

**Submission to the Joint Standing Committee on Electoral Matters
*Inquiry into the Conduct of the 2010 Federal Election***

Submission by Michael Doyle, January 2011

The Increase in Informal Voting ... Why Did It Happen?

SUMMARY

This submission discusses the large increase in the number of informal votes in the House of Representatives 2010 Federal Election, compared with previous elections. It describes factors which appear to be significant and would therefore have contributed to that increase. The submission identifies relevant questions flowing from those factors - questions which need to be answered if the number of informal votes is to be reduced. It also makes related recommendations.

SUBMISSION

In the 2010 Federal Election the Greens achieved the biggest swing (3.97%) in the House of Representatives. The next biggest swing was achieved by ...? Liberals? No. Nationals? No. Independents? No. It was that awkward, intransigent, and recalcitrant group, the Informals. 729,304 votes went to them, or 5.5% of the total electors that received a ballot. This means that more than 1 in 20 of those who had their name crossed off the electoral register “failed” to vote correctly. In the 2007 election it was 3.95%; but in 2010 it was 5.55%. Why the increase? Nobody knows. However, we do know that there were some important factors which were different in 2010 compared to 2007.

The above factors can be summarized in one word: Confusion.

Confusion Factor #1 Do we have Voluntary Voting?

There has always been a simmering debate as to whether we have compulsory voting. But until fairly recently it was generally confined to a few people (perhaps with too much time on their hands), and some politicians (when they were forced to comment on the issue) plus a few academics.

Prior to and during the 2010 election, whenever the issue of “Compulsory Voting” was raised in the media (such as talkback radio¹, articles and Comments to the Editor², and TV programmes like the ABC’s Q&A³) there was a growing theme: “We do not have

¹ 3AW’s Tom and John Elliott on several Sundays August 2010.

² [‘Vote or Else’ Julie Bishop SMH article, 3/3/10, and comments from readers](#)

³ Bill Shorten, M.P., on ABC’s Q&A, September 4 2008

compulsory voting ... it is only compulsory to have your name crossed off the electoral roll.”

During the 2010 election, to a much greater extent than in previous elections, the media and the politicians were clearly saying, “Voting is not really compulsory.” In some cases the ‘really’ was omitted and it was said that you only need to have your name crossed off the electoral roll. The justification for this is “the confidentiality” of the voting booth, and what you mark on your ballot is your choice (the need to correctly place the ballot in the box was rarely discussed). In other words, it is OK to break the law provided that nobody else knows that you’ve done it.

With so many telling us during 2010 that voting is not compulsory, is it any wonder that some people must have drawn the obvious conclusion ... if it’s not **compulsory** to vote, then it must be **voluntary** ?

Factor #2 Mark Latham

Mr Mark Latham was perhaps the most vocal during the campaign in stating that “Voting Is Not Compulsory”. He did it on Channel Nine's "60 Minutes", August 15th 2010. In fact he went even further by saying “It's not compulsory to fill out the ballot paper. You can put it straight in the ballot box, totally blank.” He also said, "That's what I'll be doing on Saturday, and I urge you to do the same. It's the ultimate protest vote."⁴

Some in the media thought that Mr Latham would be prosecuted for misleading voters. But the Australian Electoral Commission’s reported response was that Mr Latham had done nothing wrong and that the Commonwealth Electoral Act did not contain an explicit provision prohibiting the casting of a blank vote.

In fact the Act is very clear as to what constitutes the act of voting:-

COMMONWEALTH ELECTORAL ACT 1918 - SECT 200DK

Voter to mark vote on ballot paper

Except as otherwise prescribed by the regulations, the voter, upon receipt of a ballot paper under section 200DJ, must without delay:

*(a) go to an unoccupied compartment of the voting place and **mark his or her ballot paper in private**; and*

(b) fold the ballot paper so as to conceal his or her vote and deposit it in a ballot-box; and

(c) leave the voting place.

