

**Submission to the Joint Standing Committee on Electoral Matters
*Inquiry into the Conduct of the 2010 Federal Election***

Second Submission by Michael Doyle, February 2011

Is Our Electoral System “among the world’s best” ?

Summary

Well, it is according to the Federal Parliament’s Electoral Matters Committee Chair Daryl Melham.¹

It is a hollow statement, of course. Media releases often contain trite and banal statements. Hitler’s Propaganda Minister Josef Goebbels would no doubt have said much the same about Germany’s electoral system, as would Josef Stalin about the USSR’s. But this is far from being a trivial issue. It prompts the question, “Is Australia’s electoral system **truly** among the best? “. Or, like that oft-stated assertion “Australia has been well served by a system of compulsory voting”, is it just meaningless cant?

The Electoral Matters Committee’s November 2010 media release states: *“The practice of reviewing each federal election started in 1983 and provides Australians with an important opportunity to express their views and involve themselves in the scrutiny and improvement of our electoral system,” said Mr Melham.*

This submission therefore seeks to analyse our electoral system and offers suggestions to improve it. The focus is :-

Can it be truthfully claimed that “Australia’s electoral system ranks among the world’s best “ ?

¹ [Media Release November 2010](#)

SUBMISSION

What should an electoral system do ?

The purpose of an electoral system is to translate the will of the electorate, as expressed through the ballot box, into elected members of a legislative body. There are many and varied systems throughout the world. Each nation would probably claim that their system is among the best. However, in order for an electoral system to work effectively there are some essential requirements common to all of them:-

1. The electoral system must comply with the United Nation's Universal Declaration of Human Rights (to which Australia is a signatory).
2. Every ballot must have the same value.
3. All voters must be given equal access to the same information.
4. The results of the voting must be accurate.
5. The number of people who actively **participate** by voting (this is **not** the same as 'turnout') must be high.

In order for the electoral system to be one of the best :-

6. All voters should be provided with clear information about the candidates and their policies.
7. Voters should be provided with clear information about how to vote.
8. The number of people who actively participate in the political process (such as Party membership) must be high.
9. Dishonesty or deceit must not be encouraged nor ignored.
10. Illegality must not be encouraged nor ignored.

How does Australia's electoral system perform against the above criteria?

- 1. The electoral system must comply with the Universal Declaration of Human Rights**

Most Australians would respond with a knee-jerk "Yes, of course we comply." Possibly a few politicians would prefer to avoid commenting - because this is one of the main reasons for them continually asserting (in denial of the truth, the Australian Electoral Commission², and previous court cases) that *it is only compulsory to have your name crossed the electoral roll* (as if that would make it compliant, anyway !).

² [AEC backgrounder - compulsory voting](#)

Article 21 of the Universal Declaration of Human Rights³ states :

- (1) Everyone has the right to take part in the government of his country, directly or through **freely chosen** representatives.

The Australian Commonwealth Electoral Act Section 245⁴ is titled ‘**Compulsory Voting**’. Clause 15 of the Section states “*An elector is guilty of an offence if the elector fails to vote at an election. An elector is guilty of an offence if the elector fails to vote at an election.*“ It is difficult to reconcile any compulsory requirement (be it having your name crossed off a roll, or actually voting) with the words ‘**freely chosen**’. Therefore, the Australian system must be marked as failing this criterion.

2. Every ballot must have the same value.

Again, an Australian’s first thought is, “Yes. My vote has the same value as that of any other Australian.” But if that is the case, then why do Labor and the Coalition invest huge resources during elections in some electorates whilst ignoring others? Certainly, in an election anywhere in the world, there will be always some candidates that can be considered as certainties to win. But only in Australia will the list of marginals be so easily named. And, conversely, the list of rock-solid Labor or Liberal seats are also known to all. Compulsory voting means that the political Parties know, to a frightening exactitude, the number of people likely to be attending at any booth in the country.

