

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ELECTORAL AND REFERENDUM AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Administrative
Services, the Honourable Frank Walker, QC, MP)

ELECTORAL AND REFERENDUM AMENDMENT BILL 1995

OUTLINE

This Bill contains a number of proposed technical amendments to the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 of a minor or administrative nature. They are necessary to resolve various practical problems which have arisen in electoral administration and to improve operational procedures in the conduct of elections and referendums.

Some of the proposed amendments were recommended for legislative amendment by the Joint Standing Committee on Electoral Matters in its Report on the Conduct of the 1993 Federal Election tabled on 16 November 1994. They have been included in the Bill as they require early attention to enable the Australian Electoral Commission to be fully prepared for the next federal election.

The major provisions of the Bill are designed to:

- . enable the Australian Electoral Commission to delegate to staff its powers to supply and charge for goods and services and provide that such goods and services may be supplementary or an alternative to those already supplied under Joint Rolls Arrangements between the Commonwealth and the States; and to delegate its powers under any law;
- . improve the enrolment objection process by allowing relatives and friends who do not live in the same subdivision as electors of unsound mind to apply for their removal from the roll on medical advice and without the payment of an objection fee;
- . allow for electors whose enrolment has been objected to, to be removed from the roll in the period between the issue of the writ for an election and the close of rolls. This will help to ensure that only electors entitled to enrol are able to vote;
- . ensure that the personal details of silent electors will not be disclosed to persons inspecting applications for postal votes;
- . allow the Australian Electoral Commission to use the more up-to-date method of security printing of ballot papers instead of using watermarked ballot papers which will result in considerable savings in ballot paper storage and production costs;
- . disallow canvassing in and around hospitals that are polling places on polling day and in special hospitals during the five days before and including polling day;
- . extend the right to vote to all Divisional Returning Officers and Australian Electoral Officers and standardise the method for resolving ties during the counting of votes; and
- . extend the two-candidate preferred count, as conducted in polling places on polling night, to the fresh scrutiny and declaration votes scrutines, as conducted later by the Divisional Returning Officers.

Finally the Bill makes a number of minor amendments to correct spelling and syntax errors and to remove gender-specific language where it still occurs.

FINANCIAL IMPACT STATEMENT

The Australian Electoral Commission estimates that approximately \$2.3 million would be saved over each three year parliamentary term if ballot papers were to be produced using security printing arrangements instead of the existing watermarked paper. Savings are attributable to reduced storage, handling and freight costs as well as production costs. The remaining provisions will give rise to neither costs nor savings.

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Act to be cited as the *Electoral and Referendum Amendment Act 1995*.

Clause 2 - Commencement

2. This clause provides that the Act shall come into operation on the day it receives Royal Assent.

Clause 3 - Schedules

3. This clause provides for the Acts specified in the Schedules to be amended according to the applicable items set out in each of the Schedules.

SCHEDULE 1 - AMENDMENTS OF THE COMMONWEALTH ELECTORAL ACT 1918 (the Electoral Act).

Item 1 - Interpretation

4. This item amends subsection 4(1) of the Electoral Act to provide a definition of "certified list of voters".

Item 2 - Interpretation

5. This item removes gender-specific language from section 5.

Item 3 - Commission may provide other services

6. This item amends subsection 7A(1) to provide that Electoral Commission officers and other electoral staff may provide goods or services to any person or body. As the definition currently stands, only the Chairperson, the Electoral Commissioner, and the other Commission member, are authorised to provide goods or services. The heading to the section is also altered.

Item 4 - Commission may provide other services

7. This item inserts new subsections 7A(1A) and 7A(1B) after subsection 7A(1). These new subsections allow for the provision of goods or services, provided under subsection 7A(1), as an alternative or supplement to the arrangements made under section 84. At present, section 84 is the sole basis for the Joint Roll Arrangements, and the existing section 7A, which provides a broad power to provide roll products, cannot be used as an alternative or supplement to section 84.

Item 5 - Commission may provide other services

8. This item amends subsection 7A(2) and complements the amendment to subsection 7A(1) in item 3 above.

Item 6 - Commission may charge fees

9. This item amends section 7B to provide that the Commission may charge for the supply of goods or services provided by Electoral Commission officers and other electoral staff.

Item 7 - Delegation by Commission

10. This item amends subsection 16(1) to provide that the Commission may delegate its powers, not only under the Electoral Act, but also under any other law. The current provision does not allow the Commission to delegate its power under other legislation, despite the fact that the Commission has powers under a range of other Commonwealth Acts.

