

# Electoral Reform Bill 2010

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the *Electoral Reform Bill 2010*.

#### Objectives of the Legislation

The objectives of the Bill are to:

- (i) amend the *Electoral Act 1992* to introduce a compulsory preferential method of voting, a voluntary voting system, prohibiting the distribution of how-to-vote cards and the prohibiting of displaying political material on land occupied by the State;
- (ii) amend the *Electoral Regulation 2002* to require identification be sighted by an issuing officer in order to obtain a ballot paper;
- (iii) amend the *State Penalties Enforcement Regulation 2000* to omit the current regulations which will no longer need to be enforced.

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## **Reasons for the Bill**

### **Full Preferential Voting**

Preferential voting has become an established method of voting in both the federal and state parliaments of Australia. It requires voters to number, in preference, all of the candidates on the ballot paper.

Preferential voting was first used at the Corangamite federal by-election on 14 December 1918. The first general election (Senate) using preferential voting was held on 13 December 1919.

There are two variants of this system. At a federal level, full preferential voting is utilised for the House of Representatives, whereas in Queensland, an optional preferential method is used.

Under full preferential voting each candidate must be given a preference by the voter. If a candidate receives more than an absolute majority of the formal first preference votes, that candidate is elected. If no candidate has an absolute majority, the candidate with the fewest votes is excluded. The excluded candidate's votes are then transferred to the other candidates according to the second preferences shown by voters on the ballot papers. If still no candidate has an absolute majority, again the remaining candidate with the fewest votes is excluded and these votes are transferred. This process will continue until one candidate has more than half the total votes cast and is declared elected.

The method of compulsory preferential voting, as used in the federal House of Representatives, maximises the value of each vote, thus ensuring that the majority will of the people is reflected in the elected representative.

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Optional Preferential voting has been used in Queensland State elections since 1992. Voters are able to cast a valid vote by either:

1. Marking only one square;
2. Marking some, but not all squares; or
3. Marking each and every square in order of preference.

Optional preferential voting is characterised by the voter deciding whether to allocate a preference to some or indeed all of the candidates on the ballot paper. There is no requirement to allocate these preferences in Queensland.

There are substantial advantages that full preferential voting bring to the parliamentary system. Importantly it ensures that only a candidate with the support of an absolute majority of the electorate will win the seat, eliminating the possible success of minority candidates. The successful candidate is therefore the most preferred, or least disliked candidate.

It also ensures that voters can support minor parties and independent candidates in the knowledge that that their preferences may be used to directly affect the outcome, and ultimately decide the successful candidate. Thus, exhausted votes for minor parties and independents are not wasted.

### **Voluntary Voting System**

In a democracy, the freedom of choice to the individual is widely espoused. Ironically in Queensland there is a mandatory system in place regarding compulsory voting.

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John Hirst wrote in *The Age* in 1992 that *„It took only 52 minutes in the House of Representatives and 86 minutes in the Senate for compulsory voting to become law ... in what sort of nation can compulsory voting be introduced without discussion or debate?“*.

Indeed, Senator the Honourable Nick Minchin referred to compulsory voting as *„an embarrassment in a nation like ours, which is otherwise a shining light of democracy and civil liberty in a world still darkened by authoritarian rule in so many countries. The overwhelming majority of the world's democracies uphold and protect their citizens' legal right to choose whether or not to vote, a right we are denied in Australia‘*.

Compulsory voting in Australia was adopted in Queensland in 1915 by the then Liberal government of Digby Denham. It became the first place in the British Empire to do so. It was subsequently adopted nationwide in 1924 and first used at a federal election in 1925.

Currently, only ten of the thirty three members of the Organisation for Economic Co-operation and Development (OECD) have compulsory voting. There are currently thirty two countries with compulsory voting. Of these, nineteen, including Australia, enforce this by way of provisions for penalties for non-compliance.

Voters are given a number of ways to cast their ballot at an election, including postal voting, pre-poll voting, absentee voting, voting at Australian overseas missions and voting at mobile teams at hospitals and nursing homes and in remote localities, in addition to ordinary voting at a polling place in their electorate.

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In recent years, public sentiment has changed in relation to party politics and the depth of policy considerations offered to voters by political parties. Indeed, there is an increasing level of direct and indirect support for non-compulsory voting in light of the current party political climate.

