

The Southern Cross Group

Promoting Mobility in the Global Community
www.southern-cross-group.org



Primary Submission to the Australian Parliament's
Joint Standing Committee on Electoral Matters

***Inquiry into the Conduct of the 2001 Election and Matters Related
Thereto***

Enrolment and Voting in Australian Federal Elections for Australian Citizens Overseas

Brussels and Canberra

12 July 2002

***The Southern Cross Group is an international non-profit advocacy organisation
seeking to speak for and work with the million-odd members of the Australian Diaspora
worldwide.***

© Copyright: Southern Cross Group 2002

This work is copyright. It may be reproduced in whole or in part subject to the inclusion of an acknowledgment of the source. No commercial usage or sale is permitted.

TABLE OF CONTENTS

LIST OF RECOMMENDATIONS	3
1 THE RIGHT TO VOTE AND PROVISIONS CONCERNING ENROLMENT AND VOTING THAT EFFECTIVELY DISENFRANCHISE AUSTRALIAN CITIZENS OVERSEAS	6
1.1 The Right to Vote is a Right Attached to Citizenship	6
1.2 Statistics on Overseas Voting	7
1.3 Some Overseas Australians Can Still Vote.....	8
1.4 Any Conditions on the Right to Vote Must be Objective and Reasonable	8
1.5 The Provisions That Disenfranchise Overseas Australians	10
1.5.1 Two-Year Time Limitation.....	11
1.5.2 Intention to Resume Residing in Australia within Six Years	15
1.5.3 Reasons for Leaving Australia.....	17
1.6 Further Suggestions to Facilitate a More Effective Implementation of the Overseas Voting and Enrolment Legislation	17
1.6.1 Overseas Correspondence Addresses.....	17
1.6.2 Time Between Issuing of Writs and Closing of Rolls	19
2 COMPULSORY VOTING AND OVERSEAS AUSTRALIANS	21
2.1 Compulsory Enrolment and Voting for Citizens in Australia.....	21
2.2 Non-Compulsory Enrolment and Voting for Australians Overseas ..	22
2.3 Voting and Enrolment Should Remain Non-Compulsory for Expatriates.....	22
2.4 The “Use it or Lose it” Provision	24
3 ACCESS TO INFORMATION.....	27
4 ELECTRONIC VOTING	32
5 REGISTER OF OVERSEAS VOTERS	34
6 CONCLUSION	37

LIST OF RECOMMENDATIONS

Recommendation 1: That Section 94(1B) of the *Commonwealth Electoral Act 1918* be repealed so that an application to be treated as an eligible overseas elector may be made at any time after an Australian citizen ceases to reside in Australia.

Recommendation 2: That Section 94A(2)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an application for enrolment from outside Australia can be made at any time after an Australian citizen ceases to reside in Australia.

Recommendation 3: That Section 94(1)(c) of the *Commonwealth Electoral Act 1918* be repealed so that any Australian citizen who has ceased to reside in Australia, or intends to cease to reside in Australia, may apply to be treated as an eligible overseas elector without having to state an intention to resume residing in Australia within any period of time.

Recommendation 4: That Section 94A(1)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an Australian citizen who has ceased to reside in Australia and is not on the Electoral Roll can apply for enrolment without having to state an intention to resume residing in Australia within any period of time.

Recommendation 5: That Section 94A(1)(a) of the *Commonwealth Electoral Act 1918* be amended by removing the words “for reasons relating to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse”, so that any Australian citizen residing overseas who is not on the Electoral Roll may apply for enrolment regardless of their reasons for leaving Australia.

Recommendation 6: That the Application Form for Enrolment from Outside Australia and the Application Form for Registration as an Overseas Elector be amended so as to make it necessary for the applicant to provide to the AEC a postal address either in Australia or overseas, or an e-mail address at which the applicant is sure he or she can be reliably and directly reached without undue delay.

Recommendation 7: That Section 94(4) of the *Commonwealth Electoral Act 1918* be amended so that where a person applies to be treated as an eligible overseas elector and the person’s name is not on the Electoral Roll, the Divisional Returning Officer is required to inform that person in writing at their most reliable contact address that the person should instead apply for enrolment from outside Australia and provide the person with the appropriate application form for such enrolment.

Recommendation 8: That the Australian Electoral Commission make available a Notification of Change of Contact Address Form so that eligible overseas electors who change their place of residence outside

Australia, are facilitated in notifying the AEC of this change of overseas address.

Recommendation 9: That the time between the issuing of the writs and the closing of the rolls should under no circumstances be reduced.

Recommendation 10: That voting and enrolment for Australian citizens aged 18 years or over who reside outside Australia remain non-compulsory.

Recommendation 11: That Section 94(13)(c) of the *Commonwealth Electoral Act 1918* be repealed so that an eligible overseas elector does not cease to be entitled to be treated as an eligible overseas elector simply because a general election is held at which he or she neither votes nor applies for a postal vote.

Recommendation 12: That a Parliamentary Inquiry and/or an Interdepartmental Committee be established to explore the ways and means by which the Australian Diaspora may be better supported and utilised.

Recommendation 13: That further research into electronic voting and enrolment methods be pursued as a matter of urgency with a view to their introduction and use as a way of supporting the exercise of the right to vote by Australians overseas.

Recommendation 14: That regardless of the outcome in respect of other recommendations in this submission, the AEC establish a Register of Overseas Electors as an online database, accessible by registered individuals, to maintain up-to-date voter details; to notify the calling of elections; and to facilitate the control of postal and absentee votes by overseaselectors.

EXECUTIVE SUMMARY

All Australians share the common bond of citizenship and the right to vote is a privilege of citizenship. An Australian overseas is still part of the Australian community, even though he or she is physically outside Australia's territorial boundaries.

An Australian overseas who wants to exercise his or her democratic right to participate in the election of those that make laws and decisions which effect all Australians should have that right. Presently, however, at least 500,000 Australian citizens of eligible voting age are prevented from voting by certain restrictive provisions in the *Commonwealth Electoral Act 1918*.

The Southern Cross Group believes that these restrictions on the exercise of the right to vote, a right that is protected by Article 25 of the International Covenant on Civil and Political Rights, are not "objective and reasonable". The Group therefore calls for amendments to the *Commonwealth Electoral Act 1918* so that:

- ⌘ Australian citizens overseas can apply for eligible overseas elector status and enrolment at any time after they cease to reside in Australia;
- ⌘ Australian citizens overseas can be treated as eligible overseas electors and enrol to vote from overseas without having to state an intention to resume residing in Australia within any period of time;
- ⌘ Australian citizens overseas who are not on the electoral roll are not restricted from enrolling from overseas due to the reason that they went overseas.

While compulsory voting and enrolment for citizens in Australia remains the norm, the Southern Cross Group believes that the current system of non-compulsory enrolment and voting for Australian citizens overseas must remain in place, purely and simply for practical reasons.

However, where an overseas Australian citizen wishes to exercise his or her fundamental right to vote, this should be possible at any time while the citizen is overseas, and should not be made impossible because a citizen overseas misses one election.

Further, the Southern Cross Group believes that the Government must explore with greater vigour methods of electronic voting, and the ways and means by which the Australian Diaspora may be better supported and utilised. Finally, a register of overseas voters would greatly facilitate enrolment and voting by the some 645,000 Australian citizens of voting age who reside overseas.

1 THE RIGHT TO VOTE AND PROVISIONS CONCERNING ENROLMENT AND VOTING THAT EFFECTIVELY DISENFRANCHISE AUSTRALIAN CITIZENS OVERSEAS

1.1 The Right to Vote is a Right Attached to Citizenship

In July 2001, Immigration Minister the Hon. Philip Ruddock announced a national campaign to encourage permanent residents who have been living in Australia for more than two years to take out Australian citizenship.¹ Over 900,000 people in Australia currently meet the requirements for naturalisation.

A primary motivation for many of Australia's permanent residents to take Australian citizenship is the fact that with citizenship comes the right to vote. That the right to vote is a right attached to citizenship in Australia is beyond dispute. Indeed, Australian Citizenship Fact Sheet No. 2, available from the Australian Government's Citizenship website, lists the right to "vote and elect Australia's governments" as the first in a list of six privileges conferred with Australian citizenship.²

But not all of Australia's citizens have the right to vote. The Southern Cross Group ("SCG") estimates that approximately 500,000 Australian citizens of eligible voting age are currently disenfranchised by various provisions in the *Commonwealth Electoral Act 1918* ("The Act").³ What is the distinguishing factor that makes this group of citizens less worthy of the right to vote than other citizens in the eyes of the Australian legislature? It is simply the fact that they are not geographically present within Australia's territorial boundaries.

