

# **Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010**

## **INTRODUCTION**

1.1 On 2 June 2010, pursuant to the resolution of the Senate regarding time-critical bills passed on 13 May 2010,<sup>1</sup> the provisions of the following bills were referred to the committee for inquiry and report by 15 June 2010 (subsequently extended to 17 June):

- Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010;
- Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010;
- Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010; and
- Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010.

1.2 The committee agreed, by unanimous decision, that there were no substantive matters that required examination contained in the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 and the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010 and so reported to the Senate on 15 June.

1.3 In relation to the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 (the How-to-Vote Cards Bill) and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 (the Modernisation Bill), the committee invited written submissions from interested organisations and agencies, the Commonwealth Department of Finance and Deregulation, and the Australian Electoral Commission. The list of submissions received is at Appendix 1. The committee did not hold a public hearing in relation to the Bills.

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1 On 13 May 2010, the Senate resolved to refer to committees for inquiry and report by 15 June 2010 the provisions of all bills introduced into the House of Representatives after 13 May 2010 and before 3 June 2010 that contain provisions commencing on or before 1 July 2010 (together with the provisions of any related bill).

## BACKGROUND

1.4 In June 2009, the Joint Committee on Electoral Matters, tabled its report on the conduct of the 2007 federal election and matters related thereto.<sup>2</sup> The report contained 53 recommendations aimed at enabling the franchise, maintaining an effective electoral roll, increasing the participation of Indigenous and homeless electors, responding to the increased demand for early voting, reducing informal votes, the modernisation and sustainability of electoral administration, and the modernisation of regulatory arrangements. In the second reading speech for the Modernisation Bill, the Minister commented:

The majority of reforms in this Bill are based on unanimously supported recommendations of the Report of the Joint Committee on Electoral Matters following its inquiry into the 2007 Federal election.<sup>3</sup>

## THE BILLS

### *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010*

1.5 The How-to-Vote Cards Bill aims to amend the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) in relation to electoral advertising in two ways. First, specific and expanded authorisation requirements of how-to-vote cards are proposed. The proposed authorisation requirements are aimed at making clear who will benefit from the preference flow suggested on the how-to-vote card and thus 'reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of how-to-vote material is clearly stated'.<sup>4</sup> The amendments make it an offence for a person to publish or distribute a how-to-vote card that does not comply the authorisation requirements or includes false authorisation details.

1.6 Secondly, the Electoral Act and the Referendum Act prohibit a person from causing to be printed, published or distributed, anything that may mislead or deceive an elector in relation to how to cast a vote. The Bill aims to expand the definition of the term to 'publish' in both the Electoral Act and Referendum Act to add the terms 'telephone' and 'internet'. By expanding the definition to include the internet, the offence will capture material published overseas by an Australian citizen or resident.

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2 Joint Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, Canberra, June 2009.

3 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

4 Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010, *Explanatory Memorandum*, p. 1.

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***Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010***

1.7 The Modernisation Bill repeals redundant provisions; gives the Electoral Commissioner flexibility rather than prescription; and places more technological tools at the Australian Electoral Commission's (AEC) disposal so that the AEC can continue to deliver the best enrolment and election practices.<sup>5</sup> In order to achieve these aims, the Bill:

- removes the requirement to publish in the *Government Gazette* enrolment and election-related forms and information such as the location of polling places. The Electoral Commissioner will now be required to publish this information, at a minimum, on the AEC's website in recognition of the trend for people to use technology and websites to interact with government;
- amends the evidence of identity requirement for enrolment so that a person making an application for enrolment or a person changing their name must provide evidence of identity – either a driver's licence number, passport number or an attestation of identity signed by an enrolled elector – with their enrolment application;
- reduces the age at which people may provisionally enrol from 17 years to 16 years, thus allowing the AEC to target enrolment of young people in schools, educational institutions and youth events;
- allows for electronic Roll information to be provided to parliamentarians allows for electronic certified lists;
- introduces flexibility to print ballot papers at the local level by removing the technical requirement from ballot-papers to be 'overprinted' and to require that ballot papers contain a feature to be approved by the Electoral Commissioner;
- amends the process of authenticating ballot papers by a Divisional Returning Officer;
- introduces one form of mobile polling which may visit anywhere that the Electoral Commissioner determines thus removing inconsistencies that currently exist in the arrangements for visits at various places or institutions;
- enables a person to apply for a postal vote electronically by removing the requirement for an application for a postal vote to be signed and witnessed and requiring an elector making a postal vote to make a declaration that he or she is entitled to make an application;
- prohibits written material from being attached to a postal vote application, however, extraneous material may be included in an envelope along with the postal vote application;

