

The Committee Secretariat

Joint Standing Committee on Electoral Matters

Parliament House Canberra

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INQUIRY INTO THE COMMONWEALTH ELECTORAL AMENDMENT BILL 2016

In this submission a reference to a section of the bill is to the numbered amendments in the bill. I would ask the secretariat if they could also publish this submission in html so that people can click on the links.

In addition to what I said in my submission to The Inquiry Into All Aspects of The 2013 General Election (attached) I would add that the right to say no is a fundamental human right to thought, belief, opinion, expression and political participation.

I also refer you to both the Universal Declaration and the ICCPR on the issue of op pref being freedom of opinion and expression

(<http://www.un.org/en/universal-declaration-human-rights> and
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>)

And to Human Rights Commission submission to Federal Court In Albert Langer's case.

<https://www.humanrights.gov.au/commission-submissions-langer>

Langer v Cth

<http://www.austlii.edu.au/au/cases/cth/HCA/1996/43.html>

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/1996/1277.html?&nocontext=1>

I ask:

- What if the major parties are on the same song sheet in regard to wars that kill people and the people aren't? Is it fair then that we should swallow our pride and surrender our right to say no cos our votes will be informal otherwise?
 - What if the major parties both have candidates who are taking money from big business and are either bent or guilty by association? Is it fair then that we should swallow our pride and surrender our right to say no cos our votes will be informal otherwise?
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Myself and others are saying on the record that there is stuff we don't like and don't want to be made complicit in.

Below are the text of amendment sought and extracts of electoral provisions referred to.

These are the amendments I seek to the:

COMMONWEALTH ELECTORAL AMENDMENT BILL 2016

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/CEAB2016

Incorporating my submission (submission 132) the The Inquiry into the 2013 election
http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Submissions (attached).

These amendments are to allow for optional preferential voting “below the line” in Senate elections and to allow Qld style optional preferential voting for the House of Representative Elections (see s122-123 Electoral Act Qld 1992-
<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/ElectoralA92.pdf>)

The amendments relate to the current Commonwealth Electoral Act provisions:

Commonwealth Electoral Act 1918

http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/

As to what is currently formal or informal voting at a federal election

Senate voting

s239 http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s239.html

House of Representatives voting

S240 http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s240.html

As to what is an informal (Illegal) ballot paper

S268 http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s268.html

Amendments sought to the text of the bill:

Amendment 1

In s20 of the bill , before “Subsections 239(2) and (3) ” Insert : S239(1)(b)

**After S239(1)(b) “(b) writing the numbers 2, 3, 4 (and so on, as the case requires)”
Insert a semi colon and omit “in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.” And insert
“and may**

(c) if the person so wishes, mark a vote in the squares opposite the names of any of (but not necessarily all) the remaining candidates so as to indicate the order of the person's preference for them.”

Amendment 2

In s20 of the bill , after the proposed “Subsections 239(2) and (3) ” Insert new amendment to the bill s20(A)

s20(A) SECT 240 Marking of votes in House of Representatives elections

After the heading

repeal s240(1) (a) and (b) , renumber s240(2) “s240(3)and substitute

“(1) A person may vote by writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of only 1 candidate to indicate the person’s preference for the candidate.

(2) Instead of voting in accordance with subsection (1), a person may vote by—

(a) writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of a candidate to indicate the person’s first preference for the candidate; and

(b) writing—

(i) the number 2 in another square; or

(ii) the numbers 2, 3 and so on in other squares; to indicate the order of the person’s preferences for 1 or more (but not necessarily all) of the other candidates.”

Amendment 3

After s21 of the bill insert new amendment 21(A)

SECT 268 Informal ballot papers

After the heading Repeal s 268(1)- (b) and (c) and substitute :

“(b) subject to s239(1)(a),(b) and (c) in a Senate election, it has no vote indicated on it, or (as the case requires) it does not indicate the voter's first preferences”

“(c) in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate .”

Electoral Provisions Referred to:

COMMONWEALTH ELECTORAL ACT 1918 - SECT 239

Marking of votes in Senate election

(1) Subject to subsection (2), in a Senate election a person shall mark his or her vote on the ballot paper by:

(a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and

(b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.

(2) A vote may be marked on a ballot paper by writing the number 1 in a square (if any) printed on the ballot paper under [subsection 211\(5\)](#) or [211A\(6\)](#).

(3) Where a voter has marked a tick or cross in a square printed on a ballot paper under [subsection 211\(5\)](#) or [211A\(6\)](#), the voter shall be regarded as having written the number 1 in the square.

(4) Where a candidate dies between the date of nomination and polling day, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot paper shall not be informal by reason only:

(a) of the inclusion on the ballot paper of the name of the deceased candidate;

(b) of the marking of any consecutive number opposite that name; or

(c) of the omission to place any number opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences.

