

ALP Abroad

Australian Labor's international supporters network

**Submission to the Joint Standing
Committee on Electoral Matters enquiry
into the conduct of the 2013 election by
ALP ABROAD**

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1 Background

ALP Abroad is the Australian Labor Party's international supporters network. Whilst having no formal affiliation with the party, ALP Abroad has worked to co-ordinate the overseas Labor campaign in every Federal election since 1975. This submission makes recommendations based on our observation of elections overseas, our interaction with DFAT, the AEC, and the experiences and very real frustrations experienced by thousands of overseas Australians citizens who wish to vote.

2 Executive Summary

The fundamental principle that guides this submission is that the over 1 million Australian citizens overseas should have exactly the same rights to participate in the democratic governance of their country as Australians who are resident in it.

Australian Citizenship has been the primary precondition for the franchise since 1984. Despite citizenship being the accepted basis for the franchise, overseas Australians are treated as second class citizens by the Commonwealth Electoral Act and by the operation of enrolment and voting administration as they both limit the ability of overseas Australians to vote. This may well be unconstitutional following the High Court's decisions in Roach in 2007 and Rowe in 2010.

The treatment of Australians as second class citizens by Commonwealth Electoral Act and the practise of the AEC means has led to the disgraceful situation of that **only 16,314 of the 1 million overseas Australians** were enrolled to vote as overseas electors as of May 2013. Most Australians who vote overseas are travellers or people who have worked abroad for a short period because of Australian electoral law.

ALP Abroad proposes putting the voting rights of Australian citizens living overseas on the same basis of all Australians, by amending the Commonwealth Electoral Act 1918 to delete the part section 94A(2)(c) "must be made within 3 years of the day on which the applicant ceased to reside in Australia."

This submission makes further recommendations to change the conduct of future elections so that overseas Australians participation is maximised:

- Specific changes to Commonwealth Electoral Act relating to overseas voting to ensure that all overseas Australians can vote and that enrolling to vote as an overseas voter is made as easy as possible.
- The AEC be given a specific remit and sufficient funds to promote the enrolment of Australians as overseas voters.
- The AEC be responsible for all aspects of the conduct of all overseas polling stations and direct the Department of Foreign Affairs and Trade staff as on aspects of operation of polling stations.
- That the number and times of operation of overseas polling station be expanded.
- That internet voting be introduced for registered overseas voters.

3 Changes to the Commonwealth Electoral Act

Over 1 million Australians live overseas, but in the last three Federal elections this number has averaged around 70,000. Every election ALP Abroad comes into contact with large numbers of overseas Australians who wish to vote but could not because of the operation of the Commonwealth Electoral Act which had excluded them from voting without their knowledge. Overseas Australians have a strong sense of connection with Australia through relatives and most intend to return one day. They are shocked to find that the democracy they are proud of will them from voting unless they vigilant and informed about keeping their vote.

Australians living abroad are entitled to vote, but their franchise is limited by the Electoral Act, which contains relatively complex procedures for enrolment and provides that expatriates can lose their entitlement to vote if they fail to vote at a federal election, or fail to lodge an application to be treated as (or remain as) an 'eligible overseas elector' within the specified time frame which is currently 3 years.

The lack of enrolment and voting by overseas Australians is directly the result of the provisions of the Section 94 and 94a of the electoral act that discriminate against overseas citizens by making it difficult to enrol and to keep your vote if you are enrolled to vote as an overseas Australian. Current Australian electoral law prohibits thousands of expatriates from exercising their democratic right to enrol to vote as Australian citizens. This is because section 94A of the *Commonwealth Electoral Act 1918* stipulates that those who are not on the electoral roll may only enrol from abroad if it is less than three years since they left Australia to live abroad.

Most Australians are raised in a culture of universal compulsory voting and assume that they will always be able to vote when overseas and are unaware that:

- They need to enrol as overseas voters if they a going overseas for an extended period.
- There is a three year limit on enrolling to vote as an overseas voter from overseas when leaving Australia.
- Once they are off the roll they cannot get their vote back unless they return to Australia for at least 1 month.

