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Commonwealth Electoral Amendment Bill (No.1) 2000

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Commonwealth Electoral Amendment Bill (No. 1) 2000

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25 September 2000



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# Commonwealth Electoral Amendment Bill (No. 1) 2000

**Date Introduced:** 6 September 2000

**House:** House of Representatives

**Portfolio:** Finance and Administration

**Commencement:** Royal Assent

## Purpose

To specifically authorise the provision of:

- a range of elector information to members of the House of Representatives, senators and registered political parties, and
  - age range and gender details in relation to medical research and health screening; and
- ease restrictions relating to the organisation of registered political parties eligible for the supply of electoral information.

## Background

This Bill has its genesis in the proposal for the Australian Taxation Office (ATO) to mail out a personalised letter by the Prime Minister<sup>1</sup> as part of the GST information campaign. To conduct the mail out the ATO purchased an electronic copy of the Electoral Roll from the Australian Electoral Commission (AEC) which contained names, addresses and details of age and gender. The information had been 'grouped' by the AEC to minimise the number of letters to be sent to each household. It was estimated that approximately 8 million packages would be sent, comprising general GST information and a personalised letter from the Prime Minister. This was to be the first time that Electoral Roll information was to be used for an Australia wide mail out.<sup>2</sup>

Legal opinion received by the Government as a result of doubts expressed regarding the validity of the supply of electronic information by the AEC and its proposed use by the ATO cast doubts on the authority the AEC was relying on to distribute this and other

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electoral information. The opinion also has other implications, relating principally to the authority of the AEC to provide certain information to members of the House of Representatives, senators and registered political parties and the information which may be supplied in relation to medical research and health screening. These issues are addressed in this Bill and will be discussed after dealing with the legal points raised in relation to the proposed mail out.

## Legal Issues

The supply of electoral Rolls by the AEC by electronic means and the uses to which such information may be put is governed by sections 91 and 91A of the *Commonwealth Electoral Act 1918* (the Act).

Paragraph 91(4A)(e) of the Act provides that the AEC may, on request, provide a copy of the roll on tape or disk if it considers it appropriate and subject to any conditions determined by the AEC. However, this power is subject to section 91A of the Act which restricts the uses to which the information provided may be used. The restrictions are contained in regulation 10 of the Electoral and Referendum Regulations and are that the information can only be used for:

- the conduct of medical research in accordance with the Guidelines for the Protection of Privacy in the Conduct of Medical Research, and
- the provision of certain public health screening programs.

In relation to the proposed mail out by the ATO, the proposed use of the information did not fall within the prescribed purposes and so was not authorised under this paragraph of the Act.

It was also contended by the AEC<sup>3</sup> that the information could be supplied to the ATO without any legislative restriction on use under subsection 91(10). Subsection 91(9) provides that except as otherwise provided by the Act, the AEC is not to provide information which discloses the occupation, age or sex of electors. Subsection 91(10) provides that the AEC

may provide a prescribed authority with a microfiche copy of a Roll or with information referred to in subsection (9)

if this is authorised by the regulations (the ATO is a prescribed authority and so authorised to receive information).

Following questioning in the Senate Finance and Public Administration Committee on 24 May 2000 as to the legality of its providing an electronic version of Rolls to the ATO disclosing the age and sex of electors, the AEC stated in a Media Release dated 6 June 2000 that it had received legal opinion in 1991 and 1993:

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Advising that it was lawful to provide prescribed authorities with information disclosing the personal particulars of electors by electronic means

and that

The AEC sought additional legal advice after the Senate Estimates hearings on 24 May involving the AEC's provision of elector information to the ATO. Senior General Counsel from the Australian Government Solicitor provided written confirmation that under the Commonwealth Electoral Act it was open to the AEC to provide a prescribed authority with information on a tape or disk.

However, on 8 June 2000 the Attorney-General issued a News Release containing advice from the Solicitor-General that subsections 91(9) and (10) did not authorise the provision of an electronic version of Rolls containing details of elector's occupation, age or sex to the ATO or other prescribed authority. This opinion was based on the premise that the disclosure of personal information authorised by subsection 91(10) acted only as an exception to the general prohibition on such action contained in subsection 91(9) and was not in itself sufficient to authorise the provision of an electronic version of Rolls.<sup>4</sup>

The end result is that:

- while the AEC may provide a person or body with an electronic version of the Rolls under paragraph 91(4A)(e), the information provided (which is not to include age or gender details as there is no exemption from subsection 91(9) for this purpose) may only be used for a permitted purpose determined by the Electoral and Referendum Regulations, and
- subsection 91(10) does not authorise the provision of an electronic version of Rolls to a prescribed authority such as the ATO.

In accordance with the advice from the Solicitor-General, the Government announced that the proposed mail out would be cancelled and a mail out addressed to 'The Householder' substituted. The new mail out comprised a letter from the Commissioner of Taxation and the general information on the GST.