If you’re a voter in a rock-solid seats, then your vote is worth zilch to the ALP or to the Liberals. Even the Greens would not be keen on arranging for any leaflet drops in your letter box. There will not be many political advertisements in your local newspaper. And don’t expect a visit by a political leader to your shopping centre. Still think that your vote is of equal value to every other Australian’s?

3. The electoral process must take place so that all voters are given equal access to the same information nationally.

To have ‘compulsory voting’ in a democratic country requires that there are no impediments to prevent a person from voting. For example, what if a person is likely to be prevented from attending a polling booth on Election Day? Due to their health ? Or perhaps they are pregnant? To deal with this, voters can apply for a pre-poll vote and send in their completed ballot prior to Election Day.

³ [UNIVERSAL DECLARATION OF HUMAN RIGHTS](#)

⁴ [Commonwealth Electoral Act](#)

Unfortunately, this means that those pre-poll voters are not going to have access to the information and campaign speeches made available after they posted their ballot. Obviously, the loss of access to 4 or 5 days information could be viewed as a small price to pay if some voters are not to be disenfranchised. But what if that number of voters is 15% ... or 25% ... or more ... of the total electorate? What if there are alarming and significant news releases about the policies or one of the leaders during the last two days?

It is interesting to note that in 2010 the people using postal votes, and thus voting before Election Day, would have done without the knowledge of some major events of the campaigns:-

- 260,280 postal voters would not have known about the alleged Cabinet leaks accusing Julia Gillard of opposing paid parental leave, and questioning the size of a pension rise. The revelations were stated to be damaging for the Labor leader and her popularity went down.
- 553,537 missed Julia Gillard admitting her election campaign had been too stage managed, and promising to offer voters the "real Julia" (August 2).
- 840,661 voted before August 10. They therefore did not know about the Sydney Morning Herald article on a leaked Treasury report showing the Coalition had an \$800 million budget black hole.
- 865,265 voted before August 11. This was when Tony Abbott appeared to win over undecided voters at the first people's forum meeting in western Sydney. Comments and questions directed to Labor leader Julia Gillard indicated the electorate still had major concerns over the sacking of Kevin Rudd.
- 951,829 (6.8% of all voters) postal voters did not know about: the Coalition's budget figures, checked by private accounting firm WHK Horwarth, which delivered a budget surplus of over \$6.1 billion; Tony Abbott and Julia Gillard's forum meeting in Brisbane where commentators thought the Labor leader more relaxed and confident than previously.

(I have not included the 1,044,597 pre-poll votes where people attended at special polling centres to vote before Election Day. So the number of people voting without knowledge of significant campaign events is around twice as many as shown in the dot points above.)

4. The results of the voting must be accurate.

Another no-brainer "Yes, of course they are accurate" ?

Wrong. Under a compulsory voting system, they cannot be accurate. 729,304 votes were recorded as 'informal' at the 2010 election. What does that mean, 'informal' votes? Yes, they include ballots that have been incorrectly completed, perhaps by

confused or careless voters. And it is important that the Australian Electoral Commission be able to assess whether these incorrect votes have increased since the last election. Perhaps more or different education campaigns about voting are needed?

But those 729,304 ‘informal’ votes also include ballots cast by people who have no preference for any candidate or Party. Under a voluntary system, these voters of course would simply have stayed at home. Compelled to accept a ballot, though, they will have either invalidated their ballot or left it blank.

Who knows how many were deliberately ‘informal’ and how many were accidentally incorrect? Accurate results? How can they be, when we don’t know the number of deliberately invalid votes and we don’t know the number of accidentally incorrect votes.

5. The number of people who actively participate by voting (this is not the same as ‘turnout’) must be high.

Ah, but at least we know how many votes were correctly completed and allocated a first preference? Yes, true. But how many of those ‘correct’ ballots were as a result of the voter mindlessly following a How-To-Vote card, or a ‘donkey vote’ (allocating 1,2,3,4,5 down the ballot)? We have no idea.

How many people would have made a conscious decision and truly wanted, voluntarily, to give first preferences to the candidates as listed in the election results? We have no idea.

We have no idea of how many people truly wanted to give their first preference to Labor, Liberal, Green, or National candidates at any election since 1925. The only way that we could have any certainty is if there had been voluntary voting.

