

The Nationals
Submission to the Joint Standing Committee on Electoral Matters
Inquiry into the Conduct of the 2010 Federal Election
March 2011

Preface

This submission is made on behalf of The Nationals.

The Nationals welcome the opportunity to contribute to the Joint Standing Committee on Electoral Matters (JSCEM) Inquiry into the Conduct of the 2010 Federal Election and related matters and submit the following comments for the Committee's consideration.

Enrolment and Participation

Recent uprisings across a raft of Middle Eastern nations serve as a reminder that an individual's right to vote is precious and that the integrity of an electoral system is central to maintaining public confidence in the political process.

In Australia, maintaining the integrity of the electoral system starts with ensuring that those who are eligible to vote have the opportunity to enrol and do so.

Our system also, rightly, attaches a level of individual responsibility to an individual's right to vote. Under the *Commonwealth Electoral Act* voting is compulsory in this country for Australian citizens aged over 18 years and it is incumbent upon all voters to ensure their details on the electoral roll are correct at all times. These responsibilities are not onerous or difficult to fulfil.

The Parliament and government have the responsibility of ensuring the integrity of the electoral roll. A prime objective in that regard is to negate the opportunity for electoral fraud and the potential manipulation of election results.

The Nationals have maintained a longstanding commitment to stamping out electoral fraud and the opportunity for electoral fraud.

In years past and again at the 2010 election there has been potential for electoral fraud due to the late close of the Electoral Roll seven days after the writs for an election are issued. These arrangements see massive enrolment activity occurring in that seven day period.

For example, at the 2004 election, more than 520,000 changes to enrolment or new enrolments were submitted to the Australian Electoral Commission (AEC) over the seven days. The sheer volume of activity and the reduced period in which the AEC could verify the bona fides of enrolment applications made it difficult for the AEC to exclude fraudulent votes from the count.

The former Coalition Government closed this loophole in 2006 with legislative changes that closed the Roll for (a) new enrolments at 8pm on the day the writs were issued and (b) changes in existing enrolments three days after the issue of writs. The effect of this change was to give the AEC an additional seven days in which to verify new enrolments and an extra four days to verify changes of address.

Opponents to these close of Roll changes claimed the changes would disenfranchise many Australians from the electoral process. The claims proved unfounded. In fact, the AEC reported that the number of people missing the close of Rolls deadline in 2007 dropped by more than 40 percent to 100,370 compared to 168,394 in 2004.

During the 2010 election campaign the High Court ruled, in a split decision, in favour of an appeal by the GetUp group against the 2006 close of Roll provisions (*Rowe v Electoral Commissioner*). This decision saw the close of Roll revert to seven days after the issue of writs. The AEC reports that this resulted in a predictable surge of enrolment activity, some 98,000 applications in fact. Clearly, the High Court decision imposed a significant and unexpected additional demand on the AEC's resources.

More generally, the AEC has reported significant growth in the volume of its work over the 2004, 2007 and 2010 elections, in terms of phone and email inquiry, enrolment activity and early voting. These increasing demands on the AEC's resources only add to The Nationals' concerns that the reversion of the close of Roll provisions is a retrograde step that adds to the risk of electoral fraud as well as the AEC's increasingly heavy workload during a campaign.

Enrolling to vote is a simple process which may be initiated online 24 hours a day, seven days a week. All that is required is the completion of an application form and proof of identity. The simplicity of both the enrolment process and the obligations on voters to enrol was well made by Justice Heydon in his dissenting judgment in the High Court case.

Research commissioned by the AEC into enrolment triggers appears to reinforce this argument, finding that the vast majority of people were aware of their enrolment responsibilities and that a sense of urgency, such as that provided by an imminent election, provide the critical motivation for their enrolment.

Again, a comparison of the impact of the pre- and post-2006 reforms underlines the argument. The proportion of eligible electors enrolled increased from 91.5 percent in 2004 to 92.3 percent in 2007, before falling again in 2010 to 90.9 percent – in spite of the High Court decision to restore the extended pre-2006 close of roll provisions.

