

## ***Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005***

### **Commentary for the Democratic Audit of Australia by Norm Kelly**

The Howard government's electoral reform legislation – the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005* – is set to be debated in the House of Representatives in the final week of March 2006. The Bill contains amendments to the *Commonwealth Electoral Act 1918* and other related Acts on a variety of electoral issues. The following provides a brief guide to various aspects of the legislation, the government's arguments in support of the reforms, and my own comments.

The following web links may be useful for research into the particular aspects of the Bill. The Senate Finance and Public Administration Committee is currently inquiring into the Bill, and is due to deliver its report on Monday 27 March. It received 52 submissions, with the majority of these concerned with the proposed disenfranchisement of prisoners. Other areas of concern included the earlier closure of the electoral roll, more stringent proof of identity requirements, and increases in donation disclosure thresholds.

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#### **Democratic Audit of Australia - Political Finance and Government Advertising Workshop, 25 February 2006**

Academics and politicians presented papers at this workshop which have particular relevance to the current legislation. For details on papers and audit report, go to:

{ [HYPERLINK "http://democratic.audit.anu.edu.au/events/2006\\_pol\\_fin\\_wksp.htm"](http://democratic.audit.anu.edu.au/events/2006_pol_fin_wksp.htm) }.

#### **Joint Standing Committee on Electoral Matters (JSCEM) – Inquiry into the Conduct of the 2004 Federal Election**

The Committee's report can be obtained here: { [HYPERLINK "http://www.aph.gov.au/house/committee/em/elect04/report.htm"](http://www.aph.gov.au/house/committee/em/elect04/report.htm) }

#### **Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005**

This link provides the text of the Bill, as well as explanatory notes and speeches:

{ [HYPERLINK "http://parlinfoweb.aph.gov.au/piweb/browse.aspx?NodeID=54"](http://parlinfoweb.aph.gov.au/piweb/browse.aspx?NodeID=54) }

#### **Senate Finance and Public Administration Committee's Inquiry into the Bill**

Go to this link to view the 52 submissions made to the inquiry: { [HYPERLINK "http://www.aph.gov.au/senate/committee/fapa\\_ctte/electoral\\_integrity/submissions/sublist.htm"](http://www.aph.gov.au/senate/committee/fapa_ctte/electoral_integrity/submissions/sublist.htm) }

For further information on the Inquiry, such as transcripts of hearings and additional tabled material, go to the inquiry web site at: { [HYPERLINK "http://www.aph.gov.au/senate/committee/fapa\\_ctte/electoral\\_integrity/"](http://www.aph.gov.au/senate/committee/fapa_ctte/electoral_integrity/) }.

This site will also include the Committee's report once published.

#### **Commonwealth Electoral Act 1918**

The current version of the legislation can be viewed here: { [HYPERLINK "http://www.austlii.edu.au/au/legis/cth/consol\\_act/cea1918233/"](http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/) }.

## **Increase the disclosure threshold for political donations**

Increases the current disclosure threshold of \$1,500 to \$10,000. Donors and recipients will not have to identify the donor's name for donations under this amount.

**Government's position:** This will bring Australia into line with other comparable countries, and adjust the current amount, which has been unchanged for more than a decade, for inflation. It will also protect individuals and corporations' right to privacy.

**Comment:** While the proposed new threshold is comparable with New Zealand (\$NZ10,000) and the United Kingdom (£5,000), it is well above limits in Canada (\$CAN200) and the United States (\$US1,000). Moreover, these otherwise comparable countries all place campaign spending limits on parties and candidates, unlike Australia. These restrictions mean that there is less likelihood of being able to 'buy' an election. In Australia, the lack of spending caps or upper limits on donations, means the capacity to unduly influence an election result remains real.

This will enable a higher proportion of donations to be made secretly, leaving voters unaware of who is supporting parties and candidates.

If the current amount needs to be adjusted to take inflation into account, the new limit should be around \$2,000-\$2,500.

## **Earlier closure of electoral rolls**

For citizens wanting to be added to the electoral roll, the roll will close at 8pm on the day that the election writ is issued (previously seven days from the time writs were issued). Two exceptions are 17-year-olds turning 18 before election day, and people granted citizenship before election day.

Persons already on the electoral roll but wishing to change their enrolment address will have three business days to make the change.

**Government's position:** This will improve the integrity of the roll by preventing fraudulent enrolments.

**Comment:** As the Commonwealth does not have fixed election dates, this is likely to disenfranchise many young people who are unaware that an election may be called. It also reduces the integrity of the roll in the cases of people who do not have sufficient time to change their enrolment to their current address.

Following the 2001 election, the Australian Electoral Commission conducted an audit in South Australia of address changes in the week from the issuing of the writs to the close of rolls. In a roll of over one million people, no evidence of fraud was discovered.

## **Proof of identity provisions for new and changed enrolments**

The new proof of identity provisions require production of a driver's licence, or if the person doesn't have a driver's licence, the application will need to be countersigned by two electors who know the applicant. Additional requirements may be added by regulation.

