

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COMMONWEALTH ELECTORAL AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Special Minister of State)

OUTLINE

The Joint Select Committee on Electoral Reform presented to Parliament in December 1986 its Report (No. 2) on the operation during the 1984 General Election of the 1983/84 amendments to Commonwealth electoral legislation.

The Government has announced that it accepts most of the Report's recommendations and that legislation to give effect to the acceptable recommendations will be introduced in two stages. Accordingly, this legislation amends the Commonwealth Electoral Act 1918 to give effect to those recommendations which are considered essential for implementation before the next election.

The major provisions are designed to:

- require Commonwealth and State Governments to comply with the Act to the same extent as other participants in the electoral process;
- extend the redistribution timetable, and provide for a second round of public hearings in certain circumstances, to enhance participation by those affected;
- improve procedures for processing enrolments immediately before the close of roll and remove the 3 month residential requirement, to ensure that as many eligible electors as possible may vote;
- abolish the Register of Candidates, and simplify and consolidate provisions for nomination, and lodgement of group voting tickets for the Senate;
- standardise the way names and party affiliations are shown on ballot-papers;
- ensure House of Representatives and Senate scrutinies are not delayed by:
 - imposing a 14 day cut-off for receipt of postal votes;
 - requiring overseas polling officials to be subject to the same obligations as officials in Australia;
 - streamlining procedures for processing declaration votes;
 - conducting a provisional scrutiny of House of Representatives preferences to provide an earlier indication of likely outcomes;
 - simplifying the Senate scrutiny to speed up final results;
- improve election funding and financial disclosure provisions by:
 - defining 'election advertisement';
 - requiring the disclosure period for 'third parties' to be the same as for political parties;
 - repealing the requirement for printers' returns;
 - allowing for amendments to claims and returns when errors occur;
 - providing a common release date for claims and returns;
- remove existing time limits on the ability to alter polling day and/or return of the writs, and add similar flexibility to the date of the first meeting of a Parliament by extending the time for return of the writ from 90 to 100 days after issue.

Financial Impact Statement

Since the majority of the provisions are administrative amendments there will be no additional costs involved in their implementation. The simplified Senate scrutiny procedures should produce savings of approximately \$150,000 in an election year.

CLAUSE NOTES

Clauses 1 and 2

The first two clauses provide for the short title and for the Act to come into operation on the day on which it receives Royal Assent.

Clause 3 : Interpretation

Inserts definitions in Section 4 of the Principal Act of:

- . declaration vote
- . electoral matter ('matter which is intended or likely to affect voting in an election')
- . real place of living;

omits the definition of:

- . registered officer (see also Clause 4);

inserts provisions clarifying the intent of references in the Act to:

- . Australian Electoral Officer
- . Divisional Returning Officer
- . electoral matter (clarifies that, without limiting the definition of 'electoral matter', matter is intended or likely to affect voting in an election if it refers to the election, Governments or previous Governments, members or former members of legislatures, political parties or candidates, or issues in connection with the election. See also Clause 35 for definition of 'election advertisement').

Clause 4 : Extraterritorial operation of Act, Act to bind Crown, Registered officer of political party

Inserts provisions after section 4 of the Principal Act:

- . a new section 4A, designed to ensure that overseas polling officials are subject to the same penalties for neglect of duty as officials in Australia;
- . a new section 4B, the effect of which will be to require Commonwealth and State Governments to comply with the Act to the same extent as other participants in the electoral process; and
- . a new section 4C, designed to define the 'registered officer' of a party as the person shown in the Register of Political Parties as such; to provide for the appointment of deputy registered officers; and to provide that references in Parts XIV and XVI to a registered officer are to include a reference to a deputy registered officer.

Clause 5 : Times at which redistributions are to commence

Amends section 59 of the Principal Act to provide for a redistribution of a State or the Australian Capital Territory to commence within 30 days after (in lieu of 'forthwith after') the end of the period of seven years after the last redistribution. (Except if the seven year period elapses within the last twelve months of the life of a House of Representatives - in which case the redistribution is to commence 30 days after the first meeting of the next House of Representatives.)

