



**Dissenting report – The Hon. Bronwyn
Bishop MP, The Hon. Alex Somlyay MP,
Senator Scott Ryan, Senator Simon
Birmingham**

The 2010 Federal Election

Report on the conduct of the election and related matters

**Joint Standing Committee on Electoral
Matters**

Dissenting Report

The Hon. Bronwyn Bishop MP

The Hon. Alex Somlyay MP

Senator Scott Ryan

Senator Simon Birmingham

July 2011

Summary of Opposition recommendations

The Opposition opposes the following recommendations from the Government Committee members:

1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 16, 24, 25, 26, 33, 34, 36

The Opposition does not oppose the following recommendations:

9, 12, 15, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 35

The Opposition makes the following recommendations:

- *That a dedicated fraud squad be established within the AEC to investigate and prepare briefs for the DPP to prosecute cases of fraudulent voting.*
- *That the AEC should concentrate on continuing to check the accuracy of the roll by canvassing and advertising to make people aware of their obligations to properly initially enrol and advise of change of address when it occurs.*
- *That the current system of cleansing the electoral roll is maintained to ensure that elections are decided by an accurate record of eligible voters.*
- *That pre-poll voting be open on the Monday 12 days before the election and that electors continue to be required to sign a declaration when casting a pre-poll vote.*
- *That the current postal vote application system remains as it is noting the successful outcomes it achieves.*
- *That current dates for the receipt of postal vote applications from overseas voters are maintained, that voters should not be disadvantaged by being given less time to receive ballot papers.*
- *That electors wishing to cast a valid declaration vote must provide correct information about their address prior to the close of rolls, failure to do this will result in their vote not being included in the count.*

- *That the voting system used in Federal elections remains constitutionally sound and calls on the Government to ensure that South Australian ticket voting or a similar system is not implemented at a Federal level.*
- *That the current system maintains in place where nominations close between ten and 27 days after the issue of the writ and the date for fixed polling is not less than 24 or more than 32 days after the date of nomination.*
- *That the AEC retains the need for Election Day officials to sign a written contract acknowledging their important role and responsibilities.*

Dissenting report

The Coalition has a number of concerns with the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the 2010 Election. These concerns are chiefly related to maintaining the integrity of the electoral roll, ensuring that the successful postal vote application system remains in place and ensuring that any moves towards a ticket voting system in the House of Representatives, as is currently practiced in South Australia, are rejected outright.

In the previous dissenting report into the JSCEM enquiry into the 2007 Election, Opposition members noted that:

The Commonwealth Electoral Act mandates that Australian citizens undertake some basic tasks to meet their obligations in relation to the conduct of elections, namely:

- to enrol to vote,
- to accurately maintain their enrolment at their permanent place of residence,
- to cast a vote when an election is called, and,
- to fully extend preferences to all candidates contesting election for the House of Representatives in their local electorate.

Three years later, the Labor Party and the Greens are still avidly pushing that the above requirements are too difficult for a number of Australians and that Government intervention is required to ensure people carry out their democratic obligations. The Opposition remains concerned with the Government members reaffirming their commitment to introduce automatic enrolment and updates to the roll based on potentially dubious data from other Government agencies that this will lead to people being placed incorrectly on the electoral roll who have no

right to vote and others being placed on the roll against their knowledge. Members new to the Committee since the 2010 Election share this concern.

The Government members on the Committee have also expanded on previous recommendations and advised that a system needs to be implemented that would see electors have their ballot papers filled out by bureaucrats should they fail to number every box. Opposition members believe that moves towards the South Australian ticket system is a fundamental attack on a voter's democratic right to select which candidates they wish to vote for.

Opposition members are also manifestly concerned with the Committee's proposed restrictions on postal vote applications. In the 2010 election, 2.63 per cent of postal votes were informal compared to 5.55 per cent overall,¹ this is similar to the 2001, 2004 and 2007 elections and demonstrates the success of the current system where postal voters have the option to return their postal vote application form to either the candidate of their choice or to the Australian Electoral Commission (AEC) directly. Whilst trying to relax rules for other voters, the Government members on the Committee are seeking to restrict the rights of postal voters by recommending that all postal vote applications must be returned directly to the AEC.