The law also treats Australians who are enrolled to vote as overseas voters differently in a way that seems designed to discourage them from exercising their right to vote in that:

- It is not compulsory to vote as an overseas voter, unlike other voters.
- Overseas voters must re-enrol to vote **every year** after being enrolled to vote as an overseas voter for six years to keep their vote. The AEC does not even provide a reminder to overseas voters on the need to re-enrol.
- They must indicate when they are planning to return when applying for an overseas vote, something many voters have no idea of when they leave Australia.

Australian citizens have a fundamental right to be enrolled to vote in elections taking place in their country and the law needs to be changed to enshrine that right. The current system has effectively restricted the franchise of overseas Australian citizens to those who can overcome the barriers to voting currently in place.

Recommendations on changing the Commonwealth Electoral Act

That the Commonwealth Electoral Act be amended so that:

- 1) The AEC has a specific remit to promote enrolment and voting as overseas voters to every Australian leaving the country and those who the AEC is aware have left.
- 2) Any Australian citizen can enrol to vote as overseas voter at any time. This requires specifically the removal of the requirement of section 94A(2)(c) "must be made within 3 years of the day on which the applicant ceased to reside in Australia".
- 3) Once enrolled, overseas enrolment remains valid, subject to the same provisions of other enrolled voters.
- 4) That the provisions of the act that make voting compulsory for all other voters applies to overseas voters.

4 Promoting the enrolment and voting of overseas Australians

Australia's diaspora of over a million overseas Australians needs to be the focus of a specific program of engagement by the government that has at its heart the retention of active citizenship by overseas Australians. Australia cannot afford to lose the national resource of overseas Australians, who are disproportionately young, tertiary educated and globally connected, through lack of effort to keep them engaged in the country of their citizenship.

During the lead up to and conduct of the last couple of Federal elections, the only organisation that actively promoted the enrolment of overseas Australians to vote, and published the times and locations of overseas voting by advertisements and public promotional activities was ALP Abroad.

The AEC provides only passive information via its website. We think that as part of remit to promote overseas voting that the AEC:

- Promote awareness of overseas voting in Australia.
- Develop an enrolment form and brochure to be distributed at all points of departure, with the automatic updating of enrolment allowed for on the departure form.
- Make greater efforts to promote voting to overseas voters.
- Advertise voting times, procedures and locations for overseas voters using electronic and overseas expatriate media.

Our recommendations cover these four areas of activity in detail.

Recommendations for the promotion of overseas voting

- 5) Promote awareness of overseas voting

Develop an AEC brochure entitled "Going overseas? Enrol as an overseas voter"
The new overseas enrolment brochure should be distributed by:

- The AEC website.
- All Australian Post Offices alongside passport application forms.
- Counters where International Driving Permits are issued.
- Public libraries.

- Government shop fronts.
- Student Union areas at all Australian universities and other higher education institutions.
- Youth and other community centres and clubs.
- All Australian embassies, and consular offices.
- Travel agencies, travel fairs and international job expos and be promoted by internet based advertising.

6) The AEC promote of voting awareness at point of overseas departure

A brochure for distribution solely at international departure terminals should address the fact that the person is about to leave the country, and stress that voting from abroad is an important way of contributing to Australia's future even while away.

This brochure should be handed to departing Australians at check-in and briefly explained when they receive their boarding pass and Outgoing Passenger Card. It should include a detachable (and improved) version of the AEC's "Overseas Notification Form" that can be filled in on the spot and deposited in appropriately placed collection boxes, e.g. in the immigration area, and at gate lounges and Customs GST refund counters. It should also be franked with an international reply paid freepost stamp so that if people do not put it in a collection box at the airport, it can be posted back without complication from overseas. The departure form itself could be amended so it captured details that could be fed into the automatic notification system.

