

The Senate

Finance and Public Administration
Legislation Committee

Electoral and Referendum Amendment (How-
to-Vote Cards and Other Measures) Bill 2010
[Provisions]

Electoral and Referendum Amendment
(Modernisation and Other Measures) Bill 2010
[Provisions]

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Membership of the Committee

42nd Parliament

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Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

INTRODUCTION

1.1 On 2 June 2010, pursuant to the resolution of the Senate regarding time-critical bills passed on 13 May 2010,¹ the provisions of the following bills were referred to the committee for inquiry and report by 15 June 2010 (subsequently extended to 17 June):

- Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010;
- Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010;
- Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010; and
- Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010.

1.2 The committee agreed, by unanimous decision, that there were no substantive matters that required examination contained in the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 and the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010 and so reported to the Senate on 15 June.

1.3 In relation to the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 (the How-to-Vote Cards Bill) and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 (the Modernisation Bill), the committee invited written submissions from interested organisations and agencies, the Commonwealth Department of Finance and Deregulation, and the Australian Electoral Commission. The list of submissions received is at Appendix 1. The committee did not hold a public hearing in relation to the Bills.

1 On 13 May 2010, the Senate resolved to refer to committees for inquiry and report by 15 June 2010 the provisions of all bills introduced into the House of Representatives after 13 May 2010 and before 3 June 2010 that contain provisions commencing on or before 1 July 2010 (together with the provisions of any related bill).

BACKGROUND

1.4 In June 2009, the Joint Committee on Electoral Matters, tabled its report on the conduct of the 2007 federal election and matters related thereto.² The report contained 53 recommendations aimed at enabling the franchise, maintaining an effective electoral roll, increasing the participation of Indigenous and homeless electors, responding to the increased demand for early voting, reducing informal votes, the modernisation and sustainability of electoral administration, and the modernisation of regulatory arrangements. In the second reading speech for the Modernisation Bill, the Minister commented:

The majority of reforms in this Bill are based on unanimously supported recommendations of the Report of the Joint Committee on Electoral Matters following its inquiry into the 2007 Federal election.³

THE BILLS

Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010

1.5 The How-to-Vote Cards Bill aims to amend the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) in relation to electoral advertising in two ways. First, specific and expanded authorisation requirements of how-to-vote cards are proposed. The proposed authorisation requirements are aimed at making clear who will benefit from the preference flow suggested on the how-to-vote card and thus 'reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of how-to-vote material is clearly stated'.⁴ The amendments make it an offence for a person to publish or distribute a how-to-vote card that does not comply the authorisation requirements or includes false authorisation details.

1.6 Secondly, the Electoral Act and the Referendum Act prohibit a person from causing to be printed, published or distributed, anything that may mislead or deceive an elector in relation to how to cast a vote. The Bill aims to expand the definition of the term to 'publish' in both the Electoral Act and Referendum Act to add the terms 'telephone' and 'internet'. By expanding the definition to include the internet, the offence will capture material published overseas by an Australian citizen or resident.

2 Joint Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, Canberra, June 2009.

3 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

4 Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010, *Explanatory Memorandum*, p. 1.

Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

1.7 The Modernisation Bill repeals redundant provisions; gives the Electoral Commissioner flexibility rather than prescription; and places more technological tools at the Australian Electoral Commission's (AEC) disposal so that the AEC can continue to deliver the best enrolment and election practices.⁵ In order to achieve these aims, the Bill:

- removes the requirement to publish in the *Government Gazette* enrolment and election-related forms and information such as the location of polling places. The Electoral Commissioner will now be required to publish this information, at a minimum, on the AEC's website in recognition of the trend for people to use technology and websites to interact with government;
- amends the evidence of identity requirement for enrolment so that a person making an application for enrolment or a person changing their name must provide evidence of identity – either a driver's licence number, passport number or an attestation of identity signed by an enrolled elector – with their enrolment application;
- reduces the age at which people may provisionally enrol from 17 years to 16 years, thus allowing the AEC to target enrolment of young people in schools, educational institutions and youth events;
- allows for electronic Roll information to be provided to parliamentarians allows for electronic certified lists;
- introduces flexibility to print ballot papers at the local level by removing the technical requirement from ballot-papers to be 'overprinted' and to require that ballot papers contain a feature to be approved by the Electoral Commissioner;
- amends the process of authenticating ballot papers by a Divisional Returning Officer;
- introduces one form of mobile polling which may visit anywhere that the Electoral Commissioner determines thus removing inconsistencies that currently exist in the arrangements for visits at various places or institutions;
- enables a person to apply for a postal vote electronically by removing the requirement for an application for a postal vote to be signed and witnessed and requiring an elector making a postal vote to make a declaration that he or she is entitled to make an application;
- prohibits written material from being attached to a postal vote application, however, extraneous material may be included in an envelope along with the postal vote application;