The Opposition members on the Committee are concerned with trying to change a successful arrangement which allows postal vote applicants to receive information from their chosen candidate and results in a far lower percentage of informal votes than any other form of voting. The Opposition believes that Labor and the Greens are simply moving to punish postal voters for their own political advantage, which is evident by Recommendation 14 which would see the details of all postal vote applicants sent to all political parties, irrespective of whether the elector wishes their details sent there or not.

Fraudulent Voting

The Opposition Committee members believe that the problems experienced at the 2010 Election show there is a definite need to establish a fraud squad as part of the Australian Electoral Commission which would have the power to investigate and prepare briefs for the Department of Public Prosecutions to prosecute cases of fraudulent voting. A number of Committee members note that the AEC provided figures which outlined there were 20 633 cases of multiple voting in 2007, 14 402 cases in 2004 and 16 949 cases in 2001.

¹ AEC Analysis of Informal Voting, 2010 Federal Election, Table 5, p. 18.

Whilst many of these cases could have been genuine mistakes, it does show that multiple voting is a serious problem that has not been sufficiently reviewed by the Committee. The AEC claims that these cases resulted in no prosecutions, although further advice from the Parliamentary Library confirms that there were in fact three prosecutions. The Parliamentary Library provided the Opposition members with advice that the Australian Federal Police cited a lack of resources for its inability to make successful prosecutions:

Of the 31 incidents of possible enrolment fraud recorded by the AEC during the 39th Parliament, 25 were referred to the AFP for investigation. The AFP declined to investigate six of the matters referred to it. In all but one of these cases, the AFP indicated a lack of resources prevented it from investigating. Six incidents remain under investigation by the AFP, and six incidents were accepted by the AFP but did not proceed any further due to lack of evidence. Of the remaining seven cases, two remain under consideration by the DPP, two were rejected by the DPP due to lack of evidence, and three resulted in prosecutions.

Indeed, the Australian Electoral Commission noted in Committee briefing papers that 'the AEC can only refer matters to the AFP for investigation and possible prosecution'.

Opposition Committee members feel there is a strong need to combat fraudulent voting, which has not been seriously investigated by successive governments in recent years. These Committee members feel that a dedicated fraud squad within the AEC with the power to investigate and refer matters to the Department of Prosecutions is vital to reduce the impact of voter fraud, serve as a deterrent to potential criminals and to help maintain the integrity of the Electoral Roll.

The Opposition Committee members recommend:

That a dedicated fraud squad be established within the AEC to investigate and prepare briefs for the DPP to prosecute cases of fraudulent voting.

'Automatic' enrolment

Noting that Opposition membership has changed since the inquiry into the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW), it still expresses the view as stated, a summary of which is set out below.

No evidence at the this inquiry addressed the substantive concerns raised by Opposition members of the Committee in 2010, and a number of questions about

the operation of these provisions following the Victorian 2010 election and NSW 2011 election remain unanswered.

A complete expression of the arguments against such provisions can be found in the Dissenting Report into the earlier inquiry, which can be found at:
<http://www.aph.gov.au/house/committee/em/autobill2009/report/dissent.pdf>

Summary of the key issues

The reliance on external data sources that have been collated and that are utilised for other purposes does not make them fit for use in forming the electoral roll.

As outlined in the previous report into these proposals, a 1999 report by the House of Representatives Standing Committee on Economics, Finance and Public Administration: *Numbers on the Run – Review of the ANAO Report No.37 1998-99 on the Management of Tax File Numbers*, found that:

- There were 3.2 million more Tax File Numbers than people in Australia at the last census;
- There were 185,000 potential duplicate tax records for individuals; 62 per cent of deceased clients were not recorded as deceased in a sample match.

Similarly, an ANAO Audit Report (No.24 2004–05 Integrity of Medicare Enrolment Data) stated that ‘ANAO found that up to half a million active Medicare enrolment records were probably for people who are deceased’.²

In simple terms, where there are such examples of inconsistency in Commonwealth data, there cannot be sufficient faith in this data being used to automatically add people to the electoral roll.

The potential for error is even greater when using data from state or territory governments, as the Commonwealth cannot determine its accuracy and the relevant agencies are outside the scope of oversight by Commonwealth Parliament or Auditor-General.

The current ‘paper trail’ that sees electors initiate enrolment with a signed form provides a unique security feature to address any questions regarding roll integrity. The placement of people on the roll automatically will undermine this important element of roll integrity.

² Australian National Audit Office, *Integrity of Medicare Enrolment Data No. 24 2004-05*, p. 12.