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5 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

- requires a completed postal vote application be returned directly to the AEC, which is intended to ensure that the application is not returned via a third party, including a political party;
- requires that both the elector and the witness of the postal vote application make a written declaration that the requirements for completing the ballot paper were completed before the close of the poll;
- clarifies that a right to inspect the electoral Roll does not include the right to electronically copy or record the Roll;
- allows the AEC to provide the postal address of general postal voters to state and territory electoral commissioners;
- introduces specific provisions to facilitate enrolment and continued enrolment for people experiencing homelessness so that a person experiencing homelessness will not lose their itinerant elector enrolment because he or she has been living in crisis or transitional accommodation for one month or longer or be removed from the Roll if they do not vote at a general election;
- expands the grounds upon which a person may apply for a pre-poll or postal vote; and
- makes a number of minor technical amendments to remove gender specific language, amend incorrect cross references and provide for consistent use of terminology.

1.8 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, stated:

Taken together these amendments provide the AEC with the necessary flexibility and technological tools needed to deliver modern electoral practices for the benefit of all electors.

The reforms are significant, and they are overdue.

This bill demonstrates the government's continuing commitment to update the Electoral Act and the referendum act for the benefit of all electors.<sup>6</sup>

## ISSUES

### *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010*

1.9 The reforms proposed to how-to-vote cards were welcomed, with Professor Graeme Orr noting that they 'offer neat and bright line rules for the form of the authorisation'.<sup>7</sup> However, some submitters suggested additional improvements are required. Mr Andrew Murray commented that standardisation of regulations in relation to how-to-vote cards across all Australian governments should be introduced.

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6 The Hon Gary Gray, MP, Parliamentary Secretary for Western and Northern Australia, *House of Representatives Hansard*, 2 June 2010, p. 11.

7 Professor G Orr, *Submission 1*, p. 1.

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Further, the bill should include a requirement that how-to-vote cards be registered with the AEC. Mr Murray stated that it is a relatively simple measure for how-to-vote cards to be scanned and placed on the AEC's website 'so allowing postal voters and others who use the internet access to HTV guidance'.<sup>8</sup>

1.10 Professor Orr also supported registration of how-to-vote cards, noting that not only would this have the benefit of educating campaigners, by bringing them into the administrative net ahead of polling day, but also giving the 'Commissioners and parties advanced notice of material, allowing time for a considered challenge to any dubious material'. Professor Orr went on to comment that the proposed enforcement provisions focus on after-the-event. He commented that the proposed penalty (\$1100) was adequate for minor offences but 'clearly' inadequate as a penalty for 'false authorisation'.<sup>9</sup> In conclusion Professor Orr commented that relying on an offence provision is inadequate and he recommended pre-polling day registration.

1.11 The AEC noted that some of the states (Victoria, Queensland and NSW) have moved to a registration system of how-to-vote cards. In South Australia, how-to-vote cards are submitted to the SA Electoral Commission for inclusion in a poster that will appear at polling places. However, the SA system also allows for other how-to-vote cards to be handed out to voters near polling places. In Tasmania it is not permissible to hand out how-to-vote cards on polling day itself and in the ACT they may not be handed out within 100 metres of a polling booth.

1.12 The AEC was of the view that how-to-vote card pre-registration systems may be manageable in a single jurisdiction with comparatively small numbers of candidates and in a single time zone. However, for a general election in the federal jurisdiction involving nearly 1,500 candidates for both the Senate and the House of Representatives, such a system is likely to result in practical difficulties in having how-to-vote cards submitted to the AEC, registered and approved for publication in the short time between the close of nominations for candidates and the commencement of pre-poll voting. The AEC also noted that:

...the resources necessary to administer such a scheme are currently not available and this runs the risk of diverting the AEC from its primary election activities. Accordingly, the measures contained in Schedule 1 to the How-to-Vote Cards Bill do not include any prior registration requirements.<sup>10</sup>

1.13 Professor Orr suggested tightening of the term 'authorised...on behalf of', in particular in circumstances where a party supporter may claim to have authorised the material themselves.<sup>11</sup>

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8 Mr A Murray, *Submission 6*, p. 1.

