

# **Additional Comments**

## **SENATOR BOB BROWN**

### **Australian Greens**

The Australian Greens believe that our democracy will be strengthened by greater participation and broader representation in the electoral process and that the current system militates against both.

We welcome the reforms in 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. However I believe that the bills could be improved with additional improvements.

I intend to use these additional comments to highlight some key issues in these bills. These comments are by no means an exhaustive list of improvements which the Australian Greens believe should be made to the Electoral Act.

I submit that the following items be considered by the Government and the Senate as improvements to the bills before their passage through the Senate.

#### **Lowering the voting age to 16 years of age**

The Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 reduces the age at which people may provisionally enrol from 17 years to 16 years. The Australian Greens believe that not only the provisional enrolment age should be lowered but the voting age itself.

The Greens believe that all Australian citizens over the age of 16 should be eligible to vote.

Young people pay taxes, live under Australian laws and can leave home, have children, and join political parties. At 16 ½ years, young people can join the Defence forces. The Greens believe that if our Australian society bestows young people with all these responsibilities, it is reasonable to afford young people access to the opportunity to vote. In its report on the conduct of the 2007 federal election, the Joint Standing Committee on Electoral Matters noted that by lowering the provisional enrolment age to 16, outreach to potential first time enrollers would be easier, as many more young people are still in fulltime study at that age. Effective enrolment efforts could then focus on schools and technical colleges to target 16 year olds. This would be an important component in building an effective enrolment strategy over the longer term.

## Restricting the use of postal vote applications for party political purposes

The Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 makes changes to the material which is able to be attached to postal vote applications and requirements for returning postal votes to the AEC.

The Australian Greens support these changes. In deed, the Greens have previously announced and drafted amendments to introduce in the Senate that would require any PVAs sent out by political parties to be returned directly to the AEC.

Further, we would move to amend the Commonwealth Electoral Act to require that no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

The widespread distribution of postal voting applications (PVAs) by political parties and sitting members has resulted in a marked increase in postal votes at federal elections. Since 1996 there has been an increase in postal votes of approximately 96 per cent - rising from 383,264 in 1996 to 749,566 in 2007 (see Figure 1 below).

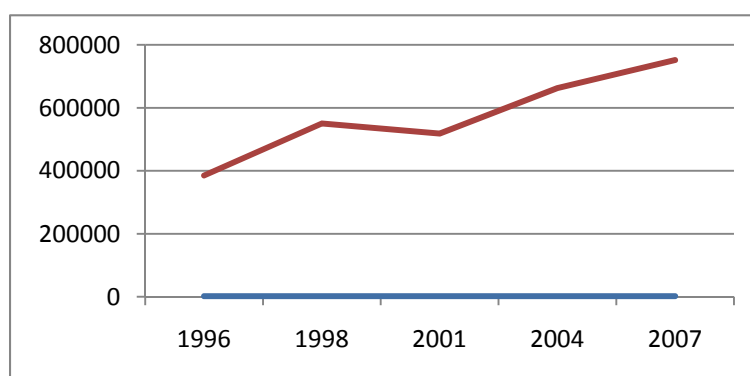


Figure 1 Increase in postal vote applications from 1996 – 2007

Source: Australian Electoral Commission (AEC), Election Statistics 1993, 1996, 1998, AEC, Canberra, 1999 (CD-ROM); AEC, Election Results 2001, AEC, Canberra, 2002 (CD-ROM); AEC, Election Results 2004, AEC, Canberra, 2005 (CD-ROM); AEC, 'Virtual Tally Room: The Official Election Results Election 2007', AEC website, viewed 28 September 2009

A recent ANAO Audit Report noted that the AEC produces PVAs for each election, and makes them widely available on announcement of the election at AEC offices, post offices, and the AEC website and to all federal Members and Senators . As a result, it is not necessary for parliamentarians to use their printing entitlement in order to effectively disseminate postal vote applications to constituents. Indeed, prior to 2004, there was no entitlement that allowed parliamentarians to use their printing allowance to produce PVAs.

Currently under the Commonwealth Electoral Act application forms for postal voting can be issued by any person or organisation provided they conform to 'the approved

form' and are attached to or form part of other written material issued by that person or organisation.

