



Dissenting Report – Mr Scott Morrison MP, Senator the Hon Michael Ronaldson, Senator Simon Birmingham, Liberal Party of Australia, Hon Bruce Scott MP, The Nationals

Introduction

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.

These requirements are the basic building blocks of our system of compulsory preferential voting. They are not onerous requirements. They represent the modest responsibilities of citizenship. The vast and overwhelming majority of Australians fulfil these responsibilities.

Yet the majority report of the Government members of the Committee concludes these requirements impose an unwarranted inconvenience on citizens and seeks to

apply a lowest common denominator approach to reform of our electoral laws. This approach is opposed by Coalition members of the Committee.

In the lead up to the last election the AEC conducted a highly successful campaign encouraging Australians to value their vote. The campaign led to a surge in enrolments prior to the election, based on the active response of citizens to this important message. The recommendations of the majority report are in direct conflict with this message.

The majority report argues for a relaxation of important measures introduced to protect the integrity of our electoral process and most significantly the electoral roll itself. The product of their recommendations is to reward complacency towards our democracy and appease those who fail to meet their responsibilities under the Act. Such recommendations include:

- extending the close of rolls and thereby reducing the time available for scrutiny of late enrolments by the Australian Electoral Commission once an election is called;
- weakening existing proof of identity requirements for those found not to be on the roll;
- removing any sanctions for failing to maintain your enrolment as required under the Act;
- removing the requirement for voters to fully exhaust preferences for House of representative elections.

The approach taken in the majority report to address the problem of people failing to maintain their enrolment or vote properly is to simply ignore it. In short, they seek to legitimise illegitimate behaviour, rather than uphold and enforce the reasonable requirements of the Act. This is a lazy and dangerous approach that is not supported by Coalition members of the Committee.

Coalition members commend and support efforts by the AEC to boost enrolments, including on-line registration with appropriate safeguards. However, we do not believe this should be achieved at the expense of the integrity of our electoral system or by diluting the responsibilities of citizens under the Act.

A century ago Australia was one of only a handful of functional democracies around the world. As a consequence we must not only continue to prize our own democracy but be a standard bearer for all those who have paid a heavy price to join the family of democratic nations.

The enemy of democracy is complacency. The measures recommended in the majority report and highlighted below seek to reward such complacency.

Accordingly the Coalition members oppose the following recommendations of the majority report:

Recommendation 1

The committee recommends that Section 155 of the *Commonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.

The closure of the rolls seven days after the issue of a writ is a significant threat to the integrity of the electoral roll.

Closing the roll at 8 pm on the day the writs for the election are issued (usually three or four days after the election is called) for people enrolling for the first time, and people re-enrolling after being removed from the roll, currently gives the AEC an extra 7 days to verify new enrolments and an extra 4 days to verify changes of address.

At a time when the AEC is processing a large number of enrolments, these changes have greatly assisted the AEC in identifying and discounting fraudulent enrolments. Under the old scheme, to which Labor proposes returning, more than 520,000 changes to enrolment or new enrolments were submitted to the AEC in the seven-day period before the close of rolls during the 2004 Federal election. The proposed timeframe of seven days will again make it virtually impossible to exclude fraudulent votes from the count.

The Coalition considers that the existing arrangements ensure that the electoral roll contains a high degree of accuracy and integrity, and is concerned that the extra time period allows for a return to a system which permits calculated fraudulent enrolments to take place.

Furthermore, evidence provided by the AEC in their first submission to the inquiry at 2.2.5 noted that under the new rules the number of people missing the close of rolls deadline in 2007 was 100,370 compared to 168,394 in 2004. This represents a reduction of more than 40%.

As a consequence, in contrast to the argument asserted in the majority report, the combination of the effective campaign run by the AEC to encourage enrolment, combined with the fact that failure to enrol prior to the election being called would result in not being able to vote had a positive effect on encouraging enrolment. This outcome highlighted the virtue of an enforcement incentive over the liberalised approach recommended in the majority report.

Coalition members also note the statement by the AEC in their first submission at 2.3.1. that 'the reduction in the close of rolls period meant that during 2007 the AEC placed a strong emphasis on ensuring that eligible electors were correctly

enrolled prior to the issue of writs and that the focus was on having an “election ready roll” at the appropriate time’.

Coalition members of the Committee believe a return to the previous system will serve to discourage citizens from making or maintaining their enrolment during the ordinary course of the year, as they will have the opportunity to delay such action until an election is called.

Recommendation 2

The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the Electoral and Referendum Regulations 1940 that require provisional voters to provide proof of identity

- **be repealed; and**
- **that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.**

The Coalition is opposed to any weakening of the proof-of-identity provisions in relation to enrolling or provisional voting on the grounds that it removes an important deterrent that acts to prevent citizens from failing to maintain their enrolment or who may seek to engage in multiple voting.

Given that failure to properly maintain one’s enrolment is a breach of the Act, it is not unreasonable for such persons to be subjected to a more stringent procedure to admit their vote, as a result of neglecting their responsibilities under the Act.