Item 8 - Suggestions and comments relating to redistribution

11. This item amends subsection 64(1) to provide that notices inviting suggestions and comments in relation to redistributions be published in only one newspaper circulating throughout a State or Territory, rather than in two newspapers. The requirement to publish in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Item 9 - Notice of proposed redistribution

12. This item amends subparagraph 68(1)(d)(i) to provide that notices inviting public attention to the availability for perusal of copies of the comments and suggestions relating to proposed redistributions be published in only one newspaper circulating throughout a State or Territory, rather than in two newspapers. The requirement to publish in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Item 10 - Mini-redistribution

13. This item amends paragraph 76(13)(b) to provide that a copy of the determination of Redistribution Commissioners in relation to a mini-redistribution be published in one newspaper circulating throughout a State or Territory, rather than in two newspapers. The requirement to publish in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Item 11 - Interpretation

14. This item amends the definition of "private objection" to include a cross-reference to new subsection 114(1A).

Item 12 - Objection to enrolment

15. This item amends subsection 114(1) to provide that a person enrolled for a subdivision may not object to the enrolment of another person on the grounds specified in paragraph 93(8)(a). This amendment complements the new subsection 114(1A) in item 13, which provides that an elector may object to the enrolment of another person on the grounds specified in paragraph 93(8)(a) whether or not they are enrolled in the same subdivision. The current situation is that an elector must live within the same subdivision to be eligible to object to the enrolment of another person.

Item 13 - Objection to enrolment

16. This item inserts subsection 114(1A) after subsection 114(1). The new subsection provides that an elector may object to the enrolment of another person on the grounds specified in paragraph 93(8)(a) whether or not they are enrolled in the same subdivision. This amendment will allow relatives and friends of medically unsound electors, who may not live in the same subdivision, to arrange for their removal from the roll on medical advice.

Item 14 - Form and manner of objection

17. This item amends subsection 115(2) to provide that only objections under subsection 114(1) require the lodgement of an amount of \$2 with the objection. Objections lodged under subsection 114(1A) do not require this payment.

Item 15 - Determination of objection

18. This item amends subsection 115(2) to provide that the period during which a Divisional Returning Officer cannot remove an elector's name from the Roll commences at the close of Rolls rather than at the issue of the writ for an election.

Item 16 - Determination of objection

19. This item amends subsection 115(8) as a consequence of the amendments to subsections 114(1) and 115(2).

Items 17 to 26

20. These items provide for minor drafting amendments to sections 135, 136, 137, 138, 140 and 141 to remove the hyphen from "de-registered", "de-registration", "de-registering" and "de-register" wherever occurring. The same alterations are made to the section headings.

Item 27 - Writs for election of Senators

21. This item amends paragraph 153(2)(b) to provide that the receipt and particulars of the writ for the election of Senators need only be advertised in one newspaper circulating in the State or Territory, rather than two. The requirement to advertise in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Item 28 - Writs for election of members of the House of Representatives

22. This item amends paragraph 154(4)(b) to provide that the receipt and particulars of the writ for the election of members of the House of Representatives need only be advertised in one newspaper circulating in the State or Territory, rather than two. The requirement to advertise in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Items 29 and 30 - To whom nominations made

23. These items amend paragraph 167(4)(b) and omit paragraph 167(4)(c), respectively. This removes the requirement for the Australian Electoral Officer to forward nomination deposit monies to each of the relevant Divisional Returning Officers where a bulk nomination is received. The effect of these items is to allow the Australian Electoral Officer to bank bulk nomination deposits directly into the Australian Electoral Commission's Trust Fund.

Item 31 - Issue of certificate and ballot papers

24. This item amends subsection 188(1) to provide for the delivery of postal ballot papers and the certificate envelope to an applicant, other than by post.

Item 32 - Inspection of applications

25. This item amends subsection 189(4) to provide that before being made available for public inspection, all information, other than the elector's name, be removed from postal vote

applications received from silent enrolment electors. While subsection 189(4) currently provides that the address of a silent enrolment elector be removed from the postal vote application before being made available for inspection, there is other information such as phone number, postal address and the witness's name and address on the application, all of which could help to identify the elector's address.

Item 33 - Certified lists of voters

26. This item amends section 208 to provide that there shall be a certified list of voters. Despite the range of references to the certified list of voters in the Electoral Act, and its description in section 208, there is no provision which requires the existence of the list itself. This has the potential to cause problems of evidence in litigation.

