

Submission to the Standing Committee on Electoral Matters.
Submission by Christopher Alger.

25 January, 2011.

To the Members of the Standing Committee on Electoral Matters:

This submission is intended to describe my experience of the 2010 Federal Election in relation to the “compulsory” voting legislation and to highlight my complaints of punitive abuse of basic human rights in connection with privacy and inappropriate discrimination on religious grounds.

I did not participate in attending a polling place during the 2010 Australian Federal Election. The Australian Electoral Commission then wrote to me requesting a written reason that is ‘valid and sufficient’ for my apparent failure to vote.

I then provided the reason for not voting in writing to the AEC. This reason was later established not to be “valid and sufficient” in the “opinion” of an AEC returning officer (Tony Anderson, Leichhardt QLD) and I was then issued with a Penalty Notice Failure to Vote. The Penalty Notice contained a demand to pay a fine of \$20 (by date) or face possible escalating legal consequences including increasing fine amount and court action.

In relation to the above, due to the enforcement of the Commonwealth Electoral ACT 1918 (Section 245), I have had my privacy arbitrarily interfered with and I have been discriminated against on religious grounds for no good reason.

i.e. My right to privacy was arbitrarily interfered with when the returning officer from the AEC requested a written reason for my apparent failure to vote. My voting position is private to me at my discretion including my reasons for not voting. Similarly, the details of my voting are private at my discretion had I voted. My reasons for not voting are essentially as private as my reasons for voting. I have also been discriminated against on religious grounds as had I claimed a religious reason for my apparent failure to vote then this would have been deemed to be a ‘valid and sufficient’ reason by the AEC returning officer and no fine need be paid, the case would close.

Comments:

It is noted that it is a misnomer to state that section 245 of the above-mentioned legislation actually imposes “compulsory” voting. The law and the AEC implementation of the law only detects if an eligible voter has not had his or her name crossed off the certified list of eligible voters within an electorate in connection with the potential voter / elector actually attending a polling place. Having had his or her name crossed off such list, the eligible elector is provided with ballot papers. There is no practical need to cast a vote from this point if the elector wishes not to vote for any reason including a religious reason. In fact the elector can now accidentally or

deliberately mark the ballot papers informally or choose not to mark them at all before placing such papers into the ballot box. In such a case no vote actually takes place, and no law broken or no law broken in a way that is detectable. Therefore, in practical terms, the arbitrary interference to privacy (asserted above) and discrimination on religious grounds appears to be based on attempts to make compulsory attendance at a polling place (or equivalent) to have name crossed off Certified List of eligible electors within the electorate. But in no way does the law or the AEC enforce a vote be cast in practice. This is because it is a secret ballot. It is secret due to privacy concerns. But my reasons for not voting are also secret, at my discretion.

It is again noted the system is effectively easily circumvented by, for example, informally marking ones ballot papers or citing a religious reason to the AEC, if one prefers not to actually vote for any reason without breaking the law or paying fine to AEC.

- My experience of the 2010 Federal Election highlights breaches of some of the articles contained in the **International Covenant on Civil and Political Rights**, in particular articles 17 (relating to privacy) and 26 (relating to discrimination on grounds of religion). Other articles in this covenant are also breached.

- My experience of the 2010 Federal Election highlights breaches of articles contained in the **United Nations Universal Declaration of Human Rights**, in particular article 12 (privacy) as well as article 1, relating to freedom equality and dignity; article 2, relating to religion distinction and discrimination; article 3, relating to liberty; article 7, relating to equality and discrimination; article 18, relating to conscience belief and practice; article 19, relating to opinion without interference; article 21, relating to the right to freely chosen representatives.

*As demonstrated earlier, one is compelled only to have ones name crossed off the Certified List of electors on polling day under the compulsory voting legislation. One can effectively be exempted from this by citing a religious reason (for “ apparent failure to vote”) if the AEC requests a written reason. A religious reason is acceptable to the AEC as ‘valid and sufficient’ to the point of discriminating against the equivalent non-religious reason and elector. The non religious would- be elector is then exposed to escalating negative legal consequences, whilst the religious equivalent elector is not. **Discrimination on religious grounds.***

It is offensive that I have had my privacy arbitrarily interfered with and that I have been discriminated against on religious grounds here in Australia both in a frivolous and punitive fashion.

Incidentally, the compulsory voting legislation may infer that there is always a candidate worth voting for in every electorate in Australia for every elector and that all electors have sufficient quality of information to make an informed choice. The reality is that this is not necessarily the case. The actual reason I gave to the AEC for my apparent failure to vote is as follows in italics:

I did not vote because:

When Prime Minister John Howard made a series of promises to the Australian electorate before an election and then after the election he renamed the promises that his government would not actually implement “non core promises” – I realised that I can’t tell the difference between core and non core promises made before an election. In other words I feel I can’t tell what is true or false of the representations made by politicians during an election campaign – and possibly also at other times. Nor do I – in many instances – have the resources available to me to reliably independently verify what is true or false of representations made. I feel that John made this reality clear when he confessed to such a class of promises as non- core promises after the fact of an election (and not before). I feel also unbeknown to me that this sloppiness with the truth may apply to any number of politicians during an election campaign, etc, and at other times and I generally don’t have the resources to independently verify what is true or false of representations made.

I earnestly believe I do not have sufficient quality of information available to me to make a meaningful voting decision. And if I do, I don’t know it. I cannot tell who to vote for, the quality of information is insufficient to me.

Above is the given reason for my not voting. It is a private reason that I make available at my discretion yet I was compelled to give it to the AEC (under duress) under the compulsory voting legislation, for not having my name crossed off the Certified List of electors on polling day. It is as good as any religious reason, to state the obvious. It was rejected by Tony Anderson of the AEC in the division of Leichhardt, far north QLD. Tony Anderson was offered over the telephone a more detailed written reason for my not voting (in reality for not having my name crossed off the Certified List) but Tony informed me that if it were along the same lines as the original reason it would still be deemed insufficient, despite possible clarification.

Privacy, Australian precedent:

It is noted that a Tasmanian resident once complained to the United Nations about criminal law in Tasmania that criminalised activity between consenting male adults in private. He complained that the law constituted arbitrary interference with his right to privacy (by potentially bringing to court a private matter, etc) under section 17 of the International Covenant of Civil and Political Rights and that the law also discriminated between men and women. Subsequently the Australian Federal Government nullified the applicable Tasmanian law after a query from the UN. The compulsory voting legislation is similarly offensive on privacy and discrimination grounds.

I note I may lodge separately a complaint re privacy and discrimination offences against myself with the appropriate United Nations body.

Recommendations:

Section 245 of the relevant legislation needs repeal or reform. It is hardly enforceable from the perspective that it does not actually compel a person to cast a valid vote. It also interferes with the rights to protection from arbitrary interference to the right to privacy and pointlessly discriminates on religious grounds.

References:

Universal Declaration of Human Rights:

<http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>

International Covenant of Civil and Political Rights:

<http://www2.ohchr.org/english/law/ccpr.htm>

Tasmanian State law overturned on privacy and discrimination grounds:

<http://www.austlii.edu.au/au/journals/PLPR/1994/33.html>

Yours truly,

Christopher Alger