In May 2001 the Government made much of the fact that all Australians share the "common bond of citizenship".⁴ Indeed, the Government's special page for overseas Australian citizens on its Citizenship website presently states:

Australians overseas also share the common bond of Australian citizenship.⁵

One must question the meaning of such statements if in fact the citizenship of an Australian citizen outside Australia is of lesser value, with lesser privileges, than that of an Australian citizen who does not venture beyond Australia's shores.

¹ Media Release by the Hon. Philip Ruddock MP, "Government Invites More People to Become Citizens", 1 July 2001.

² <http://www.citizenship.gov.au/download/factsheet2.pdf>

³ http://www.southern-cross-group.org/statistics/stats_ausos.html. The Australian Department of Foreign Affairs and Trade (DFAT) estimated that as at 31 December 2001, there were some 858,866 Australian citizens living overseas. If one assumes that approximately 25 percent of that population are minors, as is the case with the Australian population in Australia, approximately 645,000 would be of eligible voting age.

⁴ *Australian Citizenship...A Common Bond*, Government Response to the Report of the Australian Citizenship Council, May 2001, available at <http://www.citizenship.gov.au/0501report/index.htm>.

⁵ <http://www.citizenship.gov.au/overseas.htm>

1.2 Statistics on Overseas Voting

As part of the Southern Cross Group's Submission to DIMA⁶ (as it then was) of 6 July 2001 on the repeal of Section 17 of the *Australian Citizenship Act 1948*, we canvassed the current provisions in Part VII of the *Commonwealth Electoral Act 1918* which prevent many overseas Australian citizens from voting. At that time, 12 months ago, based on DFAT consular figures for the calendar year 2000, the SCG estimated that there were around 615,000 Australians overseas aged 18 or over. Only 65,086 of those had votes issued to them in the 1998 Federal Election.⁷

For the 10 November 2001 Federal Election only 63,016 votes were issued overseas. Even fewer - 57,955 - votes were issued in the 1999 Referendum on the Republic.

If we scrutinise the situation more deeply, then the problem becomes even more serious. As stated above, we know that only 63,016 votes were issued overseas in the 2001 Federal Election. But according to a letter received by the Southern Cross Group from the AEC of 16 August 2001,⁸ there were only 9,064 people on the Electoral Roll with eligible overseas elector status at that time.⁹ Australians resident overseas, as opposed to those who are tourists, would, in most cases, have eligible overseas elector status.

Thus, of the 63,016 votes issued overseas in November 2001, most would have been issued to Australians who were tourists or otherwise temporarily overseas for a short period. This would indicate that the extent of the disenfranchisement problem for Australian citizens living overseas is actually greater than at first glance. When one just considers how many votes were issued overseas compared to the overseas resident population aged 18 or over, it appears that only 10 percent of resident overseas Australians are voting. However, if one compares the number of eligible overseas electors with the number of resident overseas Australians aged 18 or over, then the figure is a miniscule 1.5 percent.

⁶ http://www.southern-cross-group.org/archives/OverseasVoting/2001-07/Extract_on_Voting_from_SCG_Submission_to_DIMA_6_July_2001.pdf

⁷ See http://www.southern-cross-group.org/statistics/stats_matters.html for links to detailed breakdowns by overseas post of the number of overseas votes issued in the 1998 Election, the 1999 Referendum, and the 2001 Election.

⁸ http://www.southern-cross-group.org/archives/OverseasVoting/2001-08/Letter_from_AEC_re_overseas_voting_16_Aug_2001.pdf

⁹ It should be noted that there were probably more eligible overseas electors on the roll by the time of the November 2001 election, since at the date of the AEC's letter, the date of the election had not even been announced, and the catalyst for enrolment updates and changes is always an electoral event. The Southern Cross Group has no up-to-date figure of the number of eligible overseas electors currently on the electoral roll.

1.3 Some Overseas Australians Can Still Vote

It is important to understand that some Australian citizens overseas can still vote. The Southern Cross Group has learned, however, that people often do not understand the administrative formalities they have to undertake to make sure that they can still vote while overseas. Because they are unaware of these formalities, they often find themselves disenfranchised.

If a person is leaving Australia for more than just a few weeks or months, they should tell the Australian Electoral Commission (AEC) that they wish to be noted on the Electoral Roll as being overseas by filling in and submitting the Application to Register as an Overseas Elector.¹⁰ This will prevent their name from being deleted from the Electoral Roll while they are away. Unfortunately, not everyone going overseas realises that they have to do this within two years. After that, by law, the window of opportunity for telling the AEC ends.

Australians who have been overseas for one election or referendum where they did not vote typically will have been wiped off the Electoral Roll. Until 1998 it was simply not possible to enrol to vote from overseas. Thus, many Australians who had been away for a number of years had no way of re-enrolling once their name had been deleted from the Roll. Since 1998, enrolment from overseas has been possible, using the Application for Enrolment from Outside Australia,¹¹ but a person must submit this to the AEC within two years of leaving Australia. For those who are long-term away, it is not hard to see that this provision is not very helpful.¹²

The specific provisions in Part VII of the *Commonwealth Electoral Act 1918* which operate to disenfranchise overseas Australians will be looked at in detail below. Before engaging in that examination, it is useful to look at the international standards that operate to protect to the right to vote.

1.4 Any Conditions on the Right to Vote Must be Objective and Reasonable

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) obligates Australia to ensure that:

Every citizen shall have the right to vote and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

¹⁰ <http://www.perform.net.au/ElectoralForms/ER022E.pdf>

¹¹ <http://www.perform.net.au/ElectoralForms/ER016.pdf>

¹² There is one quirk in the law that does make it possible for some people who have been disenfranchised overseas to get back on the Electoral Roll. If a person has been back in Australia for one month or more, in the last two years, then they qualify to re-enrol, either while they are back in Australia, or within two years of leaving again. This is because in order to register on the Electoral Roll for a Subdivision in Australia, a person must be resident at an address in that Subdivision for one month.

In 1996 the United Nations Committee on Human Rights adopted General Comment 25 that elaborates on Article 25 of the ICCPR.

The Committee stressed the relationship between citizenship and the right to vote:

In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of “every citizen”. State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹³

In addition, the Committee went on to state:

Any conditions which apply to the exercise of the rights protected by article 25 should be based on *objective and reasonable criteria* (emphasis added). For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.¹⁴

Australia explicitly denies persons of unsound mind who are incapable of understanding the nature and significance of enrolment and voting the right to vote.¹⁵ But the way in which the provisions on overseas enrolment and voting operate to effectively disenfranchise Australians citizens overseas is less explicit and far from immediately obvious to the casual reader of the relevant provisions who does not work with the provisions in practice. Regardless of this fact, the Southern Cross Group argues that these restrictions are subject to the same “objective and reasonable criteria” requirement laid down by the UN Human Rights Committee. Other statements by the Committee are also instructive:

The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements...¹⁶

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote...Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.¹⁷

¹³ General Comment 25, Adopted by the Committee on 12 July 1996, para. 3.

¹⁴ General Comment 25, Adopted by the Committee on 12 July 1996, para. 4.

¹⁵ *Commonwealth Electoral Act 1918*, Section 93(8)(a). Persons serving a sentence of 5 years or longer for an offence against the law of the Commonwealth or of a State or Territory, or a person who has been convicted of treason or treachery and has not been pardoned are also not entitled to vote.

¹⁶ General Comment 25, Adopted by the Committee on 12 July 1996, para. 10.

¹⁷ General Comment 25, Adopted by the Committee on 12 July 1996, para. 11.

Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.¹⁸

State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.¹⁹

In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable.²⁰

...Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens...²¹

The Southern Cross Group has not had the opportunity to review any reports by Australia submitted to the United Nations under Article 40 of the ICCPR which detail Australia's limitations on the right to vote or explain why the current limitations on overseas enrolment and voting are objective and reasonable criteria for limiting the right to vote guaranteed in Article 25 of the ICCPR.

Australia's ratification of the First Optional Protocol to the ICCPR means that it would be possible for an individual to bring a complaint to the Human Rights Committee if they believed that their right to vote under Article 25 was being infringed by the current restrictions in the *Commonwealth Electoral Act 1918*.

The Southern Cross Group also notes that Article 41 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly in 1990, provides in Article 41:

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Australia has not yet ratified this Convention, and it is not yet in force. However, the international community has accepted this important principle.

1.5 The Provisions That Disenfranchise Overseas Australians

Over several years the Southern Cross Group has been contacted by hundreds of Australian citizens living overseas who have lost their right to vote

¹⁸ General Comment 25, Adopted by the Committee on 12 July 1996, para. 12.

¹⁹ General Comment 25, Adopted by the Committee on 12 July 1996, para. 13.

²⁰ General Comment 25, Adopted by the Committee on 12 July 1996, para. 14.

²¹ General Comment 25, Adopted by the Committee on 12 July 1996, para. 22.

at home. It is often not possible to pinpoint exactly just one provision in the *Commonwealth Electoral Act 1918* which has resulted in their disenfranchisement. In truth, a number of provisions operate together to create a regime that prevents citizens from voting because they are not on the electoral roll for an election. For Australian elections, enrolment is a fundamental prerequisite to exercising the right to vote.

