

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

ELECTORAL AND REFERENDUM AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Administrative Services,
Senator the Honourable Nick Bolkus)



ELECTORAL AND REFERENDUM AMENDMENT BILL 1992

OUTLINE

This legislation amends the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

The major provisions of the Bill are designed to:

- repeal the requirement that documents containing information about each Senate and House of Representatives candidate be delivered to all households prior to the next election;
 - provide that the Australian Electoral Officer for the State or Territory that includes the relevant Division may direct an indicative distribution of second and later preference votes at a House of Representatives election for that Division on polling night;
 - confer on the Australian Electoral Commission the explicit function of providing assistance to authorities of foreign countries or to foreign organisations in the conduct of elections and referendums in cases where the provision of such assistance is approved by the Minister for Foreign Affairs and Trade (this amendment was recommended by the Senate Standing Committee on Foreign Affairs, Defence and Trade at paragraph 5.33 of its May 1991 Report entitled "United Nations Peacekeeping and Australia");
 - empower the Australian Electoral Commission, in a manner not inconsistent with the performance of its primary functions, to perform functions derived from its primary functions to make available goods and services to members of the public and organisations;
 - empower the Australian Electoral Commission to impose charges for the provision of goods and services, except where those goods and services are provided in pursuance of an explicit legal obligation to do so without charge;
 - provide for a new system of automatic enrolment of new citizens, so that persons applying for citizenship may make a provisional claim for electoral enrolment, which would be activated upon the granting of citizenship;
 - require the Australian Electoral Commission to include in a report to the Minister, to be tabled in Parliament, on the operation of the Election Funding and Financial Disclosure provisions in relation to an election, a list of the names of those persons who, in the opinion of the Commission, are or may be required to furnish a return showing donations to candidates or political parties;
 - provide for the employment under the *Commonwealth Electoral Act 1918* of temporary staff to be involved in electoral education and information programs;
 - eliminate the need to advise electors individually of transfer to a new Division after a redistribution and instead provide that such notice may be sent to households;
- provide for the regular provision of information in computer format on changes to the Electoral Roll to registered political parties, Senators and Members of the House of Representatives and other persons or organisations as the Australian Electoral Commission determines are appropriate; provision of such information is to be free of charge to Senators, Members and those registered political parties which have Parliamentary representation;

provide a mechanism for review of the cancellation of "silent" elector status;

eliminate the need for the Australian Electoral Commission to advertise the receipt of an application for the registration of a political party in cases where the Commission in its initial consideration of the application concludes that it is required to refuse the application, and the applicant declines to vary the application to remedy its defects;

provide that if a registered political party has never endorsed a candidate it may be deregistered if a period of four years has elapsed since registration;

ensure that where a voter with "silent" enrolment has nominated as a candidate, his or her address will not be required to be shown on the relevant nomination form and therefore will not be made publicly available;

ensure that only one registered party affiliation may be shown next to a candidate's name on a ballot paper;

eliminate the restriction on the Electoral Commission appointing any deputy presiding officers for a polling place at which there will be fewer than 6 issuing points at any time during the hours of polling on polling day;

eliminate the need to send a non-voter's notice to an elector who has already shown that he or she had a valid and sufficient reason for failing to vote;

provide that where a person has been named on electoral material that fact can be used as prima facie evidence in proceedings against that person for an offence against the *Commonwealth Electoral Act 1918*;

- provide that the service of court processes can be made by mail delivery instead of by direct service as required by some State and Territory legislation;

extend the protection afforded to officers of the Australian Electoral Commission by the *Commonwealth Electoral Act 1918* against the obligation to produce enrolment claim cards in court to enable such officers to refuse to supply enrolment claim cards in response to a warrant issued under the *Crimes Act 1914*.

FINANCIAL IMPACT STATEMENT

The Australian Electoral Commission estimates that repeal of the requirement that documents containing information about each Senate and House of Representatives candidate be delivered to all households prior to the next election will save approximately \$2,120,000.

