

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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)



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## **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. The Government's Response to this Report was tabled in the 1995 Winter sittings.

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 (No. 1) 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;
- enable prisoners, other than those convicted of treason or treachery and not pardoned, to enrol and vote in federal elections;
- 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;
- allow for the despatch of postal ballot materials to all registered General Postal Voters without them first having to complete a postal vote application; and
- allow for the commencement of the preliminary scrutinies of declaration votes on the Monday prior to polling day. This will not permit the opening of the declaration envelopes until after the close of the poll.

### **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 - AMENDMENTS 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 events such as by-elections. 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, 16, 19 and 20 - Enrolment of prisoners

8. These items amend paragraph 93(8)(a), omit paragraph 93(8)(b), repeal section 109 and, as a consequence, amend subsections 96A(1) and 110(1) of the Electoral Act to remove the qualification restrictions placed on prisoners being able to enrol and vote for federal elections. Currently, persons who are convicted and are under sentence for an offence punishable by imprisonment for 5 years or longer are unable to enrol or to remain enrolled to vote. The amendment would enable all prisoners,

other than those who are convicted of treason or treachery and have not been pardoned, to enrol to vote provided they meet the normal qualifications for enrolment. Section 109 is repealed as the lists giving names of prisoners who were previously disqualified will no longer be required from the prison authorities.

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, 15, 17 and 18 - 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 21 - Enrolment claims sent by facsimile

11. This item inserts a new section 111A after section 111 to allow for the receipt of applications for enrolment by facsimile. 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 22 and 23 - 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 24 and 25 - 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 26 and 27 - 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 28 - 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 29 - 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 30, 42 and 43 - General postal voters

17. These items amend subsection 186(2), insert a new paragraph 3A into Schedule 3, and, as a consequence, amends 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.

Items 31 and 32 - Prohibition from canvassing

18. These items insert subsections 200D(1A) and 200D(2A) to provide that canvassing is prohibited within 6 metres of a Divisional Office or a pre-poll voting office, respectively, during the hours that voting may take place in those offices. The effect of this amendment is consistent with the prohibition on canvassing near polling places, as provided for in subsection 340(1).

Item 33 - Hours for pre-poll voting on polling day

19. 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 34 to 36 - Gazettal of remote mobile polling places

20. 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 37 - Right of assistance to vote

21. 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.

Items 38, 39 and 44 - Commencement of preliminary scrutiny of declaration votes

22. These items amend subsection 266(1), insert a new subsection 266(1A) and amend paragraph 17 of Schedule 3 of the Electoral Act, respectively, to provide that the preliminary scrutiny of declaration votes may commence on the Monday prior to polling day. The amendment to paragraph 17 of Schedule 3 is to ensure that the Divisional Returning Officer cannot open the declaration envelopes until after the close of polling.

Item 40 - Court of Disputed Returns - security deposit

23. 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 41 - Court of Disputed Returns - legal representation

24. 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 - AMENDMENTS OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984 (the Referendum Act)**

Item 1 - Hour of the close of the rolls

25. 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 - Right of assistance to vote

26. 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

27. 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, 10 and 11 - General postal voters

28. These items amend subsection 58(2), insert a new paragraph 3A to Schedule 4, and, as a consequence, amends 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 7 - Hours for pre-poll voting on polling day

29. 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.

Items 8, 9 and 12 - Commencement of preliminary scrutiny of declaration votes

30. These items amend subsection 89A(1), insert a new subsection 89A(1A) and amend paragraph 16 of Schedule 4 of the Referendum Act, respectively, to provide that the preliminary scrutiny of declaration votes may commence on the Monday prior to polling day. The amendment to paragraph 16 of Schedule 4 is to ensure that the Divisional Returning Officer cannot open declaration envelopes until after the close of polling.

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HOUSE OF REPRESENTATIVES

ELECTORAL AND REFERENDUM AMENDMENT BILL (NO. 2) 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be moved on Behalf of the Government

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



## ELECTORAL AND REFERENDUM AMENDMENT BILL (NO. 2) 1995

### OUTLINE

There are four proposed amendments to the Electoral and Referendum Amendment Bill (No. 2) 1995, introduced into the House of Representatives on 28 June 1995. The Bill makes changes to the Commonwealth Electoral Act 1918 (the Act) and the Referendum (Machinery Provisions) Act 1984.

The amendments are designed to:

- omit the existing amendment of the Bill extending the enrolment entitlements of prisoners, and to replace it with an amendment which will make the enrolment entitlement of prisoners conditional on the actual sentence rather than the potential sentence;
- correct an omission in the amendments of the Bill relating to the issue of ballot material to registered General Postal Voters;
- omit the existing amendment of the Bill relating to the prohibition on canvassing within 6 metres of the entrance to Divisional Offices and pre-poll voting centres; and
- omit the existing amendment of the Bill relating to the commencement of the preliminary scrutiny on the Monday before polling day.

### FINANCIAL IMPACT STATEMENT

The Australian Electoral Commission estimates that these amendments will give rise to neither costs nor savings.

## NOTES ON AMENDMENTS

### **Amendment 1**

#### Clauses 1 to 4

These clauses amend items 5 and 19, and omit items 16 and 20, of Schedule 1 to the Bill. The clauses withdraw the extension of enrolment entitlements of prisoners, and instead make the enrolment entitlements conditional on the actual sentence imposed rather than the potential sentence. This will make administratively workable the reporting requirements imposed on prison authorities, who currently are unable to notify details of the maximum possible sentence which could have been imposed. The only detail available to prison authorities is the actual sentence.

### **Amendment 2**

#### Clause 5

This clause inserts a new item 29A into Schedule 1 of the Bill to complement the proposed amendments made in the Schedule at items 37, 49 and 50, which provide for the despatch of postal ballot material to registered General Postal Voters. The new item repeals section 185A of the Commonwealth Electoral Act 1918, and is consequential upon the existing amendments.

#### Clause 11

This clause inserts a new item 5A into Schedule 2 of the Bill to complement the amendments in the Schedule made at items 7, 11 and 12, which provide for the despatch of postal ballot material to registered General Postal Voters. The new item repeals section 57 of the Referendum (Machinery Provisions) Act 1984, and is consequential upon the existing amendments.

### **Amendment 3**

#### Clauses 6 and 7

These clauses omit items 31 and 32 from Schedule 1 of the Bill to withdraw the amendment which would have provided for a prohibition on canvassing within 6 metres of the entrance to Divisional Offices and pre-poll voting centres.

### **Amendment 4**

#### Clauses 8 to 10 and 12 to 14

These clauses omit items 38, 39 and 44 from Schedule 1 of the Bill, and omit items 8, 9 and 12 from Schedule 2 of the Bill, to withdraw the amendment which would have provided for the commencement of the preliminary scrutiny on the Monday prior to polling day.