1.5.1 Two-Year Time Limitation

Under Section 94(1B) of the Act, an application to the AEC to be treated as an eligible overseas elector must be made within 2 years after the day on which the elector ceased to reside in Australia.

For those who are not on the electoral roll when they leave Australia, Section 94A(2)(d) of the Act imposes the same time limitation on the making of applications for enrolment from overseas.

This limited two-year window of opportunity is probably the most insidious of all the restrictions on overseas voters. It means that if a person misses the two-year deadline, due to ignorance of the law or for any other reason, they can then be effectively disenfranchised at the end of the two year period for the whole remaining time that they are overseas.

The following example is one of several similar cases, which came to the attention of the Southern Cross Group before the November 2001 election:

Peter left Australia to go and live in the Netherlands in June 1999. He was on the electoral roll when he left Australia. He was not aware that he could apply to be treated as an eligible overseas elector, having never seen any AEC literature on the subject. At the time of the November 1999 Referendum on the Republic, Peter was backpacking on holidays in the jungle in Peru, and was unable to attend an Australian overseas mission to vote in person or organise a postal vote. Peter was not concerned, because an Australian consular official at the Australian Embassy in The Hague had mentioned to him at a social function one night that "it is not compulsory for Australians overseas to vote".²²

In July 2001, back in the Netherlands, and knowing that a federal election was likely to be called within a few months, Peter decided to contact the AEC by e-mail to find out about procedures for voting from overseas in the 2001 federal election. After several e-mail exchanges, the AEC told him that he was no longer on the electoral roll. It appeared that following Peter's failure to vote in November 1999, the AEC had discovered that he was no longer living in Australia at the address at which he had been previously enrolled, and had cancelled his enrolment. If the AEC had sent Peter a letter to that address in Australia, it was never forwarded on to him overseas.

Initially unconcerned that his enrolment had been cancelled, Peter then asked the AEC to re-enrol him in time for the 2001 federal election. The AEC asked him when he had left Australia, and Peter told the AEC that he had left in June 1999. As it was already more than two years since Peter had ceased to reside in Australia, the AEC refused to re-enrol him. Peter could therefore not vote in the November 2001 federal election. The only way for Peter to vote again while living overseas would be for him to return to Australia for one month or more and live at a particular address, which would qualify him for enrolment at that address.

²²

It is indeed not compulsory for Australians overseas to vote. See the more detailed discussion below on non-compulsory voting for expatriate Australians.

It is impossible to quantify the number of Australian citizens overseas who have lost their right to vote in this way. The Southern Cross Group has been told verbally by the AEC that “quite a few people get very annoyed when they discover that they can’t vote”.

Anecdotal evidence that has been related to the Southern Cross Group would also indicate that staff at Australian missions overseas are confronted with significant numbers of disgruntled disenfranchisees. One consular official wrote to the Group in the following terms in June 2002:

I am now on my sixth overseas posting as Consul with the Department of Foreign Affairs and Trade over a period of 15 years, so I have seen a few elections in that time. I am often faced with angry Australians who come into the Australian mission wanting to vote and finding they can’t.

It seems to me that there is a lot of confusion amongst those about to leave Australia, and those already living overseas, re what exactly they are supposed to do about their electoral status while they are away. Some register as eligible overseas electors, however information provided by the AEC suggests that this still does not guarantee that you will be informed of elections or receive electoral material.

The AEC website is quite comprehensive on these issues, but perhaps people don’t know to look there, or perhaps they don’t have Internet access. In particular, many older folk are not comfortable with computers, even when they are in countries where Internet access rates are high. Also, in third world countries, many expatriate Australians, like the citizens of their host countries, cannot easily gain access to the Internet.

Indeed, it would seem that some consular staff are themselves disenfranchised by the restrictions in the *Commonwealth Electoral Act 1918* on overseas voting and enrolment. One woman told the Southern Cross Group:

I am an Australian citizen working as a locally employed staff member in an Australian Embassy in Europe. I am responsible for the promotion of Australian culture in order to enhance Australia’s profile as a culturally and technologically sophisticated, innovative and dynamic nation. In order to fulfil my responsibilities I closely follow Australian news and current affairs. I have input into certain policy decisions pertaining to my sector and region in Europe. My daily business is to talk about Australia, I am passionate about Australia, and I think I have a better grasp of important issues in Australia than many Australian residents. Yet I am not qualified to vote.

The Southern Cross Group has also had related to it incidences where despite a person’s best efforts to communicate with the AEC after missing an election, they still end up being taken off the electoral roll, and then the relevant provisions prevent them from voting again while they remain away. The following example was recently brought to the Group’s attention:

Tom moved to the UK in 2000. At the time he left, he was on the electoral roll at his parents’ address in Albury, NSW, for the Subdivision of Farrer. Before he left Australia, Tom heard from friends already in the UK that all he had to do to vote while in the UK was to turn up at Australia House in the Strand in London in the week preceding election day. He was unaware of the existence of eligible overseas elector status or the limitations on overseas enrolment and voting.

In the event, Tom did not vote in the November 2001 federal election at Australia House because his girlfriend gave birth to their first child in London in that same week. He rang the High Commission from the hospital where he was spending most of the week with his girlfriend and new baby, because he was worried that he might be fined if he did not vote. The person he spoke to told him that he would not be penalised if he did not make it to Australia House before the polls closed.

In early 2002 the AEC wrote to Tom at his parents' address in Albury. The AEC told Tom that he may be removed from the electoral roll because it appeared that he was no longer living at his enrolled address and he may not have lived in the electoral subdivision for at least the last month. Tom was advised that he should contact the AEC within 20 days of the date of the letter if he believed that he was entitled to remain enrolled.

Tom's mother opened the letter on the day that it arrived. The next day she went in person to the local AEC office and a female employee assured her that Tom would not be removed from the roll because "he has more time before his voting rights cease". Tom's mother provided the AEC employee with Tom's UK contact details.

Several weeks later, another letter arrived addressed to Tom, which informed him that because the AEC had not heard from him within 20 days of the date of the first letter, his name had now been removed from the electoral roll. Tom's mother immediately telephoned the AEC, and spoke to a different employee, who told her that the other employee's advice was wrong, that there was no record of her first visit on behalf of Tom to the AEC office, and that there was nothing more they could do.

It is now over two years since Tom left Australia, so he cannot re-enrol and is therefore disenfranchised while he remains resident overseas.

Why should Peter, Tom, or any other Australian citizen be given only a limited window of time in which to notify the AEC that they want to be treated as an eligible overseas elector? Further, once a person has been removed from the roll, why should they only be allowed to apply for enrolment again within two years of leaving Australia?

The *Commonwealth Electoral Act 1918* should be amended so that any Australian citizen aged 18 years or over who is overseas at the time of an Australian general election, by-election or referendum has the right to enrolment and the right to vote in that general election, by-election or referendum. United States citizens who are overseas when an election is held simply register to vote prior to each election.

If there is a sound policy justification for the two-year deadline, which appears in the Act concerning both overseas enrolment and voting, the Southern Cross Group could find no written record of it.²³ It is submitted that the two-

²³

Section 94A of the *Commonwealth Electoral Act 1918*, making enrolment from overseas possible for the first time, was introduced into the Act shortly before the 1998 federal election, as a result of a recommendation made by the JSCEM in its Report of the Inquiry into all Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto, para. 4.46 to 4.50. The legislative history of the 1998 amendment provides no explanation as to why a two-year time limitation, or any time limitation, was deemed necessary. It would appear that the AEC was in favour of allowing only government representatives on postings outside Australia to enrol from overseas (see AEC Submission 30 of 29 July 1996, para. 4.9.9 and recommendation No. 5 in that submission), but the JSCEM agreed with former Electoral Commissioner Brian Cox that the amendment should not be confined to public servants, but should apply to any person who travels overseas to reside in another country.

At the same time, under Section 94 of the Act, applications to be treated as an eligible overseas elector could only be made within one year of leaving Australia. In 2001, this was changed to two years, to match the period within which a person not enrolled could enrol from overseas.

year limitations in Section 94(1B) and Section 94A(2)(d) of the *Commonwealth Electoral Act 1918* amount to conditions on the exercise of the right to vote which are not based on objective and reasonable criteria. As such, they breach Australia's obligations under Article 25 of the International Covenant on Civil and Political Rights.

Recommendation 1: That Section 94(1B) of the *Commonwealth Electoral Act 1918* be repealed so that an application to be treated as an eligible overseas elector may be made at any time after an Australian citizen ceases to reside in Australia.

Recommendation 2: That Section 94A(2)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an application for enrolment from outside Australia can be made at any time after an Australian citizen ceases to reside in Australia.

