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The Committee Secretary
 Joint Standing Committee on Electoral Matters
 Parliament House
 Canberra ACT 2600
 AUSTRALIA

Joint Standing Committee on Electoral Matters	
Submission No.	59
Date Received	27/6/02
Secretary	<i>[Signature]</i>

Submission

Dear Sir,

This submission is made on behalf of the 15 Australian New Zealand-American Chambers of Commerce in the United State of America (the "Chambers"), with their several thousand individual Australian members, in response to the JSCEM's invitation for public comment as part of its Inquiry into the Conduct of the 2001 Federal Election.

The Chambers are almost wholly organized, staffed and run by Australian volunteers who contribute a tremendous amount of their personal time, effort and support to advancing the commercial, cultural, and social relations between Australia and the United States of America. That the Chambers make a significant contribution to advancing Australia's interests in the United States is readily acknowledged by the Australian Department of Foreign Affairs and Trade and Austrade. Many of our loyal Australian members, however, are unable to exercise their right as Australian citizens to participate in Australia's representative democracy.

We submit that the *Commonwealth Electoral Act 1918* (the "Act") is outdated, and arbitrarily, unjustly, and needlessly deprives many Australian citizens overseas of their right to participate in the election of representatives. The Act needs to be brought up to date to recognize the way Australians live and work in today's world.

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The following are specific comments relating to particular provisions of the Act adversely affecting Australian citizens residing outside of Australia:

1. Australian Citizens Overseas

The Department of Foreign Affairs and Trade has estimated that in 2001, there were approximately 860,000 Australians overseas. If three-quarters of that population is of eligible voting age, approximately 645,000 overseas Australians should be able to vote. In the November 2001 election, however, less than one-tenth of this number had votes issued to them overseas. Many of those who voted overseas would have been tourists, rather than those actually residing overseas. It is an inescapable fact, however, that many Australians overseas who did not vote are simply not entitled to vote under the relevant provisions of the Act. One must conclude, therefore, that several hundred thousand Australian citizens overseas are disenfranchised, perhaps as many as 500,000.

Many of the Chambers' Australian members were extremely disappointed that they were not able to vote in the 1999 Referendum on the Republic, a matter of great importance for the future of Australia.

British subjects who are not Australian citizens, but who are resident in Australia and who were on a Commonwealth Electoral Roll on 25 January 1984 were eligible to vote in the referendum on the Republic, whereas many Australian citizens living overseas were prevented from doing so. While the exact number of non-Australian citizens on the Electoral Roll today seems to be unknown, media reports would indicate that between 200,000 and 600,000 non-Australians were able to vote in the Referendum on the Republic.

It is destructive of the concept of Australian citizenship that a non-Australian should be able to vote on an issue of such critical importance for Australia's future, as well as in federal elections, when up to 500,000 Australian citizens are prevented by the law from doing so. The right to vote is, after all, a fundamental right attached to citizenship. A poll taken by AGB-McNair in August 1996 indicated that over 80 percent of Australians believe that only Australian citizens should have the right to vote in Australian elections and referendums.

2. Enrollment from Overseas

Amendments to the *Commonwealth Electoral Act 1918* made just before the 1998 federal election have allowed Australians to Enroll to vote from overseas for the first time in history. Clearly, this was a welcome improvement.

The limitations attached to this mechanism, however, render it useless for many overseas Australians.

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2.1 Prerequisites for Enrollment from Overseas

2.1.1 Two-Year Time Limit

The two-year time limitation on Enrollment from overseas is inexplicable. It is hard to understand what possible policy justification lies behind the requirement that one can only enroll to vote from overseas within two years of leaving Australia.

For those Australians who left Australia to live overseas more than just a few years ago, the provision is useless. They had already been wiped off the electoral roll long ago and, at the time the provision was introduced, had probably left Australia much longer than two years before.

Even for those who have left Australia more recently, the provision is extremely limiting, especially when combined with the total lack of information, which is made available on overseas voting and Enrollment to Australians departing the country. A person in the middle of a move to live overseas will rarely think to check the AEC website, the only Government source where proper information is provided. Until an election is imminent, an Australian who has recently moved overseas may not think to address the issue of his or her Enrollment status.

Almost all Australian citizens are already on the electoral roll (indeed it is a legal requirement for Australian citizens aged 18 or over) when they leave the country. Most will actually stay on the roll for a period of months or several years after they leave Australia, even if they do not tell the AEC that they have left Australia. This is because it will take the AEC some time to realize that they have left. If a person is wiped off the electoral roll, very often it will not be until two years after they left the country, and by the time they discover that they have been wiped off, perhaps just before the next federal election, the two-year window of opportunity will be long since past.