## Other Implications

In his Media Release of 8 June 2000 the Attorney-General noted that other authorities had also been provided with electronic copies of Rolls since 1993 without being authorised by a regulation made under paragraph 91(4A)(e) of the Act, contrary to the Solicitor-General's opinion. The AEC provides 7 authorities, including the ATO, with electronic versions of the Rolls under the Electoral and Referendum Regulations apparently in reliance on subsection 91(10).<sup>5</sup> In relation to current and past unauthorised provisions of Rolls, the Attorney-General stated in his Media Release:

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In order to validate uses of the Electoral Roll already made in the past by Federal Government agencies, retrospective legislation dating from 1993 may be required.

The Government will rectify this as soon as possible either through legislation, regulation or other appropriate action.<sup>6</sup>

The structure of the provisions of the Act under which information is supplied by electronic means to members of the House of Representatives, senators and registered political parties is substantially similar to that noted above, with section 91 providing authorisation for the AEC to provide information and section 91A providing details of the purposes for which the information may be used. Changes to the interpretation of section 91 referred to above have the potential to restrict the information which may be provided to members, senators and registered political parties. The second reading speech to the Bill states:

The AEC has been providing geographic and other information on the basis that the Act did not preclude the provision of such information.

Without the proposed amendments, the only elector information the AEC can provide to members of the House of Representatives, Senators and federally registered political parties will be the full name, enrolled address, date of birth, gender, salutation, and federal Division.

In short, the proposed amendments allow for the provision of the range of fields of elector information that was previously available on the AEC's Elector Information Access System (ELIAS) to members, Senators and federally registered political parties.

In relation to information supplied for medical research and health screening, the Solicitor-General's interpretation of subsection 91(9) casts doubt on the authority of the AEC to provide age and gender information for these purposes. This arises as while people and bodies will be authorised to be supplied with information for these purposes under paragraph 91(4A)(e), there is no exception to the subsection 91(9) prohibition on the supply of age or gender information.

## Main Provisions

**Item 3 of Schedule 1** will repeal subsection 91(9A) of the Act which provides that a disk or tape containing details of the gender of electors may be provided to a person or organisation involved in medical research or health screening, a member of the House of Representatives, a Senator or to a registered political party. Subsection 91(9C), which authorises the AEC to provide a tape or disk with information on an elector's date of birth and salutation to a member of the House of Representatives or a Senator, or to a registered political party, will be repealed by **item 4**.

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These provisions will be replaced by **new section 91AA** which will be inserted into the Act by **item 5**. **Proposed subsection 91AA(1)** provides that where a copy of a Roll is provided on tape or disk under subsection 91(4A) to:

- a registered political party
- a senator, or
- a member of the House of Representatives

the AEC may include any or all of the information listed in **proposed subsection 91AA(2)**. The information which may be provided includes:

- details of the elector's address, sex, date of birth and salutation
- the census district in which they live
- the most recent enrolment date and transaction
- whether the person is a general postal voter
- if the elector has re-enrolled, their previous Division
- the elector's State or Territory Division and local government area, and
- the Australia Post delivery point identifier for each address of the person.

Any information provided is not to relate to a person whose name is excluded from the Roll under section 104 of the Act (which provides for details not to be included on the Roll if the person can show a potential risk to their own or family's personal safety) (**proposed subsection 91AA(3)**).

**Proposed section 91AB** will clarify the information which may be provided for medical research and health screening (as noted above information may currently be provided for these purposes under regulations made for the purposes of paragraph 91(4A)(e)). The proposed section provides that if a copy of a Roll is provided for these purposes, it may also include details of the sex and age range of a person. Age ranges must cover at least two years. This will ensure that there is authority to provide the age range information.

Subsection 91(7) of the Act provides that the AEC need not provide copies of the Rolls for a State, Territory or a Division in a State/Territory to a registered political party unless a branch or division of the party is organised on the basis of that State/Territory. **Item 2** will relax this restriction so that copies must be provided where the party is organised on the basis of at least 5 States/Territories or has at least 5 members who are either members of the House of Representatives or senators.

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## Endnotes

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- 1 The letters were to be personalised by being addressed to individuals and signed by the Prime Minister.
- 2 Evidence by AEC officials to the Finance and Public Administration Legislation Committee, 24 May 2000.
- 3 *ibid.*
- 4 A statement of the basis of the Solicitor-General's advice is attached to the Attorney-General's Media Release of 8 June 2000.
- 5 A list of the Departments and Authorities which receive copies of the Rolls and the purposes for which they may be used is available on the AEC website at <http://www.aec.gov.au/enrol/authorities.htm>
- 6 Attorney-General, *Media Release*, 8 June 2000. Note however, that this Bill does not have retrospective operation.

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