1.5.2 Intention to Resume Residing in Australia within Six Years

Section 94(1)(c) of the *Commonwealth Electoral Act 1918* stipulates that an enrolled elector who has ceased to reside in Australia, or intends to cease to reside in Australia can only apply to be treated as an eligible overseas elector if he or she “intends to resume residing in Australia (whether in that Subdivision or elsewhere) not later than 6 years after ceasing to reside in Australia”.²⁴

Similarly, Section 94A(1)(d) provides that a person may only apply for enrolment from overseas if the person intends to resume residing in Australia not later than 6 years after he or she ceased to reside in Australia.

The Southern Cross Group believes that a person's intentions should not be made a factor in determining their eligibility to enrol and vote. Many people do not know what their long-term intentions are when they leave Australia. Even for those that have a particular intention at a particular point in time, often plans change over time for a multitude of reasons.

It must also be noted that the enforcement of this intention requirement by the AEC can only ever be problematic. It would be very difficult for the AEC to ever establish that a person's declaration of intention to return within six years, as stated either on the Application for Enrolment from Outside Australia, or on the Application for Registration as an Overseas Elector, was in truth fraudulently made.

As stated above, the right to vote is one attached to citizenship. A citizen who intends to stay away from Australia for 20 years should not be deemed less worthy of the right to vote than one who intends to stay away for five years. A person's intentions should be irrelevant to their eligibility for enrolment and voting while overseas. Citizenship and age should be the only criteria.

Citizens of the United States retain the right to vote, simply by virtue of their citizenship, regardless of what their intentions are when they leave the United States, and regardless of how long they intend to live outside the United States. The law on overseas voting for US citizens is found in the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* of 1986. This is administered by a special federal agency, the Federal Voting Assistance Program (FVAP). Its goals are to:

- ## inform and educate US citizens worldwide of their right to vote;
- ## foster voting participation;
- ## protect the integrity of, and simultaneously enhance, the electoral process at the Federal, State and local levels.

The FVAP provides US citizens worldwide a broad range of non-partisan information and assistance to facilitate their participation in the democratic

²⁴ Until 1998, the period was three years, instead of six. The extension of the period came about as a result of recommendation 22 in the JSCEM's Report of the Inquiry into all Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto.

process - regardless of where they work or live, and regardless of how long they have been away from the United States. The FVAP provides toll free telephone numbers for US citizens in more than 55 countries.

The United States *National Voter Registration Act* of 1993 was specifically enacted to establish procedures to increase the number of eligible citizens who register to vote at elections for Federal office. In passing this legislation, Congress found that:

1. the right of citizens of the United State to vote is a fundamental right;
2. it is the duty of the Federal, State, and local governments to promote the exercise of that right;
3. discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

The only way in which a United States citizen can lose their right to vote is to be convicted of a felony or found mentally incompetent by a court.

A number of other countries also grant their overseas citizens a right to vote that is completely independent of how long the individual intends to be absent.²⁵

The SCG does not believe that any Government is justified in removing the right to vote, which is a privilege of citizenship, simply because a citizen is living overseas for longer than a certain randomly-defined period. While in the past one may have been able to argue that an Australian citizen overseas could not keep up with developments in Australia while they were away, today, with internet and vastly improved communications and transportation, this is not the case.

It is submitted that the intention limitations in Section 94(1)(c) and Section 94A(1)(d) of the *Commonwealth Electoral Act 1918* amount to conditions on the exercise of the right to vote which are not based on objective and reasonable criteria. As such, they breach Australia's obligations under Article 25 of the International Covenant on Civil and Political Rights.

Recommendation 3: That Section 94(1)(c) of the *Commonwealth Electoral Act 1918* be repealed so that any Australian citizen who has ceased to reside in Australia, or intends to cease to reside in Australia, may apply to be treated as an eligible overseas elector without having to state an intention to resume residing in Australia within any period of time.

Recommendation 4: That Section 94A(1)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an Australian citizen who has

²⁵

André Blais, Louis Massicotte, and Antoine Yoshinaka, "Deciding who has the right to vote: a comparative analysis of election laws", 20 *Electoral Studies* (2001), p. 41-62.

ceased to reside in Australia and is not on the Electoral Roll can apply for enrolment without having to state an intention to resume residing in Australia within any period of time.

1.5.3 Reasons for Leaving Australia

Section 94A(1)(a) of the *Commonwealth Electoral Act 1918* provides that a person may only apply for enrolment from outside Australia if “the person has ceased to reside in Australia for reasons relating to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse”.

The Southern Cross Group has not been able to find any sound policy justification for this limitation in the documentation surrounding the introduction of Section 94A into the Act in 1998.

In fact, the limitation is discriminatory. A person who leaves Australia on an extended holiday, for example to go backpacking around Africa for an indefinite period, who has no intention of working while away, is excluded from enrolling from overseas under Section 94A(1)(a).

Similarly, a senior Australian who is retired and goes overseas to live with relatives for several years is also excluded from enrolling from overseas, merely because of his or her reasons for leaving the country.

The provision would seem to indicate that those who depart Australia for the more noble purpose of employment are somehow more worthy of the right to enrolment and therefore the right to vote while they are overseas. In fact, Section 94A(1)(a) distinguishes between those who go overseas to work or career reasons, or those who accompany a working spouse, and other groups in the Australian community who are not pursuing employment or career opportunities. This sort of distinction between citizens concerning the enjoyment of voting rights has been condemned by the United Nations Committee on Human Rights, as seen above.²⁶

***Recommendation 5:* That Section 94A(1)(a) of the *Commonwealth Electoral Act 1918* be amended by removing the words “for reasons relating to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse”, so that any Australian citizen residing overseas who is not on the Electoral Roll may apply for enrolment regardless of their reasons for leaving Australia.**

1.6 Further Suggestions to Facilitate a More Effective Implementation of the Overseas Voting and Enrolment Legislation

1.6.1 Overseas Correspondence Addresses

²⁶

General Comment 25 to the ICCPR, Adopted by the UN Committee on 12 July 1996, para. 3.

The Southern Cross Group has learned that often overseas Australians do not receive timely information from the AEC concerning their enrolment status. This appears to be because often the AEC only writes to the person at their enrolled address in Australia, or a different address for correspondence in Australia, and the letter never reaches the person overseas.

It is submitted that the AEC should be making more efforts to contact Australian citizens at their overseas addresses directly, where it knows that they are overseas. At present, it would appear that it is not absolutely necessary to provide one's overseas address on the Application Form for Enrolment from Outside Australia and the Application Form for Registration as an Overseas Elector. While both forms provide a space for the person's enrolled address, and a space for a separate postal address for correspondence, that postal address can be the same as the person's enrolled address in Australia, or for example, a PO Box in Australia, so that no overseas address need necessarily be provided.

These forms need to be amended so that an address is given by the applicant at which the applicant can be reliably reached without delay. In some instances, this may involve giving an overseas address as well as an enrolled address or another address for correspondence within Australia. Where the applicant has a stable web-based e-mail account, which is unlikely to change, and which can be accessed from any Internet terminal in the world, this may well be the most desirable means of communication. Applicants should be prompted into thinking about the best long-term contact method for their circumstances and required to indicate this when filling out the forms.

Recommendation 6: That the Application Form for Enrolment from Outside Australia and the Application Form for Registration as an Overseas Elector be amended so as to make it necessary for the applicant to provide to the AEC a postal address either in Australia or overseas, or an e-mail address at which the applicant is sure he or she can be reliably and directly reached without undue delay.

In addition, when a person applies to be treated as an eligible overseas elector, but in fact is no longer on the electoral roll, the Southern Cross Group believes that the AEC should then be under a legal obligation to facilitate as much as possible the person's enrolment from overseas, where they still qualify to enrol from overseas, in order to avoid that person becoming disenfranchised unnecessarily, by contacting them at their most reliable contact address.

Recommendation 7: That Section 94(4) of the Commonwealth Electoral Act 1918 be amended so that where a person applies to be treated as an eligible overseas elector and the person's name is not on the Electoral Roll, the Divisional Returning Officer is required to inform that person in writing at their most reliable contact address that the person should instead apply for enrolment from outside Australia and provide the person with the appropriate application form for such enrolment.

It should also be recognised that while living overseas, Australians move around from time to time and may change their most reliable contact address

if that address is an overseas address, whether it be within a particular city, within a particular country, or between countries. If a person's most reliable contact address is care of a family member in Australia, that family member might move or cease to be the most reliable contact address.

For those who are registered as eligible overseas electors, there is some confusion as to what needs to be done when such a change occurs, even though the person's enrolled address in Australia may not change. For the purposes of encouraging and helping eligible overseas electors to notify the AEC of changes in their most reliable contact address, the Southern Cross Group believes that a Notification of Change of Contact Address Form would mark an improvement.

