

**To Committee Secretary  
Joint Standing Committee on Electoral Matters**

## **Submission to Joint Standing Committee on Electoral Matters**

**On Postal Votes, Mobile Polling Places, and Some Other Matters.**

### **SUMMARY**

#### **Postal Votes**

The definition of **authorised witness** is not made clear to people exercising a postal vote on the certificate form attached to the postal vote envelope, nor is it made clear in the printed leaflet supplied to postal voters. Bone fide ballots can be, and I suspect are, excluded from the count because what would seem reasonable voter interpretations of the term do not strictly accord with the act.

#### **Mobile Polling Places**

Residents of nursing homes, aged hostels, and hospital patients missing out on the opportunity to vote by failure of nursing staff to inform them of time and place or failing to include them in the round.

Denial of access to scrutineers at some institutions.

#### **General Comment on AEC Information to Voters.**

Concerns about the quality of basic information produced by AEC in print or by media for the general public, which can be misleading. Behind the slick and simplified information provided lies an act with rigidly enforceable interpretations. A case in point is the definition of authorised witness.

#### **On the behaviour of AEC Staff.**

Brief comment on some encounters over the years.

#### **On the preferential ballot.**

The system should be changed to optional preferential.

**From:**  
Laura Sinclair

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### On Postal Votes, Mobile Polling Places, and Some Other Matters.

#### Postal Votes

On Monday 27 June, in the week leading up to polling day, 2 July, I scrutineered at the AEC Herbert office at 143 Walker Street, Townsville. AEC officers were conducting a preliminary scrutiny of declaration (postal) votes in accordance with Schedule 3 of the Commonwealth Electoral Act 1918. This particular procedure was new to me, and I was not conscious of how critical it might turn out to be.

What it entailed was an examination of the postal vote certificates on the outside of individual closed envelopes containing the postal ballot papers to ascertain if the certificates met the requirements of sect. 194, that the certificate was completed and signed by the right person (the elector who requested a postal vote) and was signed by an **authorised** witness. Envelopes examined were consigned to two piles, one where the AEC officers were satisfied that all was in order, and a second pile if there was any uncertainty. I was assured that the second pile would be examined by the DRO to assess their admissibility.

I was not altogether comfortable with the process as I pointed out that the definition of authorised witness was unclear both on the certificate itself and explanatory leaflet supplied to electors. This is of real concern as certificates signed by witnesses as “husband”, “wife” or “family member” were consigned to the second pile. The AEC certificate indicates beside the authorised witness signature box the following (*eg. elector*), the abbreviation *eg.* implying that other categories or descriptors of witnesses are also authorised. In mainland Australia this is not the case.

On completion of the days scrutiny I went home and downloaded the Commonwealth Electoral Act 1918. The definition of Authorised witness appears at s.193, the relevant parts of which read as follows:

- (1). An elector whose name appears on a Roll is an authorised witness.
- (2). Outside Australia, the following persons are authorised witnesses:
  - (a) an officer of the Defence Force or the naval, military or air forces of a Commonwealth country;
  - (b) a person appointed or engaged under the *Public Service Act 1999*;
  - (c) a member of the civil or public service of a State or Territory or of a Commonwealth country;
  - (d) a Justice of the Peace for a State or Territory or a Commonwealth Country;
  - (e) a minister of religion or medical practitioner resident in a State or Territory or a Commonwealth country;
  - (f) an Australian citizen.
- (3). A person who is a candidate at an election is not an authorised witness in relation to the casting of a postal vote in that election.

None of this is made clear to electors on the certificate itself or the leaflet provided by the AEC. If voters want further information they are directed to the AEC website.

I went back to the AEC office the next morning to raise my concerns about the lack of clear direction given to voters re. authorised witnesses. Otherwise valid and reputable witnesses might be declared invalid by entering a descriptor other than *elector* and bone fide ballots might not be counted.

