

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ELECTORAL AND REFERENDUM AMENDMENT BILL (NO. 2) 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Administrative Services,
the Honourable Frank Walker, QC, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF
REPRESENTATIVES TO THE BILL AS INTRODUCED



ELECTORAL AND REFERENDUM AMENDMENT BILL (NO. 2) 1995

OUTLINE

This Bill contains a number of proposed amendments to the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 which arise from the recommendations of the Joint Standing Committee on Electoral Matters in its Report entitled "The 1993 Federal Election" which was tabled on 16 November 1994.

Some of the matters dealt with in the Committee's Report which are of a minor or technical nature, and which require legislative amendment, have been taken up in the Electoral and Referendum Amendment Bill 1995, introduced in the House of Representatives on 1 February 1995.

The major provisions of the Bill are designed to:

- . allow greater flexibility to the Australian Electoral Commission in the method for conducting Electoral Roll Reviews;
- . make the enrolment entitlement of prisoners conditional on the actual sentence rather than the potential sentence;
- . allow electors going overseas to apply to register as Eligible Overseas Electors within three months of the expected departure or within one year after actual departure from Australia;
- . extend the time for the close of the Rolls from 6.00pm until 8.00pm on the day that the Rolls close for an election;
- . ensure that the death or withdrawal of a bulk nominated candidate does not invalidate the nomination of the other candidates so nominated; and
- . allow for the despatch of postal ballot materials to all registered General Postal Voters without them first having to complete a postal vote application.

FINANCIAL IMPACT STATEMENT

The Australian Electoral Commission has indicated that Electoral Roll Reviews may require additional funding in a given review cycle. However, because of the flexibility the proposed amendment will allow, any additional costs would be absorbed over a period of two review cycles. The remaining amendments will give rise to neither costs nor savings.

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Act to be cited as the *Electoral and Referendum Amendment Bill (No. 2) 1995*.

Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day it receives Royal Assent.

Clause 3 - Amendment of the Commonwealth Electoral Act 1918

3. This clause provides for the amendments to the *Commonwealth Electoral Act 1918* to be made according to the items set out in Schedule 1.

Clause 4 - Amendment of the Referendum (Machinery Provisions) Act 1984

4. This clause provides for the amendments to the *Referendum (Machinery Provisions) Act 1984* to be made according to the items set out in Schedule 2.

Clause 5 - Entitlement to enrolment of prisoners

5. This clause makes a transitional provision for the enrolment of prisoners who would not otherwise be entitled under the new provision established by item 6 of Schedule 1. Those prisoners who were enrolled at the time of their sentencing, and because of the existing disqualification provisions were removed from the Roll, would not have an entitlement under the provision established by item 5 of Schedule 1. This clause establishes that entitlement.

SCHEDULE 1 - AMENDMENT OF THE COMMONWEALTH ELECTORAL ACT 1918 (the Electoral Act)

Item 1 - Subparagraph 35(1)(a)(i)

6. This item amends subparagraph 35(1)(a)(i) to substitute habitation reviews with Electoral Roll Reviews, and is consequential to amendments made under item 3.

Items 2 and 3 - Roll Reviews

7. These items omit subsections 92(2) to (5) and insert new subsections 92(2) and (3) to provide for flexibility in the way that Electoral Roll Reviews are conducted. Current provisions restrict the Australian Electoral Commission to conducting Roll Reviews by, as far as practicable, visiting every habitation. This method is not efficient or effective in all situations. The flexibility will enable conduct of full reviews and/or reviews targeted to specific areas of known under-enrolment or high turnover, and close to an electoral event such as a by-election. It will also allow for the conduct of reviews by means other than visiting each habitation. The amendments preserve funding arrangements for the conduct of reviews.

Items 4, 5, and 18 - Enrolment of prisoners

8. These items amend paragraphs 93(8)(a) and 93(8)(b) and section 109 to provide that the enrolment entitlement of prisoners be conditional on the actual sentence imposed, rather than the maximum sentence which could have been imposed. The reporting requirement of the prison authorities is amended accordingly. The current provision is administratively unworkable because State and Territory prison authorities are not in a position to provide the necessary details.