Recommendation 8: That the Australian Electoral Commission make available a Notification of Change of Contact Address Form so that eligible overseas electors who change their place of residence outside Australia, are facilitated in notifying the AEC of this change of overseas address.

1.6.2 Time Between Issuing of Writs and Closing of Rolls

The length of time between the issuing of the writs once an election is announced, and the closing of the rolls is also a matter of concern to Australian citizens overseas.

For the 2001 election, the election was announced on 5 October. The Writs were issued on 8 October, and the rolls closed at 8 pm on 15 October. This meant that anyone who wanted to update his or her enrolment, by for example applying to be treated as an eligible overseas elector, or by applying for enrolment from overseas, only had a window of ten days in which to act after the Prime Minister's announcement.

This is not an extensive period of time, particularly for citizens overseas. The Application for Registration as an Overseas Elector and the Application for Enrolment from Outside Australia must be returned by either post or fax, and cannot be returned by e-mail. For those overseas Australians without access to a fax, overseas mail delivery times could mean that their applications would not be received on time, even if the overseas citizen had immediate access to the forms online once the election was announced.

The Southern Cross Group notes that legislation to amend the *Commonwealth Electoral Act 1918* and provide for the close of the rolls for an election or referendum for new enrolments at 6 p.m. on the day of the issue of the writs, and for existing electors, wishing to update their enrolment, at 8 p.m. three working days after the issue of the writ, was introduced into the House of Representatives on 14 March 2002.²⁷

²⁷ *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*. The amendment was recommended by the JSCEM after the 1996 election because it was concerned about the potential inaccuracies in the roll caused by the large number of late enrolments received between the issue of the writs and the close of rolls that are not able to be fully checked by the AEC. The 1998 bill proposing these amendments was rejected in the Senate.

The Southern Cross Group strongly opposes this proposed amendment, as it would present yet another obstacle to the effective right to vote for Australian citizens overseas. In the view of the SCG, the present length of time between the issuing of the writs and the closure of the rolls is already too short for overseas Australians.

Recommendation 9: That the time between the issuing of the writs and the closing of the rolls should under no circumstances be reduced.

2 COMPULSORY VOTING AND OVERSEAS AUSTRALIANS

Australia has had compulsory voting at the federal level since 1924. In its work with expatriate Australians over several years, the Southern Cross Group has become aware that many Australian citizens overseas are unclear as to whether they are under a legal obligation to vote when they are outside Australia.

In fact enrolment and voting are not compulsory for Australian expatriates. The legislative provisions that apply are discussed below, as well as the reasons why the Southern Cross Group believes that enrolment and voting should remain non-compulsory for Australian citizens overseas.

Further, in keeping with the fact that voting is not compulsory for expatriates, the Southern Cross Group believes that eligible overseas electors should not be disenfranchised simply because they have missed voting in one or more elections while overseas.

2.1 Compulsory Enrolment and Voting for Citizens in Australia

The Australian Electoral Commission website states:

Every Australian citizen (18 years or older) is required by law to vote. If the citizen is unable to provide a “valid and sufficient” reason for not voting, a penalty is imposed.²⁸

Section 101(1) of the *Commonwealth Electoral Act 1918* makes enrolment compulsory for those in Australia:

Subject to subsection (5A), every person who is entitled to be enrolled for any Subdivision, otherwise than by virtue of section 94, 94A, 95, 96 or 100, whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll, shall forthwith fill in and sign a claim and send or deliver the claim to any Divisional Returning Officer or Australian Electoral Officer.

Section 245(1), in turn, makes voting compulsory:

It shall be the duty of every elector to vote at each election.

In addition, failing to vote is an offence:

An elector is guilty of an offence if the elector fails to vote at an election.²⁹

²⁸ http://www.aec.gov.au/_content/what/voting/voting.htm

²⁹ Section 245(15), *Commonwealth Electoral Act 1918*.

2.2 Non-Compulsory Enrolment and Voting for Australians Overseas

The compulsory enrolment requirement in Section 101(1) of the *Commonwealth Electoral Act 1918* does not apply to overseas Australians, who are covered by Sections 94, 94A, and 95 of the Act.

With regard to compulsory voting, the Divisional Returning Officer is not required to send a penalty notice to an elector who has failed to vote if he or she is satisfied that the elector was absent from Australia on polling day.³⁰ In addition, eligible overseas electors are exempt from Section 245 of the Act, which sets out the formalities for penalty notices, fines and the corresponding offences.³¹

While Section 94(1) of the Act provides enrolled voters leaving Australia with the opportunity to apply to be treated as an eligible overseas elector, that Section is couched in terms that make it clear that it is not compulsory to make such an application:

An elector who:

- (a) is enrolled for a particular Subdivision of a Division; and
- (b) has ceased to reside in Australia, or intends to cease to reside in Australia; and
- (c) intends to resume residing in Australia (whether in that Subdivision or elsewhere) not later than 6 years after ceasing to reside in Australia;

may apply to be treated as an eligible overseas elector. (emphasis added)

Similarly Section 94A(1) of the Act, which provides for enrolment from outside Australia, states:

A person *may* apply to the Australian Electoral Officer for a State for enrolment for a Subdivision in that State if, at the time of making the application:

- (a) the person has ceased to reside in Australia for reasons relating to the person's career or employment or for reasons relating to the career or employment of the person's spouse; and
- (b) the person is not enrolled; and
- (c) the person is not qualified for enrolment, but would be so qualified if he or she resided in a Subdivision of a Division, and had done so for at least a month; and
- (d) the person intends to resume residing in Australia not later than 6 years after he or she ceased to reside in Australia. (emphasis added)

2.3 Voting and Enrolment Should Remain Non-Compulsory for Expatriates

The Southern Cross Group submits that it would be impossible, purely at a practical level, to ever introduce compulsory enrolment and voting for citizens physically outside Australia. With approximately 645,000 Australian citizens of eligible voting age living overseas as at the end of 2001, the Australian Electoral Commission could never hope to keep tabs on such a large and disparate group of people. Voting from overseas will always be much more difficult than voting within Australia, due to the relatively small number of

³⁰ Section 245(4)(b), *Commonwealth Electoral Act 1918*.

³¹ Section 245(17), *Commonwealth Electoral Act 1918*.

polling places overseas (100 for the 2001 federal election) and the delays in postal voting due to mail systems in different countries. Some Australians overseas are by definition, tourists or continuously mobile.

Further, while overwhelmingly expatriates have told the Southern Cross Group that they wish to still participate in the Australian electoral process and that they are frustrated at the fact that the law presently disenfranchises many individuals overseas, occasionally Australians overseas have commented that they do not wish to vote in Australia, because they feel that they are too out of touch with events at home to make an informed and responsible decision at election time due to their extended absence. One Australian woman e-mailed the Group in the following terms:

I live in the US now, I pay taxes here, and my knowledge of current affairs is mostly US based. I try to keep abreast of what is happening in Australia but I simply haven't the time.

I have prided myself in the past of being an informed voter but I don't believe that I am well enough informed to place an intelligent/informed vote from Atlanta, GA.

The arguments for and against compulsory voting for those Australians in Australia on election day have been canvassed at length elsewhere, including by the Joint Standing Committee on Electoral Matters in its reports following previous inquiries.³² It is not within the scope of this submission, or indeed within the mandate of the Southern Cross Group, which speaks on behalf of Australians overseas, to make any recommendation as to whether voting should remain compulsory for electors in Australia. However, it is the position of the Southern Cross Group that whether or not enrolment and voting remain compulsory for electors in Australia, these obligations should never be extended to Australians overseas.

Recommendation 10: That voting and enrolment for Australian citizens aged 18 years or over who reside outside Australia remain non-compulsory.

³² See, for example, Joint Standing Committee on Electoral Matters, Report of the Inquiry into all Aspects of the Conduct of the 1996 Federal Election and Matters Related thereto, June 1997, paras 3.1 - 317; Joint Standing Committee on Electoral Matters, Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto, June 2000, paras. 4.32 - 4.36.

2.4 The “Use it or Lose it” Provision

Although the law makes clear that enrolment and voting are not compulsory for Australians overseas, there is a particular anomaly in the *Commonwealth Electoral Act 1918* which does not sit well with this fact, and which amounts to another way under the Act by which overseas Australians can become permanently disenfranchised. This is what the Southern Cross Group has dubbed the “use it or lose it” provision.

Section 94(13)(c) of the *Commonwealth Electoral Act 1918* provides:

A person ceases to be entitled to be treated as an eligible overseas elector under this section if:

- (c) while the person is being so treated, a general election is held at which he or she neither votes nor applies for a postal vote.