I spoke to an officer at the counter indicating my concerns, offering the view that the certificate form and leaflet guidance were both badly inadequate, that the system was flawed and needed change. The officer concerned (who was not the DRO) adopted a puffed up bureaucratic stance, being it seemed not much interested in my concerns. I acknowledged that that was the way the AEC paperwork stood for this election but offered my view that it needed to be sorted out for the next.

I first met the DRO on Friday 1 July (pm) when I went to the office to find out where the AEC counting house for Herbert would be. I was impressed by the DRO as a fair and reasonable person and remain so. At the time she was still having difficulty getting enough staff for the count. The responsibilities of the DRO outlined in the Act are onerous. Checking the admissibility of postal vote certificates where they had earlier been put aside by junior staff could turn into a big job if handled thoroughly.

The whole system it seemed to me relied heavily on the DRO adopting a fair and reasonable posture in line with admitting all envelopes that a reasonable person would assess were submitted in good faith. With this in mind it would be wrong to reject a certificate witnessed *by wife, husband or family member* where a cursory examination of the roll would indicate that such were or were likely to be on the roll. At issue is that the individual casting the ballot is indeed the person who lawfully applied for the postal vote, not someone else, and importantly that the ballot paper was completed in accord with the electors wishes, and sealed in the envelope prior to closure of the poll.

Now, entering the word *elector* next to an indecipherable signature of course provides no guarantee that all is bone fide, for there is no reasonable opportunity for the DRO to confirm the validity of the witness. Nor does the witness signature necessarily ensure that the person casting the vote is the person lawfully entitled to do so, for that relies on Schedule 3-3A. To make their signature checkable the witness would need to provide first and second names so the rolls could be checked. That is not now done. The system is sloppy and does not necessarily provide for the fairness and integrity required.

I note that by Schedule 3–3A, where the DRO has reason to doubt that the signature on the postal vote certificate that purports to be the electors signature is the electors signature, the DRO must check the signature against the most recent record (if any) of the electors signature that is available to the DRO. If after checking the DRO is not satisfied with the signature on the envelope the DRO must make all reasonable attempts to contact the elector within 3 days after the election to require the elector to provide evidence of his or her identity by the first Friday following polling day. PVA forms can now be used for such authentication. (See Scrutineer Handbook 2016 p.25).

I further note that in the days following polling day many more postal votes were received by the AEC. I am not aware of any scrutineers being present at any preliminary scrutiny following that which I attended.

## A Particular Instance of Concern

It appears that two of our members were away in the USA on polling day and submitted postal votes from there. I understand (as noted above) they had little or no information to guide them concerning authorised witnesses. Whether they had witnesses of any kind sign their certificates I don't know, but I understand they have received letters from the DRO to the effect that their ballots were not counted for some apparently related reason. Surely the DRO would have checked **their** signatures in the enrolment data base to confirm their identity; their postal vote application forms PVAs would have their signatures (and secret/security question) enabling authentication. This then leaves the question as to whether the ballot papers were witnessed being sealed in their certified envelopes prior to closure of the poll. At this point witness category becomes important for if not in accord with a strict interpretation of the Act the ballot contained may not be counted.

## Mobile Polling Places

I am informed that numbers of residents at Garden Settlement nursing home have received letters for failing to vote. I am further informed that one of the residents inquired well before polling day as to what arrangements were in place to enable him to vote. Evidently the staff member he spoke to said something along the lines of *"Leave it to me. I'll arrange it"*. If the AEC polling staff visited Garden Settlement he and perhaps 18 others were left out. I note that the scrutineer's handbook states that "Once determined the places, days and times of mobile polling arrangements are published on the AEC website". This is not a lot of help to many elderly voters in nursing homes, or, hospital patients. They rely on advice by administration or nursing staff.

## The Mater Hospital

On two occasions in recent years I attended the Mater Hospital, Pimlico to scrutineer. I was informed by the returning officer that the Mater management had denied access to scrutineers, ostensibly for patient wellbeing reasons. No doubt nurses with nursing union affiliations would have been present or accompanied the returning officer.

