

## AUSTRALIA DOES NOT HAVE A SECRET BALLOT SYSTEM

Australia no longer has a secret ballot system to judge by the definition of a secret ballot system that the Australian Electoral Commission (AEC) defines in its 'electoral education resource' Democracy Rules: 'Citizens vote in secret. A screen is provided to prevent others from seeing how they voted. The secret ballot allows people to vote without fear of intimidation from others and reduces the risk of bribery.'

Obviously the 2007 federal election did not qualify by that definition as a secret ballot election as 16.4% of the votes cast did not qualify as being cast under those conditions. They were postal or pre-poll declaration votes both of which the AEC describes as 'early votes'. And the level of these is rising with each successive election; for example postal votes have doubled in number since 1993, while pre-poll votes have tripled.

Such early votes do not qualify as being cast by secret ballot as they are not cast in the same polling box, in the same polling booth, in the same polling station, with the same security, as ordinary votes on the one polling day. Furthermore they are not votes cast which reflect the same snapshot of issues and news polls on the same day as is the case with ordinary voters on polling day.

Moreover postal voters never cast their votes into any polling box, while pre-poll voters are often denied the opportunity as they often find a ballot box out of reach in undermanned or inexperienced pre-poll stations. Also neither postal nor pre-poll voter have the faintest idea what security exists over their ballot papers until electoral officials begin counting them in their offices in the lead-up to election day. They certainly are no longer secure in police stations as once was the case.

A great many voters are uneasy that fraud can most easily be committed on an organised scale in the area of postal voting. This unease was reflected in the conclusions of the *Australian Government Electoral Reform Green Paper* authorised by Joe Ludwig as Special Minister of State in September 2009 Its implications for postal votes in particular include the following:

\*In contrast to ballots cast in polling places, secrecy cannot be guaranteed for postal ballots, completed in an environment uncontrolled by electoral administrators. It has been argued that there is a greater risk that postal voters 'may be influenced or even intimidated by others'.

\*It has been contended that postal voting makes it 'much harder to be certain that the person casting the vote is actually the person the vote is registered for.'

\*Postal voting relies on the postal service to transmit ballot papers and completed votes within relevant deadlines. There have been instances of disenfranchisement of voters particularly in rural and remote areas, where infrequent postal services have slowed the postal voting process. (*Reform Green Paper p 164*).

Very few people are aware that the issue of electoral fraud in our elections, or 'bribery' as it was called then, has always hovered in the background of Australian political life since 1856. For example our famous federal MP (Billy) Hughes said, during the first Commonwealth Electoral Bill debate in 1902, 'Bribery (fraud) is carried on to a greater or lesser extent at every election in every state in the Commonwealth.' But that issue tends to be dismissed, or derided, as the bad grace of losing candidates or parties, rather than taken up as a case of where there is smoke there is fire..

The first debate on whether to adopt postal voting began in the South Australian Parliament in 1856, the very year that Victoria adopted H.S. Chapman's final resolution of a limited secret ballot voting process, which spread world-wide as the Australian Ballot. This Parliament rejected postal voting as 'entirely incompatible with the sanctity of the secret ballot (*F.M.McCain Origins of S.A. Electoral system 1972 p.49* ). However this view was reversed in 1890 to permit seamen and shearers, authorised by certified witnesses, to cast postal votes despite objections that 'it would open the door for combinations of people and unions to obtain a block vote (*S.A. Hansard 10.10. 1890 p.71*)

The South Australian prevailed when the Commonwealth government was formed. Postal voting was adopted, but curtailed briefly in principle during the short-lived Fusion Government in 1909 because, in Senator Hutchings' words, 'The grossest kind of fraud has occurred in connection with postal voting

(*Commonwealth Hansard 1909 p. 5647*).’ Never the less the Labor Party unwittingly instigated the opposite of what was intended by liberalising the list of authorised witnesses to ‘increase the facilities to enable every one entitled to take advantage of this portion of the Act to do so’. Postal voting not only escalated. It ran completely out of control. Postmasters who had the right to issue postal votes were giving ballot papers to all and sundry. Doctors were too lenient in issuing medical certificates. People were exerting undue influence on others - such as women with their domestics, employers with employees, party supporters in nursing homes and hospitals parading as ‘flying angels (in white coats)’, party agents to the sick and infirm in homes, and Justices of the Peace among the worst everywhere.

When Senator Pearce spoke in favour of total abolition of postal voting, his speech was as relevant then as it is today. He said: ‘Such canvassing is against the spirit of the Electoral Act. It was never intended to create a class of men who would go round canvassing for postal votes and trying to induce electors not to attend the polling booth (*Senate Hansard 1911 p.4016*).’

Postal voting was re-introduced in 1918 for the benefit of servicemen. It was extended in 1949 by the Chifley government to allow those outside the state, outside five miles by the nearest practicable route to any booth, or travelling on polling day, to apply for a postal vote. Fred Daly MHR Martin bitterly opposed this. ‘It is an undeniable fact that serious exploitation is taking place through unscrupulous persons obtaining votes by methods, that are allowed by the Act. Divisions are now decided by postal votes. It is the only part of the total vote of the Commonwealth that can be manipulated, subverted and twisted (*House of Representatives Hansard 1949 p 1452*).’

The N.S.W. Premier Joe Cahill, was of the same view. He imposed restrictions that brought the number of postal votes down to 435 by 1965, when the incoming Liberal Premier Askin ‘liberalised/ them again due to the prevailing view that the conservative parties always won them.

