



2 November, 1998

Gary Fenlon MLA
Chair
Legal, Constitutional & Administrative Review Committee
Parliament House
George St
Brisbane Qld 4000

Dear Mr Fenlon

Enclosed is a submission from the Australian Democrats (Qld Division) to your Committee's Inquiry into issues of electoral reform raised in the Mansfield decision.

We would be happy to provide further information or to provide verbal evidence before the Committee if you are conducting any hearings. We can be contacted through the Democrat office on 3216 1249 or via Email.

Thank you for inviting our party to make a submission.

Yours sincerely

Liz Oss-Emer
Qld President & Campaign Director

Andrew Bartlett
National Campaign Director

The role of how to vote cards in the electoral process has been a source of many comments over the years. This is not surprising, given that such cards are prevalent at the very climax of election campaigns.

The details of the relevant court case and the fact that how to vote cards were seen as influential enough to mount a challenge clearly demonstrates that such cards can be influential in how people cast their vote. Indeed, if how to vote cards had little or no impact, political parties and candidates would hardly go to such expense and effort to ensure they are distributed as widely as possible.

The Australian Democrats have long campaigned for the abolition of how to vote cards being distributed outside polling booths on election day. Many unsuccessful amendments have been moved to electoral legislation attempting to bring about this outcome. The grounds for rejecting such a change have often centred around arguments of free speech, as well as pragmatic concerns about maximising political advantage for incumbents or parties with the most resources.

Concerns about the principle of free speech could be met by enabling each candidates' how to vote guide to be available on a collated poster in each voting booth or at each polling place. This occurs now at federal elections with the publication by the Electoral Commission of a poster showing each party's preference allocation for above the line Senate votes.

Alternatively, each candidate could supply the Electoral Commission with supplies of how to vote cards, which could then be placed in containers at each polling booth so those voters who wanted a how to vote guide would be able to get one. This is not very different from what is currently done for some pre-poll visits to nursing homes and the like, where Electoral officers can take how to vote cards to be provided on the request of the voter.

The fact that both Tasmania and the ACT now have rules against the distribution of how to vote cards outside booths on polling day show that such rules can work effectively and do not breach constitutional guarantees of freedom of speech. Banning how to votes also has the side benefit of saving an enormous amount of wasted paper, with many millions of how to vote cards being printed for each state election.

The Democrats strongly urge the Committee to seriously consider the approach of banning how to votes altogether as the clearest way of addressing the concerns and issues raised through the Mansfield case. We recommend that this be done in conjunction with the provision of how to votes inside each booth by Electoral Officers, either via a poster or posters, or through having individual party how to votes available at a specified table or other source. If each party or candidate was allowed to provide only one how to vote guide, or even just how to votes which had their own candidate as first preference it would solve the concerns at the heart of the Mansfield case.

This approach would mean that only candidates could present how to vote material at the booth. Other organisations, such as environment groups and gun lobby groups have at times also distributed how to votes on the day. These groups would not be able to have material at the booth, but could still get their message out through means such as letterboxing, advertising, etc.

If the Committee is not supportive of banning how to vote distribution outside polling booths, the Democrats suggest a second option for consideration. This model is based on what currently occurs for state elections in New South Wales. Under this system, material can only be distributed outside polling booths on election day if it has been pre-registered with the Electoral authorities.

Candidates or parties can still register a range of different how to vote cards even though they intend to use only one on the day (as a way of keeping others guessing about preference recommendations). However, it would at least mean that other parties would be alerted if there were plans to use how to votes of the type used in the Mansfield case (and many other seats at the Qld State election). Measures could then be taken by others to bring the existence of allegedly misleading cards to the attention of the public.

Restrictions or guidelines could also be developed and enforced as to what such material must contain. Along with the existing requirement for authorisation, it could be required to have a prominent party logo. A how to vote with first preference for a particular candidate might need to have approval or authorisation from that candidate or that party's Registered Officer.

The use of cards such as those used by the ALP in Mansfield has been occurring for many years and the Democrats have often been used in the same way that One Nation was in the Mansfield instance. Apart from potentially misleading voters, it can also have an effect on a party's primary vote. We have had frequent calls and comments from voters after various elections saying that they were planning to vote Democrat until they got to the booth and received a how to vote which had the Democrats giving preferences to the major party they most disliked. Such an impact is hard to quantify, but needless to say any loss of vote through such means is undesirable, especially in a state such as Queensland which provides public funding on the basis of first preference votes gained.

The Democrats urge the Committee to take up the suggestions we have put forward in this submission. The problems brought to light in the Mansfield case are not new and they do not bring credit on the democratic process. Despite all the attention that the Mansfield case provided, similar actions occurred at the federal election just three months later.

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