Empowering the Australian Electoral Commission to impose charges for the provision of goods and services will enable the Commission to recover costs for services that are currently provided free of charge. However, the requirement for the Commission to provide regular Roll updates to registered political parties which have parliamentary representation is a new cost estimated to be approximately \$100,000 per annum.

Elimination of the need to advise electors individually of transfer to a new Division after a redistribution and instead provide that such notice may be sent to households will enable the Australian Electoral Commission to use a less expensive method of advising electors of redistribution changes. After the 1992 redistributions electors were advised of changes by notices published in newspapers. This method is cheaper than either of the above options but is much less effective in reaching the target audience.

The remaining provisions of the Bill will give rise neither to costs nor to savings.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the *Electoral and Referendum Amendment Act 1992*.

Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day it receives Royal Assent, except for clause 12, which shall commence on a date to be fixed by Proclamation or, if no Proclamation is made, the clause shall commence 6 months after the day on which the Act receives Royal Assent.

PART 2 - AMENDMENTS OF THE COMMONWEALTH ELECTORAL ACT 1918

Clause 3 - Principal Act

3. Formal.

Clause 4 - Functions and Powers of Commission

4. This clause amends subsection 7(1) of the Principal Act to confer on the Australian Electoral Commission the explicit function of providing assistance to foreign countries and foreign organisations in the conduct of elections and referendums in cases where the provision of such assistance is approved by the Minister for Foreign Affairs and Trade. The amendment was recommended by the Senate Standing Committee on Foreign Affairs, Defence and Trade at paragraph 5.33 of its May 1991 Report entitled "United Nations Peacekeeping and Australia".

Clause 5 - Commission may provide other services related to its functions - Commission may charge fees

5. This clause inserts new section 7A of the Principal Act to empower the Australian Electoral Commission, in a manner not inconsistent with the performance of its primary functions, to provide goods and services to other organisations or individuals (for example, providing a "scanning" service to State electoral authorities, or assisting in the conduct of an election other than a federal election).

6. This clause also inserts new section 7B of the Principal Act to empower the Australian Electoral Commission to impose fair and reasonable charges for the provision of goods and services, except where those goods and services are provided in pursuance of an explicit legal obligation to do so without charge.

Clause 6 - Reports by the Commission

7. This clause amends subsection 17(2A) of the Principal Act to require the Australian Electoral Commission to include in a report to the Minister on the operations of the Election Funding and Financial Disclosure provisions in relation to an election, a list of the names of those persons who, in the opinion of the Commission, are or may be required to furnish a return under subsection 305A(1) showing donations to candidates or political parties. This amendment makes such persons subject to compliance investigations under section 316 of

the Principal Act in the same manner as those required to furnish returns showing expenditure incurred for political purposes under subsections 305(1) and 309(4).

Clause 7 - Employment of additional staff, consultants etc.

8. This clause substitutes a new paragraph 35(1)(a) of the Principal Act to provide for the employment under the Act of temporary staff to be involved in electoral education and information programs.

Clause 8 - New Rolls on creation of new Divisions etc.

9. This clause amends paragraph 86(3)(b) of the Principal Act to provide that notification of electors of changes in electoral boundaries after a redistribution can be made by a notice sent to households rather than by a notice sent to each affected elector, as at present.

Clause 9 - Provision of Rolls and habitation indexes to political parties etc.

10. This clause amends section 91 of the Principal Act to provide for the regular provision on computer tape or disk, of supplements to the Electoral Roll, to registered political parties, Senators and Members of the House of Representatives and other persons or organisations as the Electoral Commission determines are appropriate. Supplements of Rolls are to be provided free of charge to Senators and Members, and registered political parties which have representation in Parliament. Supplements of Rolls are to be provided at cost to other registered political parties and other persons or organisations that the Electoral Commission determines are appropriate. All registered political parties will also be able to purchase at cost habitation indexes in addition to their free entitlement under subsection 91(5).