5 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

- requires a completed postal vote application be returned directly to the AEC, which is intended to ensure that the application is not returned via a third party, including a political party;
- requires that both the elector and the witness of the postal vote application make a written declaration that the requirements for completing the ballot paper were completed before the close of the poll;
- clarifies that a right to inspect the electoral Roll does not include the right to electronically copy or record the Roll;
- allows the AEC to provide the postal address of general postal voters to state and territory electoral commissioners;
- introduces specific provisions to facilitate enrolment and continued enrolment for people experiencing homelessness so that a person experiencing homelessness will not lose their itinerant elector enrolment because he or she has been living in crisis or transitional accommodation for one month or longer or be removed from the Roll if they do not vote at a general election;
- expands the grounds upon which a person may apply for a pre-poll or postal vote; and
- makes a number of minor technical amendments to remove gender specific language, amend incorrect cross references and provide for consistent use of terminology.

1.8 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, stated:

Taken together these amendments provide the AEC with the necessary flexibility and technological tools needed to deliver modern electoral practices for the benefit of all electors.

The reforms are significant, and they are overdue.

This bill demonstrates the government's continuing commitment to update the Electoral Act and the referendum act for the benefit of all electors.⁶

ISSUES

Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010

1.9 The reforms proposed to how-to-vote cards were welcomed, with Professor Graeme Orr noting that they 'offer neat and bright line rules for the form of the authorisation'.⁷ However, some submitters suggested additional improvements are required. Mr Andrew Murray commented that standardisation of regulations in relation to how-to-vote cards across all Australian governments should be introduced.

6 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

7 Professor G Orr, *Submission 1*, p. 1.

Further, the bill should include a requirement that how-to-vote cards be registered with the AEC. Mr Murray stated that it is a relatively simple measure for how-to-vote cards to be scanned and placed on the AEC's website 'so allowing postal voters and others who use the internet access to HTV guidance'.⁸

1.10 Professor Orr also supported registration of how-to-vote cards, noting that not only would this have the benefit of educating campaigners, by bringing them into the administrative net ahead of polling day, but also giving the 'Commissioners and parties advanced notice of material, allowing time for a considered challenge to any dubious material'. Professor Orr went on to comment that the proposed enforcement provisions focus on after-the-event. He commented that the proposed penalty (\$1100) was adequate for minor offences but 'clearly' inadequate as a penalty for 'false authorisation'.⁹ In conclusion Professor Orr commented that relying on an offence provision is inadequate and he recommended pre-polling day registration.

1.11 The AEC noted that some of the states (Victoria, Queensland and NSW) have moved to a registration system of how-to-vote cards. In South Australia, how-to-vote cards are submitted to the SA Electoral Commission for inclusion in a poster that will appear at polling places. However, the SA system also allows for other how-to-vote cards to be handed out to voters near polling places. In Tasmania it is not permissible to hand out how-to-vote cards on polling day itself and in the ACT they may not be handed out within 100 metres of a polling booth.

1.12 The AEC was of the view that how-to-vote card pre-registration systems may be manageable in a single jurisdiction with comparatively small numbers of candidates and in a single time zone. However, for a general election in the federal jurisdiction involving nearly 1,500 candidates for both the Senate and the House of Representatives, such a system is likely to result in practical difficulties in having how-to-vote cards submitted to the AEC, registered and approved for publication in the short time between the close of nominations for candidates and the commencement of pre-poll voting. The AEC also noted that:

...the resources necessary to administer such a scheme are currently not available and this runs the risk of diverting the AEC from its primary election activities. Accordingly, the measures contained in Schedule 1 to the How-to-Vote Cards Bill do not include any prior registration requirements.¹⁰

