

The Senate

Standing Committee on
Finance and Public Administration

Electoral and Referendum Legislation
Amendment Bill 2006

February 2007

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Senate Finance and Public Administration Committee

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Chapter 1

Introduction

Background

1.1 The Electoral and Referendum Legislation Amendment Bill 2006 (the bill) was introduced into the House of Representatives on 30 November 2006 by the Special Minister of State, the Hon. Gary Nairn. The bill was then introduced into the Senate on 7 December 2006.

Reference of the bill

1.2 On 7 December 2006, the Senate adopted the Selection of Bills Committee Report No. 16 of 2006 and referred the provisions of the bill to the Senate Standing Committee on Finance and Public Administration (the committee) for inquiry and report by 20 February 2007.

Purpose of the bill

1.3 The purpose of the bill is to implement Government supported reform measures arising from the recommendations made by the Joint Standing Committee on Electoral matters (JSCEM) in its *Report of the Inquiry into the Conduct of the 2004 Federal Election and matters Related Thereto* (JSCEM Report).

1.4 The bill amends the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984.

Submissions

1.5 The committee advertised its inquiry in *The Australian* on 12 December 2006. In addition, the committee contacted a number of individuals and organisations in writing alerting them to the inquiry and inviting them to make a submission.

1.6 The Australian Electoral Commission, the Commonwealth agency with carriage for the legislation, provided a submission to the inquiry. The Human Rights and Equal Opportunity Commission and Department of Defence provided the only other submissions.

Acknowledgement

The committee wishes to thank all those that assisted with the inquiry.

Chapter 2

The Bill

2.1 This chapter gives a brief outline of the bill's background and main provisions.

2.2 The bill follows reform measures that the Parliament passed on 21 June 2006 in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.¹ This Act brought the most significant change to the Electoral Act since 1983. Many measures of the Act and the bill flow from recommendations of the Joint Standing Committee on Electoral Matters' (JSCEM) report on the 2004 federal election.

Joint committee report on the 2004 federal election

2.3 The JSCEM has inquired into and reported on every federal election since 1983 to encourage public discussion on the conduct of legislation and formulate recommendations for legislative and practical change.²

2.4 On 2 December 2004 the then Special Minister of State, Senate the Hon. Eric Abetz, asked the JSCEM to inquire and report on all aspects of the conduct of the 2004 federal election and matters related thereto (JSCEM Report).³

2.5 The JSCEM Report was tabled in Parliament on 10 October 2005. It made 56 recommendations covering a range of issues, including voting for visually impaired people and defence personnel, enrolment, pre-election voting, and defamation. The bill gives effect to a number of the recommendations in that report. It is of particular note that those recommendations had unanimous support on the joint committee.

Proposed amendments

2.6 In his second reading speech on the bill the current Special Minister for State, the Hon. Gary Nairn, outlined the following as major amendments:

- electronic voting trials for the visually impaired and the Australia Defence Force;
- various changes to postal voting;
- electoral enrolment by Australians who are overseas (including Defence Force personnel);
- pre-poll voting arrangements; and
- defamation of candidates.

1 The Senate passed the bill of the same name by a majority, with non-government parties opposing. For a discussion of the bill's provisions, see Senate Finance and Public Administration Legislation Committee, *Report of the Inquiry into provisions of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, March 2006.

2 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 1 (hereafter, JSCEM, *2004 Federal Election*).

3 JSCEM, *2004 Federal Election*, p. 7.

2.7 The bill amends both the Electoral Act and the Referendum Act to ensure consistency in voting methods across Australia for both elections and referendums.⁴

2.8 The amendments are outlined in more detail below.

Electronic voting trials

2.9 The bill proposes for a trial of electronic voting for the blind and visually impaired, and for Australian Defence Force personnel and Defence civilians serving overseas. If enacted this will provide for the first occasion of electronic voting in Australian electoral history.⁵

2.10 This amendment gives effect to recommendations 27, 41, 42 and 43 of the JSCEM report.

Electoral enrolment for Australians outside Australia

2.11 The bill provides for Australian citizens overseas to use a passport number as proof of identity as an alternative to an Australian drivers license for enrolling to vote and changing enrolment details. The AEC will verify passport numbers with the Passport Office.

2.12 Amendments to the Electoral Act made in June 2006 introduced proof of identity requirements for enrolment, re-enrolment, changes to enrolment details and for provisional voting. An elector is required to show a drivers license as proof of identity. Alternatively they may use a passport or birth certificate. If an applicant does not have these identity documents, he or she needs to have the application countersigned by two electors who have known the applicant for at least one month and who can confirm the applicant's name. The amendment proposed by the bill will allow for overseas electors.

Postal voting

2.13 The bill proposes a number of amendments to the conduct of postal voting for the 2007 election. This includes enabling Australian Defence Force members and defence civilians, Australian Federal Police and staff members and eligible overseas electors to register as general postal voters.