Clause 10 - Use of information from Roll and habitation index

11. This clause amends section 91A of the Principal Act to extend the current limitations on use of information on habitation indexes provided to registered political parties to include any Roll information provided on tape or disk to registered political parties, Senators or Members. Registered political parties, Senators or Members will only be able to use Roll information provided to them on tape or disk for purposes related to an election or referendum; for monitoring the accuracy of the Roll; or for the performance by a Senator or Member of his or her functions in relation to an enrolled person or persons.

Clause 11 - Prohibition of disclosure or commercial use of Roll or habitation index

12. This clause amends section 91B of the Principal Act to extend the current prohibitions on disclosure of information on habitation indexes provided to registered political parties to include any Roll information provided on tape or disk to registered political parties, Senators, Members or other persons or organisations. Any information obtained on tape or disk under section 91 will be protected information and must not be disclosed for purposes other than purposes permitted under section 91A and must not be used for commercial purposes.

Clause 12 - Provisional claim for enrolment by applicant for citizenship

13. This clause inserts new section 99A of the Principal Act to provide for a new system of automatic enrolment of new citizens, so that persons applying for citizenship may make a provisional claim for electoral enrolment, which would be activated upon the granting of citizenship. If an applicant changes address after lodging an application for provisional enrolment, a further claim may be lodged with the Australian Electoral Commission notifying the change of address. A related amendment is made by clause 13.

Clause 13 - Request for address not to be shown on Roll

14. This clause amends section 104 of the Principal Act to require written notice to be given to an elector whose "silent" enrolment status is questioned by a Divisional Returning Officer pursuant to a review conducted under subsection 104(7) of the Act. The amendments require that such an elector's address details will not be reinstated to the public Roll until appeal rights have been exhausted. Related amendments are made by clause 14.

15. This clause also amends section 104 of the Principal Act to allow persons lodging a provisional claim for enrolment pending the granting of citizenship, to apply for silent enrolment. Related amendments are made by clause 12.

Clause 14 - Review by Australian Electoral Officer

16. This clause amends section 120 of the Principal Act to provide a mechanism for review of a decision to cancel an elector's "silent" enrolment status. Related amendments are made by clause 13.

17. There is currently no way in which an aggrieved elector can require review either within the Commission or in the Administrative Appeals Tribunal (AAT) of a decision to cancel "silent" enrolment status. This contrasts with most other decisions relating to enrolment, which are reviewable first internally and then by the AAT. Provision is already made for review of a decision to refuse "silent" enrolment status; this amendment provides similarly for review of a decision to cancel "silent" enrolment status.

18. This clause also corrects an incorrect cross-reference in paragraph 120(4)(e) of the Principal Act, changing the reference to section 113 to a reference to section 114. Paragraph 120(4)(e) currently refers to "any relevant objection under section 113" whereas objections are made under section 114.

Clause 15 - Variation of application

19. This clause amends section 131 of the Principal Act to provide that, where the Commission in its initial consideration of an application for party registration concludes that it is required to refuse the application, and the applicant applies to vary the application, the application as varied is to be treated as if it were a new application. This amendment is related to clause 16.

Clause 16 - Procedure for dealing with application

20. This clause amends section 132 of the Principal Act to remove the requirement for the Commission to advertise the receipt of an application for the registration of a political party in cases where the Commission in its initial consideration of the application concludes that it is required to refuse the application, and the applicant declines to vary the application to remedy its defects.

21. As the Principal Act now stands, section 132 requires advertisements to be placed in the Gazette and in a newspaper inviting comment on an application for registration from persons who oppose the application. This requirement applies even when the Commission in its initial consideration of the application has concluded that it is required to refuse the application, and the applicant has declined to vary the application to remedy its defects. Since the application in such circumstances will, after the consideration of any public comments and subject to available appeal processes, inevitably be rejected, the requirement for the placing of advertisements amounts to a waste of time and money.

Clause 17 - Deregistration of party failing to endorse candidates or ceasing to be a Parliamentary party

22. This clause inserts a new paragraph in subsection 136(1) of the Principal Act to provide that if a registered political party has never endorsed a candidate it is liable for deregistration if a period of four years has elapsed since registration.

