

Compulsory Voting in Australia

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16 January 2006

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Introduction

- After each federal election, the Joint Standing Committee on Electoral Matters (JSCEM) conducts an inquiry into the election and considers public submissions. A report, with recommendations for improvement to Australia's electoral system, is subsequently published.
- The 1996 JSCEM report recommended that compulsory voting should be repealed. The ALP and Democrat members of the committee did not support the recommendation, and the government rejected the recommendation, saying that voluntary voting should not be considered at this time.
- The 1998 and 2001 JSCEMs received submissions on voluntary voting, but chose not to pursue the issue.
- The 2004 JSCEM recommended that a full and separate inquiry be held into voluntary and compulsory voting.
- Compulsory voting is an issue for the federal parliament. The AEC does not have an official view. Its role is to conduct elections according to the electoral law in force at the time.
- If there is to be a public debate on voluntary and compulsory voting, the AEC does have a role to ensure that the community is informed about all matters relevant to the debate.
- What I propose to do today is to provide you with some background information on compulsory voting in Australia, and then discuss some of the more significant arguments about compulsory voting.

Background

Voting is Compulsory

- The *Commonwealth Electoral Act 1918*, under section 245(1), states:

”It shall be the duty of every elector to vote at each election”.
- Under the Electoral Act, the actual duty of the elector is to attend a polling place, have their name marked off the certified list, receive a ballot paper and take it to an individual voting booth, mark it, fold the ballot paper and place it in the ballot box.
- It is not the case, as some people have claimed, that it is only compulsory to attend the polling place and have your name marked off, and this has been upheld by a number of legal decisions:
 - ❖ High Court 1926 – *Judd v McKeon* (1926) 38 CLR 380
 - ❖ Supreme Court of Victoria 1970 – *Lubcke v Little* [1970] VR 807
 - ❖ High Court 1971 – *Faderson v Bridger* (1971) 126 CLR 271
 - ❖ Supreme Court of Queensland 1974 – *Krosch v Springbell; ex parte Krosch* [1974] QdR 107
 - ❖ ACT Supreme Court 1981 – *O’Brien v Warden* (1981) 37 ACTR 13
- On a related matter, it is also an offence under the Electoral Act to remove a ballot paper from a polling place.
- As voting is compulsory, electors are given a number of ways to cast their vote at an election, including postal voting, pre-poll voting, absent voting, voting at Australian overseas missions and voting at mobile teams at hospitals and nursing homes and in remote localities, as well as ordinary voting at a polling place in their electorate.
- Because of the secrecy of the ballot, it is not possible to determine whether a person has completed their ballot paper prior to placing it in the ballot box. It is therefore not possible to determine whether all electors have met their legislated duty to vote. It is, however, possible to determine that an elector has attended a polling place or mobile polling team (or applied for a postal vote, pre-poll vote or absent vote) and been issued with a ballot paper.

History

- Compulsory voting was first advocated by Alfred Deakin at the turn of the 20th century. Voting was voluntary at the first 9 federal elections.
- Compulsory enrolment for federal elections was introduced in 1911.
- In 1915, consideration was given to introducing compulsory voting for a proposed referendum. As the referendum was never held the idea wasn't pursued.
- Also in 1915, compulsory voting was introduced in Queensland by the Liberal Government of Digby Denham, apparently concerned that ALP shop stewards were more effective in "getting out the vote", and that compulsory voting would restore a level playing ground (ironically, Denham went on to lose the 1915 election).
- The significant impetus for compulsory voting at federal elections appears to have been a decline in turnout from more than 71% at the 1919 election to less than 60% at the 1922 election. The Bruce-Page government (a conservative coalition of the Nationalist and Country parties) was reluctant to be too closely identified to such a proposal.
- In 1924, a private member's bill to amend the Electoral Act was introduced in the Senate by Senator H. J. M. Payne (Nat. Tas) sponsored in the House of Representatives by Edward Martin (Nat. Perth). It was only the third private member's bill passed into law since 1901.
- The impact was immediate, with turnout at the 1925 election rising to over 91%.
- Victoria introduced compulsory voting in 1926, NSW and Tasmania in 1928, WA in 1936 and SA in 1942.
- When enrolment and voting at federal elections was introduced for Indigenous Australians in 1949 it was voluntary, and continued to be so until 1984 when enrolment and voting became compulsory for all eligible electors.

Compulsory Voting in Other Countries

- When Queensland introduced compulsory voting in 1915, it became the first place in the then British Empire to do so.
- There are currently 32 countries with compulsory voting, of which 19 (including Australia) pursue it through enforcement.
- 10 of the 30 members of the OECD have compulsory voting.
- Table 1 provides details:

<i>Table 1</i>	
Countries that enforce compulsory voting	Countries that do not enforce compulsory voting
Argentina	Bolivia
Australia	Costa Rica
Austria (two Lander only)	Dominican Republic
Belgium	Egypt (male voters only)
Brazil	France (Senate only)
Chile	Gabon
Cyprus	Guatemala
Ecuador	Honduras
Fiji	Italy
Greece	Netherlands
Lichtenstein	Paraguay
Luxembourg	Philippines
Mexico	Thailand
Nauru	
Peru	
Singapore	
Switzerland (one Canton only)	
Turkey	
Uruguay	

Note: OECD countries are highlighted.