2.14 Other changes to postal voting arrangements include:

- Setting 6 p.m. on the Thursday before polling or voting day as the deadline for the receipt of postal vote applications in order for the AEC to dispatch postal voting material;
- Allowing means other than post for delivery of postal voting material; and
- Expanding the range of AEC officers who can receive completed postal envelopes.

Pre-poll voting arrangements

2.15 The bill proposes changes to allow for pre-poll voting centres to be set up in emergency situations.

4 Electoral and Referendum Legislation Amendment Bill 2006 Explanatory Memorandum, p. 9.

5 AEC, *Submission 1*, p. 1.

Defamation of candidates

2.16 The bill proposes the repeal of section 350 of the Electoral Act. This section makes it an offence if a person makes or publishes any false or defamatory statement in relation to the personal character or conduct of a candidate. Instead, cases of defamation would be dealt with in accordance with defamation laws in the relevant State or Territory jurisdiction.

2.17 This is in line with the move to uniform national defamation laws.⁶ Further, the Australian Electoral Commission (AEC) gave evidence to the JSCEM arguing that section 350 does not effectively address cases of defamatory remarks placed on the Internet. The AEC and other witnesses argued that section 350 could stifle free speech and political commentary in the modern communications environment, and could unreasonably place personal commentators at risk of charges of defamation.⁷

2.18 This amendment commences on Royal Assent and gives effect to recommendation 46 of the JSCEM Report.

Committee consideration

2.19 The striking point about this bill is that it largely reflects unanimous recommendations of a joint parliamentary committee, based on that committee's extensive inquiry into the 2004 federal election. The measures proposed under the bill are therefore non-controversial and should have wide acceptance in the community.

2.20 It comes as no surprise, then, that the inquiry into the bill did not attract a significant number of responses or submissions. Apart from the AEC submission which essentially explained the measures incorporated in the bill, the only other submissions the Committee received, from the Human Rights and Equal Opportunity Commission (HREOC) and Department of Defence, supported the passage of the bill.

Extending electronic voting

2.21 In supporting the bill, HREOC did suggest the extension of electronic voting, once trialled, to other electors in need of this facility to exercise the right to a secret ballot. It pointed to the rights provided for in the International Covenant on Civil and Political Rights, to which Australia is a party, which include the right to vote in 'genuine periodic elections ... by secret ballot'. The covenant also obliges parties to it to adopt measures where required to give effect to these rights without discrimination of any kind. This is interpreted as including people with disabilities.⁸

2.22 HREOC accepted the approach adopted in the bill of trialling electronically assisted voted and limiting it in scope to people with vision impairment. But it noted that there are other electors with a range of disabilities who are unable to read or complete a paper ballot and therefore effectively denied the right to vote by secret ballot. HREOC encouraged the Committee to support the 'earliest possible extension' of electronic voting to assist people requiring such assistance to exercise this universal right.

6 Electoral and Referendum Legislation Amendment Bill 2006 Explanatory Memorandum, p. 26.

7 JSCEM, *2004 Federal Election*, pp. 279-283.

8 HREOC, *Submission 2*, pp 1-2.

2.23 The Committee notes that JSCEM, in its consideration of assisted voting, saw electronic voting as part of a broader approach to addressing the needs of people with disabilities at polling stations.⁹ It also notes the government accepted the JSCEM recommendation that the AEC consult relevant disability organisations to develop an action plan to address the full range of access issues affecting voting.¹⁰

2.24 The Committee considers that, if trialled successfully, the AEC should examine the application of electronic voting to assist as broad a range of electors requiring this facility as is technically possible. This may require further development and trialling to match the facility to the needs of particular groups. In supporting the extension of electronic voting to those in need, the Committee shares JSCEM's view that this should not be taken as a step towards widespread electronic voting. It is only intended to address the needs of particular groups to ensure they are able to exercise the right to cast a secret ballot.

Committee conclusion

2.25 The Committee notes the bill largely reflects unanimous recommendations contained in a joint parliamentary committee report. Further, the only three submissions received also support the bill. The Committee therefore considers the bill should be passed.

2.26 The Committee considers that electronic assisted voting should be extended to electors requiring this facility to enable them to exercise the right to a secret ballot, provided trialling of this system proves to be successful.

Recommendation 1

2.27 The Committee recommends that the Senate pass the bill.

Senator Brett Mason
Chair

9 JSCEM, *2004 Federal Election*, p. 135.

10 Dated August 2006, the government response to the report was tabled in the Parliament on 4 September 2006.

Appendix 1

Submissions and Additional Information Received

**Submission
Number**

Submitter

1. Australian Electoral Commission
2. Human Rights and Equal Opportunity Commission
3. Department of Defence