Clause 6 : Redistribution Committee for State

Amends section 60 of the Principal Act to provide for a senior officer of the Australian Public Service in the relevant State to be appointed where a State Auditor-General or Deputy (or a State Surveyor-General or Deputy) is not available to serve on a Redistribution Committee for a State.

Clause 7 : Redistribution Committee to make proposed redistribution

Amends section 66 of the Principal Act to remove the requirement for the Redistribution Committee to endeavour to achieve absolute equality of enrolment three and a half years after a redistribution. The amendment will permit Redistribution Committees a 2% plus or minus margin in seeking to achieve future enrolment equalities.

Also deletes the requirement that Redistribution Committees give consideration to the trend of population changes, since the provision is rendered unnecessary by the existence of the future equality requirement, and is inconsistent with all other quantitative requirements which relate to enrolment rather than population (see also Clause 13).

Clause 8 : Outline of proposed redistribution

Inserts a new section 67A after section 67 of the Principal Act to enable Redistribution Committees to make their broad proposals publicly known as soon as they have determined the general nature of the redistribution.

Clause 9 : Notice of proposed redistribution

Amends section 68 of the Principal Act to require a Redistribution Committee to:

- publish maps showing names and boundaries of each proposed Division in two newspapers circulating throughout the relevant State or Territory, and in such regional newspapers as specified by the Redistribution Committee (in lieu of the requirement that maps be displayed in Post Offices etc.);
- and

- include copies of the written suggestions lodged with the Redistribution Committee (in addition to copies of the written comments on those suggestions) with the material which is available for perusal at Electoral Commission Offices at the time the proposed redistribution is promulgated.

Also amends section 68 to enable the descriptions of proposed boundaries (available for perusal at Electoral Commission Offices) to be in the form of maps or plans. These will provide more meaningful information than the survey descriptions provided under the existing requirement for 'detailed descriptions'.

Clause 10 : Objections against proposed distribution

Amends section 69 of the Principal Act to extend the period within which objections may be lodged to a Redistribution Committee's proposed redistribution from 14 to 28 days, so as to enable greater participation by those affected by the redistribution process (see also Clauses 11 and 12).

Clauses 11 and 12 : Augmented Electoral Commission, Consideration of objections

Amend sections 70 and 72 of the Principal Act to extend the period for consideration of objections (including initial and any further objections) from six weeks to 60 days.

Amend section 72 to extend the right to make submissions to those who have made comments on suggestions made to Redistribution Committees. (At present only those who made suggestions can make submissions.)

Further amend section 72 to provide for there to be a second round of objections and public hearings where an augmented Electoral Commission proposes to make significant changes in the redistribution proposed by the Redistribution Committee. Specifically, it provides that:

- as soon as practicable after the augmented Electoral Commission has held an inquiry into initial objections, it is to make a proposed redistribution, and a public announcement:
 - stating its findings concerning the initial objections and the Redistribution Committee proposal;
 - stating whether its proposal is significantly different from the Redistribution Committee proposal; and
 - if it is significantly different - indicating that persons or organisations who originally appeared (or were entitled to appear) before it may lodge a further objection; in which case, it will hold an inquiry into those further objections.

Clause 13 : Redistribution of State or Australian Capital Territory

Amends section 73 of the Principal Act to remove the requirement for augmented Electoral Commissions to endeavour to achieve absolute equality of enrolment three and a half years after a redistribution. The amendment will permit augmented Electoral Commissions a 2% plus or minus margin in seeking to achieve future enrolment equalities. The requirement that consideration be given to the trend of population changes is also deleted for the same reasons underlying Clause 7.

Also inserts a provision for the augmented Electoral Commission to make a public announcement of its findings in relation to objections and its final determination.