Australian politicians have made much of the fact that we have very high ‘turnouts’ of 90% and over. Are they also proud that at the 2010 election perhaps 1 in every 20 voters was disenfranchised? An Australian Electoral Commission spokesperson stated, without proffering any evidence, during the 2010 election that most Informal votes are due to people unintentionally making a mistake⁵. Are we happy that 1 in every 20 Australians ‘voted’ but failed to have their views expressed at the last election?

6. All voters should be provided with clear information about the candidates and their policies.

Another no-brainer-Yes? Well, again, “No”. A major source of information about local candidates and policies is the leaflet pushed in the voter’s mail box, and advertisements in local newspapers. Of course, these are a drain on the funds of the candidates and

⁵ [Latham not breaking the law, says AEC](#)

Parties. Under a compulsory voting system, marginal electorates are targeted and it is these that receive the bulk of funds. Voters in the rock-solid seats are lucky if they receive one flimsy leaflet; on Election Day, there might not even be any Party workers with How-To-Vote cards to help the elderly and the New Australians because the activists are all 'handing out' in the marginal seats.

7. Voters should be provided with clear information about how to vote.

Is it compulsory to vote? The Australian Commonwealth Electoral Act (Section 245) is clear on this: "An elector is guilty of an offence if the elector fails to vote at an election." But before the 2010 election, confusion reigned. Politicians, journalists, and election 'experts' were saying that it is not compulsory to vote. Australian Electoral Commission advertisements, unlike at previous elections, did not include the words "Voting Is Compulsory".

The ABC's election analyst, Antony Green, added his affirmation that it is not compulsory to vote. He wrote on the ABC website⁶:-
 "Compulsory voting means you must attend a polling place, have your name crossed off the electoral roll, accept ballot papers, retire to a voting enclosure to vote and then deposit the ballot papers in the appropriate ballot box." Well, he is correct of course. Up to a point.

He chooses to omit a crucial requirement. The Electoral Act, 2006 (a), states that a voter must '*mark his or her ballot paper in private*'. Of course, this is the crux. The words "in private", according to the defenders of compulsory voting, mean that a voter can break the law with immunity. But, as I argue in another submission, if the voter can break the law in private, then why not simply leave a defaced or torn ballot in the booth? Mr Green reminds us that "Removing ballot papers from the polling place is an offence" ... but he omits to mention that failing to mark a ballot is also an offence.

There have also been suggestions that voters could deliberately invalidate their ballot and write a short slogan or reason on the ballot. But Mr Green says 'remember this, the only people who see the ballot papers are the people who count the votes'. Presumably he thinks that Party scrutineers wear blindfolds ... and never report political comments back to their HQs. I can assure him, having been a scrutineer, that the Informals are given very special attention by these Party workers (who will be trying to win that extra vote). Any slogan or comment by a voter is most certainly read. It beggars belief to suggest that political comments, especially if on the same issue, would not be communicated to the Party Headquarters. No doubt politicians and influential people prefer that this expressive method of using 'Informals' does not become widespread.

⁶ [Antony Green's Guide to the 2010 Election](#)

8. The number of people who actively participate in the political process (such as Party membership) must be high.

If the membership in Political Parties dwindles, then there is less pressure on the representatives, especially those in ‘safe’ seats, to perform effectively. Each Party claims to have ‘core principles’, but without active members to hold the representatives to account then it is not surprising that Party leaders are tempted to take ‘pragmatic’ or populist decisions which are in contravention of those principles. Without active members, Party HQ’s decide who will be candidates and ensure that preselections result in those hand-picked people. Never mind that they have made no political input until now. Never mind that a local member would have provided local knowledge. Never mind that the selected person’s only real claim of superiority is prowess in the sporting or media arena.

In countries with compulsory voting there is no pressure on political Parties ‘to get the vote out’. They know that their traditional supporters will always vote the same way. There is less need for enthusiastic Party members that will work together and no need at all for them to door knock potential voters. Indeed, where is the need for a candidate in a rock-solid seat to actually speak to any voters? Or to local Party members?