Re-enrollment is then impossible for the person, unless he or she returns to live at an address in Australia for one month or more. A person who is prevented from enrolling to vote is effectively disenfranchised.

It is submitted that there is no relevant or sound policy justification for limiting the period for enrollment from overseas to two years after the date of departure. Any Australian citizen should be able to enroll to vote, at any time. Enrollment at any time is possible for those Australian citizens living in Australia. It should also be possible for Australian citizens living overseas.

United States citizens living overseas may vote no matter where they live or how long they have been away from the United States. Before each election, they simply register to vote. For example, notices are currently appearing in English language publications in Belgium encouraging US citizens to register to vote in November, in the following terms:

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American Elections Voter Registration

You can register for the November elections on June 22 at the American College in Leuven, 100 Naamsestraat, from 14.00 to 16.00. Bring your passport, social security number and address of your last residence in the US. Email Gail Fagan at gafagaen@tiscali.be for details.

2.1.2 Reasons for Leaving Australia

Another restrictive prerequisite for overseas enrollment concerns the reason for leaving Australia. Enrollment from overseas is currently only possible if a person has ceased to reside in Australia "for reasons related to the person's career or employment or for reasons relating to the career or employment of the person's spouse".

An Australian citizen and passport holder has the right to enter and leave Australia at any time. The reasons why a person leaves the country should be irrelevant to their right to vote. What policy justification could possibly be presented to limit the category of those who can enroll from overseas to those who go overseas for work reasons, and their spouses?

The Act appears to presuppose that it is acceptable for Australian citizens to go overseas for career or employment, but not for an extended holiday. Australian citizens who are not gainfully employed overseas, and their spouses, it would seem, are less worthy of the right to enroll, and, therefore, less worthy of the right to vote, when outside the country.

As the law is currently worded, a young person wanting to backpack around South America for several years is excluded from enrolling to vote from overseas. In addition, a retired Australian senior citizen who lives overseas with a family member for several years would also not qualify to enroll from overseas. The only route to overseas voting for these people, it would seem, is to make sure they are on the electoral roll before they leave, and then transfer to Eligible Overseas Elector Status within two years of leaving Australia. If, however, they are unaware of the formalities with which they have to comply, and are wiped off the roll while overseas, the right to re-enroll is denied them, purely because they did not leave Australia for the "right" reasons.

2.1.3 Intention to Return

Another illogical prerequisite for enrollment from overseas is that the applicant must *intend to resume residing in Australia* not later than six years after he or she ceased to reside in Australia. This will be discussed below, as the same restriction forms one of the prerequisites for the application for Eligible Overseas Elector status.

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3. Eligible Overseas Elector Status

3.1 Prerequisites for Eligible Overseas Elector Status

Quite apart from the difficulties surrounding the provisions on enrollment from overseas, the eligibility requirements for registration as an Eligible Overseas Elector, which apply to those on the electoral roll when they leave Australia, are discriminatory in more than one respect.

3.1.1 Two-Year Time Limit

There is a two-year deadline for registration as an Eligible Overseas Elector on leaving Australia. This is inappropriate for the reasons outlined above in the context of the same deadline for enrollment from overseas.

3.1.2 Intention to Return

Registration as an Eligible Overseas Elector is conditional upon a person having an *intention to return to Australia* within six years. We submit that an Australian citizen should be able to vote while they remain an Australian citizen, regardless of where they are, how long ago they left Australia, and whatever their intentions. Eligible Overseas Elector Status should not be restricted to those whom the Act presupposes to somehow be more "committed" to Australia because they have stated an intention to return to live in Australia within six years.

Furthermore, it is submitted that a person's life plans and intentions are so subjective that the AEC can never hope to properly police this legislative prerequisite in any case. There is no objective way to assess whether a person really has a particular intention or not. Intentions are only proved by actions over time. Indeed, the AEC presently appears to carry out no checks whatsoever to see whether a person's declared intention on the application for eligible overseas elector status is genuine at the time it is made or not and, in truth, could not possibly do so.

Even if a person's intention could be objectively assessed to be genuinely made at the time, it is submitted that to require individuals to declare their intentions and their life plans six years hence is simply ridiculous. Thousands of Australians who left Australia for one year, or a defined period in the beginning, are still living overseas today many years later, their plans having changed due to the formation of personal relationships, career developments or other factors which could never have been foreseen a few years earlier.

