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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

ELECTORAL AND REFERENDUM AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of
the Government

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



ELECTORAL AND REFERENDUM AMENDMENT BILL 1992

OUTLINE

The amendments and new clauses to be moved on behalf of the Government amend the *Commonwealth Electoral Act 1918* and the *Freedom of Information Act 1982*.

The amendments and new clauses to be moved on behalf of the Government are designed to:

- ensure that persons or organisations receiving personal enrolment information in computer format from the Australian Electoral Commission will only be able to use information for permitted purposes: (1) any purpose in connection with an election or referendum, (2) monitoring the accuracy of information contained in a Roll, or (3) any purpose permitted by the Regulations;
- give scrutineers, in addition to their existing rights, an explicit right to observe preferences indicated on ballot papers during the scrutiny (in addition to preference votes being counted), provided that the scrutiny is not unreasonably delayed (this amendment gives effect to recommendation 3 of the Joint Standing Committee on Electoral Matters in its interim report on Counting the Vote on Election Night);
- provide that the Australian Electoral Officer for each State or Territory must direct an indicative distribution of second and later preference votes at a House of Representatives election for those Divisions in which three or more candidates are standing, to provide an indication on polling night of which candidate is likely to be elected in each Division (this amendment gives effect to the recommendations of the Joint Standing Committee on Electoral Matters in its interim report on Counting the Vote on Election Night);
- create an offence during an election period of intentionally encouraging electors to mark their ballot papers in any way other than consecutively and fully (this amendment was recommended by the Joint Standing Committee on Electoral Matters at paragraph 3.42 of its report on the 1990 Federal Election);
- limit access to personal electoral roll information under the *Freedom of Information Act 1982*, by creating a new class of exempt document, being a document that is an electoral roll, a print, microfiche, tape or disk of an electoral roll, a document used in preparation of an electoral roll, or a document derived from the electoral roll; with the exception that individuals will retain their rights of access and review in relation to records pertaining to themselves as are presently contained in the *Freedom of Information Act 1982* (public access to personal electoral roll information will still be available under the *Commonwealth Electoral Act 1918*).

FINANCIAL IMPACT STATEMENT

The amendments and new clauses to be moved on behalf of the Government will give rise neither to costs nor to savings.

NOTES ON CLAUSES

Clause 10 - Use of information from Roll and habitation index

1. Amendments (1), (2) and (3) amend clause 10, which amends section 91 of the Principal Act, to ensure that persons or organisations receiving personal enrolment information in computer format from the Australian Electoral Commission will only be able to use information for permitted purposes:

- any purpose in connection with an election or referendum;
- monitoring the accuracy of information contained in a Roll;
- any purpose permitted by the Regulations.

2. This amendment will apply end-use restrictions, similar to those that will apply to electoral roll information supplied to Members of Parliament and political parties, to electoral roll information supplied to those persons and organisations which may receive such information as the Electoral Commission considers appropriate. It is intended that purposes permitted by the Regulations will include purposes such as medical research conducted under National Health and Medical Research Council guidelines issued under the *Privacy Act 1988*.

Clause 21A - Scrutiny, how conducted

3. Amendment (4) inserts a new clause 21A, which amends section 265 of the Principal Act to give scrutineers an explicit right to observe preferences indicated on ballot papers during the scrutiny (in addition to preference votes being counted), provided that the scrutiny is not unreasonably delayed. This right will be in addition to the scrutineers' existing right to observe all proceedings at the scrutiny, including the count of first preferences and the indicative count of later preferences. This amendment gives effect to recommendation 3 of the Joint Standing Committee on Electoral Matters in its interim report on Counting the Vote on Election Night.

Clause 22 - Scrutiny of votes in House of Representatives elections

4. Amendment (5) substitutes a new clause 22, which amends section 274 of the Principal Act to provide that the Australian Electoral Officer for each State or Territory must direct an indicative distribution of second and later preference votes at a House of Representatives election for those Divisions in which three or more candidates are standing, to provide an indication on polling night of which candidate is likely to be elected in each Division. This amendment gives effect to the recommendations of the Joint Standing Committee on Electoral Matters in its interim report on Counting the Vote on Election Night.

5. The original clause 22 gave the Australian Electoral Officer for each State and Territory a discretion as to whether to direct a count of preferences or not. This amendment will make the count of preferences mandatory.

Clause 22A - Encouraging persons to mark ballot papers otherwise than in accordance with Act

6. Amendment (6) inserts a new clause 22A, which inserts new section 329A of the Principal Act to create an offence during an election period of intentionally encouraging electors to mark their ballot papers in any way other than consecutively and fully. This amendment was recommended by the Joint Standing Committee on Electoral Matters at paragraph 3.42 of its report on the 1990 Federal Election.

7. This new section will make it an offence to advocate an "optional preferential vote" by making use of the formality criteria, which do not require fully consecutive numbering for a vote to be formal. For example, it will be an offence to encourage electors to mark their ballot papers: "1, 2, 2, 2, . . .".

8. The offence will apply to any matter printed, published or distributed or broadcast on radio or television.

PART 3A - AMENDMENT OF THE FREEDOM OF INFORMATION ACT 1982

9. Amendment (7) inserts a new part to the Bill, which amends the *Freedom of Information Act 1982*.

Clause 29A - Principal Act

10. Formal.

Clause 29B - Electoral rolls and related documents

11. This clause inserts new section 47A of the Principal Act to limit access to personal electoral roll information under the *Freedom of Information Act 1982*, by creating a new class of exempt document, being a document that is an electoral roll, a print, microfiche, tape or disk of an electoral roll, a document used in preparation of an electoral roll, or a document derived from the electoral roll; with the exception that individuals will retain their rights of access and review in relation to records pertaining to themselves as are presently contained in the *Freedom of Information Act 1982*.

12. This amendment is complementary to the amendments to sections 91, 91A and 91B of the *Commonwealth Electoral Act 1918* made by clauses 9, 10 and 11. The effect of the amendment will be to ensure that the end-use restrictions placed on personal electoral roll data by the above clauses cannot be circumvented by obtaining personal enrolment information under the *Freedom of Information Act 1982*.

13. Public access to personal electoral roll information will still be available under the *Commonwealth Electoral Act 1918*.

Long title, page 1

14. Amendment (8) amends the long title of the Bill to reflect the amendment to the *Freedom of Information Act 1982* made by amendment (7).