## General Comment on The Quality of AEC Information to Voters

I have long been concerned about some of the stuff the AEC promulgates, which is **inaccurate, misleading or deceptive**. One of their regular chants over the years has been *"you must fill in every square"*. Going back into the early 90's this was false, for the system then was effectively optional preferential. When not all squares were filled in preferences exhausted at the last numbered square. It was that serial pest Albert Langer who made a lot of noise about it that led the AEC to enforce full preferential voting. This made the count, and scrutineering all the more difficult, particularly in respect of the metre long Senate papers before above the line was introduced. The quality of information now is much better for those who bother to access the AEC website, but not all electors are able, or bother, to do so. Most electors rely solely on the printed material supplied and AEC media ads.

## **On the Behaviour of AEC Staff**

I have encountered both good and bad over the years .

On the good side I was very impressed by the DRO during the recent 2016 poll and count.

On the other side:

I had difficulties with one official during the 2016 Herbert count. When I challenged some ballots she wanted to declare informal requesting they be put aside for the DRO, she repeatedly and aggressively countered with *"That's my decision"*. I persisted with my occasional challenge and she got quite heated shouting things such as *"That's my job"* and *"I'll make that decision"* loudly at me. As it happened the noise drew the attention of Senator George Brandis who took her aside and explained the law which settled the matter. She continued to scowl angrily thereafter.

Not all AEC officers, particularly temporary staff, know the rules adequately.

Years ago I had a returning officer deliberately try to mislead me at the University High booth in Melbourne. I rang our legal adviser to resolve the issue.

Again at the University High booth years ago, during the count a man wandered in through a side door and started messing around with the waste paper/rubbish bins. There were ballot papers everywhere, on tables and senate ballots on the floor. I immediately asked the nearest official "who's he?" and pointed out he wasn't allowed in and had to go. The woman hissed at me "He's the caretaker", I repeated he wasn't allowed in and had to go, again she hissed aggressively "He's the caretaker". I informed her that "he goes right now or I call the divisional returning officer". He was removed.

## **On Preferential Voting**

The full (exhaustive) preferential ballot should be abandoned in favour of optional preferential which is much fairer. The notion that a full preferential system produces a true outcome where an absolute majority view is determined is flawed when there are a large number of candidates. For the most part electors find it impossible to rank large numbers in a thoughtfully considered order of preference, and it is a nonsense that the seventh or eighth preference is afforded the same weight as the first. An incidental flood of seventh or eighth preferences, which are there solely to satisfy the AEC "fill every square" requirement should not override a considered first preference outcome.

A great many electors object strongly to being forced to assign any preference whatever to candidates they dislike or know nothing about, and are offended that if they fail to do so their ballot will be informal, despite having voted for their carefully chosen candidate.

The successful gaming of the system in the 2013 Senate ballot has surely discredited the full preferential system for good. A serious flaw with the system is that it leads to the donkey vote eg.1,2,3, ... ,9 down the HoR paper. Thus when the poll is tight as in Herbert 2016 the outcome becomes a lottery to the advantage of the candidate higher up the ballot paper.

There were more than enough donkey votes to swing the 2016 result in Herbert. There were of course ballots deemed informal where insufficient squares were marked; in such cases the voter's wishes while clear enough, are not counted. Many perhaps cast their vote this way in defiance of a requirement they consider unjust.

The purpose of a ballot is to ascertain which candidate has majority support. The clearest indication of that is the first preference count. In the unlikely case where candidates are tied appeal to second preferences may be reasonable. Appeal to say seventh and eighth preferences to decide, or topple a first preference winner, is not reasonable.

The optional system avoids many pit falls and inequities and should be adopted. It does not deny anyone from listing comprehensive preferences if they so choose, or deny parties the right to recommend preferences. It will better reflect the people's views

The time has come for change.

Laura Sinclair