Items 6 to 13 - Eligible Overseas Electors

9. These items remove subsections 94(1) and 94(2), replacing them with four subsections, 94(1), 94(1A), 94(1B) and 94(2), amends subsection 94(3), paragraph 94(5)(a) and subsections 94(6) and 94(7), and inserts a new subsection 94(6A). Paragraphs 94(14) and 94(15) are also amended. They have the effect of allowing an elector who is going overseas to apply for registration as an Eligible Overseas Elector within three months preceding the expected day of departure, in place of the current one month application period. It will also allow an elector to apply for registration within one year after the actual date of departure, where this was not previously possible. In either case, registration remains as a period of three years from the actual date of departure.

Items 14 to 17 - Hour of the close of the Rolls

10. These items amend subsections 95(4), 96(4), 102(2A) and 102(4) to provide that the Rolls for an election shall close at 8.00pm on the day of close of Rolls rather than at 6.00pm, and, as a consequence, that applications for registration as Eligible Overseas Electors and Itinerant Electors also close at that time.

Item 19 - Claims may be sent by fax machine

11. This item inserts a new section 111A after section 111 to allow for the receipt of applications for enrolment by fax machine. This new provision will make enrolment simpler for those in remote areas, especially where mail services are such that the applications would otherwise be received after the close of rolls for an election.

Items 20 and 21 - Bulk nomination deposits

12. These items amend section 173 and insert subsections 173(2) and (3) to provide that, where a bulk nominated candidate is either elected or has received 4 percent of first preference votes, the nomination deposit with respect to that candidate be returned to the person who paid it, whether that be the candidate, or some person on behalf of the candidate, unless the person who paid it authorises its payment to another person.

Items 22 and 23 - Withdrawal of consent to nomination and return of deposit - bulk nominations

13. These items amend section 177 and insert subsections 177(2) to (4) to provide that, where a bulk nominated candidate withdraws their consent to nomination, the nomination deposit with respect to that candidate is to be returned to the person who paid it, whether that be the candidate, or some person on behalf of the candidate, unless the person who paid it authorises its payment to another person. It also provides that should a candidate, who is one of a number of bulk nominated candidates, withdraw their consent before the hour of nomination, then such withdrawal does not affect the nomination of the other candidates so nominated.

Items 24 and 25 - Return of deposit on death of bulk nominated candidate

14. These items amend section 178 and insert new subsections 178(2) and (3) to provide that if a bulk nominated candidate dies, and the nomination deposit has been paid by someone on behalf of the candidate, the deposit is returned to that person or someone authorised by that person. In all other cases the deposit is to be paid to the candidate's personal representatives.

Item 26 - Death of one of a number of bulk nominated candidates.

15. This item inserts subsection 180(3) to provide that should a candidate, who is one of a number of bulk nominated candidates, die before the nominations are declared, then that candidate's death does not affect the nomination of the other candidates so nominated.

Item 27 - General Postal Voters

16. This item inserts a new paragraph 184A(2)(ca) to provide that an elector who is caring for a person who is seriously ill or infirm, and who is unable to attend a polling place to vote, may apply to register as a General Postal Voter. However, this will not apply where the seriously ill or infirm person is in a hospital.

Items 28, 29, 37 and 38 - General Postal Voters

17. These items repeal section 185A, amend subsection 186(2), insert a new paragraph 3A into Schedule 3, and, as a consequence, amend subparagraph 6(a) of Schedule 3 of the Electoral Act to provide that, following the close of nominations, postal ballot papers and postal vote certificate envelopes shall be sent to all registered General Postal Voters. At present, only those registered General Postal Voters who are registered by virtue of being so physically incapacitated as to be unable to sign their name, are sent this material. All other registered General Postal Voters currently receive an application for a postal vote. Schedule 3 of the Electoral Act provides for the method of conducting the scrutiny of declaration votes, and is amended as a consequence. The insertion of paragraph 3A to Schedule 3 provides that the check of signatures on postal vote certificates received from General Postal Voters will be made against the elector's application for registration as a General Postal Voter or their application for enrolment.