In Australia, apart from the occasional new and trendy Party, political membership is decreasing. Now, this is difficult to prove. The indicators, though, are there for all to see:

- The increasing number of claims about dummy memberships and problems in preselections.
- The pathetic numbers turning up for branch meetings.
- The lack of internal policy debates.

9. Deceit must not be encouraged nor ignored. (“Pre-poll voting”)

A compulsory voting system in a democratic nation requires that the actual task of voting is made as easy as possible. It is essential that there are as few people as possible who have a valid reason for not having voted. Hence we have pre-poll voting, where people can vote before Election Day. They can do this by attending at special voting stations or by sending their vote through the post. It’s all so very helpful and civilized, isn’t it?

It’s very helpful to the Australian Electoral Commission, too. The more people that vote early, the fewer are taking up space, asking questions, and causing delays on Election Day. And their votes can be counted at leisure on the following Monday, rather than the Saturday night when Australian Electoral Commission workers very reasonably want to get home to bed.

And the Labor and Coalition Parties like postal votes because they can “help” voters by sending them applications for a postal vote. They also provide a “How-To-Vote” card, just so that the voter doesn’t have to think too hard about how to fill in the ballot. So

kind. Unfortunately, the Independent candidates rarely have the funds and resources to be as helpful to voters. So sad.

Who else likes pre-poll, especially postal, voting? Why, the Voters! But I use that word 'Voters' in the same loose terminology as Mark Latham, Bill Shorten, Antony Green, and Daryl Melham: a 'Voter' is someone that wants their name crossed off the electoral roll. Some people have minimal interest and hate the idea of queuing on an Election Saturday. So, they apply for a postal vote, fill in the declaration, obtain the ballot, mark it, and post it. All done, and everyone's happy. Except that many of them have broken the law. And the election result has been influenced by some people that have no interest in the outcome. And all those voting early will have missed the later parts of the electoral campaign. Oh well, never mind. At least we have a high turn-out.

	2004	2007	2010
Total Enrolment	13,098,461	13,646,539	14,086,869
Postal Votes Issued	774,078	833,178	967,010
Percentage Postal	5.91	6.11	6.86

It can be seen that an increasing number of voters are choosing to vote before Election Day. The Australian Electoral Commission website⁷ (and, I believe, the postal voting application) states that this is permitted, in person or by post, if on Election Day you will be:

- outside the electorate where you are enrolled to vote
- more than 8km from a polling place
- travelling or unable to leave work
- seriously ill, infirm or approaching childbirth (or caring for someone who is)
- a patient in hospital and can't vote at the hospital
- in prison serving a sentence of less than three years or otherwise detained
- unable for religious reasons to go to a polling place.

(You can also vote early if you are a silent elector or have a reasonable fear for your safety.)

In 2010 there was a massive 967,010 (6.9%) postal votes. How did so many people justify signing a form to say that they needed a postal vote?

more than 8km from a polling place

15,000 (estimate)

⁷ [AEC Ways To Vote](#)

travelling or unable to leave work	20,000 (estimate)
seriously ill, infirm (or caring for someone who is)	332,000 *
approaching childbirth (or caring for someone who is)	23,000 ⁸
a patient in hospital and can't vote at the hospital	85,000 ⁹
in prison serving a sentence of less than three years	25,000 ¹⁰
unable for religious reasons to go to a polling place.	5,000 (estimate)
Silent electors or those in fear for their life	50,000 ¹¹
TOTAL	515,000

I suggest that the above is being very generous. Some of them will be double-counted. For example, there will be some seriously ill or infirm people that are also in prison. Some that are more than 8km from a polling place will also be travelling.

* The figure for seriously ill or infirm assumes that 1 in every 50 Australians is infirm or seriously ill and unable to attend a booth, and that there are 50,000 people acting as full-time carer to such people, to the extent that they are also **unable** to attend a booth.

Even if we round up the total to 600,000 we are still well short of the 967,010 postal votes issued.

