

Summary

This submission responds to two issues contained in the discussion paper relating to the review of Queensland's electoral laws:

- Should compulsory voting remain for Queensland State elections?
- Should the voting system used for Queensland State elections be changed?

In summary, this submission argues that compulsory voting should remain, but that the voting system should be changed to give voters the choice, by way of a formal vote, to declare that they do not support any of the candidates standing for election.

Submission

The purpose of this submission is to advocate a simple yet fundamental change to Queensland's voting laws – the formal provision for electors to not vote for any of the candidates on the ballot paper.

It is proposed that this voting provision be introduced by amending the voting laws currently in place in Queensland. It is proposed that compulsory voting be retained, but not in combination with the present voting system. Rather, the voting system would be amended so as to allow voters the choice by way of a formal vote to declare that they do not support any of the candidates standing for election.

In this way, the nominated benefits and advantages of compulsory voting are preserved, while at the same time the major argument against it – the denial of a person's basic democratic right to not vote in support of a candidate – is removed.

The proposal is to introduce the option of voters being able to choose none of the candidates standing for election, and for their vote to be formal and valid, and counted. In other words, voters would have the legal right to not vote for any of the candidates on the ballot paper.

Though not permitted to abstain from voting, as it is proposed that compulsory voting be retained, voters would, in effect, be permitted to abstain from having to vote for a candidate, as they are presently required to do under the State's electoral laws. Voters would be able to cast a formal vote which declared they did not support any of the candidates standing for election.

Obviously, it would require a legislative change, but the mechanics of the move would be simple enough to introduce. It would involve adding a square to the ballot paper which a voter could mark indicating a desire to not want to vote for any of the candidates on the ballot paper. It could, for example, be placed at the bottom of the names of candidates on the ballot paper and say "None of the above candidates". Alternatively it might say "I do not wish to vote for the candidate/s standing for election", or "I do not wish to vote for any of the candidates standing for election."

The change proposed would result in elections that more truly reflect the will and wishes of the people. Currently, a voter wishing to cast a valid vote is required to vote for a candidate they may or may not wish to support.

Under this proposal, the winning candidate would be the one securing the required majority of those votes cast for a candidate. While it would work equally well with the existing method of optional preferential voting or compulsory preferential voting, it is submitted that it be introduced as an addition to the existing optional preferential method of voting, for the purpose of continuing to provide for a voter wishing to support one candidate but not another being able to do so.

The change proposed is a logical extension of optional preferential voting – in addition to the current provision for voters being able to express their support (and preference) for either only one, or not all, or

all candidates, voters would be able express their support (and preference) for none of the candidates. The method, or system, of voting would need to be renamed, as the additional option it provided for would extend it beyond optional preferential voting. It could, for example, be known as "discretionary optional preferential voting", with the word "discretionary" indicating that it is at the voter's discretion to vote for a candidate in an optional preferential method, or not vote for a candidate at all; or perhaps "optional preferential plus voting" with the word "plus" signifying that the system consisted of optional preferential voting *plus* the option of voters being able to not vote for any of the candidates standing for election.

This revised system of voting may well result in a candidate being elected to office on fewer votes than they might have received under the existing voting arrangements. This, however, is of little if any consequence when weighed against the positive aspects accruing from giving voters the right to declare that they do not support any of the candidates standing for election.

It is often argued that voters currently have the ability to not vote for any of the candidates on the ballot paper. All they have to do is leave it blank, or otherwise indicate on the ballot paper they do not wish to vote for any of the candidates. Indeed, this is one of the arguments nominated by the Australian Electoral Commission in favour of compulsory voting – "the voter isn't actually compelled to vote for anyone because voting is by secret ballot". (It is referenced in the discussion paper for the current review of Queensland's electoral laws.)

There are two major flaws in this argument. Firstly, it is not a legal vote, although the privacy of the ballot box means that a voter is unlikely to face prosecution for having committed an offence. Secondly, such a vote is not a valid vote. These votes are not recognised, or counted, or delineated in any way from other informal votes. They are lumped in with other informal votes, many of which have been cast in error (through confusion, laziness, ignorance, or apathy). The voter in the situation of exercising their choice not to support any candidate by casting an informal vote is regarded as having cast a worthless vote.

In a democracy, the right to vote ought to be accompanied by a right to not vote. To have one yet not the other cannot be justified either in principle or in practice. In a democracy, also, the greater the degree of "participation" and "representativeness" the better. As a result, the denial of the right to not vote under the compulsory voting system is seen as an acceptable price to pay for achieving a greater degree of participation and representativeness – by maximising the number of people who vote through making it mandatory for them to do so.

However, under Queensland's (and Australia's) system of compulsory voting and accompanying methods of voting, a person who does not support any of the candidates standing for election, and who does not wish to commit an offence (which occurs when they do not vote in the manner required by law), is placed in a situation of having to vote for someone who they do not support. Their democratic right to vote for whoever they wish in free and fair elections is not just seriously compromised, it is denied altogether.

In this context, it is worth mentioning what Queensland's electoral laws specify in relation to the marking of ballot papers. There is no provision, even implicitly, for a voter to not mark a ballot paper. The *Electoral Act 1992* is rigidly prescriptive. Subdivision 4 of Part 7 of the Act concerns the marking of ballot papers. Section 122 is headed "How electors *must* vote" (emphasis added). Section 122(1) states: "An elector *must* vote in accordance with subsection (2) or (3)" (emphasis added). These subsections specify how an elector is to indicate their preference for a candidate or candidates by marking the ballot paper. There is no provision for an elector to do anything else. Hence, an elector would be in breach of Section 122 of the Electoral Act if they were to state or indicate that they did not support any of the candidates standing for election, for example, by writing this on the ballot paper or alternatively by leaving the ballot paper blank.