In a traditionally two-party system, this lack of differentiation is becoming increasingly evident.

Whilst compulsory voting may teach the benefits of democratic and political participation, the constituent is often a casualty in poorly considered policies and guiding principles offered by political parties.

There is a widely held belief that whilst participation rates may be high, that the vote cast may, in some instances, be a considered one or in fact an expression of frustration, and in some instances, exasperation and disappointment.

Both the government and opposition should consider the total electorate in policy formulation. Compelling all political parties to produce qualitative and quantitative policy outcomes for electors would reveal a subsequent increase in substantive outcomes for these voters. In a contemporary society, this would, and should, fundamentally shift the focus for political parties away from the short term election campaign and “election night win” to a longer term, consistent and well considered approach. Here, the wishes of constituents, and their communities, triumph.

In a democracy, the importance of political candidates to work hard in and for their community, and earn their support through the ballot should not be underestimated. Instead, political parties in fact rely on compulsory voting

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whereby electors are being required to discharge their obligation to vote (whether they wish to or not) which in turn ensures that voters are not required to be persuaded to do so by effective, valuable or constructive policies.

There is a substantial cost to the taxpayer in funding compulsory voting. Registered political parties may claim reimbursement by the Electoral Commission Queensland, of election campaign costs, up to the level of their entitlement, in respect of those of their endorsed candidates who gained at least four (4) percent of the formal first preference vote in the electorate contested. The entitlement is calculated by multiplying the total of eligible votes received by the election funding rate indexed annually (currently 1.64455). Independent candidates who gain at least four (4) percent of the formal first preference vote may also claim reimbursement of their campaign costs up to the level of their entitlement.

This reimbursement is frequently returned to the political party and not to the candidate who has incurred these costs, creating a system whereby political parties have a vested interest in maintaining compulsory voting. Therefore, the practice of compulsory voting benefits political parties who are ultimately the benefactors of substantial taxpayer funding through the Electoral Commission Queensland.

Significant endeavours are made to pursue and prosecute those citizens who do not vote. This in itself is a further convenient circumstance extended to political parties, who once again rely on bureaucracy to punish those individuals.

A “right” to vote is something that an elector possesses rather than something that they should be compelled to effect. Tim Evans, Director, Elections Systems and Policy of the Australian Electoral Commission on 16 January 2006 asserted that the United Nations Universal Declaration of Human Rights and the United

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Nations International Covenant on Civil and Political Rights refer to people's rights to "freely chosen representatives".

Fundamental to a contemporary and progressive society is a citizen's right to choose whether they wish to vote. To reject such a right is an affront to democracy.

### **How to Vote Cards**

A common feature of electoral laws across Australia is the prohibition, within a certain area of the ballot box, on the influencing of electors by various methods, including the distribution of how-to-vote cards.

Section 166 of *The Electoral Act 1992* (Qld) (the Act) provides that:

*(1) A person must not, during the election period for an election, do anything mentioned in subsection (2)—*

*(a) inside a room with voting compartments; or*

*(b) within 6m or, in relation to an office mentioned in section 109(1), a lesser distance allowed by the commission, of the entrance to a building with voting compartments.*

*Maximum penalty—10 penalty units.*

*(2) For the purposes of subsection (1), the things are—*

*(a) canvassing for votes; or*

*(b) inducing an elector not to—*

*(i) vote in a particular way; or*

*(ii) vote at all at the election; or*

*(c) loitering; or*

*(d) obstructing the free passage of voters.*

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Further, Section 169 of the Act provides that:

*(1) A person must not display a political statement—*

*(a) inside a room with voting compartments; or*

*(b) within 6m of the entrance to a building with voting compartments.*

*Maximum penalty—1 penalty unit.*

*(2) In this section—*

***political statement** means a statement or design that a reasonable person would associate with a political organisation, cause or belief.*

The distribution of how-to-vote cards at polling booths can often be an intimidating and in some cases, offensive, process for the voting public.