23. Subsection 136(1)(a) of the Principal Act currently provides that a registered party is liable to deregistration if a period of four years has elapsed since the last election for which it endorsed a candidate. As the Act now stands, if a registered political party has never endorsed a candidate, it cannot be deregistered.

Clause 18 - Mode of nomination

24. This clause amends section 166 of the Principal Act, to ensure that where a voter with "silent" enrolment has nominated as a candidate, his or her address will not be required to be shown on the relevant nomination form and therefore will not be made publicly available. To enable the Electoral Commission to contact such candidates, separate notification of a postal address will be required, but will not be made publicly available.

25. Subsection 176(3) of the Principal Act already prevents an Australian Electoral Officer or a Divisional Returning Officer from publicly declaring the address of a "silent" elector. However, the provision does not prevent such an elector's address from being disclosed by public inspection of the nomination paper. The amendment will correct that anomaly.

Clause 19 - Verification of party endorsement

26. This clause inserts a new subsection 169B(2) of the Principal Act to provide that, where a candidate has been endorsed by two or more registered political parties, that candidate will be taken to have been endorsed, for the purpose of listing party affiliations on ballot papers, by only one of those parties where:

the candidate is nominated by the registered officer of only one of the parties; or if this is not the case

a request that the name of a registered political party be printed next to the candidate's name on the ballot paper has been made by only one of the parties' registered officers; or if this is not the case

the candidate has specified one of those parties in writing; or if none of the above apply

the Electoral Commission decides, after making such inquiries as it thinks appropriate of the registered officers of the parties or otherwise, that the candidate is taken to be endorsed by one of the parties.

This will ensure that only one registered party affiliation will be shown next to a candidate's name on a ballot paper.

27. As the Principal Act now stands, it is unclear as to whether a candidate may be entitled to have more than one party affiliation printed next to his or her name on the Senate ballot paper in a case where more than one party nominates the candidate under a combined party ticket and neither one of the parties nor the candidate indicates which party affiliation should be printed on the ballot paper next to the name of the candidate. This amendment will clarify the position.

Clause 20 - Arrangements for polling

28. This clause deletes subsection 203(6) of the Principal Act to remove the restriction on the Electoral Commission appointing any deputy presiding officers for a polling place at which there will be fewer than 6 issuing points at any time during the hours of polling on polling day.

29. The Joint Standing Committee on Electoral Matters, in its December 1990 Report on the 1990 Federal Election, recommended that, in order to alleviate queuing problems at future elections the Australian Electoral Commission employ additional staff where necessary to ensure that the ratio of ordinary vote issuing staff to potential voters is at a realistic level, and recommended that the Commission revise its National Polling Place Resources Policy to provide flexibility in the staffing and resourcing of polling places.

30. Section 203(6) of the Act places constraints on the flexibility of staffing arrangements in polling booths which mitigate against bringing into effect the recommendation of the Joint Standing Committee on Electoral Matters.

Clause 21 - Compulsory voting

31. This clause inserts a new paragraph in subsection 245 of the Principal Act to remove the need to send a non-voter's notice to an elector who has already shown that he or she had a valid and sufficient reason for failing to vote. In the absence of the proposed amendment the Divisional Returning Officer is required to send a penalty notice to an apparent non-voter even when that person had already contacted the Divisional Returning Officer and advised him or her of circumstances surrounding the failure to vote which amounted to a valid and sufficient reason for the failure. The amendment will eliminate such pointless correspondence.

Clause 22 - Scrutiny of votes in House of Representatives elections

32. This clause amends subsection 274(4) of the Principal Act to provide that an Australian Electoral Officer for the State or Territory may direct an indicative distribution of second and later preference votes at a House of Representatives election on polling night.

Clause 23 - Evidence of authorship or authorisation of material

33. This clause inserts a new section 385A of the Principal Act to provide that where a person has been named on electoral material that fact can be used as prima facie evidence in proceedings against that person for an offence against the Act.