Advocates of compulsory voting reject the claim that requiring people to vote is an infringement of a person's rights or liberties, on the grounds that people in effect have the right to not vote via the avenue of an informal vote. This argument, however, either confuses or deliberately misrepresents an *ability* to not vote formally with a recognised *right* to not vote, given effect by legal, formal provision for an elector to declare they do not wish to vote for any of the candidates standing for election. An informal vote is an

invalid vote, one that is in breach of what the law requires. It can hardly be construed as establishing, enabling and safeguarding what democracies throughout the world that do not have compulsory voting regard as a person's basic democratic right and civil liberty – the right to not vote.

By providing voters with the option to not vote for any of the candidates standing for election, the benefits of greater participation and representativeness are maintained, but the odious and undemocratic aspect of requiring an elector to vote for someone they do not support is removed.

Some people may balk at this proposal and express concern that too many people may cast a vote for none of the candidates, and this would leave the successful candidate possibly elected by a reduced number of voters than might otherwise have been the case. This, however, is not necessarily a bad thing, and might even be seen as a good thing. At least we would have a more accurate picture of the level of disaffection among voters, and these voters will not have been denied the right to vote as they wish, and for their vote to be considered as valid and legitimate as the next person's vote. Further, under the current system of optional preferential voting, it is quite possible for a candidate to be elected on a minority of overall votes cast.

It would actually provide valuable information to governments, oppositions, political parties, candidates standing for election and the community generally to know precisely how many voters supported a candidate at an election because they wanted to, as opposed to the situation now where it is a combination of voters actively supporting a candidate and other voters only supporting that candidate because they do not have an option not to (without their vote being deemed invalid).

A further criticism of the move that might be made is that giving people the option to declare "a plague on all your houses" and not vote for any candidate is encouraging people to view disengagement and alienation from deciding who they want to run the affairs of government (at whichever level) as an acceptable and legitimate stance to take, whereas if everyone took that view then no one would be elected and the notion of representative government becomes a nonsense.

In reality, the chances of this happening are zero. The system of compulsory voting still is being retained, and sufficient voters will choose to express their support for one of more of the candidates standing for election for there to be a contest and for a candidate to be duly and legitimately elected. Even in countries that do not have compulsory voting, thus allowing electors who do not wish to vote for any of the candidates standing for election to do so, candidates continue to be elected and representative governments formed. The world's leading democracies (the United States, the United Kingdom, Canada, Germany and France, for example) do not have compulsory voting, and the fact that quite a proportion of their citizens do not vote – for a range of reasons, and not all because those concerned are disengaged or disaffected – is not viewed as having imperilled democracy in those countries. Indeed, Australia is one of a minority of democracies that has compulsory voting, and an even smaller number that enforce it.

At the national level, compulsory voting has been examined periodically by the Joint Standing Committee on Electoral Matters (JSCEM), most recently in 2008 in the course of its review of the 2007 Federal election. The crucial issue of whether compulsory voting, in the manner in which it is prescribed, constitutes an infringement of an individual's rights and liberties has received only shallow consideration in these reviews. The question of whether the various arguments for and against compulsory voting might be able to be reconciled, if not wholly then at least in part, through a change to the method of voting, specifically by making legal provision for electors to not vote for any candidate, does not appear to have ever been canvassed.

The Queensland Electoral Commission presents a lopsided view of how the State's electoral laws cater for a person's rights when it comes to voting. The following statement appears prominently on the commission's website: "Voting is your right to express your views in choosing your Member of Parliament and having your say in how Queensland is governed." Not so, however, if the view you wish to express is that you do not support or prefer any of the candidates. If this is the view you hold, you do not have the right to express it. The only view that Queensland's electoral laws allows voters to express is for a choice of candidate – their support for a candidate and their preference for a candidate over another candidate.

Voters are compelled by law (notwithstanding the secrecy of the ballot and their ability to vote informally) to express their support for a particular candidate. A view that voters may well hold, but that the law specifically precludes them from expressing, is that they do not support or prefer any of the candidates. The current electoral laws presume that voters are disposed to a choice or preference in support of a candidate(s).

Compulsory voting without formal provision for not making a choice, in other words without the formal provision to refrain or abstain from choosing, represents a gross violation of a voter's freedom to choose, and thus a serious infringement of a fundamental civil liberty.

By making formal provision for a voter to declare they do not support or prefer any of the candidates, it would separate out from the present aggregation of informal votes those voters who wish to express by way of a vote a deliberate choice or preference for none of the candidates offering themselves for election. The other sub-categories of informal voters would remain, but of the remaining informal votes the number who objected to compulsory voting on the grounds that, as prescribed, it infringed their civil liberties would be greatly reduced. Moreover, it is as instructive to know the levels of support for particular choices as it is to be aware of views that do not support any of the choices available.

Implementation of the change proposed in this submission would remove the stain that has existed on democracy in Queensland for now almost 100 years, from when compulsory voting was introduced in 1915 without a provision allowing electors to cast a formal vote which stated they did not support any of the candidates standing for election

Submission made by:

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Note: The views in this submission are expressed from the personal, individual perspective of a Queensland elector. They do not purport to represent the views of any other person or organisation.