Items 34 and 35 - Ballot-papers/Official mark

27. These items amend subsection 209(3) and section 209A respectively. The latter amendment provides that ballot papers for elections may be printed using a security mark, approved by the Electoral Commission, in lieu of a watermark. This will give the Electoral Commission the option of using a security printing method. The former amendment will provide that the security mark and colour requirement for the ballot papers may be "washed" onto white paper as part of the printing process, rather than having a requirement for printing onto coloured watermarked paper. These amendments, together with those at items 3 and 4 of Schedule 2 to this Bill, have the potential to save approximately \$2.3 millions in each three year parliamentary term.

Item 36 - Mobile booths - other hospitals

28. This item amends subsection 225(1) to provide that special hospitals used for mobile polling can be declared by gazettal at any time. At present special hospitals can only be declared by gazettal for a specific election and therefore only after the issue of writs for an election.

Item 37 - Provisions related to section 224 and 225

29. This item omits subsection 226(5) and inserts two new subsections. The first subsection provides that the general prohibition on canvassing near any polling booth in subsection 340(1), also applies to a hospital that is a polling place on polling day. This means that canvassing for votes will be prohibited within a hospital or within six metres of an entrance to a hospital that is a polling place on polling day.

30. The second subsection provides that the general prohibition on canvassing near any polling booth in subsection 340(1), also applies to a special hospital on the five days preceding polling day and on polling day. This means that canvassing for votes will be prohibited within a special hospital and within 6 metres of the entrance to a special hospital during the period starting on the five days preceding polling day and ending on polling day, or the day to which polling is adjourned. During this period mobile teams may visit special hospitals for the purpose of taking the votes of electors.

31. Previously, canvassing in either a hospital that was a polling place or a in special hospital was prohibited from the day of the issue of the writ for an election until the end of polling day or the day to which polling was adjourned.

Items 38 and 39 - Forwarding of declaration votes

32. These items amend paragraph 228(5)(c) and insert a new subsection 228(5A) after subsection 228(5), respectively. These provide that there will be a cutoff for the receipt of all postal votes of 13 days after polling day, whether or not they are received by the relevant Divisional Returning Officer, another Divisional Returning Officer, an Assistant Returning Officer overseas, a pre-poll

voting officer or a presiding officer. At present only those postal votes returned direct to the relevant Divisional Returning Officer must be received before the 13 day cutoff period. Those received by the other officials, prior to polling day, and onforwarded to the relevant Divisional Returning Officer attract no cutoff. Inevitably there are delays in the receipt of documents from some overseas places, which may then cause delays to the commencement of a Senate scrutiny (the quota cannot be struck until all votes are received, even though the numbers involved are so small as to not affect the result of an election).

33. However, in recognition of the possibility that larger numbers of votes may be delayed, the new subsection 228(5A) also provides for a discretionary power to reside with the Electoral Commissioner to extend the cutoff period beyond the 13 days.

Item 40 - Questions to be put to voter

34. This item amends subsection 229(1) to remove gender-specific language.

Item 41 - Questions to be put to voter

35. This item amends subsection 229(4) to clarify that the "certified list" is in fact the "certified list of voters".

Item 42 - Compulsory voting

36. This item amends subsection 245(3) to provide that the Divisional Returning Officer may arrange for delivery of the non-voting penalty notice by means other than post. This amendment will provide for greater flexibility in remote areas where mail services may be unreliable. The provision will also allow the delivery of notices by field officers in those areas where they operate.

37. Subsection 245(3) is also amended to provide that the penalty notice be sent to the latest known address of the elector, rather than the address shown on the certified list of voters.

Item 43 - Antarctic electors

38. This item amends subsection 249(4) to remove the requirement for the Divisional Returning Officer to annotate the certified list of voters to indicate that an elector is an Antarctic elector. This requirement is unnecessary and out of step with other provisions for annotation of the Roll. The requirement that the Roll for the subdivision be annotated is not affected.

Items 44 to 47 - Scrutiny of votes in Senate elections

39. These items amend subsection 273(17), paragraph 273(20)(b), subsection 273(22) and paragraph 273(31)(b) respectively. Together they provide that the Australian Electoral Officer, when conducting the scrutiny for the Senate election, will no longer have a discretion for determining which candidates to elect or exclude, or the order of election or exclusion, where ties occur. The amendments provide that such determinations will be required to be made by lot. In consequence of the withdrawal of this discretion, the amendment to subsection 273(17) also extends voting rights to the Australian Electoral Officer.

Items 48 and 49 - Scrutiny of votes in House of Representatives elections

40. These items amend subsections 274(2A) and 274(2B) respectively, to provide that the Divisional Returning Officer, as directed, shall conduct a two candidate preferred count at the fresh scrutiny and at each scrutiny of the declaration votes. The current provisions provide that a two candidate preferred count be conducted on polling night at each polling place. These amendments extend this to the fresh scrutiny and declaration scrutines conducted after polling day.