7) The AEC make greater efforts to promote voting to overseas voters between elections by.

- Reaching expatriate Australians through Australians at home by mentioning overseas voting on domestically targeted literature.
- Permanent Provision of Information in public areas of all Australian Missions.
- Advertisements in foreign newspapers, in-flight magazines and expatriate publications,
- AEC presence at major overseas events with high expatriate interest
- A dedicated overseas phone number that is monitored and where calls are returned,
- Internet advertisements on Australian websites targeting visitors with overseas ISP's.

8) Comprehensively promote voting times, procedures and polling places for overseas voters during elections using the same methods as above.

5 Overseas polling stations need to be directed by the AEC

Overseas polling stations are conducted by Department and of Foreign Affairs and Trade who make decisions about the operation of the polling stations. Our experience is that they can make decisions;

- That are contrary to AEC advice,
- That disadvantage voters,

- That displays a lack of sympathy with and understanding of the democratic process.

The conduct of the London polling place in 2007, the largest in Australian Federal election, demonstrates why the DFAT should have no role in determining the operations of polling stations. We note that the last two elections have not seen a repeat of these problems but the issue still needs to be addressed to avoid future problems.

London 'closed to public' first day of voting

Monday 12th November 2007 was advertised by the AEC on its website as the first day of voting in pre-poll centres including London. The senior staff at the London High Commission chose to 'close to the public' the polling place so that 'the High Commissioner and staff could vote'. The President of ALP Abroad was informed that this had operational advantages for DFAT as.

- DFAT staff would not have to queue.
- It would be easier to arrange publicity photographs for the High Commissioner casting the first vote without members of the public present¹.

The High Commission did not advertise November 12th as voting day on its website and told phone enquiries the week prior that the polling place 'was not open on the 12th'.

ALP Abroad had advertised extensively that voting started Monday in accordance with AEC advice. The Australian Labor Party's national office made strong representations that to the AEC to ensure that DFAT opened the polling station on Monday the 12th to the public. The problem was the AEC could not 'direct' the polling place be open, it could only request.

Australia House management only relented on the morning of the 12th, when DFAT agreed that if 'members of the public turned up, they would be given a vote'. Members of the public still had to wait outside for half an hour after the 10am opening time while the High Commissioner had his photograph taken casting the first vote.

On the first day of polling in 2004, 503 pre-poll votes were cast at Australia House. In 2007, 209 pre-poll votes were cast on day 1, only 41% of the votes cast in 2004. This significant decline in votes cast which we attribute to the failure of Australia to advertise the date and their discouragement of citizens to turn up to vote on that date.

Postal vote applications in London closed a day early

On the AEC website, it stipulated that postal vote application must reach a postal vote centre by close of business on Thursday November 22nd. This is the last day that the returned postal vote can reach the voter by Election Day.

Australia House made unilateral decision to make the close postal vote application on Wednesday 21st. This was because they believed that postal votes might not reach electors if sent at close of business on the Thursday, even though the English postal

¹ Notes of Phone conversation 8th of November with Embassy staff.

system has next day delivery for first class mail and a Saturday morning postal delivery.

We think a significant number of postal votes would have been received by the Thursday as this was the cut off date advertised by the AEC and ALP Abroad. Australia House was requested to provide information on the number of postal vote applications received after between close of business on the Wednesday and Thursday. We believe were valid applications but Australia House did not respond to our request.

Threat to 'ban' campaign workers from public footpath

The lack of organisational cultural sympathy with and understanding of the democratic process was exhibited by a range of petty restrictions that DFAT officers attempted to impose on the operation of the election activities conducted on the public footpath outside of Australia House.

In most cases political party representatives of all parties ,after much trouble, were able to dissuade DFAT staff to abandon their sillier proposals, such as asking people queuing up to vote to go away and cast a postal vote.