Once the Divisional Returning Officer becomes aware that the person has ceased to be entitled to be treated as an eligible overseas elector by virtue of Section 94(13)(c), he or she must cancel the person’s enrolment.³³

The Southern Cross Group is not in any way claiming that overseas electors are not being made aware of this provision. Indeed, the AEC form Application for Registration as an Overseas Elector says:

It is not compulsory for people outside Australia to vote. However, if you do not vote, or apply for a postal vote, your registration and electoral enrolment may be cancelled.³⁴

In a similar vein, the Information on Enrolling from Outside Australia page which accompanies the AEC’s Application for Enrolment from Outside Australia states:

Enrolment and voting by people outside Australia is not compulsory. However, if you are enrolled and you do not vote, or apply for a postal vote at a federal election, your electoral enrolment may be cancelled.³⁵

The use of the word “may” on both forms is somewhat misleading, when one considers that the Divisional Returning Officer is actually under a legal obligation to cancel an eligible overseas elector’s enrolment if they do not vote while overseas, once this fact is discovered. Due to the fact that the person’s name will not have been marked off on the electoral roll at the time of the election, the AEC will always become aware when an eligible overseas elector has not voted while overseas.

The fact that an eligible overseas elector can be deleted from the electoral roll because he or she has failed to vote in one election is highly inequitable. The law is very clear that enrolment and voting are not compulsory when a person is overseas. Section 94(13)(c) is inconsistent with this fact, because, when understood in the context of the other provisions in the Act on overseas

³³ Section 94(14)(b), *Commonwealth Electoral Act 1918*.

³⁴ <http://www.perform.net.au/ElectoralForms/ER022E.pdf>

³⁵ <http://www.perform.net.au/ElectoralForms/ER016.pdf>

enrolment and voting, it essentially says to the eligible overseas elector, “If you choose to enrol, then you must exercise your right to vote at every single election, otherwise we will cancel your enrolment and therefore your right to vote in future elections while you are overseas”.

The plain fact of the matter is that when the Divisional Returning Officer cancels an eligible overseas elector’s enrolment under Section 94(14)(b), in almost all cases the expatriate concerned will be prevented from re-enrolling for the next election, due to the restrictions on enrolment from overseas imposed by Section 94A(2)(d) in particular. An application for enrolment from outside Australia can only be made within 2 years of the day on which the person making the application ceased to reside in Australia.

The Southern Cross Group believes that there are many reasons why an eligible overseas elector may miss voting at a particular election. As many individual overseas Australians have made clear in their personal submissions to the JSCEM during this inquiry, there are numerous obstacles to voting overseas, even when an eligible overseas elector has the best will in the world.

It is difficult to understand what policy rationale could lie behind Section 94(13)(c). The law imposes an obligation on Australians in Australia to enrol and vote. If an elector in Australia misses an election at their enrolled address they are under an obligation to enrol at their new address for the next election. From this it would seem that the Government wants to encourage full participation. But for Australian citizens overseas, the relevant provisions in the law are bent on making sure that the entitlement to vote is lost as soon as one election is missed, and that the person is then “written off” for the purposes of electoral participation while they remain overseas.

Does the Government consider that eligible overseas electors should be “punished” for missing one election by wiping them off the electoral roll for good while they remain overseas? How is this stance consistent with the fact that voting is not compulsory while a citizen is overseas? If voting is not compulsory, surely an overseas Australian should be able to miss one or more elections without their right to vote being taken away.

Why does the AEC state on its forms that a person’s enrolment “*may* be cancelled” rather than “*will* be cancelled”? Perhaps the AEC is not in fact always strictly enforcing Section 94(14)(b) when an eligible overseas elector misses an election. Nevertheless, the fact that an eligible overseas elector can under the law be deleted from the electoral roll following one missed election is highly inequitable. For that reason, Section 94(13)(c) should be repealed.

Where the AEC discovers that an eligible overseas elector has missed voting in an election, the Southern Cross Group submits that the elector should not be deleted from the electoral roll so hastily. A cancelled enrolment under Section 94(14)(b) as a result of Section 94(13)(c) will in most cases, when read in conjunction with Section 94A, mean that the particular overseas Australian is disenfranchised for future elections which take place while he or she continues to reside overseas.

Elsewhere in this submission the Southern Cross Group has advocated that the AEC should maintain a database of the most reliable contact details of eligible overseas electors alongside their address in Australia for which they are enrolled. The AEC should make every attempt to contact the eligible overseas elector, both at their enrolled address in Australia, and at their most reliable contact address. There should be no obligation on the elector to provide any sort of explanation for why he or she did not vote, because it is not compulsory for the elector to vote while overseas. The AEC should however use its best efforts to establish whether the eligible overseas elector is still overseas. If the person has in the meantime returned to Australia, or no longer wishes to be enrolled while living overseas, the roll can then be updated accordingly. If the person is still overseas and wants to remain on the roll, then the AEC should leave them on the roll, but take the opportunity to update their overseas address where relevant.

Recommendation 11: That Section 94(13)(c) of the *Commonwealth Electoral Act 1918* be repealed so that an eligible overseas elector does not cease to be entitled to be treated as an eligible overseas elector simply because a general election is held at which he or she neither votes nor applies for a postal vote.

3 ACCESS TO INFORMATION

As stated at the outset, the Department of Foreign Affairs and Trade (DFAT) estimated earlier this year that at the end of 2001 there were some 859,000 Australians living permanently overseas. If the number of Australians temporarily (defined as less than twelve months) overseas is added to that number then the total number overseas at any given time will be well in excess of 1 million – more than 5% of the total population.

Based on its experience, the Southern Cross Group believes that this Diaspora represents a significant national asset. This asset has to date been poorly recognised, supported and utilised by Australian governments, government agencies and political parties. The SCG notes the support provided to their Diasporas by other nations, for example Austria, Cyprus, Italy, France, Greece, Ireland, Portugal, San Marino, Spain, and Switzerland.³⁶

A common thread in comments to the Southern Cross Group by overseas Australians is the difficulty experienced in accessing, from overseas, information on government-level administrative procedures and processes, being information readily available within Australia through Government advertising and shopfronts, and/or media coverage.

This has been particularly so in relation to electoral matters at both the federal and State/Territory levels.

There are problems associated with:

- ## requirements on initial departure from Australia;
- ## registering as a new voter from overseas;
- ## registering as an overseas voter once permanent residence overseas is established;
- ## alerting overseas Australians to the calling of elections or referenda;
- ## seeking and receiving postal votes and/or knowledge of overseas polling places at which absentee votes may be cast;
- ## lodgement of postal votes within the allowed timeframe;
- ## lists of candidates for both upper and lower house electorates. (An associated problem here, although outside the responsibility of the Australian or State Electoral Commissions, is related to ascertaining the policies of individual candidates and political parties).

In its submission of 6 July 2001 in response to the Government's discussion paper on the proposed repeal of section 17 of the *Australian Citizenship Act 1948*, the Southern Cross Group drew attention to the difficulties generally associated with accessing government information from outside Australia. It recommended as follows:

³⁶ For an extensive discussion on the treatment of their Diasporas by a number of countries see "Links between Europeans living abroad and their countries of origin", Doc. 8339, A report of the Committee on Migration, Refugees and Demographies of the Council of Europe, 6 March 1999 available at <http://stars.coe.fr/doc/doc99/edoc8339.htm>.

“ Recommendation 10: The Southern Cross Group recommends that the Government establish an Australia-based agency or group within the Department of Immigration and Multicultural Affairs (DIMA), to act as a focal point for the dissemination of Government information to Australians living overseas and to ensure that Government services are more accessible to Australians overseas.

It has become abundantly clear to the Southern Cross Group during its Section 17 campaign that Australians living overseas face considerable difficulties in finding authoritative information about the laws and administrative processes of their country of citizenship and changes and developments which are taking place in relation to them. The SCG is fortunate in that it has developed, as part of its research resources, a network of part-time monitors. In respect of Australia, they try to monitor the Australian media and Commonwealth Parliamentary proceedings for matters which affect, or could affect, Australians living overseas. In light of the Group's limited resources as a volunteer organisation, it is a far from complete coverage.

Compared with some other countries, the Commonwealth Government websites contain a wealth of well-presented and informative material for the benefit of all Australians. However, of necessity and, largely as a reflection of the Administrative Arrangements Orders, it is difficult for the uninitiated to navigate to all of the material appropriate to an individual's particular set of circumstances. This is particularly the case for overseas Australians who do not have the convenience of dropping into a shopfront or placing several simple phone calls to locate the appropriate source of information.

Since its formation, the SCG has received many e-mails and telephone enquiries from Australians overseas who ask us to clarify their particular citizenship status, or ask us for information which is in fact available on-line, but which they have themselves not been able to locate.

The Group is aware of a number of cases in which Australian Embassies and Consular services have, in the past, provided incomplete and/or incorrect information on citizenship issues. Some of these cases have been documented in current submissions before the Department. We also have had put to us a number of instances in which agencies of foreign governments have provided incorrect advice on the Australian law on dual citizenship.