COMMONWEALTH ELECTORAL ACT 1918 - SECT 240

Marking of votes in House of Representatives election

(1) In a [House of Representatives election](#) a person shall mark his or her vote on the ballot paper by:

- (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
- (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.
- (2) The numbers referred to in paragraph (1)(b) are to be consecutive numbers, without the repetition of any number.
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http://www5.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s268.html

COMMONWEALTH ELECTORAL ACT 1918 - SECT 268

Informal ballot papers

- (1) A ballot paper shall (except as otherwise provided by [section 239](#), and by the regulations relating to voting by post) be informal if:
- (a) subject to subsection (2), it is not authenticated by the initials of the presiding [officer](#) or a voting [officer](#) (within the meaning of [Division 3](#) of [Part XVA](#)), or by the presence of the official mark;
- (b) subject to [section 269](#) and [subsection 270\(1\)](#), in a [Senate election](#), it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and the order of his or her preference for all the remaining candidates;
- (c) in a [House of Representatives election](#), it has no vote indicated on it, or it does not indicate the voter's first preference for 1 candidate and an order of preference for all the remaining candidates:

Provided that, where the voter has indicated a first preference for 1 candidate and an order of preference for all the remaining candidates except 1 and the square opposite the name of that candidate has been left blank, it shall be deemed that the voter's preference for that candidate is the voter's last and that accordingly the voter has indicated an order of preference for all the candidates:

Provided further that, where there are 2 candidates only and the voter has indicated his or her vote by placing the figure 1 in the square opposite the name of 1 candidate and has left the other square blank or placed a figure other than 2 in it, the voter shall be deemed to have indicated an order of preference for all the candidates;

(d) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of the [Divisional Returning Officer](#), the voter can be identified:

Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot paper by an [officer](#), notwithstanding that the placing of the mark or writing upon the ballot paper is a contravention of this Act; or

(e) in the case of an absent vote--the ballot paper is not contained in an envelope bearing a declaration made by the [elector](#) under [subsection 222\(1\)](#) or (1A).

(2) A ballot paper to which paragraph (1)(a) applies shall not be informal by virtue of that paragraph if the [Divisional Returning Officer](#) responsible for considering the question of the formality of the ballot paper is satisfied that it is an authentic ballot paper on which a voter has marked a vote and the [officer](#) has endorsed the ballot paper with the words 'I am satisfied that this ballot paper is an authentic ballot paper on which a voter has marked a vote.'

(3) A ballot paper shall not be informal for any reason other than the reasons specified in this section, but shall be given effect to according to the voter's intention so far as that intention is clear.

Ss122 and 123, Qld electoral act

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/ElectoralA92.pdf>

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/E/ElectoralR13.pdf>

122 How electors must vote

(1) An elector must vote in accordance with—

(a) if the elector votes using electronically assisted voting—the procedures approved under section 121B(3); or

(b) otherwise—subsection (2) or (3).

(2) An elector may vote by writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of only 1 candidate to indicate the elector's preference for the candidate.

(3) Instead of voting in accordance with subsection (2), an elector may vote by—

(a) writing on a ballot paper the number 1, a tick, or a cross, in the square opposite the name of a candidate to indicate the elector's first preference for the candidate; and

(b) writing—

(i) the number 2 in another square; or

(ii) the numbers 2, 3 and so on in other squares;
to indicate the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

123 Formal and informal ballot papers

(1) Subject to this section, for a ballot paper to have effect to indicate a vote for the purposes of this Act—

(a) the ballot paper must contain writing that is in accordance with section 122 or other writing or marks that indicate the voter's intended preference or intended order of preferences; and

(b) the ballot paper must not contain any writing or mark (other than as authorised by this Act) by which the elector can be identified; and

(c) the ballot paper must have been put into a ballot box as required by this Act; and (d) if the ballot paper was put into a declaration envelope as required by this Act—the envelope must have been signed, and the signature must have been witnessed, as required by this Act.

(2) For the purposes of subsection (1)(a) and other provisions of this Act—

(a) if a ballot paper contains 2 or more squares in which the same number is written or marked—the numbers and any higher numbers written or marked in other squares are to be disregarded; and

(b) if there is a break in the order of the preferences indicated in writing or marks in the squares on a ballot paper—any preference after the break is to be disregarded.

(3) Subsection (1)(d) does not apply to the witnessing of a signature if—

(a) the person required to witness the signature was a member of the commission's staff; and

(b) the person certifies in writing to the returning officer that the envelope was signed by the elector concerned.

(4) If a ballot paper has effect to indicate a vote, it is a formal ballot paper.

(5) If a ballot paper does not have effect to indicate a vote, it is an informal ballot paper.

Pat Coleman