Ah yes, I have omitted the “outside the electorate where you are enrolled to vote” reason. Most of us are going to be outside our electorate for some of that time, but that doesn’t prevent us popping in to vote even if it does take 15 minutes of our time. Can there really have been more than 360,000 people who honestly expected, several weeks in advance, that they would be outside their electorate from 8am until 6pm on August 21st 2010?

In fact the figure 360,000 is even stranger because there were 832,950 ‘absentee’ votes cast. Absentee voters are those that actually attended at a booth, but one that it is outside their enrolled electorate. The 2006 census shows that 716,158 people were “visitors”, spending the night outside their normal household. Somehow, that figure increased by over 50% for 21st August 2010 ?

The only reasonable interpretation is that a large proportion of those 360,000 people either misunderstood the declaration which they signed or deliberately lied. And it would be reasonable to surmise that they did so on the basis of information from the Australian Electoral Commission and the major political Parties.

⁸ [Aust. Bureau of Statistics Births 2009](#)

⁹ [Aust. Institute Health and Welfare 2009](#)

¹⁰ [Aust. Bureau of Statistics Prisoners 2010](#)

¹¹ [Silent Voters/Anonymous Registration in Australia and New Zealand 2004](#)

It's not surprising that some people misunderstand the requirements for qualifying for a postal vote¹². The Australian Electoral Commission's own website (and, I believe, the application) 'summarise' the requirements to a considerable degree. To a degree, I suggest, where the public are misled. The following are **examples**.

The Australian Electoral Commission website has one requirement for being given a postal vote :-

- "you will be outside the electorate where you are enrolled to vote"

But the Act actually states:

- *"Throughout the hours of polling on polling day, the elector will be absent from the Division for which the elector is enrolled"*

Many people reading the Australian Electoral Commission instructions will assume that because there will be some time spent outside the electorate on Election Day, they qualify for a postal vote.

The Australian Electoral Commission also states that another reason is :

- You are seriously ill, infirm or approaching childbirth (or caring for someone who is)

But the Act actually states:

- *The elector will be unable to attend a polling booth on polling day because of:*
 - serious illness;*
 - infirmity; or*
 - approaching childbirth.*

What does 'seriously ill' mean? Reading the Australian Electoral Commission's instructions, a voter could be forgiven for thinking that any type of illness qualifies. In fact, it must be an illness which prevents attendance. Many people are unfortunately seriously ill or infirm. But many of them are still able to attend a polling booth¹³. Most of those caring for such a person will be **able** to attend a booth. Their attendance on the ill or infirm person is unlikely to prevent them taking 30 minutes to attend a booth some time between 8am and 6pm.

The Act also actually states:

*On polling day, the elector will be unable to attend a polling booth because the elector will be at a place (other than a hospital) **caring** for a person who is seriously ill or infirm or who is **expected shortly to give birth**.*

A woman **approaching** childbirth implies an expected birth of within say 2 weeks, possibly more. But, in the Act, the carer's requirement is different. It states '**shortly to give birth**'. This implies that the expected birth date is within a few days of the Election Day.

¹² [Schedule 2 Grounds of application for postal or pre-poll vote](#)

¹³ Indeed, it is a thought-provoking sight to see some of the people who are determined to vote in person despite being physically dis-abled.

I can almost hear the cry, “ But whats wrong with Postal Voting?” My response ? “Nothing - provided there was a genuine need”. It should be used only when essential, and when it complies with the law, because the postal (and the pre-poll) voter has access to less information than voters who vote on the Saturday. It provides the wealthier political organizations with a considerable advantage. Encouragement by those in authority to tell lies is probably a good definition of corruption. It is not a good indicator of ‘one of the best political systems in the world’.