1.13 Professor Orr suggested tightening of the term 'authorised...on behalf of', in particular in circumstances where a party supporter may claim to have authorised the material themselves.¹¹

8 Mr A Murray, *Submission 6*, p. 1.

9 Professor G Orr, *Submission 1*, p. 1.

10 Australian Electoral Commission, *Submission 3*, p. 3.

11 Professor G Orr, *Submission 1*, p. 1.

1.14 The Proportional Representation Society of Australia also suggested that how-to-vote cards which urge voters to mark just a Senate party box, be obliged to provide the full numbering(s) for all candidates in a legible font size somewhere on that material. The Society commented that this would allow voters to establish where preferences were flowing on the party ticket and thus allow them to choose to vote below the line if they so wished.¹²

1.15 The AEC concluded that the amendments in relation to authorisation requirements will 'reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of How-to-vote material is clearly stated'.¹³

Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

1.16 Many of the proposals of the Modernisation Bill were supported, in particular the provisions relating to evidence of identity;¹⁴ and age 16 provisional enrolment¹⁵; and at electors experiencing homelessness. In relation to the latter, PILCH Homeless Persons Legal Clinic commented:

We welcome those elements of the legislation that allows homeless voters to better access their human right to vote, and to participate in the public life of Australia.

In particular, we welcome the amendments to section 96 of the *Commonwealth Electoral Act 1918* that recognise the difficulties of people who are homeless that may impede their ability to vote. We also welcome the broadening of the application of mobile polling, and recognise that these amendments may further reduce barriers faced by homeless voters in accessing polling places.¹⁶

1.17 In relation to the postal voting provisions, some concerns were raised. Professor Orr, for example, commented 'I am equivocal about proposals that weaken safeguards on postal voting, given the history and potential fraud in that form of voting'. He considered that removing witnessing and signatures may weaken safeguards but 'would defer to AEC advice on whether removing the witnessing requirement will in fact add any weakness to the anti-fraud measure. The deeper issue is the reliability of the underlying enrolment.'¹⁷

12 Proportional Representation Society of Australia, *Submission 4*, p. 3.

13 Australian Electoral Commission, *Submission 3*, p. 6.

14 Professor G Orr, *Submission 1*, p. 3.

15 Professor G Orr, *Submission 1*, p. 3; Democratic Audit of Australia, *Submission 2*, p. 2; Proportional Representation Society of Australia, *Submission 4*, p. 4.

16 PILCH Homeless Persons Legal Clinic, *Submission 5*, p. 1.

17 Professor G Orr, *Submission 1*, p. 3.

1.18 Professor Orr commented on the proposal that applications for postal votes shall be made 'directly' to the Divisional Returning Officer thereby stopping their return via a third party. He voiced concern that the provision may be interpretable as forbidding a postal voter relying on a friend to deliver or post their application.¹⁸ The committee notes that the AEC's submission and second reading speech indicate that this provision is aimed at the current practice of returning postal vote applications principally via political parties and to ensure that any delays are minimised.¹⁹

1.19 The Proportional Representation Society of Australia commented on the provisions in relation to extraneous material included with postal vote applications and recommended that they be extended so that such material be required to 'sit in a separate envelope on which there is a clear authorisation and identification of candidate or party'. The Society concluded that this 'should stop any abuse of current postage entitlements and minimise occasional campaign claims that the Electoral Commission has included party propaganda in material of this nature: invariably such mailouts criticised on the grounds of perceived official bias have been from political parties'.²⁰

Conclusion

1.20 The committee notes that many of the provisions contained in the How-to-Vote Bill and the Modernisation Bill are based on the unanimously supported recommendations of the Joint Standing Committee on Electoral Matters *Report on the conduct of the 2007 federal election and matter related thereto*. The committee considers that the measures in the Bills will improve voter information in relation to how-to-vote cards, improve administrative processes and decrease the amount of prescription that prevents flexible and up-to-date process being used by the AEC in the conduct of polling. The committee particularly welcomes the extension of provisional arrangements to 16 year olds and the measures aimed at those experiencing homelessness.

