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## Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002

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Electoral and Referendum Amendment (Roll Integrity and  
Other Measures) Bill 2002

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2 August 2002

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# Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002

**Date Introduced:** 14 March 2002

**House:** House of Representatives

**Portfolio:** Special Minister for State

**Commencement:** Except as otherwise indicated in the Main Provisions section of this Digest, Royal Assent.

## Purpose

To:

- restrict the eligibility of certain prisoners to vote
- provide for an earlier closing of applications for enrolment and the electoral roll
- increase the thresholds applying under the disclosure rules
- perform similar changes in laws relating to referendums, and
- tighten the requirements relating to the address details for enrolment.

## Background

Since 1983 the conduct of each general election has been examined by a Joint Standing Committee with the aim of recommending improvements in the electoral process. Following the 1998 general election a review was conducted by the Joint Standing Committee on Electoral Matters, which released its report, entitled *The 1998 Federal Election* (the Report), in June 2000. The Report contained minority reports from the ALP and Australian Democrat members of the Committee, although both were in agreement with the majority of the recommendations of the Committee. The ALP minority report deals with specific recommendations of the majority while that of the Australian Democrats deals with more general principles.

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The Government's response to the Report was tabled on 1 March 2001 and specifically or in principle, supported 49 of the 57 recommendations of the majority report, with the unsupported recommendations relating to technical matters, such as a proposed requirement for pre-poll voters to indicate their reason for such a vote and marking of postal votes. In addition to the matters contained in the Report, the Government's response indicated that it also wished to pursue reforms which:

- would deny the right to vote for all prisoners (currently prisoners serving a sentence of 5 years or more are denied the right to vote), and
- review penalties for breaches of electoral law and increase penalties for multiple voting.<sup>1</sup>

Many of the non-controversial changes recommended by the Report were implemented by the *Electoral and Referendum Amendment Act 2001*, while the more contentious recommendations were left to a later date and some are included in this Bill, including:

- The electoral Roll for new voters be closed on the day of the issue of the writs for the election and 3 days later for enrolled voters wishing to change their address. Currently section 155 of the *Commonwealth Electoral Act 1918* (the Principal Act) provides a period of 7 days. The Report notes that a similar recommendation was contained in the report on the 1996 election and when introduced in legislation was rejected by the Senate. The recommendation was based on the inability of the Australian Electoral Commission (AEC) to verify the number of enrolment forms received under the current rules (351 913 enrolment forms for new voters, changes of address and other reasons were received by the AEC between the issue of writs and the close of rolls prior to the 1998 election).<sup>2</sup> The recommendation is opposed in the ALP minority report on the basis that it will disenfranchise voters, particularly those enrolling for the first time.<sup>3</sup> The Australian Democrats reserved their position on this recommendation.<sup>4</sup>
- The threshold above which donations must be disclosed by recipients and donors be increased from \$1500 to \$3000. Currently, political parties must disclose the name of a donor where a contribution is \$1500 or more (so that multiple contributions below this amount need not be declared), while donors must make a declaration where the sum of their contributions equals or exceeds this amount. The Report recommends that the level of donations in both cases be increased to \$3000, while noting that previous amendments to increase these amounts to \$5000 for political party disclosure and \$10 000 for individual disclosure were defeated in the Senate.<sup>5</sup> The recommendations are largely based on a reduced administrative burden on the parties involved. (In relation to the individual disclosure amount the Report states: 'This proposal would have the advantage of minimising the duplication and easing the burden on small donors, while ensuring the disclosure of all donations above \$1500 through party disclosure returns.' This appears to contradict the recommendation elsewhere in the Report that the disclosure level for

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political parties be raised from \$1500 to \$3000.<sup>6</sup>) The recommendations are opposed in the ALP minority report, principally on the basis that their implementation would 'diminish the transparency of the [current] disclosure laws.'<sup>7</sup> The Australian Democrats minority report is in favour of a stricter disclosure regime, particularly where another entity is interposed between the donor and the political party which ultimately receives the donation.<sup>8</sup>