Item 50 - Scrutiny of votes in House of Representatives elections

41. This item corrects a typographical error in subsection 274(7).

Item 51 - Scrutiny of votes in House of Representatives elections

42. This item amends subsection 274(9) to provide that the Divisional Returning Officer shall conduct a "countback" where at a point of exclusion the two, or more, lowest ranking candidates are tied, in order to determine which to exclude. Only where there is no preceding count at which one of these candidates had fewer votes than others will the Divisional Returning Officer be required to determine the excluded candidate by lot.

Item 52 - Scrutiny of votes in House of Representatives elections

43. This item omits subsection 274(13) to provide that the voting rights of Divisional Returning Officers be restored. Amendments to the Electoral Act in 1990 removed the provisions which gave the Divisional Returning Officers a casting vote.

Item 53 - Printing and publication of electoral advertisements, notices etc

44. This item amends subsection 328(1) to provide that posters be included in those forms of advertising which require authorisation.

Item 54 - Printing and publication of electoral advertisements, notices etc

45. This item amends paragraph 328(3)(a) to provide that "car stickers" be omitted from those articles which are exempted from the requirement for authorisation. Recent elections have seen "car stickers" being used other than on cars.

Item 55 - Printing and publication of electoral advertisements, notices etc

46. This item amends paragraph 328(3)(b) to insert in the Electoral Act provisions currently contained in the *Electoral and Referendum Regulations* which prescribe classes of articles exempted from the authorisation provisions. There has been a concerted effort to move regulations into the body of the Electoral Act where possible.

Item 56 - Printing and publication of electoral advertisements, notices etc

47. This item amends subsection 328(5) and is consequential to the amendment of subsection 328(1) under item 52.

Items 57 and 58 - Authors of reports etc. to be identified

48. These items amend subsection 332(1) and paragraph 332(2)(b) to provide that letters to the editor of a newspaper are exempt from the full requirements of the authorisation provisions; only the author's name and suburb/locality will need to be shown. This amendment is made to address the security and privacy problems which currently exist as a result of the requirement for full address details to be shown with letters to the editor.

Item 59 - Forging or uttering electoral papers

49. This item amends subsection 344(2) to provide that the definition of "electoral paper" include an "approved" form, as well as a "prescribed" form.

Item 60 - Voiding election for illegal practices etc.

50. This item amends subsection 362(4) to replace the '*Broadcasting Act 1942*' with the '*Broadcasting Services Act 1992*'.

Item 61 - Collection of Statistical Information

51. This item repeals section 393. The current section 393 was inserted in 1983 as regulation 86 of the *Electoral and Referendum Regulations* to specifically empower the Commission to use electoral documents for information purposes (eg. informal ballot paper surveys) after all petitions have been disposed of, rather than being automatically destroyed. However, the ambiguous wording of the section has served only to confuse the Commission's powers in this area.

52. As subsection 393A(10) provides for the destruction of documents after all petitions have been disposed of (and not less than six months have elapsed since the declaration of the poll) and the documents are no longer required by the Commission for the performance of its functions, and section 375A provides for the use of documents by the Commission for the performance of its functions, section 393 serves no useful purpose.

Item 62 - Preservation of documents

53. This item amends subsection 393A(1) to insert a definition of electoral documents, and is consequential upon the repeal of section 393.

**SCHEDULE 2 - AMENDMENTS OF THE REFERENDUM (MACHINERY PROVISIONS)
ACT 1984 (the Referendum Act)**

Item 1 - Interpretation

54. This item amends subsection 3(1) of the Referendum Act to provide a definition of "certified list of voters".

Item 2 - Action by electoral officers

55. This item amends paragraph 14(1)(b) to provide that advice of the receipt and particulars of the writ for a referendum need only be inserted in one newspaper circulating generally in the State or Territory, rather than two. The requirement to advertise in two newspapers in a State or Territory has caused difficulties, especially in those States and Territories which do not have two newspapers in wide general circulation.

Item 3 - Certified lists of voters

56. This item amends section 22 to provide that there shall be a certified list of voters. Despite the range of references to the certified list of voters in the Referendum Act, and its description in section 22, there is no provision which requires the existence of the list itself. This has the potential to cause problems of evidence in litigation.

Items 4 and 5 - Forms of ballot-paper/Official mark

57. These items amend paragraph 25(1)(b) and section 25A respectively. The latter amendment provides that ballot papers for referendums may be printed using a security mark, approved by the Electoral Commission, in lieu of a watermark. This will give the Electoral Commission the option of using a security printing method. The former amendment will provide that the security mark and colour requirement for the ballot papers may be "washed" onto white paper as part of the

printing process, rather than having a requirement for printing onto coloured watermarked paper. These amendments, together with those at items 34 and 35 of Schedule 1 to this Bill, have the potential to save approximately \$2.3 million in each three year parliamentary term.