Parliamentarians can use their Printing and Communications Allowance to print and distribute PVA forms with a reply-paid envelope as a service to constituents. The Auditor-General's report released in September 2009 found that parliamentarians from the major parties and the Nationals produced at least 8.23 million PVA documents in 2007-08 using their printing entitlement. This is 2.9 million more postal vote application forms than the number of voters enrolled for the election in 2007 -08 .

The Greens believe there are no grounds from an administrative or participatory democracy perspective for postal vote applications supplied by parliamentarians to be returned to parliamentary offices prior to being forwarded to the AEC. Data from the 2007 election demonstrates a considerable delay of forms returned via reply paid envelopes to parliamentarians arriving at the AEC. Of the PVAs issued by the AEC 69% were returned on the same day as the witness signature, whereas only 27% of PVAs issued by Liberal party were returned within 4 days, and 36% of Labor PVAs were returned within 4 days.

Irrespective of whether deadlines for the close of the electoral roll are extended, this practice of double-handling presents the very real risk of electors not being enrolled prior to the close of rolls. This practice is also being used by political parties to harvest voter information without their knowledge or consent. "Party" PVAs contain a return address to a local or state-based campaign postal address, where electors' information is recorded before the information is passed on to the AEC. This diminishes, rather than enhances electors' enfranchisement.

### **Polling Day – how to vote cards**

The Electoral and Referendum Amendment (How-to-vote Cards and Other Measures) Bill 2010 makes some timely amendments to the Act.

The Greens agree wholeheartedly with the expansion of the definition of the term to 'publish' to include the telephone and the internet. We had prepared amendments to this effect in response to the recent use of 'robocalls' in the Tasmanian election.

The predominance of how-to-vote cards negatively impacts on electors' capacity to make their voting decision free from interference. The adoption of above-the-line voting in Senate elections, especially in larger states that feature a large field of candidates, means that should voters choose to they can readily make just one mark on the ballot in order to cast a valid vote. The argument made by the major parties for the necessity of party's how to vote cards to tackle vote informality rates is spurious. If voter education is required, then non-partisan materials and programs should be delivered via the AEC.

Accordingly, the Greens believe that voters' interests would best be served by the Tasmanian and ACT state election model where how to vote cards are not handed out at polling booths on election day being adopted nationally.

## **Truth in Political Advertising**

The Australian Greens support the introduction of legislation to ensure truth in political advertising. Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

We had prepared amendments to amend the Commonwealth Electoral Act to make it an offence to publish or distribute an electoral advertisement, which is intended to affect voting in an election that contains a statement purporting to be fact that is inaccurate and misleading.

The current provisions in the Electoral Act only extend to statements which are intended to affect the casting of votes and these provisions have been interpreted very narrowly to apply only to how a voter marks their ballot paper.

The Greens amendments would extend the truth in political advertising provisions to apply more broadly to all statements/advertisements which are intended or likely to affect voting in an election. The Electoral Commission, if satisfied that an electoral advertisement contains inaccurate or misleading materials, they may request the advertiser to either withdraw the advertisement or publish a retraction.

Elections are an opportunity for political accountability and it is critical that representations are accurate and honest. Under the current system, it is possible for advertising that contains misrepresentation and outright false statements to go unchallenged and without penalty. This can be particularly damaging in cases where the advertisements are presented by third parties, which under the current system are not required to identify themselves and therefore make known their own political or ideological position.

Although such legislation was enacted briefly in Commonwealth law in 1983 -1984 it was repealed with the support of both the major parties. Opposition to such legislation relies on the argument that it infringes the right of free political communication. However truth in political advertising legislation introduced in South Australia in 1985 was found to be constitutionally valid by the High Court. South Australia's legislation doesn't ban all untruths in advertising, but rather relates to inaccurate statements of fact (not opinion) found to be untrue

The Australian Greens advocate an amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent, similar to legislation introduced in South Australia.

## **Recommendations**

**The Australian Greens recommend that the bills be amended so to:**

- 1.1 That the age of eligibility to enrol and vote be 16.**
- 1.2 That the AEC be adequately funded to deliver targeted, effective programs to engage young people in electoral processes, including enrolment.**
- 1.3 That all "party" postal voting applications (PVAs) that have been sent to voters by political parties or politicians are to be returned directly from the elector to the Australian Electoral Commission (AEC) rather than via the political party campaign office or the office of the politician**
- 1.4 That no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.**
- 1.5 That effective legislation to ensure truth in political advertising is introduced.**

**Senator Bob Brown**

**Leader of the Australian Greens.**