Since that date there has rarely been any open debate in any Australian parliament, about whether postal voting is desirable or not, probably because the Australian Electoral Commission persistently claims that there is no fraud of any significance that could overturn the result of any election in any electorate, a denial that would cover postal voting.

Such denial was recently exemplified in the conclusion declared in the Joint Standing Committee on Electoral Matters (JSCEM) 2007 Report, based on the AEC’s controversial advice: ‘The years leading up to the 2007 election saw the creation and perpetuation of the mythical ‘straw man’ of electoral fraud. The straw man has been used to create and perpetuate an erroneous view that electoral fraud is commonplace and to overstate its potential effects. It can be clearly stated in relation to false identities that there has never been any evidence of widespread or organised enrolment fraud in Australia.’

This view was not supported by the former and present N.S.W. Electoral Commissioners Dixon and Cundy in their 1989 report to the N.S.W. Government wherein they concluded there was fraud but it was the very secrecy of the fraud that could defeat the secrecy of the ballot. ‘That the electoral system is open to manipulation is beyond question. Fraudulent enrolment is almost impossible to prevent.’ Nor, if it occurred at election time would it, or could it, all be checked.

Australia’s most eminent crime reporter and author, Bob Bottom, verified this view in 2001 in his analysis of recent Queensland elections published as a lengthy foreword to the reprint of my book *Frauding of Votes*. He had evidence ‘relating to Bribie Island which served to add credence to long-standing allegations that thousands of people may have been falsely enrolled in marginal electorates. The names of bogus electors were on an electoral roll used for a mass letterbox delivery in the lead up to the 1989 Queensland election.’ This was verified by locals when he appeared on a telecast of Channel 9 which included doubts about the integrity of the late 1989 Queensland State election.

The AEC does not investigate fraud, is not required to do so, nor in my opinion should be required to do so because they should not have to sit in judgement on their own work. Therefore we have no recent example of a judicial inquiry into postal voting fraud to compare with that conducted by Richard Mawrey QC, who sat as Electoral Commissioner for the High Court in a challenge, by two defeated teams of

candidates, to the results of an election in two wards of the 2004 Birmingham Council election conducted by postal voting on demand. The sanction to conduct elections by full postal voting on demand had been approved by all parties in the House of Commons in 2001. After a long, arduous enquiry, Richard Mawrey QC announced just before the 2005 general election that this Birmingham Council fraud ‘ would have been a disgrace to democracy in a banana republic.’ This not only shocked the political world out of complacency, but also the media where the story dominated the early days of the election, including the fact he had faced strong obstruction from the Labor Party to its continuance throughout..

His conclusion was that ‘the principal problem with postal voting, whether on demand or otherwise, is that no means can be devised to guard against serious and organised fraud. The British government has tried - not very hard – to devise such a system but the changes brought in response to the election cases, where I have exposed massive fraud, have been minimal.

I identified fourteen different types of fraud capable of being perpetrated (thought some were cumulative and not free-standing) and in Slough I dealt with the fifteenth type, that dear old friend well known in all democratic systems, where I shamelessly purloined the Australian term ‘roll-stuffing. The changes brought in by our government in 2006 dealt with one of the fourteen frauds but no more. The other thirteen and roll-stuffing like John Brown’s soul go marching on (*Quadrant p. 52*).’ He complained of strong obstruction tactics from the Labor Party throughout.

The 2007 report of a University Liverpool academic Stuart Wilks-Heeg *Purity of Elections in the UK* supported Richard Mawrey’s view that postal voting should be abolished. ‘Cases tried since 2000 underline that the extension of postal voting has clearly enhanced the vulnerability of UK elections to large scale fraud. The likelihood of such fraud occurring could and should have been predicted on the basis of evidence growing of proxy vote fraud during the 1990’s. Moreover the potential for the political control of a major city council, or the outcome of a contest for a parliamentary constituency to be determined by postal votes, has been clearly demonstrated by recent fraud cases, most notably the offences considered by the Birmingham election court in 2005 (*ibid op cit*).’

The conclusion of both Richard Mawrey QC and of Stuart Wilks-Heeg was that parties are wrong in their belief that postal votes will particularly favour them, or that it will boost attendance at the polls. They are concerned at the increase in fraud in British elections, which is signified by the current inquiry by police in fifty constituencies following the recent May 6 election.

My own conclusion is that so long as one of the two parliamentary parties has its power base in the trade unions built on postal voting – power that is related to amassing control of such unions –it should be confined to those unions and not extend into parliamentary elections unless in remote areas and for emergency circumstances.

So long as we are disposed to consider ourselves a great democracy, we should ensure that our secret ballot is in every respect a secret ballot; and not yield that secrecy to an ever increasing number of postal and declaration votes that cannot by any stretch of imagination be considered to be secret. For we allow party members to scan lists of applications for postal votes, and electoral officers to scan them without scrutineers present. For all the checks that may be in place, none readily verifies if the postal voter is a phantom or fraudulent voter, for no identification is required.

But questions should nevertheless be asked urgently not about this or that, but about the validity of the whole non-secret ballot system.

As Richard Mawrey QC told us during his visit here earlier this year ‘easy voting is fraudulent voting.’ Therefore serious questions should be asked about our easy voting system which is the most generous and prolific in the world. And an Electoral Ombudsman should be appointed to ask them.

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