According to the AEC approximately 75% of provisional voters showed evidence of identity when voting. Of the 33,901 provisional voters who failed to provide this identification on polling day, only one in five of these voters subsequently provided this proof of identity by the cut off date, i.e. the close of business on the following Friday.

In the majority report it is argued, without any supporting evidence, that the attrition rate is a result of voter apathy as the result of the election is known. This conclusion is difficult to reconcile with the fact that in the electorates of Swan and McEwen for example, where there were 260 and 188 provisional voters respectively who failed to provide their proof of identity in the week following the

poll. In each case the election in these seats hung in the balance throughout the following week and well beyond.

The argument is made that the validity of these voters can be determined by a comparison of signatures. However, such a process would fail to provide any deterrent or consequence for voters who fail to meet their obligations to maintain their enrolment under the Act. Such failure should trigger a requirement for a more stringent process.

The majority report argues that the proof of identity requirement in these cases should be relaxed to avoid the situation where voters may be disenfranchised through no fault of their own due to administrative errors in the publication of the roll by the AEC. No evidence has been provided by the AEC or is provided in the majority report indicating the extent of such administrative errors to support this view.

Coalition members agree that in the event of such errors, the subsequent requirement for proof of identity should be waived. If identity has already been provided on polling day there is no issue. If subsequently the AEC determines and certifies that an omission is the result of their administrative error, the vote should be automatically included, subject to checking the signatures. Otherwise the proof of identity requirements should stand.

Finally, in relation to multiple voting while the majority report asserts that there has been no evidence of attempts at multiple voting, this is no reason to remove deterrent measures protecting against such behaviour. If this were the case a reduction in illegal boat arrivals would be a valid argument for reducing funding for border control.

Recommendation 3

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and

(a) the omission occurred after the election prior to the election to which the scrutiny relates, or

(b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:

- if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but
- if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

The situation envisaged in recommendation 3 relies on the elector having been negligent in maintaining their correct enrolment. The Coalition considers that it would be highly undesirable to further weaken the consequences of failing to enrol correctly.

People who live at a location for 21 days are, by law, required to enrol at that address. If they do not do so, they are breaking the law. It is true they may not be aware of any changes to boundaries which could affect which electorate they now reside. However they are aware of the fact that they have changed address.

The amendments proposed in the majority report mean that a person who fails to enrol still retains their right to vote in Senate elections if they are living in the same state as their previous legitimate enrolment.

Incredibly, the majority report is also proposing that a person who has failed to enrol at their new address, but allegedly still resides in the same electorate, retains all their existing voting rights – both for the Senate and House of Representatives. Nor is there any statutory penalty for failing to enrol at a new address.

Effectively, the changes proposed by the Government members of the Committee mean that there is no consequence for breaching the Electoral Act. The benefits of correctly enrolling are reduced to nothing and there is no disincentive for any

person who fails to correctly enrol, leading to a situation where the whole basis for the AEC's Continuous Roll Update (CRU) program is severely undermined.

If the Government is seriously proposing this sort of arrangement – which is effectively 'enrolment on polling day' – then they might as well abandon CRU and its attendant costs, and propose a UK-style fixed-date roll.

Recommendation 14

The committee recommends that, in order to encourage the enrolment of young Australians, the Australian Electoral Commission introduce a national 'Schools Bounty Scheme' under which government and non government schools, universities and technical colleges and the like would receive a specified amount for valid enrolment forms collected and forwarded to the Australian Electoral Commission.

The notion of introducing a financial inducement to encourage enrolment, however far removed from the individual, represents a corruption of our democratic process. If our schools and universities need such a financial incentive, then a more appropriate action may be to address the chronic failure of civics education in these institutions.

The Coalition Members of the Committee are completely opposed to such an inappropriate measure. Once again, it is a requirement of the law to enrol to vote when you turn 18. No incentive should be required, provided or solicited to take up your most important democratic right.

Recommendation 20

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting.

For example, mobile polling or pre-poll facilities should be able to be provided where there is likely to be sufficient demand for such facilities by homeless and itinerant electors, or in such other circumstances as warrant their use.

While Coalition members of the Committee have no objection to the AEC being given authority to establish mobile polling places we do not accept that such measures are necessary to assist voters who are itinerant or homeless.

While we support the measures contained in the majority report to assist with the recognition and enrolment of persons who are homeless, such persons still have ready access to polling places, especially in metropolitan areas. By contrast Coalition members believe that voters in rural and remote areas would have greater claim to having access to these services than itinerant or homeless voters.

The Coalition members believe that these facilities should only be established where voters would not have access to existing facilities provided by the AEC and that the AEC be required to report to the Joint Standing Committee on Electoral Matters following each election detailing where they have used the powers to establish mobile or pre polling places and outline their justification for using those powers.