With regard to Australian taxation law for overseas Australians, it is the SCG's experience that there is considerable confusion as to what an individual's obligations may be when a non-resident of Australia. Although some individuals are able to invest in professional advice in order to ensure that they fulfil their obligations, not all overseas Australians have this luxury.

The problem lies not in any desire to make information difficult to access, or in carelessness in providing the information, but in the sheer volume and variety of information that is available and needed, and the fact that the information stays static for such a short time. The Internet, of course, has allowed the Government to be a leader in the dissemination of timely information and there are many excellent official websites as a result of this.

For all these reasons, the Southern Cross Group considers that it would now be opportune, in light of the almost one million Australians overseas, for the Government to put in place administrative arrangements within the Department of Immigration and Multicultural Affairs for a central information coordination point. This agency should have as its mandate the responsibility of making sure that all Government information, from whatever area of Government, which is relevant to Australians overseas, can be easily accessed. In doing this, overseas Australians would have better access to the Government services they require.

For ease of reference, we will term this group the Overseas Australians Agency (OAA). The responsibilities of the OAA could include:

The establishment of an Overseas Australians Website (OAW) on which are posted well-described links to sources of Government information relevant to Australians overseas. While not an exhaustive list, the links could cover:

- ≠ Both Commonwealth and State Government matters;
- ≠ Citizenship;
- ≠ Passports;³⁷
- ≠ Immigration and short-term entry arrangements (as an aid to Australians who are frequently asked for information by non-Australians contemplating migration or visits to Australia);
- ≠ Information on how to renew Australian driving licences while outside of Australia and information on countries with which Australia has reciprocal arrangement on the recognition of driving licences, if any;³⁸
- ≠ Official sites on Australian tourism;
- ≠ Electoral matters;
- ≠ Social security matters including bilateral agreements;
- ≠ Health coverage under Australia's reciprocal Medicare arrangements in various countries;
- ≠ Taxation including taxation agreements with other countries and the e-mail lodgement facility for personal income tax returns;
- ≠ Advice for Australians travelling overseas as currently available on the DFAT site;
- ≠ Customs and quarantine information;
- ≠ Inheritance, family and other law;
- ≠ Adoption of non-Australian children;
- ≠ Trade agreements and other international instruments to which Australia is a party;
- ≠ Parliamentary proceedings, particularly notice of Committee hearings, Government inquiries, and new bills which may impact upon overseas Australians, or to which overseas Australians may want to provide input relevant to their overseas experience;
- ≠ Links to Australian media sites, for example via the National Library website;
- ≠ General sources of information about Australia, such as the National Library.
- ≠ Establishment of an Overseas Australians Database (OAD) in which those accessing the OAW would be invited to record their contact details, interests and

³⁷ The Southern Cross Group notes that at present, Passport Application forms are not available on-line.

³⁸ Australians who holiday overseas can drive on their Australian licence with an International Driving Licence. However, for Australians who become resident in an overseas country, most countries require the Australian to obtain a local driving licence. Sometimes this can involve sitting both a practical and theory test and considerable expense. The Southern Cross Group notes that the United States has a number of reciprocal agreements with other countries which allow licences to be simply exchanged without the need to pass a test.

other appropriate matters on a voluntary and private basis;

- €# Publication of a regular free e-bulletin notifying important issues, new links added to the website, or substantive changes that have occurred on the existing linked sites. People would subscribe to the e-bulletin via an invitation on the OAW;
- €# Provided the links on the OAW lead to appropriate contact details for each Government agency responsible for each of the linked sites, SCG would not see that the OAA would have any responsibility for responding to, or otherwise processing, requests for advice from Australians using the site;
- €# Ensuring that all Ambassadors, Consuls-General, and Consuls, together with all Australia-based staff are aware of the OAA and the OAW prior to departure for their overseas posting. The awareness campaign should also cover Honorary Consuls and all locally engaged staff at overseas missions;
- €# Ensuring that the existence of the OAW is well publicised within Australia and overseas, and that all Australians leaving Australia on either a short or long-term basis are advised of its existence as part of their travel documentation;
- €# Consideration might also be given to making Ambassadors and Consul-Generals to Australia of other countries and appropriate government agencies in those countries, aware of the existence of the website.

The SCG believes that, given the relative efficiency and low cost of the Internet for this type of dissemination process, the cost of maintaining the OAA, the OAW and the OAD would require a minimum of annual budget outlays. ”

That recommendation does not seem to have been taken up by Government.

Nevertheless, some positive steps have been taken. In his media release of 7 March 2002, the Minister for Foreign Affairs announced the establishment of a new Online Registration service for Australian travellers

“...I am also launching today a further reform - the Department's new Online Registration service for Australian travellers.

From today, Australians can register their details with the Department on one central website when they travel abroad. This information can be used to help locate Australian travellers in the case of natural disaster, medical emergency, civil disruption or personal tragedy.

While all Australians are welcome to register, this service is primarily for citizens planning to live overseas for a substantial period of time or those Australians who have specific concerns about security risks based on our travel advisories.

Effective from today, the registration service can be accessed through the Department's website www.dfat.gov.au/travel under 'Registration Services'.”

The Southern Cross Group applauds this initiative and in support carries on its own website advice that overseas Australians should register with DFAT and provides a link to the Registration Form.

Nevertheless, we note that the new service is merely aimed at establishing a database of contact information that, seemingly, will be used to reach overseas Australians as and when necessary within the scope of accepted DFAT responsibilities. We suspect its establishment was an imperative post

11 September 2001 when the Department experienced difficulties in checking the status of overseas Australians, particularly in the USA where our Embassies and Consulates had dropped the former practice of maintaining voluntary registers of Australians living and working within their respective regions.

We would assume that current requirements relating to the privacy of data under the *Privacy Act 1988* would prevent DFAT from sharing contact information with other government agencies.

The Southern Cross Group remains committed to the need for an Overseas Australians Website (OAW) as described above but now recognises that inter-departmental and inter-governmental rivalries and, perhaps, indifference make the achievement of this objective difficult. Thus we are here recommending the establishment of a Parliamentary Inquiry and/or Inter-Departmental Committee to identify and quantify the issues involved.

Further, we believe that associated with the OAW there should be established an Overseas Australians Database (OAD) in which those accessing the OAW would be invited to record their contact details, interests and other appropriate matters on a voluntary and private basis. This might subsume the DFAT Online Registration Service for Australian Travellers, but not the AEC Online Register of Overseas Electors recommended later in this submission.

Based on our recent experience in facilitating the collection of survey data from overseas Australians by consultants commissioned by the Department of Immigration, Multicultural, and Indigenous Affairs (DIMIA) and the Victorian Government, the Australian Diaspora has much to contribute from the overseas perspective in defining Australia's policies in a wide range of subjects, both National and International. Access to contact information, in particular e-mail addresses on the OAD by Government agencies and consultants would allow them to draw on the experience and training of many talented and interested individuals and significantly broaden the input on such matters. It would certainly enhance the sense of belonging to Australia for overseas Australians and engage many who now feel estranged from their country of citizenship.

Recommendation 12: That a Parliamentary Inquiry and/or an Interdepartmental Committee be established to explore the ways and means by which the Australian Diaspora may be better supported and utilised.

4 ELECTRONIC VOTING

The Southern Cross Group has noted recent trials of electronic voting in the ACT and Ireland and plans announced by the German government to use the Internet at all voting bureaux by 2006.³⁹

In the case of the Australian Capital Territory we note from the recent report of the ACT Electoral Commission on the experiment with electronic voting⁴⁰ that the process was considered to be very successful and that the Commission has recommended a significant expansion of the system to allow voting at a wider range of polling places at the next ACT election in 2004. We also note that the Commission currently feels that there are some difficulties with expanding the process to allow electronic voting by individuals over the Internet rather than at the fixed polling places.

Generally, the SCG supports the use of electronic voting along the lines of the ACT experiment as a move to adopt new technologies in the electoral process and believes that it should be adopted for future federal and State/territory elections. It is unlikely, however, to have much impact on the casting of votes by overseas electors except in those overseas locations such as London, Washington, and other Embassies, High Commissions and Consulates in North America and New Zealand which have significant clusters of overseas Australians and at which electronic voting facilities could be located.

Ultimately, in the medium term we would hope and urge that a capacity for electronic voting over the Internet will be developed. Such a development would no doubt increase the effective involvement of those overseas Australians who currently suffer difficulties or exclusion because of poor postal services. We believe also, that Internet voting would be a much-welcomed facility for those living at remote locations within Australia.

In the case of the Republic of Ireland experiments with electronic voting and counting at the May 2002 national election we understand from media reports at the time that the experiment conducted at several polling places was considered successful. In the March 2002 Information Paper issued by the Irish Department of the Environment and Local Government⁴¹ it is explained that its Integrated Election System (IES) was adapted from a system first developed in the Netherlands in 1988, and subsequently adopted in Germany. In each country country-specific election rules were incorporated into the software. Ireland's use of the software represents the first time the software has been adopted by a country for all election types (comprising local, general, Presidential and European elections and referenda). The Irish system does not include voting by individuals over the Internet.