**Government's position:** This will improve the integrity of the roll by preventing fraudulent enrolments.

**Comment:** There is no substantive evidence that the roll is being manipulated. Instead, these changes create an additional burden which may discourage electors from enrolling in the first place, or making subsequent changes to the roll, leading to a diminished integrity of the roll.

## **Prisoner disenfranchisement**

Prisoners in full-time detention, serving sentences of less than three years, will lose their entitlement to vote.

**Government's position:** By being in breach of society's laws, prisoners have given up their entitlement to participate in the electoral process.

**Comment:** This amendment goes against modern thinking in relation to prisoner rehabilitation. The current provision allows the vote to with sentences less than three years. One of the arguments for this is that these prisoners will be released during the term of government following the election, and therefore should have a say in it.

Of the 52 submissions received by the Senate Finance and Public Administration Committee's inquiry into this Bill, 35 expressed opposition to this amendment, with only three (Liberal Party, Nationals, and the Festival of Light) giving support.

## **Proof of identity provisions for provisional voting**

New proof of identity provisions will be introduced for people wishing to make a provisional vote on election day. Similar to the above section, proof of identity will require production of a driver's licence, or alternative documents (to be prescribed).

**Government's position:** This will improve the integrity of the ballot.

**Comment:** It is likely that those who do not hold a driver's licence will find the new requirements burdensome, and will opt not to vote.

## **Increase the level of tax-deductible political contributions**

Increase the level of tax deductible contributions from the current \$100 per year, to \$1,500 per year.

**Government position:** This will encourage participation in the democratic process, by providing tax relief.

**Comment:** The argument that participation is encouraged only holds true for small contributions, as the ability for people to participate in political discourse should not be related to their capacity to pay.

An increase to \$1500 will skew political influence to the wealthier in society, as not only do higher-earning individuals have greater capacity to make donations, they will also receive a proportionately higher (taxpayer-funded) subsidy. Based on the current tax scales, it will cost an individual on \$20,000 per year \$450 more to make a \$1,500 donation than for a person on \$100,000.

## **Candidate nomination deposits**

Increases candidate nomination deposits from \$350 to \$500 (House of Representatives) and from \$700 to \$1,000 (Senate).

**Comment:** In its September 2005 report the JSCEM noted that the current nomination arrangements appeared to be satisfactory. While this appears to be a reasonable adjustment, it may be worthwhile to consider non-monetary alternatives so that potential candidates without financial backing are able to compete. For example, requiring 100 nominees from the electorate being contested.

## **Deregistration and re-registration of political parties**

This amendment is designed to bring all political parties under the one regulatory regime. All registered parties, except for those with parliamentary representation, will be de-registered. They will then be able to apply for re-registration, subject to the provisions of the Act.

**Comment:** This amendment is based on the JSCEM's recommendation (No.20, p.100 of the Report), and is designed to make all provisions of the Act (including s. 126 – need for 500 members; and s. 129 – parties not to have names that could mislead or confuse), apply to all parties seeking re-registration.

This will have ramifications for parties such as the *liberals for forests*. However, parties such as the Democratic Labor Party will be able to avoid de-registration due to its previous parliamentary representation, although it will remain subject to other provisions of the Act, such as s.137 and s.138A (in regard to having 500 members).

### **Third parties to submit annual returns of political expenditure**

Third parties (i.e. people and organisations other than political parties, candidates, and donors) will be required to annually disclose expenditure and income related to political purposes.

**Comment:** While this is a worthwhile amendment to the Act, so as to highlight the channelling of funds through third parties, there may be some difficulty in defining political purposes.

### **Access to the roll for the purposes of the *Financial Transaction Reports Act 1988***

Allows financial institutions access to the electronic version of the roll to assist in verifying addresses of finance applicants.

**Comment:** The Electoral Commissioner already has this power (section 90B), however this amendment makes a specific provision for this category. Finance companies will be required to pay for this access.

### **Divisional offices to be located within divisional boundaries**

Ministerial approval is required if the AEC's divisional office is to be outside the divisional boundaries.

**Comment:** This matter usually becomes an issue following redistributions which may result in the divisional office being outside the division. However, the amendment transfers the decision-making authority from the Electoral Commissioner to the Minister, which derogates from the independence of electoral administration.

### **Paid internet advertising to be authorised**

This amendment requires internet electoral advertising to display authorisation in the same way that is already specified for print advertising.

### **Broadcasters and publishers not required to provide returns**

Repeals sections 310 and 311 of the Act, which requires publishers and broadcasters to provide details of electoral advertising, including how much was charged.

**Comment:** This adds to the general policy thrust that a greater proportion of political donations will be made secretly. With the removal of these sections, media organisations will be able to hide the provision of free or discounted advertising.

### **Extension of the definition of ‘associated entity’**

The definition of ‘associated entity’ is extended to entities with financial membership of a registered political party and entities that can exercise voting rights in a political party.

**Comment:** This amendment is primarily targeted at union membership of the ALP, and is designed to bring these organisations within the disclosure regime.

### **Expansion of the AEC’s demand powers under s. 92(1)**

Enables the AEC to gather information from State and Territory government agencies in relation to the maintenance of the electoral roll.