Recommendation 1

1.21 The committee recommends that the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 be passed.

Senator Helen Polley
Chair

18 Professor G Orr, *Submission 1*, p. 4.

19 Australian Electoral Commission, *Submission 3*, p. 9.

20 Proportional Representation Society of Australia, *Submission 4*, p. 5.

Coalition Senators' Dissenting Report

Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010

It is notable that this Bill arises because of a deliberate scam by the ALP in the 2010 South Australian State Election.

The SA ALP handed out how-to-vote cards which appeared to be official Family First how-to-vote cards, but the preference order favoured ALP candidates.

Labor operatives were brought in, some even from interstate, to wear t-shirts which appeared to indicate that they were Family First booth workers, and to hand out the bogus HTVs.

This is not a one-off.

It is a deliberate scam that the ALP has used before, both in New South Wales and in Queensland, and which was legitimised in the infamous case of *Webster v Deahm*. It is nice to see that Labor, after only some 17 years, has now admitted that the decision in that case was wrong and is seeking to correct the law.

This Bill would require all HTV cards to place at the top of the card, and in a prominent size, the name and party of the authoriser, or face a fine of \$1,100.

A false authorisation would incur a similar fine.

Given the song and dance which the Labor members on the JSCEM made about the unauthorised pamphlet in Lindsay, it seems a rather light penalty for such a serious – in Labor's own words – offence against the Electoral Act. Clearly, a penalty of at least 50 units would be more appropriate, especially in the instance of deliberate false authorisation details.

The specification that the authorisation must go at the top seems a little over-prescriptive. Surely the key point is that the authorisation should be large and noticeable, and that this could be achieved at the top or the bottom of the HTV – or indeed anywhere on the document in a prominent, readable font and a prominent position.

That being said, the Coalition strongly supports the principle of the Bill.

Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

This Bill purports to be a series of uncontroversial, minor amendments arising out of the unanimous recommendations of the JSCEM Inquiry into the 2007 Federal election. In the main, it is acceptable, but there are some problems which need to be addressed.

Schedule 1 moves the AEC towards a more ‘digital’ system of records management. This measure was not opposed by the Coalition members of the JSCEM.

The only query that presents itself to the Coalition relates to the seemingly unnecessary deletion of s.37 of the Commonwealth Electoral Act. Section 37 states:

37 Keeping of forms

All Divisional Returning Officers and Assistant Divisional Returning Officers shall keep forms of claim for enrolment and transfer and such other forms as are prescribed, and shall without fee supply them to the public and assist the public in their proper use.

It is not a big issue, but it seems strange that such a basic entitlement – that forms be available and freely given at DROs – should be deemed worthy of removal. If the argument is that there are no longer physical forms ‘on hand’, there will still have to be some form of on-demand printing facility in these offices.

Not all individuals have access to the internet. Some people may prefer to just wander into the local DRO and obtain a form. Thus it seems to the Coalition that there is no harm done in retaining this section, and a potential for harm to be done – i.e. the removal of a right to a free service – if s.37 were to be deleted.

Schedule 2 changes the evidence of identity rules for enrolments. It removes the mandatory need for a witness to attest to the identity of a person and reduces the acceptable identity to a smaller field of items. This measure was not opposed by the Coalition members of the JSCEM.

One issue of concern is that s.99A(6) refers to a government department which no longer exists.

Schedule 3 allows for provisional enrolment at age 16, as opposed to the current age of 17. There is one drafting error in this Schedule, at Item 6: there is no reference to “age 17” in s.121(1)(c) of the Commonwealth Electoral Act.

While this measure was not opposed by the Coalition members of the JSCEM, Coalition Senators accept the assurances of the Government that this provision is only directed at provisional enrolment and in no way represents the first step towards reducing the voting age. Coalition Senators remain committed to the electoral roll being as accurate as possible and including all eligible voters, with the franchise being exercised by all eligible voters over the age of eighteen.

Schedule 4 moves the AEC towards a more 'digital' system of electoral roll management, distribution and use on polling day. It also allows for a more flexible production of ballot papers – with appropriate security devices – on polling day. This measure was not opposed by the Coalition members of the JSCEM.

Schedule 5 standardises mobile polling booth practices. This measure was not opposed by the Coalition members of the JSCEM.

Schedule 6 has both controversial and non-controversial aspects to it.