The Bill will also implement the additional matters indicated in the government's response to the Report, including removing the right to vote for all 'full time' prisoners and increasing the penalty for intentional multiple voting. The question of voting rights for prisoners was discussed in the Report, which noted that the matter has had a changing history. Following the 1993 election an amendment was included to extend the right to vote to all prisoners (the measure was withdrawn), while in 1999 an amendment to exclude prisoners from voting was defeated in the Senate. The Report noted that the majority of the Committee agreed with the 1993 proposal, which had been a recommendation of a previous Committee, but stated that 'it believes that the current legislation should stand until there is sufficient and widespread public support for a change.'<sup>9</sup>

While the question of the integrity of the electoral roll has recently received much attention in respect of pre-selection of political candidates where enrolment is a condition for membership of a party, a recent report by the Australian National Audit Office (ANAO) into the integrity of the roll found:

The AEC does not set targets for, nor measure or report on, the accuracy of the electoral roll. The electoral roll changes continuously. At any one time it will contain inaccurate records, where voters have recently changed address, gone overseas or died, and the AEC has not yet been advised of the change, nor identified it through the CRU.

Despite these circumstances, the audit found a high degree of accuracy in electoral roll data. ANAO data-matching of name and date of birth against Medicare and other sources achieved a significant match of over 96 per cent.

To ensure that voters are registered in their correct electoral Division, the AEC maintains an up-to-date address register. ANAO data-matching with Medicare only confirmed the accuracy of the names and date of birth of those on the roll. The more uneven time frames of client transactions with Medicare meant that matching roll addresses and Medicare addresses would be of little value. Consequently this review was not attempted. The ANAO noted that, where the AEC routinely matches its address register with Australia Post, Centrelink and State data, the register proves to be consistently accurate and reliable.<sup>10</sup>

On 14 June 2002 the Joint Standing Committee on Electoral Matters announced that it would conduct a follow-up inquiry into the ANAO report and that this report was due to be tabled in the week beginning 26 August 2002.<sup>11</sup>

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The Electoral and Referendum Amendment Bill (No. 2) 2001 contained many of the measures as this Bill but lapsed when Parliament was prorogued for the 2001 general election and before it was debated in either chamber.

## Main Provisions

### Prisoners

**Items 1 and 2 of Schedule 1** will amend section 93 of the *Commonwealth Electoral Act 1918* (the Principal Act) to provide that a person who is serving a sentence of full-time imprisonment will not be eligible to vote. In related moves, **item 6** will repeal section 96A of the Principal Act which deals with the enrolment of prisoners and **item 24** will repeal section 226A which deals with mobile booths for prisons.

### Enrolment

Section 102 of the Principal Act deals with how a general application for enrolment is to be treated. **Item 8** will amend subsection 102(4) to provide that a name is not to be included on the Roll if the claim for enrolment is received:

- for a claimant who had previously been enrolled, at or after 8 p.m. on the date the Roll closes, or
- for other claimants, at or after 6 p.m. on the date of the issue of the writs.

Section 94A of the Principal Act deals with the enrolment of electors from outside Australia. A **new subsection 94A(4)** will be substituted into the Principal Act to provide that applications received after 6 p.m. on the date of the issue of writs for an election are not to be added to the Roll until after the close of polling for the relevant election (**item 3**).

Where a spouse or child of an overseas voter becomes eligible to vote in an Australian election (usually by satisfying age requirements), section 95 of the Principal Act provides that their name is to be added to the Roll if the application is received before 8 p.m. on the day the Roll closes. **Item 4** will amend subsection 95(4) to provide that the application must be received before 6 p.m. on the date of issue of the writs.

Section 96 of the Principal Act deals with the enrolment of itinerant voters and will be amended by **item 5** to provide that applications received after 6 p.m. on the date of the issue of writs for an election are not to be added to the Roll until after the close of polling for the relevant election.

**Commencement:** Other than item 3, which will commence on Royal Assent, on a day fixed by Proclamation (**clause 2**).

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## Closing of the Roll

The Roll currently closes 7 days after the issue of the writ for an election (section 155 of the Principal Act). **Items 11 and 12** will amend section 155 to provide that the Roll is to close 3 working days after the issue of the writ, with working days being defined as excluding Saturdays, Sundays and a public holiday in any State or Territory. This will also apply to new voters.