- It could be argued that Australia is out of step with the world, or at least the industrialised world.

Participation Rates

- One of the initial reasons for introducing compulsory voting in Australia, and one of the arguments frequently advanced for maintaining it, is that it maintains a high level of participation in elections.
- The turnout at Australian elections has never fallen below 90% since the introduction of compulsory voting in 1924.
- Table 2 compares turnout at selected House of Representative elections, including the election held immediately before the introduction of compulsory voting, with House of Commons elections held in the United Kingdom at around the same time. The UK has voluntary voting:

<i>Table 2</i>		
Election Year	House of Representatives	House of Commons
1922	59.38	73.0
1924		77.0
1925	91.38	
1929	94.85	76.3
1951	95.97	82.6
1966	95.13	75.8
1974	95.40	72.8
1983	94.64	72.7
1997		71.4
1998	94.99	
2001	94.85	59.4
2004	94.32	
2005		61.4

Note: there were two UK elections in 1974. Fig in table is for October election.

- It is also useful to compare turnout with enrolment. In Table 3, I have compared enrolment and turnout at the last parliamentary elections for Australia (compulsory enrolment and compulsory voting), New Zealand (compulsory enrolment and voluntary voting) and the UK (voluntary enrolment and voluntary voting). For Australia and New Zealand I have also expressed enrolment as a percentage of the estimated eligible population. As this figure is not known with confidence for the whole of the UK, I have also shown the figures for Northern Ireland, where there is an estimate of the eligible population, for the same election.
- The turnout figure for the Oct 2004 election in Australia is for the House of Representatives (not the Senate). The turnout figure for the Sept 2005 election in New Zealand is for the electorate votes (not the party list votes).

<i>Table 3</i>					
Election		Enrolment	% Eligible Population	Turnout	% Enrolment
Australia	Oct 2004	13 098 461	97.69	12 354 983	94.32
NZ	Sept 2005	2 848 149	95.25	2 260 670	79.37
UK	May 2005	44 245 939		27 167 006	61.4
Northern Ireland	May 2005	1 148 486	91.1	723 768	63.49

Note: figs for UK include figs for Northern Ireland.

Discussion

Engaging the Electorate

- Proponents of compulsory voting argue that it teaches the benefits of political participation.
- Opponents argue that it may increase the number of “donkey votes” (ballot papers numbered from 1, 2 and so on down the ballot paper – the “reverse donkey” goes from 1, 2 and so on **up** the ballot paper) and the number of informal votes and so diminishes the quality of the vote.
- Donkey votes are a correctly completed vote. There is no way of knowing whether or not the preference order indicated accurately reflects the elector’s considered opinion, or is a manifestation of ignorance or exasperation.
- Votes are informal if they are not completed correctly. Table 4 shows informal voting at the last five elections:

<i>Table 4</i>					
% Informal	1993	1996	1998	2001	2004
House of Reps	3.0	3.2	3.8	4.8	5.2
Senate	2.6	3.5	3.2	3.9	3.8

- The link between informal voting and compulsory voting is difficult to prove.
- Of the informal House of Representatives votes cast at the 2001 election, 34% had only the number 1, 17% did not complete the full sequence of numbers required and 13% used ticks and crosses. These informal votes are likely to result from a misunderstanding of electoral laws rather than a deliberate act of civil disobedience.
- 22% were blank and 6% had a slogan or some other mark, but no numbers (or else the numbers were obscured). It is possible that these are protest votes, although not all protests will be against compulsory voting. Blanks may merely be mistakes.
- There is evidence of strong popular support for compulsory voting. The first Australian Election Study, after the 1996 election, showed 74% of respondents supported compulsory voting at federal elections.
- The Australian Election Study after the 2004 election was still showing 74% in support. A Morgan poll in 2005 showed 71% support, and an Ipsos-Mackay Study, also in 2005, showed 74%.

Considering the Full Electorate

- Proponents of compulsory voting argue that government and opposition parties must consider the total electorate in policy formulation.
- Compulsory voting is claimed to encourage policies which collectively address the full spectrum of elector values, because all voters have to be appealed to by government and opposition parties in order to win, and maintain, a majority in Parliament.
- Opponents argue that it increases the number of safe electorates and clearly identifies the marginal electorates on which government and opposition parties need to concentrate.
- At its most extreme this could lead to “pork barrelling” with increased government expenditure in marginal electorates and less in safer electorates.