Given that there is neither consent nor a signature required for automatic enrolment, it is doubtful that someone could be pursued for false enrolment or other aspects of electoral fraud.

Furthermore, given the relatively light identification requirements present in the Australian electoral system, removing this security feature only weakens one of the few critical protections for the integrity of the roll and its policing.

Given that it is not uncommon for individual electorate results to be determined by less than 1000 votes, even a 1 per cent error in the information sourced from the various agencies could have significant ramifications for the outcome of a seat, or even an election.

This is not to suggest that current processes cannot be refined and updated, but a move away from an individual enrolling on his or her own initiative in compliance with electoral legislation to a situation where the state can enrol a person of its own accord represents a drastic and dramatic change in our enrolment processes.

The AEC has previously submitted that the declining enrolment rate is partly due to the outdated and overly prescriptive enrolment procedures and requirements. If this concern is to be taken at face value, then this is a reason to reconsider some of these practices – it does not justify a movement away from individual registration to automatic enrolment.

Despite the fact that Government majority recommends that the power to declare data sources as ‘trusted’ be given to the AEC, Opposition Members and Senators do not believe this addresses this problem in its entirety.

We are concerned that the power to deem data sources ‘trusted’ in determining the use of such data in compiling the roll as a potential risk to the office.

The inclusion of such data, if erroneous, would be extremely damaging to public faith in our electoral process. Furthermore, the inclusion of such data may well be controversial due to lack of faith in its inclusion or utilisation.

Placing the Electoral Commissioner at the heart of such a potentially politically charged dispute can only damage the standing of the office and the AEC.

One change that the ALP has made to this recommendation since the previous inquiry involves the publication of the data to be utilised. This reflects a concern raised in the previous inquiry into this issue that the data sources being utilised in NSW were not required to be made public.

The Government members’ current proposal is to allow the determination of such data utilisation to be a disallowable instrument. But this fails to address the point

raised above, indeed it increases the risk of drawing the Electoral Commissioner into a dispute that is, by its nature, highly political.

Opposition members believe it would be a retrograde step to diminish the independence of the AEC to such a degree that decisions about a basic function such as enrolment would once again be over-ruled by the Parliament.

Opposition members restate their view that none of these self-evident risks to the integrity of the electoral roll and public faith in it are justified.

The current enrolment process is transparent to all – completion of a form by an eligible individual. Put simply, filling out an enrolment form is not difficult.

Finally, the argument about roll divergence between some states and the Commonwealth put by Government members is not worthy of serious consideration.

As outlined previously, the fact that NSW and Victoria have legislated for automatic enrolment provisions that do not sufficiently address the above issues is no reason for the Commonwealth to simply follow.

To allow State Parliaments to effectively set the standards for the Commonwealth electoral roll through the ‘joint roll at all costs’ approach advocated by the Government members is to allow ‘the tail to wag the dog’.

Each proposal should be considered on its own merits, regardless of the activities of other jurisdictions. A joint roll is obviously desirable, but not at the cost of a loss of integrity or the potential for political disputation around electoral administration.

AEC and ALP submissions

Disappointingly, Opposition members must note that the Australian Electoral Commission and Australian Labor Party have very similar recommendations when it comes to automatic enrolment and believes that it is not up to the AEC to take such a partisan line:

The ALP renews its call for an automatic enrolment system to be introduced before the next Federal Election following significant confusion regarding enrolment and successful challenges in both the Federal Court and High Court to enrolment determinations made by the AEC in the 2010 Federal Election. (Australian Labor Party, Submission 55, p. 1)

Recommendation 1: The AEC recommends that legislation proceed to amend the Electoral Act to allow the direct update of enrolment.

Recommendation 2: The AEC recommends that the Electoral Act be amended to enable the AEC to directly enrol eligible electors on the basis of data provided by specific sources. (Australian Electoral Commission submission 87, p. 13)

It is particularly concerning that the Australian Electoral Commission seems to be pushing a political agenda when it comes to updating enrolments, these are decisions which should be made by the nation's elected representatives and not unelected bodies employed to carry out these decisions. The AEC should not be recommending that the Electoral Act be changed, but should be carrying out any changes decided by the Parliament. The changes recommended suit a specific political agenda which would have wide ranging implications affecting the integrity of the electoral roll.