Therefore, there is no reasonable case that can be made to support the claim that the 2006 reforms disenfranchise or exclude an individual from enrolling to vote and then exercising that right.

These results demonstrate that a firm deadline provides a strong incentive both for eligible voters to enrol and for the AEC to ensure that eligible voters were correctly enrolled prior to the election being called. Further, the restoration of the 2006 reforms will reduce the risk of electoral fraud being perpetrated and greatly assist the AEC in reducing its workload within the election campaign period.

Recommendation: The Nationals maintain support for the close-of-roll provisions on the day writs for an election have been issued.

Federal-State Consistency

The Nationals fully appreciate that Australia's system of governance makes state and federal governments responsible for their own electoral laws.

Nevertheless, our party has long advocated that there should be more consistency between State and Federal electoral systems. Consistency between jurisdictions would assist in ensuring the integrity of electoral systems at both levels, improving voting participation and reducing voting informality. This is particularly the case regarding enrolment procedures and voting systems.

It is a concern that, despite the available evidence and the strong “common sense” case for consistency to be achieved between state and federal electoral systems, they are in fact becoming more disparate. This is particularly the case regarding enrolment and close-of-roll provisions and campaign finance laws.

For example, State Labor Governments in Victoria and New South Wales have recently introduced automatic enrolment and “on-the-day” enrolment, while Queensland’s Labor Government proposes to introduce automatic enrolment and allow enrolment up to the day before polling day. Voters in these jurisdictions still need to formally enrol for Commonwealth elections. This may effectively result in the creation of two electoral rolls; one administered by the state electoral commission for state and local elections, another administered by the Commonwealth for federal elections.

The increasing inconsistency is also creating an otherwise unnecessary administrative burden for political parties, in the worst case effectively forcing them to operate under two sets of rules. This is certainly the case in New South Wales with its adoption of a campaign finance regime for state elections that is markedly different from the current federal system and which has proved very costly to introduce and administer.

Just as differing voting systems create confusion amongst voters, differing campaign finance laws creates confusion amongst donors, party members and the wider community. Confusion leads to mistakes being made and disenfranchises people from participating in the electoral process.

Recommendation: The Nationals recommend JSCEM work toward achieving consistency in enrolment procedures across Australia’s state and federal jurisdictions.

Recommendation: The Nationals recommend JSCEM work toward achieving consistency in campaign finance laws across Australia’s state and federal jurisdictions.

Differing Voting Systems

The Nationals have previously flagged our concern with the difference in voting systems between State and Federal elections and the effect on voting formality in submissions to JSCEM’s inquiries into the 2004 and 2007 Federal election.

The issue remains a problem in New South Wales and Queensland, where State Labor Governments abandoned the full preferential voting system used federally and in other states and instead employed and actively promoted the use of optional preferential voting in a bid to achieve political advantage. Not surprisingly, with the decline in Labor’s primary vote in those states, Queensland’s Labor Government has suddenly lost its enthusiasm for optional preferential voting and is now canvassing a move back to full preferential voting ahead of the next state election.

Putting Labor's opportunism aside, a common voting system is "common sense" and there is a strong electoral case for achieving consistency in voting systems at the state and federal level. The AEC and other researchers have established an impact on voting informality in jurisdictions with optional preferential voting at state level and compulsory preferential voting at federal level.

Once again, scrutineers in Queensland and New South Wales at this election reported numbers of informal votes as a result of voters simply allocating a first preference vote for their preferred candidate without then passing preferences to other candidates. It is possible that the problem is exacerbated by the increasing number of voters who do not take How-To-Vote cards.

Full or compulsory preferential voting has been the traditional voting system in Australia since federation and is the system used in the majority of State jurisdictions.

Recommendation: The Nationals advocate the universal use of full or compulsory preferential voting across all state and federal jurisdictions to ensure consistency and the fullest expression of an individual's vote.