The law currently places an obligation on those who are eligible overseas electors to inform the AEC as soon as they "abandon the intention to become resident again in Australia within six years after ceasing to reside in Australia". It is submitted that few eligible overseas electors will even know of the existence of this requirement. Those who want to remain on the electoral roll and maintain the right to vote are unlikely to come forward and voluntarily disenfranchise

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themselves. In any case, very few individuals ever make a conscious choice of such a concrete nature.

3.1.3 Length of Status – Six Years

An overseas Australian may only enjoy the status of Eligible Overseas Elector for an initial period of *six years*. The Act presupposes that an Australian citizen who has been overseas for six years suddenly becomes less worthy of the right to vote.

We submit that the right to vote should be available to any Australian citizen overseas, regardless of how long he or she has been overseas. It should not be limited to those whom the Act presupposes to have some sort of greater "loyalty" to the country because they are not going to be away for more than six years. Eligible overseas elector status should be related only to citizenship and continue indefinitely.

Although the Eligible Overseas Elector status can be extended progressively for one-year periods after the initial six years, it is submitted that many eligible overseas electors will be disenfranchised at the six-year point, because they will not know that the onus is on them to renew. While this six-year restriction remains law, does the AEC have a mechanism in place to follow up with people coming up to the six-year mark, to facilitate their continued enrollment?

3.1.4 Reason for Leaving Australia

It is noted that a person who is already on the electoral roll when they leave Australia can apply for eligible overseas elector status without having to state that he or she left for career or employment reasons or those of their spouse. This is as it should be. But the fact that the requirement exists as a prerequisite for enrollment from overseas when the person is no longer on the electoral roll is simply incongruous and unnecessarily restrictive, as discussed above under point 2.1.2.

4. Conclusion

The recent repeal of Section 17 of the *Australian Citizenship Act 1948* is evidence of the recognition by the current Australian Government of the increased international mobility of Australian citizens in today's world and also that, although they may be living overseas, they are still loyal and worthy Australians and, as in the case of many of our members, still making an important contribution to Australia and its welfare and interests.

The Act was passed in 1918, in the last year of the First World War, at a time when international communications were more difficult, and before the unforeseen and tremendous growth of international travel by Australian citizens. It was a different time and the Act clearly reflects the thinking of that time.

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We submit that a democracy is strongest and is a more vibrant society when its citizens are most involved in the electoral process. This is the very essence of democracy. This principle has, indeed, been long recognized in Australia by the compulsory voting requirement. The restrictions in the Act on voting by Australian citizens living overseas are inconsistent with this long-held view and needlessly deprive Australian citizens of their right to vote.

We further submit that an Australian citizen should never be deprived of their right to vote, either in Australia or overseas, without overwhelming justification and not as a mere legislative policy decision by the Government of the day that some Australians are more worthy of having the right to vote than others. The right to vote is fundamental in a democracy and should be zealously defended and preserved.

In conclusion, we propose that the Commonwealth Electoral Act 1918 be changed by amending the Act as follows:

1. Provide that the only requirement for voting in Australia elections and referendums, whether within Australia or overseas, be that of Australian citizenship and having been added to the Roll; and
2. Provide that, for Australians overseas, the Subdivision for enrollment be determined by a method similar to that contained in Subsection 2A of Section 96 of the Act, namely:

“The Australian Electoral Officer shall cause the name of the applicant to be added to the Roll:

- (a) for the Subdivision for which the applicant last had an entitlement to be enrolled;
- (b) if the person has never had such an entitlement, for a Subdivision for which any of the applicant's next of kin is enrolled;
- (c) if neither paragraph (a) nor (b) applies, for the Subdivision in which the applicant was born; or
- (d) if none of paragraphs (a), (b) and (c) applies, the Subdivision with which the applicant has closest connection.”

These amendments would restore full citizenship rights to all Australian citizens overseas, greatly simplify their ability to vote, and encourage their continued participation in Australia's democracy and future.

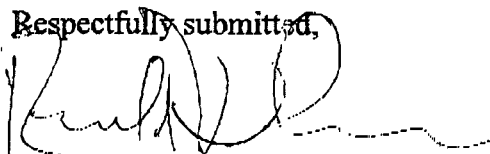
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald R. Delmenico", written over the typed name.

Ronald R. Delmenico

President