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| Joint Standing Committee on Electoral Matters | |
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Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto

Submission by Michael Doyle

Introduction

This submission does *not* show that voluntary voting is 'better' than compulsory voting, even though it is. It does *not* prove that our political Parties would be significantly improved by voluntary voting, even though they would be. Hopefully, there will be other submissions concerning those points.

This submission shows that compulsory voting legislation should be changed because it is inherently bad – for reasons relating to humanitarian issues, effective legislature, and honesty.

The current legislation:-

- contravenes the 'Universal Declaration of Human Rights' and the 'International Covenant on Civil and Political Rights',
- brings our Legislative system into disrepute, and
- leads to misleading statements about the electoral process.

Issues

United Nations agreements, signed and ratified by Australia, are being contravened

The United Nations *Universal Declaration of Human Rights*, states:-

"Article 21

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

The United Nations *International Covenant on Civil and Political Rights* states:-

"Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. ... "

and

"Article 25

Every citizen shall have the right and the opportunity. ...

1. To take part in the conduct of public affairs, directly or through freely chosen representatives;

2. *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; ...”*

Note that there is no reference to the ‘duty’ of citizen, such as being available for Jury Service or paying taxes. Nor should there be, of course – they have no relevance or parallel to the electoral process – and yet they are often raised as justifying compulsory voting. It seems that the ‘logic’ is that paying taxes and Jury Service, and (apparently) voting are essential duties - and if people were allowed to opt out of these functions, society would collapse. (Oddly, those nations with voluntary voting have yet to disintegrate into tax-free, law-less anarchies.)

Indeed, far from the United Nations agreements mentioning the ‘duty’ of people, the act of selecting a political representative is regarded as a ‘right’ – something which a person possesses and uses (or does not use) according to choice. It is not something to be produced on demand.

But the word that is most significantly mentioned is *free*. Elections, according to Articles signed by Australia, are free expressions of a nation’s citizens. To state the obvious, there is no way that a voting system based upon compelling people to vote or attend polling booths can be considered in terms of *free* expression.

Why is this important?

Australia rightly castigates nations that do not comply with United Nations agreements. And yet here is a clear example where we are failing to meet a basic political right that is identified in an agreement and a covenant to which we were a signatory. Apart from being hypocritical, this must surely weaken Australia’s voice when championing international matters at the United Nations.

Compulsory Voting brings our Legislative system into disrepute

Strange, is it not, that very few people have been prosecuted for failing to vote? I can think of one simple reason why this is so - the relevant legislation is impossible to enforce.

There are two ways that compulsory voting legislation can be breached during an election:-

1. Failing to have your name crossed off the list of voters

The Australasian Legal Information Institute¹ has stated: *“In practice, compulsory voting means eligible voters must attend a polling place, have their name crossed off the list of voters, accept ballot papers and lodge them in a ballot box. They do not actually have to fill out the ballot papers. If ballot papers are not filled out correctly, they are set aside as ‘informal’. ... After every election, officials send eligible voters who do not seem to have voted a penalty notice. If those voters do not respond by giving a ‘valid and sufficient reason’ for not voting, they are fined.”*

Exactly what constitutes a valid and sufficient reason is, understandably, kept confidential by the Australian Electoral Commission. However, it seems reasonable to assume that any credible

¹ http://www.austlii.edu.au/au/other/llac/hot_topic/hottopic/2001/4/4.html

excuse, such as a temporary but incapacitating illness, is adequate and would prevent a prosecution. And I'd very much doubt that a doctor's certificate would be required.

If a civilized nation is going to compel its citizens to vote, then there must be recognition that some people, for one of an infinite number of reasons, will be unable to vote. This provides a perfect escape clause for those of us who do not mind lying and cannot be bothered to vote.

Furthermore, the legislators and the Electoral Commission are compelled to make it as easy as possible for an elector to cast a vote, lest a person uses the defence that he/she was prevented from doing so through no fault of their own. This may seem 'voter-friendly'. Actually, this has in the past made it more difficult to impose reasonable but essential controls, such as requiring proof of identity, to prevent voter fraud. (True, there have not been many *known* instances of fraud – but then that is hardly relevant to the need for secure controls.)

2. Deliberately not marking a ballot correctly²

Clearly, deliberate failure to correctly complete a ballot paper is *not* equivalent to 'voting' in any true (nor even technical) sense. It may be regarded as Informal - a mistake or spoilt or wasted. It is, though, by no stretch of imagination a 'vote' (nor is it classed as an abstention). *But the law and the Electoral Commission, says you must vote.* It is impossible to identify anybody having *intentionally* 'wasted' the ballot – hence this action (deliberately failing to correctly complete a ballot) is not going to be penalised.

So it is true - you can indeed choose *not* to vote in the secrecy of the booth. But if you do so, then you are breaking the law – and getting away with it. There can be no doubt that the law is being broken again and again at every election, with impunity.

It is relevant, and perhaps some Senate Committee Members would raise this, that the Australasian Legal Information Institute has also stated: "*In purely practical terms, compulsory enrolment and voting work in Australia.*" (*ibid*) Of course this depends upon what is meant by 'works'. Certainly, there is always a very high turnout of voters. So what? There is no way of assessing how many people voted out of conviction, or from a conscious decision, or simply as a last-minute thoughtless action. There is no allowance for those of us who dislike intensely all the candidates on offer. Does the electoral system really 'work'?

It is often said, usually by politicians, that the compulsory voting system 'has served us well'. Has it really? Are the Political Parties more effective at responding to the concerns of their supporters and of the community, than if we had a voluntary system? A system where they had to woo every member or supporter at every election, regardless of the Branch or electorate?