Legitimacy

- Proponents of compulsory voting argue that a parliament elected by a compulsory vote more accurately reflects the will of the electorate.
- As electorates have nearly as practicable the same number of electors, each Member of Parliament is elected by the majority decision of the same number of electors as any other MP.
- In a voluntary system, the turnout could vary significantly from electorate to electorate.
- In the UK elections in May 2005, turnout varied from 74.6% in Dorset West to 41.5% in Liverpool Riverside.
- By contrast, the turnout of all but 2 electorates in the Australian elections in October 2004 was over 90% (the exceptions were Kalgoorlie with 83.53% and Lingiari with 77.71%, both covering remote areas with transient populations).
- The legitimacy of a government formed by a voluntary turnout could also be questioned. In the UK in May 2005, Labour won 55% of the seats with 35% of the vote after a turnout of 61.4% (in other words, 21% of the total possible electorate delivered 55% of the seats in the House of Commons).

Voting as a Civic Duty

- Proponents of compulsory voting argue that voting is a civic duty comparable to other duties citizens perform, such as taxation, compulsory education and jury duty.
- Opponents argue that it is an infringement of liberty to force people to vote, and that the ill informed and those with little interest in politics are forced to the polls.
- One argument against compulsory voting is that voting can be an onerous imposition on some citizens. Against this it has been stated by Mr Christopher Bayliss, in a submission to JSCEM, that:

"All our voting system requires is for a voter to attend a polling booth and mark some papers as they wish, approximately once every three years. This does not seem to be an insurmountable burden to be part of a democracy".

- Another argument is that both the United Nations Universal Declaration of Human Rights and the United Nations International Covenant on Civil and Political Rights refer to people's rights to "freely chosen representatives". It is then claimed that a "right" is something that a person possesses and chooses to use, not something produced on demand.
- Article 29 of the Universal Declaration of Human Rights, however, states that "rights and freedoms" are subject to "duties to the community", including the "just requirements of morality, public order and the general welfare in a democratic society".
- The Public Interest Advocacy Centre has stated, in a submission to JSCEM, that:

"There are many things that people do not wish to do and which they would not do if they were able to exercise "individual freedoms", but which parliament has legislated to require. The role of parliament in a parliamentary democracy includes passing laws to ensure the effectiveness of that democratic system".

- For opponents of compulsory voting, the question is about the nature and extent of the obligations that it is acceptable for the parliament to impose.

Resource Implications

- Proponents of compulsory voting argue that candidates can concentrate their campaigning energies on issues rather than encouraging voters to attend a polling place and vote.
- Opponents see this as wealth transfer, to the advantage of political parties, while proponents see it as a wealth transfer to the advantage of the democratic process.
- Opponents also argue that resources must be allocated for the enforcement of compulsory voting – determining whether those who failed to vote have “valid and sufficient reasons” and penalising those who do not.
- Parties would be anxious to maximise turnout at an election, not only for the obvious need to secure sufficient votes, but also for the access to public funding.
- If a candidate secures 4% of the formal vote cast in the electorate for which they are a candidate, they are funded \$1.95 for each formal vote. At the October 2004 election, the total amount of public funding paid was \$41 926 158.91.

Partisan Advantage

- Given that any public debate about compulsory voting will be a political debate, one of the issues that will be canvassed is whether voluntary voting produces a partisan advantage.
- Modelling of voluntary voting at elections has been hampered by inadequate data. Views vary from the Liberal Party increasing its share of the two-party preferred vote by about 5%, thereby gaining a significant advantage, to more modest increases for the Liberal Party and the Greens and decreases for independents, the Nationals and, to a lesser extent, the ALP.
- There appears to be a consensus that there would have been the same result at each of the last four elections if they had been held under a voluntary regime.
- Parties would behave differently in a voluntary voting regime, so it is difficult to form conclusions derived from existing data. On balance, there is no empirical evidence that a move to voluntary voting would advantage one major party over another.

Conclusion

- Any change to compulsory voting or enrolment is a matter for the federal parliament.
- The Prime Minister has stated that the abolition of compulsory voting will not occur before the next federal election, and there are a number of members of the government who are in favour of the status quo.
- On the other hand, influential ministers, such as Senator Nick Minchin, and backbenchers, such as Tony Smith, are on the public record in favour of voluntary voting.
- Given the high degree of public support for, and acceptance of, compulsory voting any move for its abolition would need to be underpinned by a high degree of public acceptance and support. In order to obtain this, it is likely that the government will seek to engage the public in a debate about the relative merits of the current system. This will also provide supporters of compulsory voting with their best opportunity to advance their cause.
- The debate should focus on which arrangements deliver the best reflection of the electorate's wishes, and the implications of each arrangement for the legitimacy of a government's mandate.
- Hopefully, this morning's presentation has helped to focus your own contributions to this debate.