34. The Director of Public Prosecution has advised that in the case of a misleading how-to-vote card which falsely represented that a candidate had endorsements from groups that had not endorsed him, and which in the view of the Director of Public Prosecutions contravened sections 329(1) and 351 of the Principal Act, it was not possible to bring criminal proceedings because it could not be shown by admissible evidence that any particular person was responsible for publishing or distributing the cards. The cards bore the name of the printer and of the person who had authorised them, but the fact that the person was named on the card was not admissible evidence against that person, it being hearsay evidence. There is nothing in the current Act to facilitate proof that a person named in election material is connected with the material. This amendment will remedy this situation.

Clause 24 - Repeal of section 386A

35. This clause repeals section 386A of the Principal Act, which requires that documents containing information about each Senate and House of Representatives candidate be delivered to all households prior to the next election.

Clause 25 - Service of process by mail

36. This clause inserts new section 387A of the Principal Act to provide that the service of court processes can be made by mail delivery instead of by direct service as required by some State and Territory legislation.

37. Under New South Wales legislation, for example, summonses for failure to vote must be delivered personally, which is an extremely expensive process in comparison to some other States of Australia where summonses can be delivered by receipted mail delivery.

Clause 26 - Claims for enrolment etc. not to be subject to warrants

38. This clause inserts new section 390A of the Principal Act, to extend the protection afforded to officers of the Electoral Commission by section 390 of the Act against the obligation to produce enrolment claim cards in court to enable such officers to refuse to supply enrolment claim cards in response to a warrant issued under the *Crimes Act 1914*.

PART 3 - AMENDMENTS OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984

Clause 27 - Principal Act

39. Formal.

Clause 28 - Compulsory voting

40. This clause inserts a new paragraph in subsection 45 of the Principal Act to remove the need to send a non-voter's notice to an elector who has already shown that he or she had a valid and sufficient reason for failing to vote. In the absence of the proposed amendment the Divisional Returning Officer is required to send a penalty notice to an apparent non-voter even when that person had already contacted the Divisional Returning Officer and advised him or her of circumstances surrounding the failure to vote which amounted to a valid and sufficient reason for the failure. The amendment will eliminate such pointless correspondence.

Clause 29 - Service of process by mail

41. This clause inserts new section 140A of the Principal Act to provide that the service of court processes can be made by mail delivery instead of by direct service as required by some State and Territory legislation.

42. Under New South Wales legislation, for example, summonses for failure to vote must be delivered personally, which is an extremely expensive process in comparison to some other States of Australia where summonses can be delivered by receipted mail delivery.

PART 4 - CONSEQUENTIAL AND MINOR AMENDMENTS

Clause 30 - Consequential and minor amendments

43. This clause amends the Acts specified in the Schedule.

The schedule - consequential and minor amendments

44. The *Commonwealth Electoral Act 1918* is further amended:

- Paragraphs 7(a), (b), (c), (d) and (e) - the word "and" is to be added at the end as a consequence of the amendments made by clause 4;
- Paragraph 102(4A)(b) - "Australian Postal Corporation" is to replace "the Australian Postal Commission" to reflect the new name of the Australian Postal Corporation;
- Subsections 104(2), (4), (5) and (7) - "Divisional Returning Officer" is to be replaced by "DRO" as a consequence of the amendments made by clause 13.
- Paragraphs 120(3)(a), (b), (e) and (f) - the word "or" is to be added at the end as a consequence of the amendments made by clause 14;
- Paragraphs 120(4)(a), (b), (c), (d), (e), (f), (g), (h) and (j) - the word "and" is to be added at the end as a consequence of the amendments made by clause 14.
- Sections 390 and 391 - the words "(including a provisional claim for enrolment)" are inserted after "claim for enrolment" (wherever occurring) as a consequence of the amendments made by clause 12.

45. The *Referendum (Machinery Provisions) Act 1984* is further amended:

- Section 109A in Part IX is to be renumbered 109B to correct an inadvertent double numbering in the Act where there are currently two sections 109A.

D

D

D

D

D

D

D

D

D

D

D

D