Early Voting

The *Commonwealth Electoral Act* sets out quite explicit grounds upon which a voter is entitled to apply for a postal or pre-poll vote and then cast their vote ahead of election day. In doing so, voters are required to sign a declaration that they are eligible to vote early according to the provisions of the Act.

The rate of this "early voting" continues to increase at each election, with the AEC citing voters' work commitments, travel and convenience as the main reasons for its increasing popularity. The trend means that there is effectively a shift underway towards a "two week long election day". This has clear implications for the conduct of elections, as well as for the resourcing of elections by the AEC, political parties, candidates and other participants.

Additionally, while the Act's current provisions allow for work and travel commitments, there is little allowance for the granting of an early vote on the grounds of convenience. This raises the question of whether people are perjuring themselves, either intentionally or inadvertently, under the terms of the current legislation. The subsequent question relates to the AEC's capacity and willingness to enforce these provisions. These comments should not be interpreted as casting any judgment whatsoever on those utilising the provisions for early voting or on the AEC. Rather, they are designed to prompt broader discussion about what appears to be an increasing trend and the relevance of the current regulation surrounding that.

Recommendation: The Nationals recommend JSCEM examine the trend toward early voting, the current application of the *Commonwealth Electoral Act* in this regard and the relevance of the Act's provisions relating to early voting.

Pre-poll Voting

The Nationals also recommend that JSCEM examine the resourcing of early voting systems, including the adequacy of training for AEC polling officials, the adequacy of pre-poll voting venue numbers and associated resourcing issues.

During the 2010 election some 1,300 voters in the Flynn electorate and 2,980 voters in Boothby had their votes excluded from the count as a result of polling official error. The Nationals acknowledge that the AEC took prompt action and is moving to implement improvements to prevent a repeat of this occurring. Nevertheless, some 4,300 voters were disenfranchised from the 2010 election. On this occasion it did not affect the result in those seats. However, the breakdown in the integrity of the electoral system did cost those people their right to have their vote counted.

Recommendation: The Nationals request that JSCEM pursue this issue with the AEC to ensure that appropriate measures are being put in place ahead of the next election to ensure that the problem that occurred in Flynn and Boothby is not repeated in the future.

Postal Voting

Postal voting provides an important service for an increasing number of voters, and particularly for those living in regional areas where ready access to a polling place is not available.

In previous submissions to JSCEM regarding the 2004 and 2007 elections The Nationals have exposed a series of systemic failings in the postal voting processes employed by the AEC and Australia Post. At each of these elections significant numbers of voters were disenfranchised and their votes were not counted.

Encouragingly, The Nationals did not encounter the type of systemic failings experienced in 2004 and 2007 and due credit must be given to all those involved for the steps that have been taken to address these.

However, there were isolated problems reported. One of these included the case of a couple from Cobar, New South Wales, whose votes were not included in the count because the AEC's Divisional Returning Officer (DRO) was not satisfied that the signature on their postal vote certificate (PVC) envelope matched their most recent enrolment application. The AEC has subsequently advised The Nationals that there were 5,549 PVCs rejected nationally due to signature mismatch.

The Nationals fully appreciate the need to protect the integrity of a person's vote and have advocated accordingly throughout this and previous submissions to JSCEM. We also appreciate that the preliminary scrutiny of declaration votes is a resource-intensive task that is subject to a statutory timetable. Nevertheless, it seems incongruous that some right of appeal is not provided to those postal voters falling foul of a DRO's judgment, particularly when such recourse is allowed for other forms of voting. For example, provisional voters who do not produce evidence of identity on election day have the following week in which to do so.

Recommendation: The Nationals request that JSCEM examine the potential to allow for an appeal by a postal voter where a DRO excludes their vote from the count due to signature mismatch.