⁴ <http://www.news.com.au/features/federal-election/donkey-vote-mark-latham-breaking-the-law/story-e6frflr-1225905657658#ixzz1BTcHxg3O>

To state, as Mr Latham did, that “You can put it straight in the ballot box, totally blank”, is obviously true. You can also spit on it or scrawl obscene words with related penciled images on it, fold it, and then put it in the ballot box. But all these suggestions, including Mr Latham’s, are contrary to Section 200DK (a) and to Section 240 (which specifies how a voter shall mark the ballot). The requirement at 200DK (a) ‘**mark his or her ballot paper in private**’ seems a little inconvenient to Mr Latham ... and to Mr Anthony Green, Election Analyst, who stated on the ABC’s website :-

“Compulsory voting means you must attend a polling place, have your name crossed off the electoral roll, accept ballot papers, retire to a voting enclosure to vote and then deposit the ballot papers in the appropriate ballot box”⁵. What happened to 200DK (a) ‘**mark his or her ballot paper**’ ?

If we can ignore paragraph (a) of 200DK, then can we also ignore paragraph (b) and perhaps just leave a torn-up ballot in the private booth?

I respectfully suggest that Blind Freddie would acknowledge that ‘Voting’ is described in Section 200DK. Nowhere in the Act is it even remotely suggested that the act of Voting consists of having one’s name crossed off the electoral roll. Section 245 5(b) of the Act states that “it is an offence to fail **to vote** at an election”. This makes it all the more bewildering that the Australian Electoral Commission chose not to prosecute Mr Latham for misleading voters ... or perhaps it was a very astute decision by the Australian Electoral Commission. After all, a guilty verdict would have been very embarrassing for a lot of powerful people. Awkward questions would have been asked about what constitutes ‘Voting’ and whether it is misleading to assert that we do not have compulsory voting.

This Inquiry must consider these issues:-

- Was the Australian Electoral Commission’s response to Mark Latham’s public statements correct?
- What effect did the Mark Latham statements and the Australian Electoral Commission response have on the increase in Informal Voting?

Factor #3 Australian Electoral Commission advertising

Another major difference between the 2007 and the 2010 elections was something that **did not** happen. In 2007 (and during earlier elections) the Australian Electoral Commission paid for newspaper advertisements giving information about voting early, absentee voting, and the location of polling booths. This is especially useful for New Australians, many of whom do not have English as their first language. In the 2010 election the same type of advertisements appeared. But there was one glaring difference. The 2007 adverts and earlier ones had the words “Voting Is Compulsory”. In 2010 those words were not at the top of the adverts. Nor at the bottom. Not anywhere.

The question must be asked, “Why not?” Could it be that the Australian Electoral Commission had decided to capitulate in the face of so many politicians proclaiming that

⁵ <http://www.abc.net.au/elections/federal/2010/guide/howtovote.htm>

Voting is Not Compulsory? Certainly, this Inquiry should seek answers to the following questions:-

- Why did the Australian Electoral Commission decide to pay for advertisements without the words **Voting Is Compulsory**?
- What effect did this omission have on people from a non-English speaking background and on the increase in Informal Voting?

Conclusion

In a voluntary voting system, a large drop in turnout signifies voter disapproval of all the major Parties. In Australia, voters are unable to send the same message. An increase in the number of informal votes of 28% was obviously due to a combination of Mr Latham's comments, some people believing that voting is not compulsory, the lack of clear advice by the Australian Electoral Commission, and an unknown number of votes being cast unintentionally (in effect, disenfranchising those voters). We just do not know the proportions of the mix.

The increase in informal voting sends a confused message. The major differences between 2007 and 2010 were the increased number of misleading media comments about compulsory/voluntary voting, the Australian Electoral Commission advertisements, and Mr Latham's suggestion on Channel 9.

If the number of informal votes is to be reduced, questions need to be asked ... and answered.

Recommendations

- The Commonwealth Electoral Act be amended to clarify whether Voters can choose **not** to mark the ballot allocated to them. (In which case, references to *Compulsory Voting* would also need to be clarified or removed.)
- The Commonwealth Electoral Act be amended to include a definition so that there is no confusion as to what constitutes the act of 'voting'.
- The Australian Electoral Commission be advised that advertisements related to elections and voter conduct must be accurate and complete.
- The Australian Electoral Commission be reminded that comments on the legality of actions and comments during elections should not be made without formal advice from a qualified legal professional.