Clause 14 : Copies of certain documents to be forwarded to the Minister

Amends section 75 of the Principal Act to require the Electoral Commission to include the transcripts of public hearings (if any) relating to a redistribution with the other documents already required to be forwarded to the Minister. Documents are required to be forwarded as soon as possible (in lieu of 'forthwith') after the names and boundaries have been determined.

Clause 15 : Mini-redistribution

Amends section 76 of the Principal Act to provide that Population Census Collection Districts (as designated by the Australian Bureau of Statistics for Census purposes), in lieu of Subdivisions, be the 'building blocks' for mini-redistributions.

Clauses 16 and 17 : Compulsory enrolment and transfer, Registration of claims

Amend sections 101 and 102 of the Principal Act to enable Divisional Returning Officers and Australian Electoral Officers to process claims for enrolment for any Division in their respective States, in the period between the public announcement of the election or the issue of the writs, whichever is earlier, and the close of rolls. At present claim cards may only be processed by the Divisional Returning Officer for the Division in respect of which the claim is made, which can cause delays in the period immediately before close of the roll.

Clause 18 : Repeal of registration of candidates

Repeals Part XII of the Principal Act relating to the registration of candidates. The requirement to register did not serve any useful purpose, and in fact caused confusion since it in effect duplicates similar requirements in the nomination process.

Provisions in Part XII relating to claims to use political party affiliations and their verification are transferred to Part XIV of the Act (see Clauses 19 and 20).

Clause 19 : Mode of nomination

Amends section 166 of the Principal Act to provide that the registered officer of a party may nominate a candidate or candidates endorsed by that party, as an alternative to their being nominated by six electors.

Clause 20 : Grouping of candidates, Notification of party endorsement or of independent candidacy, Verification of party endorsement, Combination of requests and nominations

Amends the provisions of the Principal Act (to insert the substance of provisions formerly contained in the repealed Part XII) by repealing sections 168 and 169 and inserting provisions to:

- . enable Senate candidates to make a joint request to be grouped;
- . provide that requests for the registered name or abbreviation of a registered political party to be printed on the ballot-papers next to the names of a party's endorsed candidates shall be made by the party's registered officer;
- . enable an unendorsed candidate to request that 'Independent' be printed on the ballot-papers;
- . provide for alternative means by which a candidate's endorsement by a registered political party may be verified; and
- . enable requests made in relation to printing of party affiliations on the ballot-papers, and nomination forms, to be combined.

Clause 21 : Requisites for nomination

Amends section 170 of the Principal Act to rephrase in plain English, without altering the meaning of, the declaration made by a candidate on nomination.

Clause 22 : Rejection of nominations and requests

Amends section 172 of the Principal Act to extend protection against rejection simply on the grounds of a formal defect or error, to requests made for grouping of candidates or for party affiliations or 'Independent' to be included on the ballot-papers (see Clause 20).

Clause 23 : Preliminary scrutiny of postal ballot-papers

Amends section 200 of the Principal Act to provide that all postal votes (which includes those cast overseas) must be received by the appropriate Divisional Returning Officer within 14 days after polling day in order to be admitted to the scrutiny. At present there is no time limit on the return of ballot-papers to Australia by Assistant Returning Officers at overseas posts.

Clause 24 : Printing of Senate ballot-papers

Amends section 210 of the Principal Act to provide that the names of candidates who have made a request to be grouped, be printed on the ballot-papers before the names of other candidates who have not made such a request (see also Clause 20).

Also provides that an incumbent Senator who has indicated an intention to lodge a group voting ticket is to be treated as a group for the purpose of the draw for ballot-paper position, so that his or her name will be printed on the ballot-papers among the grouped rather than ungrouped candidates. (see also Clause 27)

Clause 25 : Form of party name on ballot-paper

Inserts a new section 210A after section 210 of the Principal Act to require the name or abbreviation of a party name included on ballot-papers to be the name or abbreviation entered in the Register of Political Parties; and that it be printed in capital letters, and in uniform style and size of print.