10. Illegality must not be encouraged nor ignored

Many politicians and many in the media insist that voting is not compulsory because voters can do whatever they want with their ballot within the confidentiality of the voting booth. This is self-evidently *half true*. It is true, of course, that a voter can do whatever he or she wants with the ballot in the privacy of the booth. But it is also true that if they fail to vote, then they break the law. Why? Because Section 245 (“Compulsory Voting”) of the Commonwealth Electoral Act 1918 says so. For example, at 5(b) :-
it is an offence to fail to vote at an election

The process of voting is described in several places within the Act. For example, Section 233¹⁴ states:-

Vote to be marked in private

(1) Except as otherwise prescribed the voter upon receipt of the ballot paper shall without delay:-

*(a) retire alone to some unoccupied compartment of the booth, and there, in private, **mark his or her vote on the ballot paper;***

(b) fold the ballot paper so as to conceal his or her vote and:

(i) if the voter is not an absent voter--deposit it in the ballot-box; or

(ii) if the voter is an absent voter--return it to the presiding officer; and

(c) quit the booth.

Sections 239 and 240 both give details which entail the **Marking** of votes. Section 200 DK¹⁵:-

Voter to mark vote on ballot paper

Except as otherwise prescribed by the regulations, the voter, upon receipt of a ballot paper under section 200DJ, must without delay:

*(a) go to an unoccupied compartment of the voting place and **mark his or her ballot paper in private; and***

(b) fold the ballot paper so as to conceal his or her vote and deposit it in a ballot-box; and

(c) leave the voting place.

¹⁴ [COMMONWEALTH ELECTORAL ACT 1918 - SECT 233](#)

¹⁵ [COMMONWEALTH ELECTORAL ACT 1918 - SECT 200DK](#)

So, there we have it. The Act requires everyone to vote, and that requires the ballot top be marked. “Ah, yes”, but you can also break the law ... because nobody will ever know what you do in the privacy of the booth. Strangely, the various politicians and pundits never acknowledge that failing to vote is illegal. True, it is unenforceable ... but that is beside the point.

Just a few examples of ignoring or encouraging illegality:-

- Joint Standing Committee on Electoral Matters
Members of the Committee have said that voting is not compulsory. On July 25, 2005¹⁶ :-
Mr Daryl Melham said,
“So what I am arguing is that, frankly, the current system allows you your conscientious objection, because no-one is standing over you making sure that you vote in a particular way or that you actually register a proper vote.” (EM68)
Senator Forshaw said ,
“Compulsory voting means turning up at the polling place, having your name ticked off and being given a ballot paper; that is what it means” (EM69)
- Mr Antony Green, Election Analyst, on the ABC’s website
“Compulsory voting means you must attend a polling place, have your name crossed off the electoral roll, accept ballot papers, retire to a voting enclosure to vote and then deposit the ballot papers in the appropriate ballot box”¹⁷. What happened to 200DK (a) ‘*mark his or her ballot paper*’ ?
- Mr Mark Latham said on Channel Nine's "60 Minutes"
He said, “Voting Is Not Compulsory”, August 15th 2010. In fact he went even further by saying “It's not compulsory to fill out the ballot paper. You can put it straight in the ballot box, totally blank.” He also said, "That's what I'll be doing on Saturday, and I urge you to do the same. It's the ultimate protest vote.”¹⁸

When we have an electoral process where senior and respected persons deliberately encourage or ignore illegality, how can we claim that Australia’s electoral system ranks among the world’s best?

CONCLUSION

It is clearly *not* the case that our electoral system is ‘one of the best’. It has considerable short-comings which prevent and/or hinder good and democratic government .

¹⁶ [Enquiry into 2004 Federal Election, Melbourne hearing](#)

¹⁷ [Antony Green's Guide to the 2010 Election](#)

¹⁸ ["Latham not breaking the law, says AEC" news.com.au](#)

RECOMMENDATIONS

- The issue of whether we have ‘Compulsory Voting’ is not one of semantics. The Australian Electoral Commission must promote more effectively the true meaning of Section 245 of the Electoral Act. If this means providing classroom education to politicians including those on Joint Standing Committee on Electoral Matters, then so be it.
- All the requirements for qualifying for a postal or pre-poll vote must clearly stated in the Australian Electoral Commission’s website, and the application and declaration provided to voters.
- The Australian Electoral Commission should notify Party organizations that any person misleading the voters as to the requirements for a postal or pre-poll vote is liable to prosecution.