Election Day enrolment

No case has been made that there is a need for Election Day enrolment. And no evidence addressing the previous concerns of Opposition members, maintained by current Opposition members, has been raised in this inquiry.

Election Day enrolment poses a number of problems.

As well as exposing the roll to fraudulent enrolments, it will potentially cause significant delays on Election Day, additional to those that have been reported and are of increasing concern, especially at peak voting times.

It cannot be expected of election officials, only engaged on a casual basis, given the pressures and time constraints placed upon them on polling day to closely cross-check every enrolment form accurately. The Opposition notes the evidence of the CPSU to the inquiry that experienced casual officials are not offering themselves for duty as previously because of the impact of the new Labor changes to pension arrangements which can result in the loss of pension entitlements.

Secondly, the recommendation will cause additional queues on polling day. It will also provide delays in finalising the count while awaiting verification of the enrolments received that day. It is a significant additional administrative burden for the AEC at a time when measures, such as processing pre-poll votes as 'ordinary votes' have been taken to quicken the vote counting process on Election Day.

Thirdly, Election Day enrolment will inadvertently provide an incentive to people to not comply with the existing law and initially enrol or update their election details when they move residence. The knowledge that one can simply turn up on Election Day and enrol to vote after turning eighteen, taking out citizenship or moving residence will only weaken the effectiveness of the AEC enrolment and education campaigns. This will reduce the accuracy and integrity of the roll between elections.

Finally, Election Day enrolment breaches an important principle – that candidates should know their electors.

The Opposition opposes Recommendations 1-5 of the Committee's report and recommend:

That the AEC should concentrate on continuing to check the accuracy of the roll by canvassing and advertising to make people aware of their obligations to properly initially enrol and advise of change of address when it occurs.

Electronic signatures

Opposition members do not oppose the use of electronic signatures for signing electoral enrolment forms, however, the Coalition reaffirms its commitment to the integrity of the electoral roll and believes that electronic signatures should only be accepted if appropriate photographic identification is also included. This could include a current driver's licence or passport details which are the two forms of identification currently accepted on the AEC enrolment form.

Electoral Roll cleansing

Opposition members believe that the responsibility for an elector to keep their details up to date. Recommendations 7 and 8 will result that if a person actually lives at a different address to the one they claim when they attend a polling booth, they will still have their vote counted. The proposal that electors who provide an incorrect address should have their vote counted sets a dangerous precedent relating to providing information to Government authorities and makes current provisions for electors to provide identification when enrolling essentially meaningless.

The Labor and Greens parties continue to argue that the current requirements that electors enrol to vote, accurately maintain their enrolment when they change address and then cast a vote when an election is called is far too onerous for some Australian citizens. The Coalition believes that enrolling to vote and casting a vote on Election Day is the responsibility of each individual citizen.

Opposition members oppose Recommendations 7 and 8 on the basis that these moves will reduce the integrity of the electoral roll and recommend:

That the current system of cleansing the electoral roll is maintained to ensure that elections are decided by an accurate record of eligible voters.

Pre-poll enrolments

Opposition Committee members feel that section 200DH of the *Commonwealth Electoral Act 1918* being repealed will increase the likelihood of voter fraud and threaten the integrity of the Electoral roll. Providing a signature when placing a pre-poll vote is not an onerous responsibility for the elector and these Committee members believe there is not only no reason to repeal this section of the Electoral Act but doing so could lead to an increase in fraudulent voting.

Opposition members believe that pre-poll voting should not open until the Monday 12 days before polling day, as opposed to the Monday 19 days before polling day as recommended by the Government members on the Committee. This would ensure that electors are still given ample time to cast a pre-poll vote prior to Election Day should they need to.

The Opposition members are concerned that allowing pre-poll voting for 19 days prior to Election Day takes the focus of polling day itself, which is where the overwhelming majority of votes should be cast. By having pre-poll 12 days before polling day this will also ensure that the AEC has sufficient time to accept nominations and check all details before printing ballot papers.

Opposition Committee members therefore oppose Recommendations 10 and 11 and recommend:

That pre-poll voting be open on the Monday 12 days before the election and that electors continue to be required to sign a declaration when casting a pre-poll vote.

Postal vote applications

Opposition Committee members note the Australian Electoral Commission's submission advises that approximately two thirds of electors, over 550,000 people, sent their postal vote application back to a political party. The Opposition believes that changing this system will confuse electors who are comfortable with the current arrangement which has worked very well for a number of years.