The AEC and some others from time to time have advocated the exclusion of political parties from the postal voting process. However, increasing numbers of voters continue to support the postal voting service provided by the parties. Further, given the vast majority of all postal voting applications (PVAs) received by the AEC resulted from political party PVAs – some two-thirds at the 2010 election – more voters appear to have confidence in the political parties' involvement than not.

Indeed, if it was not for the involvement of the political parties in the process it is arguable whether the problems like those identified by The Nationals in 2004 and 2007 would have been as readily identified and fixed.

Some have also argued that the inclusion of other party political material with the PVA should be banned. This seems an unashamed attempt to deny parties and candidates their right to free communication with voters.

Recommendation: The Nationals support the continued involvement of political parties in the postal voting process and oppose the proposal to require PVAs to be returned directly to the AEC.

Remote Mobile Voting

The AEC's remote mobile voting teams provide an important service to those communities in very remote areas that are too small to warrant a fixed polling centre on election day.

Currently though, political parties and candidates are restricted from sending representatives with the mobile voting teams to provide How-To-Vote card services to people in these communities. Instead, parties and candidates must make their own travel arrangements, which usually involve the charter of aircraft. This is not only expensive but an inefficient use of aircraft resources as well.

Recommendation: The Nationals recommend a change in rules to allow the AEC to offer each of the participating parties or candidates in an electorate the opportunity to send a representative with the AEC's mobile voting teams.

Provisional voting

Up to and including the 2004 election, the rules surrounding provisional voting provided a loop-hole in the integrity of the electoral roll. Essentially, the system was vulnerable to potential abuse by people who enrol in marginal electorates and vote to influence a close result, despite not living in that electorate.

In 2006 legislative amendments were introduced that required (a) provisional voters to provide evidence of identity either on election day or in the following week, and (b) the removal from the count of provisional votes cast by people who had been removed from the roll by objection on the basis of non-residence.

After a significant increase in the number of provisional votes submitted to and included in the count at the 2004 election, the amendments have resulted in a decrease in these numbers at both the 2007 and 2010 elections. Further, in 2010, nearly 80 percent of provisional voters provided evidence of identity on election day and another 16 percent in the following week. In other words, 96 percent of provisional voters were able to comply. This is not surprising given that all Australian voters have access to some form of identification and the requirement to produce that is a simple and routine task of day-to-day life. Clearly the 2006 amendments have succeeded in closing the loophole the previously existed and, with further education of polling officials and the voting community by the AEC, there is no reason why the compliance rate cannot continue to be improved.

Recommendation: The Nationals recommend the retention of the current legislative rules surrounding provisional voting.

Recommendation: The Nationals recommend that the AEC continue to improve its processes surrounding the production of the certified list and the use of the list by polling officials to reduce the opportunity for error in the provisional voting process.

Political Advertising

The Nationals have previously flagged our concern with the inconsistency in the application of the media blackout rule to television and radio advertising, but not internet advertising.

Under Schedule 2 of the Broadcasting Services Act 1992, administered by the Australian Communications and Media Authority (ACMA), election advertising in the electronic media is subject to a 'blackout' from midnight on the Wednesday before polling day to the end of polling on the Saturday. This three-day blackout effectively provides a "cooling off" period in the lead up to polling day, during which political parties, candidates and others are no longer able to purchase time on television and radio to broadcast political advertising.

No such blackout applies to internet advertising, the use of which by political and third parties increased again at this election. This is inconsistent with the arrangements for other electronic advertising for little apparent reason other than a failure of electoral regulation to keep pace with media consumption trends that indicate internet advertising is providing growing competition to other electronic media as a source of news and entertainment.

Recommendation: The Nationals support the extensions of the existing media 'blackout' provisions to internet advertising. This will provide a consistent approach to all electronic advertising throughout election campaigns and an across-the-board "cooling off" period prior to polling day.

Authorisations

The *Electoral and Referendum Amendment (How to Vote Cards and Other Measures) Act 2010* introduced new authorisation requirements for How-To-Vote (HTV) cards,

including a requirement that the authorisation to be of a minimum font size relative to the size of the HTV.