The non-controversial aspects include the removal of the need for a witness for a request for a Postal Vote, and allowing the signature date (as opposed to the postmark date) on the Postal Vote to be accepted. The first point makes it easier for some in isolated areas to request a Postal Vote. The second point goes a long way to addressing the legitimate concerns that postal voters in rural and regional Australia have had, given that they do not have every-day postal services. These parts of the measure were not opposed by the Coalition members of the JSCEM.

However, Labor has added two controversial aspects: Postal Vote Applications can only be returned directly to the AEC; and a prohibition on the attachment of extra material on a Postal Vote Application form.

The Coalition can see no valid reason for the introduction of these measures by the Government, and strongly suspects that this has been done in a cynical attempt to undermine the extremely successful Postal Voting processes of the Coalition parties. Even a simple reading of the voter returns shows that the Coalition consistently polls higher with postal votes than with any other type of declaration vote.

Nor have there been any problems raised in relation to fraudulent behaviour or impersonation of voters. If there were such concerns, then why has the ALP avoided tightening the rules in relation to pre-poll and provisional votes? Indeed, one of the other Bills currently before the Parliament (Electoral and Referendum Amendment (Close of Rolls and other matters) Bill 2010) is explicitly designed to loosen the rules in relation to casting a provisional vote – interestingly, an area where the ALP polls consistently better than the Coalition.

Thus we have this situation: the Labor government is seeking to make substantial changes to a system of voting where the Coalition does well, despite there being no evidence to support any need for such a change. Simultaneously, it is softening the provisions for a form of voting where the ALP does well, and where there are serious concerns about the integrity of such votes.

It is hard not to be cynical about the motives of the ALP in relation to these particular aspects of the Bill.

Schedule 7 modernises the provisions for homeless voters. In principle, they were not opposed by the Coalition members of the JSCEM.

However, the Coalition has now identified concerns about Item 9. Item 9 seeks to repeal s.96(9)(a) of the Act. This section states:

(9) A person ceases to be entitled to be treated as an itinerant elector under this section if:

(a) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;

The implication that flows from any such amendment along the lines of Item 9, is that there is no practical provision to *ever* remove an itinerant elector from a roll.

It is axiomatic that you cannot do a habitation review on a homeless person.

Unless the itinerant elector is unusually diligent in keeping his or her enrolment details up to date, the only way to determine if they have left the electorate (or died) is if they do not show up on polling day.

This proposed amendment from Labor is an open invitation to abuse the integrity of the electoral roll. Once a person is enrolled as an itinerant elector in a particular division, they may never leave the roll for that particular division, irrespective of their true place of residence.

The opportunity for organising a campaign of fraudulent voting is obvious, and the AEC could never check the *bona fides* of any potential roll rorter.

Thus the proposed repeal of 96(9)(a) is bad policy, because it fundamentally weakens the integrity of the electoral roll and provides for no alternative mechanism for 'roll cleansing' of itinerant voters.

Schedule 8 broadens and standardises the reasons for claiming a pre-poll vote. In many ways, this legitimises what have been 'existing practices' in many DROs.

It is well known to both Officers and pre-poll polling booth workers that many people have come in to pre-poll because they will be out of the electorate or otherwise engaged in more pleasant activities on polling day.

Rather than go through the rigmarole of contriving one of the legitimate reasons for receiving a pre-poll vote, this measure is a sensible change to make voting easier for those who simply prefer to lodge an early ballot. This measure was not opposed by the Coalition members of the JSCEM.

Schedule 9 is simply a series of minor technical amendments. These do not change policy in any way and, despite not having gone through the JSCEM, will have the support of the Coalition.

Senator Scott Ryan
Australian Liberal Party
Senator for Victoria

Senator Helen Kroger
Australian Liberal Party
Senator for Victoria

Additional Comments

SENATOR BOB BROWN

Australian Greens

The Australian Greens believe that our democracy will be strengthened by greater participation and broader representation in the electoral process and that the current system militates against both.

We welcome the reforms in the Electoral and Referendum Amendment (How-to-vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010. However I believe that the bills could be improved with additional improvements.

I intend to use these additional comments to highlight some key issues in these bills. These comments are by no means an exhaustive list of improvements which the Australian Greens believe should be made to the Electoral Act.

I submit that the following items be considered by the Government and the Senate as improvements to the bills before their passage through the Senate.