Clause 26 : Group voting tickets

Amends section 211 of the Principal Act to:

- . reduce the time for lodgement of group voting tickets from 48 to 24 hours after the close of nominations;
- . require a group lodging a single group voting ticket to rank members of the group above all other candidates (at present only groups lodging more than one ticket are required to show higher preferences for members of the group than candidates not in the group); and
- . remove the requirement that all members of the group must sign the group voting ticket and provide for signature by one of a number of specified persons.

Clause 27 : Individual voting tickets

Inserts a new section 211A after section 211 of the Principal Act to enable an ungrouped incumbent Senator to lodge one, two or three group voting tickets (which in all cases must rank the Senator above all other candidates), and to have a group voting square printed on the ballot-papers, with the Senator's party affiliation or the word 'Independent' adjacent to it.

Clause 28 : Printing of political party names etc. on ballot-papers

Repeals the present section 214 of the Principal Act and substitutes a new section 214 which provides that party names or abbreviations, or the word 'Independent' are to be printed on the ballot-papers in accordance with the requests made by registered officers or Independent candidates under sections 169 or 169A.

Clause 29 : Group voting tickets to be displayed

Repeals the present section 216 of the Principal Act and substitutes a new section 216 requiring a poster showing group voting tickets to be prominently displayed at each polling booth, and for the order of the group voting tickets on the poster to correspond to the order of groups on the ballot-papers. Where a group lodges two or three tickets, the group itself specifies the relative order in which they are to appear on the poster.

Clause 30 : Forwarding of declaration votes

Repeals section 228 of the Principal Act and substitutes provisions which consolidate requirements relating to forwarding declaration votes (as defined by Clause 3).

The provisions are designed to streamline the forwarding of declaration votes to the relevant Divisional Returning Officer, by providing that:

- . Presiding Officers are to forward all declaration votes to a designated Assistant Returning Officer;
- . Assistant Returning Officers are to forward them to the respective Divisional Returning Officers;
- . each Divisional Returning Officer is to forward them to other Divisional Returning Officers or to a central exchange point in the State, from which the votes are to be sent to the relevant Divisional Returning Officer;
- . overseas Assistant Returning Officers are to be directed by the Electoral Commissioner to forward votes to a specified person for subsequent forwarding to the relevant Divisional Returning Officer.

At all stages, checking and advisory procedures are provided for.

Clause 31 : Voters to be recorded

Amends section 232 of the Principal Act to consolidate provisions relating to Presiding Officers' records of declaration votes.

Clause 32 : Scrutiny of votes in Senate elections

Amends section 273 of the Principal Act to simplify the Senate scrutiny and to reduce the time involved in the scrutiny by providing for:

- . distribution at a single count of all ballot-papers received by an excluded candidate at a particular transfer value;
- . exclusion of candidates in bulk where their inevitable exclusion is demonstrable; and
- . deferral of the transfer of surpluses where this would not affect the next exclusion.

Clause 33 : Scrutiny of votes in House of Representatives elections

Amends section 274 of the Principal Act to enable a provisional scrutiny of preferences to be conducted as part of the fresh scrutiny of House of Representatives ballot-papers, in those Divisions where a distribution of preferences is required to determine the result.

Clause 34 : Extension of time

Amends section 286 of the Principal Act to delete the present 20 and 7 day limitations, and to enable adjustments to be made on a Divisional basis. At present the person issuing the writ may alter the date of polling and/or the date of return of the writ, provided the person does so within 20 days of the day originally appointed for polling, and provided polling day is not postponed within the last 7 days. These limitations appear to serve no useful purpose.

In so far as a single writ is issued for the House of Representatives elections in a State, the amended Divisional ambit for the operation of section 286 will enable localised issues to be resolved without affecting the rest of the State.