The Nationals do not dispute the need for HTV authorisations to be clearly visible, to the contrary in fact. However, the font sizes now stipulated are in our view excessively large to the point of detracting from the HTV card.

Recommendation: The Nationals recommend that JSCEM review the minimum font size required for authorisations on HTV cards.

Registration of political parties

The Nationals have previously flagged concern with the practice of some new political parties in ripping off the name, or part thereof, of other registered Australian political parties and the apparent inability of the AEC to refuse the registration of such party names.

The use of minor parties to either support their vote or distract voters from the Coalition parties has been a well entrenched tactic of our opponents. At the 2004 election, deliberate brand confusion and deception was used by the Liberals for Forests party to steer voters away from the Coalition and to the Labor Party. This was outlined in our submission to JSCEM's inquiry into the 2004 election.

In 2004 the Federal Parliament passed an amendment to the *Commonwealth Electoral Act 1918* ("the Act"), the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*, to curb the problem. The relevant section of the *Commonwealth Electoral Act* is as follows:

S 129 (1) (da) "*a reasonable person would think {that the name} suggests that a connection or relationship exists between the party and a registered party if that connection of relationship does not in fact exist*"

However, the practice is still occurring, with the most recent examples being:

- The registration of the Liberal Democratic Party, abbreviated as the Liberal Democrats (and formerly known as the Liberty and Democracy Party) following the 2007 election
- The registration of the Australian Fishing and Lifestyle Party in 2007, subsequent to the registration of the Fishing Party
- The Shooters Party taking up the name of the deregistered Fishing Party to become the Shooters and Fishers Party, despite there being no link from the previous Fishing Party to the Shooters Party.

The AEC's has released legal advice which cites the case of *Woollard and the AEC and the Liberal Party (2001)* in which three Federal Court judges sitting as the Administrative Appeals Tribunal (AAT) set aside the AEC's decision to refuse the application of the 'Liberals for Forests' party for registration under the Electoral Act. The AEC has reported its view that aspects of this decision may be binding in any later cases involving similar issues. The AEC is apparently also of the view that there is some doubt as to exactly what interpretation is to be given to S 129(1)(da) and how it extends the previous prohibition that was contained in S 129(1)(d) and was discussed in *Woollard*.

The result is that the AEC appears unable or unwilling to refuse what appear blatant attempts to rip off established party names and confuse or mislead voters. This may have a subsequent impact on the vote of the relevant established party whose name has been used.

For example, the Liberal Democrats enjoyed a significant increase in their Senate vote from the 2007 election to the 2010 election, despite contesting less States. In 2010 the party polled 230,191 votes nationally – a massive 1,259 percent increase on 16,942 votes it polled in 2007. The party achieved this without running a campaign of any significance, with virtually no on-the-ground presence and by only contesting a small number of House of Representative seats.

A comparison of the party's Senate vote performance with the Liberal and National parties' Senate vote is also telling. The Liberal Democrats' Senate vote increased by 1.68 percent to 1.81 percent, while the Liberal and National parties' Senate vote decreased by 1.57 percent. Looking at the 1200-plus percent increase in the number of votes polled by the Liberal Democrats, the respective swings of the Liberal Democrats and the Coalition parties and the low key nature of the Liberal Democrats' campaign, it's difficult to draw any other conclusion than the party's name change having confused or misled voters to the detriment of the Coalition parties.

Further, it appears that the dramatic increase in the Liberal Democrats vote in Victoria (3,044 in 2007 to 59,116 in 2010) and that party's decision to preference the Democratic Labor Party ahead of the Coalition was a significant influence on the election of the final Senate position in that State.

While the example cited here and that of the Liberals for Forests party in 2004 have impacted on the Coalition parties, the issue is not unique to the Coalition parties. In the current situation any established, registered political party may potentially be affected.