The current system not only gives elderly, disabled and less mobile electors the opportunity to cast their vote as is their democratic right, it also ensures they have

access to how-to-vote information from their chosen candidate. The success of this system is demonstrated by the fact that informal voting amongst postal voters was 2.63 per cent compared to 5.55 per cent overall. The Opposition members are very concerned that changing this system will lead to an increase in the informal rate amongst postal voters.

Electors choose this option in the full knowledge they will receive a How-to-Vote card from their chosen political party and the recommendation that all PVAs are now returned only to the AEC contravene the right of an elector to receive voting information. Many postal voters, who are often elderly or disabled, would be confused by a change to this system and it could see an increase in the informal vote for postal voters. Opposition Committee members believe the AEC is seeking unnecessary restrictions on postal voters. The same Committee members note that the AEC has gone to great lengths to assist blind and vision impaired people vote, which is to be applauded, but their recommendation to deny electors the right to send their PVA to their chosen candidate goes against this.

It is disappointing to see that once again the AEC's recommendation mirrors the position of the Australian Labor Party. Opposition Committee members strongly believe it is not within the purview of the AEC to recommend changes of this nature, but simply to provide information about the process.

Opposition Committee members feel that Recommendation 14 is not consistent with an individual elector's right to a secret ballot by distributing information about which form an individual elector is choosing to vote. An elector has the right to privacy not only about which party they choose to vote for but also about how they cast their vote, be it as an ordinary vote, a postal vote, an absentee vote or a pre-poll vote. This recommendation singles out postal voters by not giving them the same right to a secret ballot that other voters receive.

Postal voters are also used to a system where they receive how-to-vote information only from the candidate of their choice, allowing all candidates access to this information takes away the responsibility of the candidate to contact the elector with information about the postal voting option whilst giving them the opportunity to post a How-to-Vote card. The Opposition members believe that voters send their postal vote application back to a political party, having made up their mind about which candidate they wish to vote for, with the full knowledge they will receive a How-to-Vote card from that candidate alone.

Similarly, postal voters who have previously returned their application directly to the AEC, not wishing to have their details sent to a political party, will now receive unwanted information from candidates.

For these reasons the Opposition members completely reject Recommendations 13 and 14, the Opposition recommend:

That the current postal vote application system remains as it is noting the successful outcomes it achieves.

The present system protects the secret ballot option for postal voters and gives electors the opportunity to receive information or not receive information as is their democratic right. The proposed changes will mean postal voters will not have access to a secret ballot, as does every other type of elector, and will receive unwanted information from candidates. This change is simply to ensure that Labor and the Greens are able to distribute their how-to-vote information without having to pay for the costs of distributing postal vote applications, and ignores the democratic rights of postal voters and puts the extremely low informal rate of postal votes in jeopardy.

Cut-off date for receipt of postal vote applications

Opposition Committee members feel that moving the day for postal vote applications received in Australia for addresses outside Australia to be 6 pm Monday before polling day will disadvantage postal voters by giving them less time to send in their application and will particularly disadvantage Australian Defence Force personnel serving overseas, often in remote locations. It is better to focus on the efficiency of the AEC in processing forms rather than giving electors less time to send in their application. The task of the AEC is to serve voters, not to make their own job easier.

Opposition Committee members feel that the AEC should conduct a study about the effectiveness of the cut-off date used at the March 2011 NSW Election, which is being proposed for Federal Elections. It is important to determine whether these dates affected the number of postal vote applicants and whether the cut-off dates resulted in postal voters missing out on their chance to vote. These members feel that the Committee should consider the findings of any such study before implementing the NSW system at a Federal level.

The Opposition therefore opposes Recommendation 16 and recommend:

That current dates for the receipt of postal vote applications from overseas voters are maintained, that voters should not be disadvantaged by being given less time to receive ballot papers.

Declaration votes

Recommendation 24 outlines that if a person resides at a different address to the one they claim when they attend a polling booth, they will still have their vote counted when they actually live at a different address.

Opposition members believe that the responsibility for an elector to keep their details up to date and to provide their correct address when they attend a polling booth is not an onerous responsibility for an elector and notes that the overwhelming majority of the Australian population carries out these requirements with no issue. The proposal that electors who provide an incorrect address when attending a polling booth should have their vote counted sets a dangerous precedent relating to providing information to Government authorities and makes current provisions for electors to provide identification when enrolling essentially meaningless.