Recommendation 35

The committee recommends that:

- **Section 240 (2) of the *Commonwealth Electoral Act 1918*, which provides that the numbers on House of Representatives elections ballot papers are to be consecutive numbers, without the repetition of any number, be repealed, and**
- **the savings provision contained in paragraph 270 (2), repealed in 1998, which provided that in a House of Representatives election in which there were more than three candidates, and where a full set of preferences was expressed on the ballot paper, but there were non-consecutive numbering errors, the preferences would be counted up to the point at which the numbering errors began, at which point the preferences were taken to have ‘exhausted’, be reinstated to the *Commonwealth Electoral Act 1918*, and**
- **the Government amend the *Commonwealth Electoral Act 1918* to provide a penalty provision sufficient to deter the advocacy of ‘Langer style voting’.**

The Coalition strongly opposes the proposal to remove the requirement for voters to sequentially number their ballot. The majority report states at 8.65 that it supports the retention of ‘full preferential voting for the House of Representatives’ yet then recommends that the requirement to fully extend preferences not be required to constitute a valid vote. This is an absurd proposition that clearly seeks to have one’s cake and eat it.

The Government members of the Committee argue that their recommendation is required to reduce the informality rate. However they seek to achieve this by simply calling an informal vote a formal vote.

Evidence was consistently presented to the Committee from recognised experts such as Antony Green and Emeritus Professor Colin Hughes that the preferred option to reduce informal voting of the kind highlighted in the majority report was to introduce optional preferential voting. This expert evidence has been conveniently ignored by the Government members of the committee in their majority report.

The expert testimony of Green and Hughes are strongly supported by the comparison of rates of informality between State and federal elections in NSW. In March 2007, the informality rate at the State Election using optional preferential voting was 2.69%. At the November 2007 Federal election the rate of informality in NSW was 4.95%.

For political reasons the Government members of the committee consider this approach inconvenient and have put forward a less effective option, that undermines the integrity of the compulsory preferential system and leaves the system open to abuse.

Given the significant proliferation of new communications technologies since the measures proposed by the Government members of the committee were originally removed, it is simply naive to pretend that suitable protections can be implemented to prevent Langer style abuse of the system, should these vote-saving measures now be reintroduced.

If the Government members are interested in genuine reform to reduce informality they should seriously consider the adoption of optional preferential voting at a federal level. If not, then Coalition members strongly believe they should not seek to undermine our system of compulsory preferential voting and retain the current provisions of the Act.

Recommendation 46

The committee recommends that the penalties imposed under s 328 of the *Commonwealth Electoral Act 1918* (\$1,000 for a natural person and \$5,000 for a body corporate) be revised to ensure that they provide a greater deterrent.

Coalition members do not oppose changes to increase s.328 penalties. However, the Coalition considers that the failure of the Government members to call for an increase in penalties for a broad range of other offences betrays a cynical and partisan motive to highlight rogue behaviour in the 2007 Lindsay campaign, rather than address the issue of penalties in a serious and balanced fashion.

If Government members were being consistent and were addressing these matters seriously – rather than being partisan opportunists – they would also be addressing penalties in relation to:

- failure to declare donations made to candidates and political parties;
- failure of political parties and candidates to report such donations;
- failure to enrol when a person turns 18;
- failure to update a person's true residential address;
- falsely requesting a pre-poll vote;
- multiple voting;
- impersonation of another voter; and
- deliberately giving an incorrect residential address, usually to secure political and/or financial advantage.

Recommendation 47

The committee recommends that the Government amend the *Commonwealth Electoral Act 1918* to reinstate the previous three-year disqualification for prisoners removed from s 93(8)(b) in 2006, to reflect the High Court of Australia's judgement in *Roach v Australian Electoral Commissioner* that s 93(8AA) and s 208(2)(c) are constitutionally invalid.

The Coalition members reject the views of organisations such as Getup as outlined in their evidence to the Committee on this matter. We remain firmly of the view that people who commit offences against society, sufficient to warrant a prison term, should not, while they are serving that prison term, be entitled to vote and elect the leaders of the society whose laws they have disregarded.

We acknowledge the High Court's decision in *Roach*, but we also note that the Court only gave a narrow decision in relation to a blanket exclusion, and did not seek to invalidate the general principle that the franchise may be removed from certain prisoners. It is the view of the Coalition that voting should be denied to those who are currently serving full-time custodial sentences of one year or longer.

This would align the voting disqualification with the disqualification from being a Member of Parliament, at s.44(ii) of the Australian Constitution:

Any person who ... has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a state by imprisonment from one year or longer... shall be incapable of being chosen or of sitting as a senator or member of the House of Representatives.

People being detained on remand, those serving alternative sentences such as periodic or home detention, those serving a non-custodial sentence or people released on parole should still be eligible to enrol and vote.

A whole or partial ban on prisoner voting is an established feature in many other Western countries including the United Kingdom, Switzerland, Belgium, as well as the majority of States in the United States of America.

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Deputy Chair

Senator the Hon Michael Ronaldson

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