Item 30 - Hours for pre-poll voting on polling day

18. This item amends subsection 200D(6) to provide that persons interstate on polling day may vote during the ordinary hours for voting in that State/Territory. At present a voter from New South Wales who is in Western Australia on a polling day may vote only between 8.00am and 4.00pm, despite the polls being open until 6.00pm in that State. The time currently available to such an elector during the daylight saving months is 8.00am to 3.00pm.

Items 31 to 33 - Gazettal of remote mobile polling places

19. These items amend subsections 227(4), (5) and (6) to remove the requirement to Gazette the time and date of visits to be made by remote mobile polling teams for the purpose of taking votes. The requirement for the Gazettal of the places to be visited will remain. This brings the Gazettal provisions for remote mobile polling into line with the requirements for special hospital mobile polling. The Gazettal of places to be visited can take place well in advance of the election. However, the time and day of the visit is often not finalised until after the election day is known.

Item 34 - Assistance to certain voters

20. This item inserts a new subsection 234(1A) to provide that every elector, who is a patient voting with a mobile polling team, in either a special hospital or a hospital that is a polling place, is to be informed of his or her right to be assisted in casting a vote. Such electors must still satisfy the presiding officer that they are in fact entitled to such assistance.

Item 35 - Court of Disputed Returns - security deposit

21. This item amends section 356 to provide that the deposit as security against costs for filing a petition with the Court be raised from \$100 to \$500. This is to assist in deterring vexatious and frivolous petitions, without deterring petitioners of limited means.

Item 36 - Court of Disputed Returns - legal representation

22. This item repeals section 370 and replaces it with a new section 370 which provides that a person who is a party to a petition before the Court of Disputed Returns may appear either on their own behalf or be represented by counsel or solicitor. The current provision provides that a party may be represented by no more than one counsel or solicitor, and only on the agreement of all parties or by leave of the Court.

SCHEDULE 2 - AMENDMENT OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984 (the Referendum Act)

Item 1 - Hour of the close of the Rolls

23. This item amends paragraph 4(2)(a) of the Referendum Act as a consequence of the amendment to the Electoral Act to extend the time of the close of the Roll from 6.00pm to 8.00pm.

Item 2 - Assistance to certain voters

24. This item inserts a new subsection 36(1A) to provide that every elector who is a patient voting with a mobile polling team, in either a special hospital or a hospital that is a polling place, is to be informed of his or her right to be assisted in casting a vote. Such electors must still satisfy the presiding officer that they are in fact entitled to such assistance.

Items 3 to 5 - Gazettal of remote mobile polling places

25. These items amend subsections 51(4), (5) and (6) to remove the requirement to Gazette the time and date of visits to be made by remote mobile polling teams for the purpose of taking votes. The requirement for the Gazettal of the places to be visited will remain. This brings the Gazettal provisions for remote mobile polling into line with the requirements for special hospital mobile polling. The Gazettal of places to be visited can take place well in advance of the election. However, the time and day of the visit is often not finalised until after the election day is known. The current arrangements are therefore administratively cumbersome.

Items 6, 7, 9 and 10 - General Postal Voters

26. These items repeal section 57, amend subsection 58(2), insert a new paragraph 3A to Schedule 4, and, as a consequence, amend subparagraph 6(a) of Schedule 4 of the Referendum Act to provide that, following the close of nominations, postal ballot papers and postal vote certificate envelopes shall be sent to all registered General Postal Voters. At present, only those registered General Postal Voters who are registered by virtue of being so physically incapacitated as to be unable to sign their name, are sent this material. All other registered General Postal Voters currently receive an application for a postal vote. Schedule 4 of the Referendum Act provides for the method of conducting the scrutiny of declaration votes, and is amended as a consequence. The insertion of paragraph 3A to Schedule 4 provides that the check of signatures on postal vote certificates received from General Postal Voters will be made against the elector's application for registration as a General Postal Voter or their application for enrolment.

Item 8 - Hours for pre-poll voting on polling day

27. This item amends subsection 73B(6) to provide that persons interstate on polling day may vote during the ordinary hours for voting in that State/Territory. At present a voter from New South Wales who is in Western Australia on a polling day may vote only between 8.00am and 4.00pm, despite the polls being open until 6.00pm in that State. The time currently available to such an elector during the daylight saving months is 8.00am to 3.00pm.

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