² 245 Compulsory voting ...

(15) An elector is guilty of an offence if the elector fails to vote at an election.
Commonwealth Electoral Act 1918

Whether the compulsory voting process helps to provide an effective electoral system, one that 'works' and provides a clear expression of the will of the people, is doubtful to say the least.

Why is this important?

- Compulsory voting legislation deters stronger controls to prevent voting irregularities or fraud.
- Any society which has unenforceable laws is not being true to itself. An unenforceable law is the essence of hypocrisy.
- When a law can be broken with impunity it weakens the integrity of, and the respect the community has for, the legislative process.

Compulsory Voting laws lead to misleading statements about the electoral process

The Australian Electoral Commission goes to considerable effort to educate the public about the electoral process. Its internet website has a page for Frequently Asked Questions. The first question and answer are:-

Q. "Is voting compulsory?"

A. Yes, voting is compulsory. If you do not vote and do not have a valid and sufficient reason for failing to vote, you may be fined."

That seems absolutely clear.

But there are some in the community and some of our elected representatives who disagree³ with the Electoral Commission. They insist that whilst it is 'technically' compulsory to vote, an elector is really only required to have his/her name 'crossed off' the Electoral Roll. Why the need for this subtle sleight of words? Possibly, because it is impossible to prove whether an elector has actually voted ... so our legislators contrive to call it a 'technical' requirement.

Or possibly some political representatives still believe in the political freedom to abstain from voting. Hence their desire to stress that 'compulsory voting' does not mean what it says. They argue that voters complete the ballot in secrecy, and can choose to create an Informal vote. This ignores the fact that *compulsory* voting (even 'technically') means that abstention is not permitted. But, according to some of our law-makers, breaking the Law is permissible - provided you do it secretly and nobody else knows. It seems that the electoral law has been cleansed, filtered, and interpreted as meaning 'compulsory to obtain and lodge a ballot paper'. The result? One of the most emotive words used in connection with Democracy, "voting", has been thought-processed into oblivion in a way that George Orwell could never have imagined.

³ "People *can* choose not to vote – they are merely compelled to attend a polling booth and return a ballot paper to the ballot box."

Paragraph 7.10, Report by the Joint Standing Committee on Electoral Matters following the 2001 Federal Election.

Following the 2001 Federal Election, the Report by the then Joint Standing Committee on Electoral Matters stated:-

7.4 There are several aspects of the Australian federal electoral system which are compulsory. The most obvious of these is that all those who are eligible are required to enrol, and to attend a polling booth or apply for a postal vote at each election.

In addition, in order to cast a formal vote an elector must record a preference for all candidates standing for election.

In the above there seems to be an almost shamefaced reluctance to address a crucial point. Surely the most 'obvious' aspect of our compulsory system is **voting**? But in 2001 the Committee stressed the need 'to attend a polling booth or apply for a postal vote' (not voting) and the procedure for making a 'formal' vote. The 2001 Senate Committee's next paragraph even implies an element of choice by raising the issue of 'duty'. It finally mentions 'Compulsory voting' almost as an afterthought and only to state (irrelevantly at this point) when it was enacted:-

7.5 Subsection 245(1) of the Electoral Act provides that '[i]t shall be the duty of every voter to vote at every election'. Compulsory voting for federal elections was enacted in Australia with bipartisan support in 1924.

Significantly though, reference is made to the 'bipartisan support in 1924' for compulsory voting. The implication by the 2001 Senate Committee is that a majority of Australians wanted it. In fact there was so much 'bipartisan support' that it was rushed through both Houses of Parliament with minimal warning or political debate and no public debate whatsoever. Like the word 'voting', it seems that the word 'bipartisan' can mean whatever the Senate Committee members of 2001 want it to mean. Support for compulsory voting in 1924 was certainly politically bipartisan, but was it democratic?

The Report of the Inquiry into the 2001 Federal Election states:-

7.9 None of the submissions to this inquiry expressed support for the existing compulsory voting system. The Committee notes that in public polling 74 per cent of respondents supported compulsory voting at federal elections.

The implication is that whilst five people submitted statements expressing support for voluntary voting, 'public polling' showed there was overwhelming support to retain the current system. The Report fails to tell us when the polling occurred, who carried it out, the details of the questions asked, or the size of the polling sample. Nevertheless, the 2001 Senate Committee apparently considered that the result out-weighed the submissions by those of us who took the time to document reasons for change.

Why is this important?

There is confusion in Australia as to whether we have compulsory voting. It is vital that the public is clear as to what they can and cannot legally do during an election. The fact that a law can be broken with impunity does not make it legal to do so. More importantly - if a

community, and in particular its politicians, cannot describe electoral laws (and 'matters related thereto') accurately and fairly then something is very wrong.

Conclusion

Compulsory voting is inherently bad because it:-

- contravenes international agreements on Human Rights,
- deters the introduction of controls to prevent fraud,
- cannot be enforced to any real extent,
- leads to confusion & misleading statements by honest and intelligent people trying to defend an indefensible position.

A political system that is based upon compulsion and defended by confusion, may survive and even appear to 'work'. The community is unlikely to want to change what seems to be working well, especially if experts tell them this is the case. Political Party administrative wings, not unreasonably, become more and more reluctant to move from their comfort zones. Nobody wants to admit that they are wrong. Laws are still made, mostly good but some bad, except that their makers have no certainty as to how many people support them. And democratic elections still happen, except that law-makers tell us that voting is not 'really' compulsory (even though we know that it is). And we can choose to break the law (as long as we play by the 'rules' and keep our mouth shut) because nobody will prosecute us.

Australia's electoral process can continue to 'work' with compulsory voting. But is it working well?