Item 6 - Questions to be put to voter

58. This item amends subsection 30(4) to clarify that the "certified list" is in fact the "certified list of voters".

Item 7 - Election and referendum on same day

59. This item amends a typographical error in paragraph 40(b).

Item 8 - Compulsory voting

60. This item amends subsection 45(3) to provide that the Divisional Returning Officer may arrange for delivery of the non-voting penalty notice by means other than post. This amendment will provide for greater flexibility in remote areas where mail services in remote areas may be unreliable. The provision will also allow the delivery of notices by field officers in those areas where they operate.

61. Subsection 45(3) is also amended to provide that the penalty notice be sent to the last known address of the elector, rather than the address shown on the certified list of voters.

Items 9 and 10 - Forwarding of declaration votes

62. These items amend paragraph 46A(5)(c) and insert a new subsection 46A(5A) after subsection 46A(5), respectively. These provide that there will be a cutoff for the receipt of all postal votes of 13 days after polling day, whether or not they are received by the relevant Divisional Returning Officer, another Divisional Returning Officer, an Assistant Returning Officer overseas, a pre-poll voting officer or a presiding officer. At present only those postal votes returned direct to the relevant Divisional Returning Officer must be received before the 13 day cutoff period. Those received by the other officials, prior to polling day, and onforwarded to the relevant Divisional Returning Officer attract no cutoff. Inevitably there are delays in the receipt of documents from some overseas places, which may then cause delays to the completion of the scrutiny (even though the numbers involved are so small as to not affect the result).

63. However, in recognition of the possibility that larger numbers of votes may be delayed, the new subsection 46A(5A) also provides for a discretionary power to reside with the Electoral Commissioner to extend the cutoff period beyond the 13 days.

Item 11 - Mobile booths - other hospitals

64. This item amends subsection 49(1) to provide that special hospitals used for mobile polling can be declared by gazettal at any time. At present special hospitals can only be declared by gazettal for a specific referendum and therefore only after the issue of writs for a referendum.

Items 12 and 13 - Mobile booths - prisons

65. These items amend subsections 49A(1) and (6), respectively to correct typographical errors.

Item 14 - Provisions related to sections 48 and 49

66. This item amends subsection 50(2A) to correct an incorrect cross-reference.

Item 15 - Issue of certificate and ballot papers

67. This item amends subsection 61(1) to provide for the delivery of postal ballot papers and the certificate envelope to an applicant, other than by post.

Item 16 - Informal ballot-papers

68. This item amends subsection 93(3) to correct an incorrect cross-reference.

Item 17 - Certain other matters not to invalidate referendum

69. This item amends section 108A to replace the '*Broadcasting Act 1942*' with the '*Broadcasting Services Act 1992*'.

Item 18 - Part IX

70. This item amends the heading to Part IX to reflect the content of the Part.

Items 19 and 20 - Authors of reports etc. to be identified

71. These items amend subsection 125(1) and paragraph 125(2)(b) to provide that letters to the editor of a newspaper are exempt from the full requirements of the authorisation provisions; only the author's name and suburb/locality to be shown. This amendment is made to address the security and privacy problems which currently exist as a result of the requirement for full address details to be shown.

Item 21 - Delegation of Electoral Commission

72. This item repeals section 137 and is consequential to the amendment under item 7 of Schedule 1 to this Bill, which provides for the Commission to delegate its powers under any other law, that is including the *Referendum (Machinery Provisions) Act 1984*.

Item 22 - Collection of Statistical Information

73. This item repeals section 142. Current section 142 was inserted to specifically empower the Commission to use electoral documents for information purposes (eg. informal ballot paper surveys) after all petitions have been disposed of, rather than being automatically destroyed. However, the ambiguous wording of the section has served only to confuse the Commission's powers in this area.

74. As subsection 142A(9) provides for the destruction of documents after all petitions have been disposed of (and not less than six months have elapsed since the declaration of the poll) and the documents are no longer required by the Commission for the performance of its functions, and section 109A provides for the use of documents by the Commission for the performance of its functions, section 142 serves no useful purpose.

Item 23 - Preservation of documents

75. This item amends subsection 142A(1) to insert a definition of electoral documents, and is consequential upon the repeal of section 142.

Item 24 - Clause 8 of Schedule 4

76. This item corrects a typographical error in Clause 8 of Schedule 4.



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