The Labor and Greens parties continue to argue that the current requirements that electors enrol to vote, accurately maintain their enrolment when they change address and then cast a vote when an election is called is far too onerous for some Australian citizens. The Coalition believes that enrolling to vote and casting a vote on Election Day is the responsibility of each individual citizen.

Opposition members oppose Recommendations 24 on the basis that these moves will reduce the integrity of the electoral roll and recommend:

That electors wishing to cast a valid declaration vote must provide correct information about their address prior to the close of rolls, failure to do this will result in their vote not being included in the count.

South Australian ticket voting

Opposition members strongly oppose Recommendation 25 and believe the consequential proposal contained in Recommendation 26 will be ineffective and is little more than a political fig-leaf to cover the political agenda of Government members to count informal votes.

Opposition members challenge the terminology around this proposal. This is not about 'saving' votes that are somehow valid and discarded on technicalities.

This proposal is about ballot papers that have not expressed a valid preference being deemed to do so and admitted to the count according to preferences expressed by other than the voter themselves.

A commitment to full preferential voting has long been a bipartisan one at the Commonwealth level. As the 'Langer' incident illustrated, when challenges to this have been forthcoming, the Commonwealth Parliament has acted to ensure that the requirement of voters to express a complete set of preferences regarding the candidates for election has been maintained and reinforced.

There is no doubt that there has been an increase in informal votes cast. But there is no agreement whatsoever on the reasons for this.

The Opposition believes that the Government members of the Committee have, for the convenience of their argument, failed to give due consideration to the following factors:

- the institution (by ALP Governments) of optional preferential voting in state elections in NSW and Queensland;
- the 'Just vote 1' campaigns that have subsequently followed in elections in those states, again by the ALP; and
- the impact of the 'vote informal' campaign at the last election by former Labor Opposition Leader Mark Latham.

Government members of the Committee have contrived an argument that somehow these informal votes which it wishes to count are unintentionally informal by virtue of not expressing a valid preference. A short examination of their arguments is important at this point.

The AEC analysis outlines that 51.4 per cent of informal votes were 'assumed to be unintentional'. Opposition members do not agree with this conclusion, and highlight the term 'assumption'. This is not a fact, it is merely an assertion.

The Government members of the Committee outline their plan to address this, through the institution of a mechanism to count votes that do not express a complete set of preferences '...in cases where it is clear that an eligible voter has attempted to cast a formal vote, but it is informal perhaps due to confusion over what is required to make their vote count...'. (Paragraph 7.10)

No explanation is provided on how one can be 'clear' that an attempt to make a valid vote has been undertaken when it is informal 'perhaps due to confusion'.

Despite a helpful analysis of the history of the institution of above-the-line voting for the Senate in 1984, Government members arrive at conclusions not supported by the evidence in stating 'Today, the Joint Standing Committee on Electoral Matters faces many of the same policy and practical challenges in reducing informality in the House of Representatives as faced by the Joint Select Committee

on Electoral Reform when it looked at the high level of Senate informality in 1983.’ (Paragraph 7.47)

This statement is simply wrong.

First, the level of informality in the House of Representatives in 2010 was approximately half of that of the Senate in 1983.

Second, completing a Senate ballot prior to the introduction of above-the-line voting was obviously and patently more complex than any House of Representatives ballot paper in the 2010 election.

Another critical inconsistency between the proposed measure and that of the Senate voting system relates to public information.

When voting for the Senate, it is made clear that voting above-the-line for one party distributes preferences according to a ticket lodged by that party. Information about party tickets is freely available from the AEC on polling day, from political parties and on the AEC website. While it is obvious that voter knowledge of this process is far from perfect, it is required to be made available to voters.

Conversely, the proposed ‘SA model’ relies on secrecy.

Not only are voters still prohibited from voting in an optional preferential fashion, it is illegal to advocate this fact.

This is where the Opposition’s objection to Recommendation 26 is pertinent.

The advent of new technologies and social media forms makes such a ban almost irrelevant. The AEC cannot enforce such a ban in a timely fashion, due to many of these means (e.g. Twitter) being virtually anonymous, international and not located within Australia.