The issuing of a threatened 'ban' on political parties by DFAT² from handing how to votes on the public footpath outside Australia House arose from DFAT imposing unilaterally an impractical limit of two party representatives handing out how to vote" information. During peak period at the London polling station, there were several hundred people waiting to vote who had a large number queries for party workers, such what electorate they were, as well as a range of policy questions. A minimum of four people is required to meet public demand for information.

The issue of the threat to 'ban' party helpers was arose because of underlying view of DFAT senior staff that the presence of large numbers of Australian citizens being present at their embassy to vote was somehow an 'obstruction' to the orderly conduct of the embassy's regular business. The threat was eventually dropped as a result of discussion, and the fact that embassy security had no way of enforcing a ban on the public street.

These examples from the conduct of the poll at the London polling station, the largest in Australian elections, demonstrate why all aspects of the operation of overseas polling stations must be under the close direction of the AEC with strict guidelines on the specifications as to the operation of the polling station. DFAT role should be no greater than that of the local school or council that provide polling facilities in determining polling arrangements.

Recommendation on responsibility for overseas polling stations

- 9) That the AEC have sole responsibility for directing operations of overseas polling stations and that all matters relating to their conduct and operation be determined by the AEC.

² Email sent to Party representatives by senior DFAT officer 22/11/07

6 Making it easier to vote overseas

With the changes suggested in this submission to the Commonwealth Electoral Act and the consequent greater promotion of overseas voter enrolment, we envisage that in order to service the larger number of overseas voters, a number of changes will be necessary to make it easier to vote overseas. These include

- Extending the voting times.
- Making larger stations into formal polling stations.
- Increasing the number of polling stations,
- Introducing internet voting and online updating of electoral enrolment data.

Extending voting times

In 2013 different voting times applied at different overseas polling stations around the world but a universal requirements for large polling stations emerged. This was the need for polling stations should be open to 8 pm Friday night and on Saturday.

Polling stations in Europe, Africa and the Americas were not open on the Saturday 7th. They were closed because Saturday in their times zones was past the close of voting in Western Australia. Many voters, particularly 'last minute' voters, had assumed voting is on Saturday like at home and were surprised to find the polling station is not open.

Extending the hours of voting on Fridays before the eve of poll, as well as voting on Saturday, would enable more people to vote.

Making larger overseas polling stations formal polling stations

Overseas polling stations are not in fact polling stations, but postal vote and pre-poll centres. The largest two polling places in Australian elections, London and Hong Kong, should be polling places with same status as multi electorate polling places such as the Sydney and Melbourne Town Halls. This would enable a full service to be provided including the issuing of provisional votes. These are not currently issued by overseas polling centres despite the large number of potential voters who present themselves to vote, but finding that are off the roll ,cannot be issued with a provisional vote .

Increasing the number of polling stations

That 102 polling stations operated in 2013 as polling stations is a decrease from the 104 in 2007. There are large population centres of Australians that are a considerable distance from a polling centre but could be serviced through a trade mission or consulate. For example, ALP Abroad had a number of enquiries during the election about voting in Scotland; the Edinburgh consulate is not currently a polling place. We think that the practise of operating a number of polling stations in countries like Japan, China and the USA should be extended wherever the Australian government runs more than one representative office in a country.

We recommend that a review of all consulates and other Australian government offices abroad be conducted with a view of operating additional polling places.

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Voting and enrolment by internet

For many Australians abroad, distance and time make it difficult to get to the one polling station in their country of residence. People working in outer London could have to travel for up to one and a half hours to get into the city, after work to vote whilst people in regional centres hundreds of kilometres away find it impossible to get to the polling place without taking a day off work.

We recommend that voting by internet for overseas voters be introduced. NSW state elections already allow this practise so why not Australian Federal elections?

Recommendations on making it easier to vote overseas.

- 10) Extending the voting times so that all large overseas stations are open on polling eve to 8pm and polling day itself.
- 11) Making London and Hong Kong formal polling stations.
- 12) Review the consulates and government offices with a view to identifying additional polling places.
- 13) Introduce internet voting.