In Dr Paul Williams' submission to Department of Prime Minister and Cabinet and Special Minister of State, *Strengthening Australia's Democracy – Green Paper on Electoral Reform*, December 2009, he states that —*While polling days have, until now, been relatively peaceful events, there is no guarantee this will continue. In recent years, reports of aggression and minor violence have been reported with increasing frequency. Today, tensions over the distribution of resources and the potential for political sectarianism throw up new challenges in terms of keeping polling stations safe for voters, party workers and officials.*”

Importantly, the absence of how-to-vote cards will be an incentive for all candidates to actively campaign across each electorate to ensure the voter is well informed prior to an election.

The environmental impact of the production and wastage of how-to-vote cards is notable, particularly as each voter can be given multiple how-to –vote cards. The abolition of how-to-vote cards would significantly reduce the amount of paper used on election day.

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## **Displaying Political Material on State Property**

On election day, all voters should be afforded the opportunity to cast an informed vote, in a neutral, impartial environment without any undue pressure or influence.

The displaying of political material and promotion of government projects on State property is inappropriate. There is an increasing trend of prominent and permanent government signage displayed at locations including primary and secondary schools, which remain as fixtures on election day. Whilst this signage does not display the individual political party as a matter of protocol, these signs promote and market the government of the day, and arguably have the capacity to influence electors prior to casting their vote.

Further, the absence of any political party material on election day will also allow the enforcement of polling booth rules much easier to regulate.

## **Identification**

Manual voting methods presents challenges in relation to the potential for people to vote more than once, in addition to assuming another person's identity at the polling booth.

Currently, no proof of identity is required and as such there is no method of determining the true identity of the voter. This can create uncertainty, and in some instances, alter the actual outcome of an election result.

The requirement for voters to present photo identification prior to receiving their ballot paper will greatly diminish the opportunity made available to

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unscrupulous individuals. Further, the compulsory requirement to provide photo identification will act as a deterrent to potential offenders. Importantly it will provide a higher level of security and confidence in the current manual voting method.

## **Estimated Cost for Government Implementation**

There are no foreseeable additional costs in the implementation of this Bill.

## **Notes on Provisions**

Clause 1 provides for the short title of the Bill.

Clause 2 refers to the commencement day of the Act.

Clause 3 amends the *Electoral Act 1992* in accordance with the Bills' objectives.

Clause 4 omits s 97 which only gives a direction to place a number („1’) in the square opposite the candidate of the voters' choice and indicates that the voter may wish to indicate further preference for additional candidates. This is replaced with a direction to the voter to carry out full preference allocation in order for a vote to be valid.

Clause 5 refers to the amendment of Section 102 of the *Electoral Act 1992* to outline in (1A) that a voter may wish to vote to reflect a voluntary voting system. It also includes the addition of (3A) which outlines the necessity of the voter to provide identification in order to receive a ballot paper.

Clause 6 amends s106 by renumbering it as section 106(2) to include wording that reflects a voluntary voting system.

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Clause 7 omits Section 113 and inserts the definitions required in 113(1) (a) (b) and (2) to reflect a compulsory preferential voting system.

Clause 8 omits Section 125 as there will be no penalty enforced for not voting with the insertion of wording which outlines the requirements for the commission to send notice to those declarations votes that were cast but not accepted for counting.

Clause 9 omits the need to outline payments for failure to vote in section 125 as it will reflect a voluntary voting system.

Clause 10 inserts a new s 161AA which outlines the banning of the distribution of how-to-vote cards on the polling day of the election with penalties which reflect consistency in other such electoral offences.

Clause 11 omits Section 164 which relates to the failure of voting which will no longer be required.

Clause 12 inserts (1A) in section 169 to outline the offence of displaying a political statement on land occupied by the State.

Clause 13 amends the *Electoral Regulation 2002*.

Clause 14 inserts Part 3A after part 3 to include the wording for Identity Documents to be provided so an issuing officer can sight before issuing a ballot paper.

Clause 15 outlines the type of identity documents required which will be accepted by an issuing officer.

Clause 16 amends the *State Penalties Enforcement Regulation 2000*.

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Clause 17 amends s 5 by omitting Section 5(d) of the *State Penalties Enforcement Regulation 2000*.

Clause 18 amends s 6 by omitting Section 6 of *State Penalties Enforcement Regulation 2000*.

Clause 19 omits Schedule 5, entry for *Electoral Act 1992*.