**Commencement:** On a day fixed by Proclamation (**clause 2**).

## Disclosure

Section 305B of the Principal Act provides that a person must make a return to the Electoral Commission where they make a gift/s to a registered political party or a State branch of such a party where the gifts total \$1500 or more. **Item 27** proposes to increase this amount to \$3000. The return must specify any gift/s the donor received that were used to make the contribution/s of \$1500 or more where the gifts to the donor were \$1000 or more. **Items 28 and 29** propose to increase both of these limits to \$3000.

**Item 30** provides that the above amendments are to apply to the financial year during which the amendments commence and all later financial years.

Subsection 306(1) of the Principal Act prohibits a political party or a branch of a political party from receiving a gift of \$1000 or more unless the name and address of the giver are known. **Item 31** proposes to increase the \$1000 threshold to \$3000.

Political parties, branches, candidates and people operating on their behalf are not to receive a loan of \$1500 or more from a person or entity other than a financial institution unless certain information is recorded (section 306A). **Items 32 and 33** propose to increase the threshold to \$3000.

Registered political parties are required to provide an annual return listing details of certain amounts received, including details of amounts from a source that equal or exceed \$1500 in a year (section 314AC). **Item 34** proposes to increase this amount to \$3000. As with returns to be made by a person making a gift, **item 35** provides that the above amendments are to apply to the financial year during which the amendment commences and all later financial years. Details of debts of \$1500 or more incurred by a political party are required to be included in the annual return (section 314AE). **Item 36** proposes to increase the threshold to \$3000 and again the amendment will apply to the financial year in which the item commences and later years (**item 37**).

Subsection 339(1B) of the Principal Act makes it an offence to vote more than once in an election, with a maximum penalty of 10 penalty units (the *Crimes Act 1914* provides that a penalty unit is \$110). **Item 42** will insert a **new subsection 339(1B)** which will introduce

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a new offence of intentionally voting more than once in an election with a maximum penalty of 12 months imprisonment and/or a fine of 60 penalty units.

## Referendums

The *Referendum (Machinery Provisions) Act 1984* is proposed to be amended to reflect the above changes to the Principal Act in relation to enrolment dates, the penalties for intentionally voting more than once in a referendum and the exclusion of prisoners voting in referendums (**items 44 to 60**). The commencement dates of the various measures reflect those above.

## Enrolment at an Address

The amendments contained in **Schedule 2** of the Bill will insert a requirement that an enrolled person is actually living at the address for which they are enrolled or have applied to be enrolled for. This will be achieved by a number of amendments to the Principal Act requiring people to live at the address for which they seek enrolment or are enrolled.

**Proposed subsection 114(1B)** will provide a specific right for a person who is enrolled in a subdivision to object to the enrolment of another in the subdivision on the grounds that the person does not live at the address for which they are enrolled and have not done so for at least a month. Similarly, **proposed subsection 114(4)** provides for the Divisional Returning Officer (DRO) for a subdivision to object to the enrolment of a person if there are reasonable grounds for believing that they have not lived at the address for which they are enrolled for at least a month (**items 29 and 30**). If the DRO is satisfied that the grounds for objection have been satisfied the voter's name must be removed from the Roll (**proposed subsection 118(4)** which will be inserted by **item 34**). Antarctic voters are excluded from these provisions.

**Item 37** contains transitional provisions, the most important of which provides that if a person is enrolled at a particular address at the commencement of the Bill they will be deemed to be living at that address for the purpose of these amendments.

## Endnotes

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- 1 Government Response to the Joint Standing Committee, tabled 1 March 2001, p. 28.
  - 2 Joint Standing Committee on Electoral Matters, *The 1998 Federal Election*, p. 15.
  - 3 *ibid.*, p. 155.

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- 4 *ibid.*, p. 163.
- 5 *ibid.*, pp. 127–129.
- 6 *ibid.*, recommendations 44 and 45.
- 7 *ibid.*, pp. 158&9.
- 8 *ibid.*, pp. 173–176.
- 9 *ibid.*, pp. 89&90.
- 10 Australian National Audit Office, Report 2001-02 No. 42. Integrity of the Electoral Roll, points 30–32.
- 11 Joint Standing Committee on Electoral Matters, Media Alert, 14 June 2002.

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