³⁹ E-Votes at Home Coming, an article in *The Australian* newspaper, 21 May 2002. "The German government wants all voting bureaux brought online by 2006 so electors can cast their ballots at any station in the country, chancellor minister Hans Martin Bury says. Online democracy would encourage more people to take part, he says. Bury says his announcement is just the first step towards wider use of the Internet during elections."

⁴⁰ The 2001 ACT Legislative Assembly Election – Electronic Voting and Counting System, ACT Electoral Commission, Canberra, 19 June 2002.

⁴¹ Direct Vote Recording / Electronic Vote Counting System, an Information Paper issued by the Department of the Environment and Local Government, Dublin, March 2002.

From our informal contacts with the Department in Dublin we understand that a formal review is unlikely as "... they knew what happened ..." and are quite happy with the result. Present plans are to extend the facility, with some modifications, to all constituencies at the next election.

Recommendation 13: That further research into electronic voting and enrolment methods be pursued as a matter of urgency with a view to their introduction and use as a way of supporting the exercise of the right to vote by Australians overseas.

5 REGISTER OF OVERSEAS VOTERS

The objective of this recommendation is to overcome the common complaints that lack of information, timeframes for overseas voters, the vagaries of postal services, and distant locations of Australia's Embassies and Consulates all work against effective participation by overseas electors.

The core reason underlying these complaints lies in the fact that Australia, at the federal and most State/Territory levels, does not have fixed term elections with fixed election dates. A fact that is unlikely to change in the foreseeable future. Thus, the following comments are made within the context that the lead-time between the calling of an Australian election and Election Day is relatively short and that hitherto conventional means of communication have proved to be inefficient.

By way of preliminary comment we draw attention to the procedures available to overseas New Zealanders with respect to the forthcoming New Zealand election. Elections New Zealand makes extensive use of the Internet in facilitating the inclusion of its overseas electors in the election process both in enrolling and in downloading ballot papers from its website.⁴²

In respect of the recommended Register of Overseas Electors it is envisaged that:

- ## advice about the availability and use of the Register would be included in information packs available to overseas travellers, for example DFAT brochures and websites, and those provided by many travel agencies. It would also be possible to arrange the hand out of an AEC brochure to all departing Australian travellers at the time the DIMIA Departure Card is issued.

The DFAT website and form relating to the Online Registration service for Australian travellers should also include information on the Register of Overseas Electors and a link to the relevant page of the AEC website, as would the Overseas Australians Website if and when established.

- ## individuals would register online using forms similar to the *Overseas Elector Application* (Form ERO22E), *Application For Enrolment From Outside Australia* (Form ERO16 (OS)); or the *Application to Enrol as the Spouse or Child of an Overseas Elector* (Form ERO16 (K)).

The present requirements for declarations by witnesses on the Forms ERO16 (OS) and ERO16 (K) could be overcome by requiring the inclusion of Australian passport details (number, and date and place of issue) which, if necessary, could be checked with the Passport Office. New legislative cover may be necessary to allow matching of data held by the AEC and the Australian Passports Office;

⁴² See www.elections.org.nz and the page on voting from overseas at <http://www.elections.org.nz/votin/overseas.html#2>.

- ## the online forms to indicate that an e-mail address is necessary if advice on the calling of elections and/or other advice from the AEC is to be sent to the elector by e-mail. Indeed, it may be appropriate to insist that all registered overseas electors provide an e-mail address as a condition of registration.

Those persons without an established ISP-based e-mail address could be encouraged to establish an account with one of the free web-based e-mail services, for example Hotmail or Yahoo, for this purpose. Such accounts are now commonly used by travellers as they are readily accessible from any computer linked to the Internet from anywhere in the world, including the ever present Internet cafes.

- ## the input forms could include an option that overseas electors may select to have their registration data, including e-mail address, released on request to registered political parties to facilitate the distribution of party electoral material immediately prior to elections.

- ## security over subsequent elector access to amend the registered data to be controlled via an AEC generated registration number and a password provided by the AEC or generated by the elector. This would be similar in nature to the security arrangements for Internet banking exercised by the Australian banks. The use of encryption software by the AEC would probably be necessary in this process.

Requests for removal from the Register and/or registration at a new address on the elector's return to Australia should be possible online under the same secure arrangements.

- ## to provide certainty to the overseas elector the receipt of all registration messages and any subsequent messages amending data would be acknowledged by the AEC via automatically generated responses.

- ## the AEC would generate e-mail messages to all registered overseas electors who have recorded an e-mail address when elections or by-elections are called, or other information of importance to overseas electors, for example changes to electorate boundaries or "Yes" and "No" cases for referenda, arises.

The message regarding forthcoming elections to contain a link to an online form *Request for an Overseas Postal Vote* that the elector may complete and securely lodge over the Internet using his/her registration number and password.

A logical extension of this request process would be the return delivery by the AEC of the appropriate ballot paper as an attachment to an e-mail message to the overseas elector so as to avoid postal delays in forwarding the ballot paper to the elector. Until such time as direct voting over the Internet becomes possible, the authenticity of postal votes issued under this method could be ensured by providing a cover sheet to be completed by the elector and included in the external

envelope when the elector posts the ballot paper.

- ## when an election is anticipated or called the AEC to place an appropriate notice on the Overseas Australians Website (if established) with a reminder to registered overseas electors that they should check the accuracy of their personal data on the Register of Overseas Electors and, in particular, the correctness of their e-mail address by a nominated cut-off date.

This process is aimed at reducing to a minimum the existence of dead e-mail addresses.

- ## information to be provided on the covering envelope/statement for all postal and absentee votes by registered overseas electors to include the elector's registration number.

On receipt of the ballot paper by the Returning Officer, the Register of Overseas Electors would be noted to the effect that the elector had voted in that election. In due course, those registered as overseas electors who have not lodged a ballot paper would receive an automatically generated e-mail message requiring a response if the elector wishes to remain on the Register of Overseas Electors. (This assumes that voting by overseas electors continues to be non-mandatory).

- ## if, in time, Australia moves to procedures encompassing optional voting over the Internet by individual electors from, for example, home computers, data in the Register of Overseas Electors would provide a secure base to allow Internet voting by overseas electors.

Recommendation 14: That regardless of the outcome in respect of other recommendations in this submission, the AEC establish a Register of Overseas Electors as an online database, accessible by registered individuals, to maintain up-to-date voter details; to notify the calling of elections; and to facilitate the control of postal and absentee votes by overseas electors.

6 CONCLUSION

For too long, overseas Australians have traditionally been “out of sight and out of mind”. With the campaign over several years to have Section 17 of the *Australian Citizenship Act 1948* repealed, decision-makers in Canberra heard from the Australian Diaspora collectively and effectively for the first time in Australia’s history.

Now it is time for expatriates to be listened to again. Many of their voices are presently prevented by law from speaking through the ballot box. The discrimination which Australians overseas suffer as a group with regard to voting and enrolment has, until now, not been even peripherally understood in Australia. Indeed, several rather glib statements made recently concerning the extent of the right to vote in Australia serve to demonstrate this, and could only have been made by individuals who do not yet have any real comprehension of the extensive and modern-day disenfranchisement of a significant group of Australian citizens.

On 10 June 2002, in a media release marking the centenary of women’s right to vote in Australia, Australian Electoral Commissioner Andy Becker stated:

Over the last 100 years there have been significant reforms to our electoral system to make it today a world’s best system which all Australian electors are proud to participate in.⁴³

Mr Becker went on to say that “the Australian Electoral Commission continues to administer a federal electoral system which meets the high expectations of all Australian voters”. Indeed, in 1962 the Aboriginal people were granted “without exceptions” the right to enrol and vote.

Further, Senator the Hon. Eric Abetz, Special Minister of State, was recently quoted in a media release issued from his own office as saying that it is “easier to get onto the electoral roll than to hire a video”.⁴⁴

Let the record state that Australian citizens overseas do not share these views. Not only are they often prevented by law and lack of information from enrolling to vote, once on the electoral roll they have great difficulty remaining on it and face many practical difficulties in actually voting. Not only are legislative reforms a necessity, more must be done by the AEC to facilitate voting by those overseas. A federal electoral system which disfranchises in the order of half a million citizens of eligible voting age cannot be said to be a “world’s best system”. It certainly does not meet the expectations of all Australians.

⁴³ “Australia celebrates the 100th anniversary of women’s right to vote”, AEC Media Release of 10 June 2002.

⁴⁴ Media Release by Senator the Hon. Eric Abetz, “Labor and Democrats Block Electoral Reform”, 16 May 2002.