Lowering the voting age to 16 years of age

The Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 reduces the age at which people may provisionally enrol from 17 years to 16 years. The Australian Greens believe that not only the provisional enrolment age should be lowered but the voting age itself.

The Greens believe that all Australian citizens over the age of 16 should be eligible to vote.

Young people pay taxes, live under Australian laws and can leave home, have children, and join political parties. At 16 ½ years, young people can join the Defence forces. The Greens believe that if our Australian society bestows young people with all these responsibilities, it is reasonable to afford young people access to the opportunity to vote. In its report on the conduct of the 2007 federal election, the Joint Standing Committee on Electoral Matters noted that by lowering the provisional enrolment age to 16, outreach to potential first time enrollers would be easier, as many more young people are still in fulltime study at that age. Effective enrolment efforts could then focus on schools and technical colleges to target 16 year olds. This would be an important component in building an effective enrolment strategy over the longer term.

Restricting the use of postal vote applications for party political purposes

The Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 makes changes to the material which is able to be attached to postal vote applications and requirements for returning postal votes to the AEC.

The Australian Greens support these changes. In deed, the Greens have previously announced and drafted amendments to introduce in the Senate that would require any PVAs sent out by political parties to be returned directly to the AEC.

Further, we would move to amend the Commonwealth Electoral Act to require that no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

The widespread distribution of postal voting applications (PVAs) by political parties and sitting members has resulted in a marked increase in postal votes at federal elections. Since 1996 there has been an increase in postal votes of approximately 96 per cent - rising from 383,264 in 1996 to 749,566 in 2007 (see Figure 1 below).

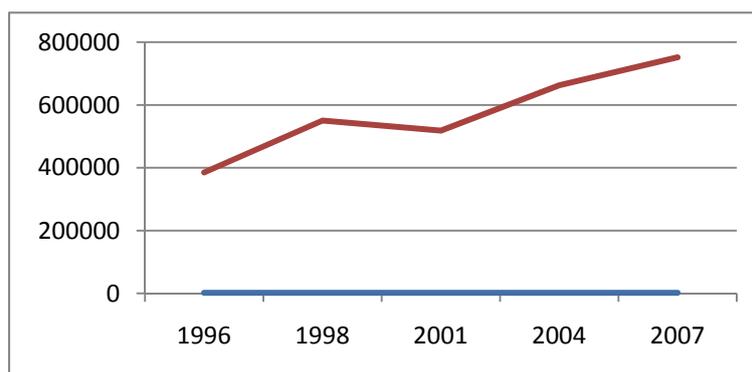


Figure 1 Increase in postal vote applications from 1996 – 2007

Source: Australian Electoral Commission (AEC), Election Statistics 1993, 1996, 1998, AEC, Canberra, 1999 (CD-ROM); AEC, Election Results 2001, AEC, Canberra, 2002 (CD-ROM); AEC, Election Results 2004, AEC, Canberra, 2005 (CD-ROM); AEC, 'Virtual Tally Room: The Official Election Results Election 2007', AEC website, viewed 28 September 2009

A recent ANAO Audit Report noted that the AEC produces PVAs for each election, and makes them widely available on announcement of the election at AEC offices, post offices, and the AEC website and to all federal Members and Senators . As a result, it is not necessary for parliamentarians to use their printing entitlement in order to effectively disseminate postal vote applications to constituents. Indeed, prior to 2004, there was no entitlement that allowed parliamentarians to use their printing allowance to produce PVAs.

Currently under the Commonwealth Electoral Act application forms for postal voting can be issued by any person or organisation provided they conform to 'the approved

form' and are attached to or form part of other written material issued by that person or organisation.

Parliamentarians can use their Printing and Communications Allowance to print and distribute PVA forms with a reply-paid envelope as a service to constituents. The Auditor-General's report released in September 2009 found that parliamentarians from the major parties and the Nationals produced at least 8.23 million PVA documents in 2007-08 using their printing entitlement. This is 2.9 million more postal vote application forms than the number of voters enrolled for the election in 2007 -08 .