Clause 35 : Interpretation

Amends section 287 of the Principal Act to provide a definition of an election advertisement for the purposes of Part XX of the Act, ie an advertisement is an election advertisement if it contains 'electoral matter' as defined by Clause 3. The definition is designed to enable all participants in the election process to determine more readily than at present whether particular advertisements are subject to the reporting requirements of Part XX of the Act.

Clause 36 : Expenditure incurred for political purposes

Amends section 305 of the Principal Act to remove the time limitations applying to disclosure of gifts received by persons other than political parties and candidates, so that the disclosure period is the same as that for parties, ie. from the day after polling day in one election to polling day in the next election.

Also clarifies the meaning of 'incurring expenditure for a political purpose' so that it includes publication of (including by radio or television) electoral matter, and publicly expressing views on an issue in the election by any other means.

Clause 37 : Repeal of returns by printers

Repeals section 312 of the Principal Act which requires printers to furnish returns of electoral matter. The returns served no useful purpose after the 1984 election in cross checking parties' and candidates' returns of electoral expenditure, since it was not possible to identify (and hence obtain returns from) all persons meeting the description of 'printer'.

Clause 38 : Amendment of claims and returns

Inserts a new section 319A after section 319 of the Principal Act enabling the Electoral Commissioner to amend a claim for public funding or a financial disclosure return, in order to remove a formal defect or correct a formal error.

Also enables a person who has lodged a claim or furnished a return to request the permission of the Electoral Commission (or an officer authorised by the Commission) to amend the claim or return.

Where the Electoral Commission (or authorised officer) refuses such a request, it (or the officer) is obliged to give the person written notice of the reasons. Provision is made for review by the Commission of an authorised officer's decision.

Where a claim or return is amended under this provision, the person lodging the claim or furnishing the return is not exempted from prosecution for lodging an incomplete, false or misleading claim or return.

Clause 39 : Public may obtain copies of claims and returns

Amends section 320 of the Principal Act so that copies of claims and returns are not available for public inspection or purchase until 24 weeks after polling day (4 weeks after the deadline for lodgement of parties' returns).

A common release date for all claims and returns will avoid any particular claim or return receiving undue publicity by its earlier or later release.

Clauses 40 to 42 : Printing and publication of electoral advertisements, notices etc, Authors of reports etc to be identified

Amend sections 328, 331 and 332 to take account of the definition of 'electoral matter' inserted in section 4 of the Principal Act by Clause 3.

Clause 43 : Extension of time for acts by officers

Inserts a new section 381A before section 382 of the Principal Act to enable the Electoral Commission to extend by 48 hours the time in which acts must be completed in the event of a failure by any person to perform a statutory duty or function.

Clause 44 : Forms

Amends the Schedule to the Principal Act by omitting existing Forms C and D (nomination forms for the Senate and House of Representatives) and substituting Forms C, CA, CB, CC, D and DA, being nomination forms provided for by Clause 19 (section 166).

Clause 45 : Further amendments

The Schedule:

- . amends section 46 of the Principal Act to require the Electoral Commissioner to ascertain the numbers of people (for the purposes of determining representational entitlement) within one month of the expiration of 9 months (in lieu of 11 months) after the first meeting of a House of Representatives. (Consequence of the extended timetable for the redistribution process - see Clauses 10 to 12.)
- . amends section 93 (with consequential amendments to sections 96 and 229) so that electors enrolled for a Division need not have lived within the Division for 3 months prior to polling day, in order to vote;
- . amends section 159 to extend the time for return of the writ from 90 to 100 days after its issue;
- . amends section 194 to extend the cut-off date for receipt of postal ballot-papers from 10 to 14 days after the close of the poll (see also Clause 23);
- . provides for consequential amendments to sections 287, 294, 295, 299, 301, 304 and 319 following the repeal of Part XII (see Clause 18); and
- . provides for a consequential amendment to section 366 following insertion of a provision standardising the printing of party affiliations on ballot-papers (see Clause 25).