The recent Canadian election provided an example of this. Despite a ban on broadcasting results of the eastern provinces before voting concluded in western provinces, some threatened to do so via Twitter (see: <http://www.cbc.ca/news/technology/story/2011/04/21/cv-section329-reaction.html>).

While no specific campaign was undertaken as threatened, Canadian authorities would have been powerless to act to prevent it if it had.

This demonstrates the ineffectiveness of any proposal that relies on laws to prohibit particular information being circulated to voters.

The combination of Recommendations 25 and 26 is substantially worse than the alternative offered by Antony Green, 'progressive informality' and poses a substantial risk to the integrity of elections. The majority proposal would also result in less informal votes being, to use the Government's language 'saved', than would Mr Green's proposal or a optional preferential model.

The implementation of these recommendations could well see an electronic campaign being conducted outside the power of Australian law to prevent, halt or address that may encourage people to only 'vote 1' for one party in order to mislead voters that this would mean votes were informal.

Under this provision these votes could then be counted according to the wishes of a party who had people associated with it conduct such a campaign. Such an incentive has no place in electoral law.

Opposition members have numerous other concerns with these proposals.

First, the constitutionality of 'deeming' votes to have been lodged a particular way is questionable. Unlike the case of the Senate ticket voting system, the information about how these votes are to be counted is specifically withheld from voters.

Second, this represents a substantial disenfranchisement of the voter in order to advantage political parties. In our compulsory enrolment and attendance regime, we require citizens to attend and effectively vote (the absence of a requirement to vote validly is not widely understood, indeed it may be the increasing level of understanding this due to campaigns such as that by Mr Latham that is increasing the informal vote).

Currently, a voter can cast an informal vote by not filling out the ballot paper as instructed. They may also register a 'protest' by only partially completing the ballot paper.

This proposal would remove that right of a voter and effectively appropriate that vote for a candidate and/or political party.

This represents a new level of involvement and privilege by candidates and certain political parties in the election process. Not only do we, by law, require them to enrol and attend, the state would now 'deem' their vote to be cast a certain way in the complete absence of the intention of such by the voter.

This represents nothing less than the institution of a fraudulent method of counting votes, compounded by the fact that it is proposed to be effectively done 'in secret' by prohibiting its broadcast.

Opposition members are resolutely opposed to any proposal that purports to count votes in a way not so marked or cast by voters themselves.

In Australian football parlance, this proposal is the equivalent of a drawn Grand Final being decided not by extra time or by a replay, but by adding the number of near misses to the scores to determine a winner after the siren sounds.

Opposition members therefore oppose Recommendations 25 and 26 and the Opposition recommend:

That the voting system used in Federal elections remains constitutionally sound and calls on the Government to ensure that South Australian ticket voting or a similar system is not implemented at a Federal level.

Close of nominations

The Opposition believes that Recommendations 33 and 34 are unnecessary and that the current arrangements are suitable for conducting elections effectively and efficiently. If the AEC feels that the current timing is too restrictive, it is better to focus on their own administration of the election, rather than giving themselves more time to complete their required tasks.

Furthermore, the Opposition believes that these recommendations would be completely redundant should their recommendation be accepted that pre-poll voting not begin until the Monday 12 days before polling days as opposed to a week prior to this.

The Opposition opposes Recommendations 33 and 34 and recommend:

That the current system maintains in place where nominations close between ten and 27 days after the issue of the writ and the date for fixed polling is not less than 24 or more than 32 days after the date of nomination.

Contracts for Election Day officials

The Coalition opposes Recommendation 36 which would potentially increase the risk that a potential worker for the Australian Electoral Commission is employed without appropriate knowledge of what their job entails, including undertaking an agreement to remain impartial at all times to ensure confidence in the Australian electoral system.

It is not an onerous responsibility for an AEC employee to sign an agreement which outlines the unique nature of their job and the vital responsibilities that come with it, including this information in an electronic copy of an employment agreement alongside other 'fine print' details in the contract will see that many employees are unaware of their unique responsibilities.

It is therefore important that the AEC requires employees, both temporary and ongoing, to sign an agreement on paper which outlines their important role.

The Opposition opposes Recommendation 36 and recommend:

That the AEC retains the need for Election Day officials to sign a written contract acknowledging their important role and responsibilities.

The Hon. Alex Somlyay MP
Deputy Chair

The Hon. Bronwyn Bishop MP

Senator Scott Ryan

Senator Simon Birmingham