

Electoral Reform Australia

The New South Wales Branch of the Proportional Representation Society of Australia

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Committee Secretary
Joint Standing Committee on Electoral Matters
Department of House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600
jscem@aph.gov.au

Re: Inquiry – Improving Electoral Administration Bill

Dear Sir/Madam,

Thank you for the opportunity to comment on the proposed changes to the *Commonwealth Electoral Act 1918* currently before the House of Representatives in the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 (**the Bill**).

Electoral Reform Australia has concerns about proposed section 238B, which deals with ballot-boxes that have been opened before the close of polls. As it currently stands, proposed subsection 238B(4) states that ballot papers from a ballot-box that has been prematurely opened must be excluded from the count. A similar amendment is proposed to the *Referendum (Machinery Provisions) Act 1984* in relation to referendums. The explanatory memorandum to the Bill (**the EM**) states that this section is designed ‘to address an issue that arose during the 2010 federal election, in which ballot-boxes in two electoral divisions had been prematurely opened before the close of polls’.

We certainly believe that ensuring the integrity of Australia’s electoral system is of the utmost importance. However, it should also be considered a fundamental right of citizens to have their vote counted. For this reason, we consider the proposed measure to be excessive and heavy-handed.

In the case of ballot-boxes that may have been deliberately tampered with, we believe that proposed section 238B would exacerbate any mischief caused. Any prospective fraudster would

easily be able to determine statistically which booths in an electorate tend towards the political party to which he or she is opposed. Attempted tampering would only occur in those booths – it would be illogical to do otherwise – and would be unlikely to involve substantial numbers of ballots. On the other hand, the exclusion of an entire ballot box from the count would have a substantial effect and one that would be favourable to the perpetrator.

We understand from the Committee's report on the conduct of the 2010 election and related matters (**the 2010 Report**) that proposed section 238B has been introduced in response to ballot-boxes in the electorates of Boothby and Flynn that were incorrectly opened due to error on the part of polling officials (2010 Report, p 46). We note that the Australian Electoral Commission (**the AEC**) has taken action to ensure that this does not reoccur. We also note that the AEC's submission to the 2010 Report recommended the introduction of a savings provision in the event of error by polling officials.

The first response to any inappropriate action during the conduct of any election should be to maintain, as far as possible, the fundamental right of the voter to have their vote counted. To this end we submit that proposed section 238B (and its referendum analogue) should not be enacted.

Instead, we submit that a better response to this issue – and one that will have an outcome more consistent with the policy of electoral inclusion – is to grant a discretion to polling officials to accept or exclude ballots from incorrectly opened ballot-boxes.

The prematurely opened ballot box should be resealed, kept separate and not counted. A report outlining the details of the event should be submitted by the Booth Returning Officer to the District Returning Officer for his or her consideration. Party scrutineers should be asked if they wish to submit supplementary reports and if they do these should also be included with the report to the District Returning Officer.

Having assessed the incident, the Returning Officer should make a decision but should start with the presumption that ballot papers should be included rather than excluded.

In Australia, the AEC is renowned for its independence and integrity and we submit that a better response – rather than heavy-handed automatic exclusion – is to allow the District Returning Officer full discretion in resolving the situation.

Yours sincerely,

Susan Gregory
President
Electoral Reform Australia