

Coalition Senators' Dissenting Report

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

It is notable that this Bill arises because of a deliberate scam by the ALP in the 2010 South Australian State Election.

The SA ALP handed out how-to-vote cards which appeared to be official Family First how-to-vote cards, but the preference order favoured ALP candidates.

Labor operatives were brought in, some even from interstate, to wear t-shirts which appeared to indicate that they were Family First booth workers, and to hand out the bogus HTVs.

This is not a one-off.

It is a deliberate scam that the ALP has used before, both in New South Wales and in Queensland, and which was legitimised in the infamous case of *Webster v Deahm*. It is nice to see that Labor, after only some 17 years, has now admitted that the decision in that case was wrong and is seeking to correct the law.

This Bill would require all HTV cards to place at the top of the card, and in a prominent size, the name and party of the authoriser, or face a fine of \$1,100.

A false authorisation would incur a similar fine.

Given the song and dance which the Labor members on the JSCEM made about the unauthorised pamphlet in Lindsay, it seems a rather light penalty for such a serious – in Labor's own words – offence against the Electoral Act. Clearly, a penalty of at least 50 units would be more appropriate, especially in the instance of deliberate false authorisation details.

The specification that the authorisation must go at the top seems a little over-prescriptive. Surely the key point is that the authorisation should be large and noticeable, and that this could be achieved at the top or the bottom of the HTV – or indeed anywhere on the document in a prominent, readable font and a prominent position.

That being said, the Coalition strongly supports the principle of the Bill.

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

This Bill purports to be a series of uncontroversial, minor amendments arising out of the unanimous recommendations of the JSCEM Inquiry into the 2007 Federal election. In the main, it is acceptable, but there are some problems which need to be addressed.

Schedule 1 moves the AEC towards a more ‘digital’ system of records management. This measure was not opposed by the Coalition members of the JSCEM.

The only query that presents itself to the Coalition relates to the seemingly unnecessary deletion of s.37 of the Commonwealth Electoral Act. Section 37 states:

37 Keeping of forms

All Divisional Returning Officers and Assistant Divisional Returning Officers shall keep forms of claim for enrolment and transfer and such other forms as are prescribed, and shall without fee supply them to the public and assist the public in their proper use.

It is not a big issue, but it seems strange that such a basic entitlement – that forms be available and freely given at DROs – should be deemed worthy of removal. If the argument is that there are no longer physical forms ‘on hand’, there will still have to be some form of on-demand printing facility in these offices.

Not all individuals have access to the internet. Some people may prefer to just wander into the local DRO and obtain a form. Thus it seems to the Coalition that there is no harm done in retaining this section, and a potential for harm to be done – i.e. the removal of a right to a free service – if s.37 were to be deleted.

Schedule 2 changes the evidence of identity rules for enrolments. It removes the mandatory need for a witness to attest to the identity of a person and reduces the acceptable identity to a smaller field of items. This measure was not opposed by the Coalition members of the JSCEM.

One issue of concern is that s.99A(6) refers to a government department which no longer exists.

Schedule 3 allows for provisional enrolment at age 16, as opposed to the current age of 17. There is one drafting error in this Schedule, at Item 6: there is no reference to “age 17” in s.121(1)(c) of the Commonwealth Electoral Act.

While this measure was not opposed by the Coalition members of the JSCCM, Coalition Senators accept the assurances of the Government that this provision is only directed at provisional enrolment and in no way represents the first step towards reducing the voting age. Coalition Senators remain committed to the electoral roll being as accurate as possible and including all eligible voters, with the franchise being exercised by all eligible voters over the age of eighteen.

Schedule 4 moves the AEC towards a more 'digital' system of electoral roll management, distribution and use on polling day. It also allows for a more flexible production of ballot papers – with appropriate security devices – on polling day. This measure was not opposed by the Coalition members of the JSCCM.

Schedule 5 standardises mobile polling booth practices. This measure was not opposed by the Coalition members of the JSCCM.

Schedule 6 has both controversial and non-controversial aspects to it.

The non-controversial aspects include the removal of the need for a witness for a request for a Postal Vote, and allowing the signature date (as opposed to the postmark date) on the Postal Vote to be accepted. The first point makes it easier for some in isolated areas to request a Postal Vote. The second point goes a long way to addressing the legitimate concerns that postal voters in rural and regional Australia have had, given that they do not have every-day postal services. These parts of the measure were not opposed by the Coalition members of the JSCCM.

However, Labor has added two controversial aspects: Postal Vote Applications can only be returned directly to the AEC; and a prohibition on the attachment of extra material on a Postal Vote Application form.

The Coalition can see no valid reason for the introduction of these measures by the Government, and strongly suspects that this has been done in a cynical attempt to undermine the extremely successful Postal Voting processes of the Coalition parties. Even a simple reading of the voter returns shows that the Coalition consistently polls higher with postal votes than with any other type of declaration vote.

Nor have there been any problems raised in relation to fraudulent behaviour or impersonation of voters. If there were such concerns, then why has the ALP avoided tightening the rules in relation to pre-poll and provisional votes? Indeed, one of the other Bills currently before the Parliament (Electoral and Referendum Amendment (Close of Rolls and other matters) Bill 2010) is explicitly designed to loosen the rules in relation to casting a provisional vote – interestingly, an area where the ALP polls consistently better than the Coalition.

Thus we have this situation: the Labor government is seeking to make substantial changes to a system of voting where the Coalition does well, despite there being no evidence to support any need for such a change. Simultaneously, it is softening the provisions for a form of voting where the ALP does well, and where there are serious concerns about the integrity of such votes.

It is hard not to be cynical about the motives of the ALP in relation to these particular aspects of the Bill.

Schedule 7 modernises the provisions for homeless voters. In principle, they were not opposed by the Coalition members of the JSCM.

However, the Coalition has now identified concerns about Item 9. Item 9 seeks to repeal s.96(9)(a) of the Act. This section states:

(9) A person ceases to be entitled to be treated as an itinerant elector under this section if:

(a) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;

The implication that flows from any such amendment along the lines of Item 9, is that there is no practical provision to *ever* remove an itinerant elector from a roll.

It is axiomatic that you cannot do a habitation review on a homeless person.

Unless the itinerant elector is unusually diligent in keeping his or her enrolment details up to date, the only way to determine if they have left the electorate (or died) is if they do not show up on polling day.

This proposed amendment from Labor is an open invitation to abuse the integrity of the electoral roll. Once a person is enrolled as an itinerant elector in a particular division, they may never leave the roll for that particular division, irrespective of their true place of residence.

The opportunity for organising a campaign of fraudulent voting is obvious, and the AEC could never check the *bona fides* of any potential roll rorter.

Thus the proposed repeal of 96(9)(a) is bad policy, because it fundamentally weakens the integrity of the electoral roll and provides for no alternative mechanism for 'roll cleansing' of itinerant voters.

Schedule 8 broadens and standardises the reasons for claiming a pre-poll vote. In many ways, this legitimises what have been 'existing practices' in many DROs.

It is well known to both Officers and pre-poll polling booth workers that many people have come in to pre-poll because they will be out of the electorate or otherwise engaged in more pleasant activities on polling day.

Rather than go through the rigmarole of contriving one of the legitimate reasons for receiving a pre-poll vote, this measure is a sensible change to make voting easier for those who simply prefer to lodge an early ballot. This measure was not opposed by the Coalition members of the JSCEM.

Schedule 9 is simply a series of minor technical amendments. These do not change policy in any way and, despite not having gone through the JSCEM, will have the support of the Coalition.

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