Clearly, with the AEC and AAT having formed the view that the legislation intended to deal with such matters is ambiguous, the 2004 amendments have failed to protect individual party names and prevent components of those names from being used by a new political party. The result is that some voters are being misled or confused and this is impacting on the election outcome.

Recommendation: The Nationals recommend that JSCEM investigate how these provisions of the legislation can be strengthened so that new parties cannot register a name that uses an existing party's name in part or full.

Recommendation: Further, we recommend that JSCEM also look at strengthening the legislation so that the recent registration by the AEC of those parties with similar names to the established parties can be subject to review and reversal if necessary.

No credible argument can be mounted to deny that the use of part of an existing party's name is not designed to confuse, mislead or deceive voters. Hijacking, ripping off or cashing in on the name, brand and/or reputation of an already-established and recognised product is well regulated in the commercial world. It is our strong view that it should be well regulated in the political system.

Redistribution Timing

Last year Section 59 of the *Commonwealth Electoral Act* compelled the AEC to start a redistribution of electoral boundaries in Victoria, despite the imminence of a federal election. The timing was even more inopportune given the timetable for the redistribution meant that the new boundaries could not be in place in time for the election and not before December 2010.

The result was widespread confusion and unnecessary angst for all involved, particularly for the candidates, their parties and the communities that were adversely affected by the release of the draft boundaries on 30 July. These proposed abolishing the regional electorate of Murray in favour of the creation of a new electorate in the suburban north of Melbourne. The scheduling of the redistribution in conjunction with an election also created a significant additional workload on political parties and others involved in the election who also wished to participate effectively in the redistribution process.

Recommendation: The Nationals recommend that this situation be avoided in the future by amending Section 59 of the *Commonwealth Electoral Act* to allow the Electoral Commissioner some discretion, within certain parameters, to postpone a redistribution if it is too close to the next election.

Campaign Finance

The Nationals have already contributed to the discussion on the issue of campaign finance in our submission on the Electoral Reform Green Paper (Donations, Funding and Expenditure).

In summary, The Nationals are willing to consider genuine, bipartisan campaign finance reform, subject to the satisfaction of a number of important prerequisites. In this party's view, any funding and donation reform should:

- promote further public confidence and integrity in our electoral system;
- recognise the costs of communicating with voters and the constraints to cost-effective communication;
- be fair and equitable to all political parties and not restrict a candidate or party's ability to communicate with voters relative to another candidate, party or region;
- encompass "third party" participants in the electoral process, such as trade unions and GetUp!.
- provide a common regime across all State and Federal jurisdictions, and efficient, low-cost administration by participants in the electoral process; and
- be enforceable.

The Nationals do not support piecemeal progression of individual changes to the current rules for campaign finance ahead of, or independently from, a comprehensive examination of campaign finance.

Our concern for a comprehensive and coordinated examination is compounded by the lack of such an approach to date in the Rudd and now Gillard Government's attempts to advance a number of selective changes via the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bills of 2008, 2009 and 2010.

The Nationals are also concerned with the decision by the State Labor Governments in New South Wales and Queensland – with the support of the Greens in New South Wales – to exploit their current majority in those Parliaments to change campaign finance laws in those states to their own political advantage. Given these changes will come at considerable additional expense to taxpayers, the approach by these State Labor Governments only adds to the public cynicism surrounding campaign finance reform.

Recommendation: The Nationals believe any changes to campaign finance regulation should be considered and agreed collectively, then progressed on a genuinely bipartisan basis and adopted collectively and uniformly across all (Federal and State) jurisdictions. Such an approach will provide genuine transparency and uniformity of regulation, as well as going a considerable way toward promoting further public confidence in Australia's electoral processes.

Summary

Opportunity exists for continued improvement of our electoral system to ensure that it serves to truly and efficiently express the wishes of Australian voters. The proposals outlined in this submission would, in the view of The Nationals, contribute significantly to that improvement if adopted.