The Greens believe there are no grounds from an administrative or participatory democracy perspective for postal vote applications supplied by parliamentarians to be returned to parliamentary offices prior to being forwarded to the AEC. Data from the 2007 election demonstrates a considerable delay of forms returned via reply paid envelopes to parliamentarians arriving at the AEC. Of the PVAs issued by the AEC 69% were returned on the same day as the witness signature, whereas only 27% of PVAs issued by Liberal party were returned within 4 days, and 36% of Labor PVAs were returned within 4 days.

Irrespective of whether deadlines for the close of the electoral roll are extended, this practice of double-handling presents the very real risk of electors not being enrolled prior to the close of rolls. This practice is also being used by political parties to harvest voter information without their knowledge or consent. "Party" PVAs contain a return address to a local or state-based campaign postal address, where electors' information is recorded before the information is passed on to the AEC. This diminishes, rather than enhances electors' enfranchisement.

Polling Day – how to vote cards

The Electoral and Referendum Amendment (How-to-vote Cards and Other Measures) Bill 2010 makes some timely amendments to the Act.

The Greens agree wholeheartedly with the expansion of the definition of the term to 'publish' to include the telephone and the internet. We had prepared amendments to this effect in response to the recent use of 'robocalls' in the Tasmanian election.

The predominance of how-to-vote cards negatively impacts on electors' capacity to make their voting decision free from interference. The adoption of above-the-line voting in Senate elections, especially in larger states that feature a large field of candidates, means that should voters choose to they can readily make just one mark on the ballot in order to cast a valid vote. The argument made by the major parties for the necessity of party's how to vote cards to tackle vote informality rates is spurious. If voter education is required, then non-partisan materials and programs should be delivered via the AEC.

Accordingly, the Greens believe that voters' interests would best be served by the Tasmanian and ACT state election model where how to vote cards are not handed out at polling booths on election day being adopted nationally.

Truth in Political Advertising

The Australian Greens support the introduction of legislation to ensure truth in political advertising. Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

We had prepared amendments to amend the Commonwealth Electoral Act to make it an offence to publish or distribute an electoral advertisement, which is intended to affect voting in an election that contains a statement purporting to be fact that is inaccurate and misleading.

The current provisions in the Electoral Act only extend to statements which are intended to affect the casting of votes and these provisions have been interpreted very narrowly to apply only to how a voter marks their ballot paper.

The Greens amendments would extend the truth in political advertising provisions to apply more broadly to all statements/advertisements which are intended or likely to affect voting in an election. The Electoral Commission, if satisfied that an electoral advertisement contains inaccurate or misleading materials, they may request the advertiser to either withdraw the advertisement or publish a retraction.

Elections are an opportunity for political accountability and it is critical that representations are accurate and honest. Under the current system, it is possible for advertising that contains misrepresentation and outright false statements to go unchallenged and without penalty. This can be particularly damaging in cases where the advertisements are presented by third parties, which under the current system are not required to identify themselves and therefore make known their own political or ideological position.

Although such legislation was enacted briefly in Commonwealth law in 1983 -1984 it was repealed with the support of both the major parties. Opposition to such legislation relies on the argument that it infringes the right of free political communication. However truth in political advertising legislation introduced in South Australia in 1985 was found to be constitutionally valid by the High Court. South Australia's legislation doesn't ban all untruths in advertising, but rather relates to inaccurate statements of fact (not opinion) found to be untrue

The Australian Greens advocate an amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent, similar to legislation introduced in South Australia.

Recommendations

The Australian Greens recommend that the bills be amended so to:

- 1.1 That the age of eligibility to enrol and vote be 16.**
- 1.2 That the AEC be adequately funded to deliver targeted, effective programs to engage young people in electoral processes, including enrolment.**
- 1.3 That all "party" postal voting applications (PVAs) that have been sent to voters by political parties or politicians are to be returned directly from the elector to the Australian Electoral Commission (AEC) rather than via the political party campaign office or the office of the politician**
- 1.4 That no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.**
- 1.5 That effective legislation to ensure truth in political advertising is introduced.**

Senator Bob Brown

Leader of the Australian Greens.

Appendix 1

Submissions received by the Committee

Submissions

- 1 Professor Graeme Orr
- 2 Democratic Audit of Australia
- 3 Australian Electoral Commission
- 4 Proportional Representation Society of Australia
- 5 PILCH Homeless Persons' Legal Clinic
- 6 Mr Andrew Murray