9 Professor G Orr, *Submission 1*, p. 1.

10 Australian Electoral Commission, *Submission 3*, p. 3.

11 Professor G Orr, *Submission 1*, p. 1.

1.14 The Proportional Representation Society of Australia also suggested that how-to-vote cards which urge voters to mark just a Senate party box, be obliged to provide the full numbering(s) for all candidates in a legible font size somewhere on that material. The Society commented that this would allow voters to establish where preferences were flowing on the party ticket and thus allow them to choose to vote below the line if they so wished.<sup>12</sup>

1.15 The AEC concluded that the amendments in relation to authorisation requirements will 'reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of How-to-vote material is clearly stated'.<sup>13</sup>

### ***Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010***

1.16 Many of the proposals of the Modernisation Bill were supported, in particular the provisions relating to evidence of identity;<sup>14</sup> and age 16 provisional enrolment<sup>15</sup>; and at electors experiencing homelessness. In relation to the latter, PILCH Homeless Persons Legal Clinic commented:

We welcome those elements of the legislation that allows homeless voters to better access their human right to vote, and to participate in the public life of Australia.

In particular, we welcome the amendments to section 96 of the *Commonwealth Electoral Act 1918* that recognise the difficulties of people who are homeless that may impede their ability to vote. We also welcome the broadening of the application of mobile polling, and recognise that these amendments may further reduce barriers faced by homeless voters in accessing polling places.<sup>16</sup>

1.17 In relation to the postal voting provisions, some concerns were raised. Professor Orr, for example, commented 'I am equivocal about proposals that weaken safeguards on postal voting, given the history and potential fraud in that form of voting'. He considered that removing witnessing and signatures may weaken safeguards but 'would defer to AEC advice on whether removing the witnessing requirement will in fact add any weakness to the anti-fraud measure. The deeper issue is the reliability of the underlying enrolment.'<sup>17</sup>

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12 Proportional Representation Society of Australia, *Submission 4*, p. 3.

13 Australian Electoral Commission, *Submission 3*, p. 6.

14 Professor G Orr, *Submission 1*, p. 3.

15 Professor G Orr, *Submission 1*, p. 3; Democratic Audit of Australia, *Submission 2*, p. 2; Proportional Representation Society of Australia, *Submission 4*, p. 4.

16 PILCH Homeless Persons Legal Clinic, *Submission 5*, p. 1.

17 Professor G Orr, *Submission 1*, p. 3.

1.18 Professor Orr commented on the proposal that applications for postal votes shall be made 'directly' to the Divisional Returning Officer thereby stopping their return via a third party. He voiced concern that the provision may be interpretable as forbidding a postal voter relying on a friend to deliver or post their application.<sup>18</sup> The committee notes that the AEC's submission and second reading speech indicate that this provision is aimed at the current practice of returning postal vote applications principally via political parties and to ensure that any delays are minimised.<sup>19</sup>

1.19 The Proportional Representation Society of Australia commented on the provisions in relation to extraneous material included with postal vote applications and recommended that they be extended so that such material be required to 'sit in a separate envelope on which there is a clear authorisation and identification of candidate or party'. The Society concluded that this 'should stop any abuse of current postage entitlements and minimise occasional campaign claims that the Electoral Commission has included party propaganda in material of this nature: invariably such mailouts criticised on the grounds of perceived official bias have been from political parties'.<sup>20</sup>

## **Conclusion**

1.20 The committee notes that many of the provisions contained in the How-to-Vote Bill and the Modernisation Bill are based on the unanimously supported recommendations of the Joint Standing Committee on Electoral Matters *Report on the conduct of the 2007 federal election and matter related thereto*. The committee considers that the measures in the Bills will improve voter information in relation to how-to-vote cards, improve administrative processes and decrease the amount of prescription that prevents flexible and up-to-date process being used by the AEC in the conduct of polling. The committee particularly welcomes the extension of provisional arrangements to 16 year olds and the measures aimed at those experiencing homelessness.

## **Recommendation 1**

**1.21 The committee recommends that the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 be passed.**

**Senator Helen Polley**  
**Chair**

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18 Professor G Orr, *Submission 1*, p. 4.

19 Australian Electoral Commission, *Submission 3*, p. 9.

20 Proportional Representation Society of Australia, *Submission 4*, p. 5.