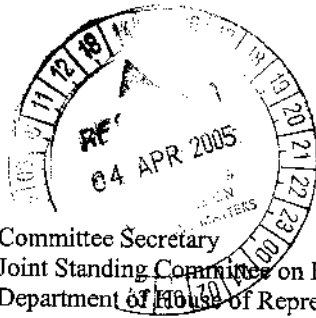


SUBMISSION NO. 106



Joint Standing Committee on Electoral Matters	
Submission No.	106
Date Received	4-4-05
Secretary	<i>[Signature]</i>



Committee Secretary  
Joint Standing Committee on Electoral Matters  
Department of House of Representatives  
Parliament House  
Canberra  
ACT 2600  
Fax 02 6277 2374

30 March 2004

Dear Sir/Madam,

Please find attached a submission to the JSCEM's Inquiry into the Conduct of the 2004 Federal Election.

The views contained therein are mine and should not be attributed to Swinburne University.

A signed, hard copy follows by post.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brian Costar".

Professor Brian Costar

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## **Section One                      Closure of the Roll**

- 1.1 Since the electoral reforms of 1983 citizens have been able to enrol or update their enrolment details for a seven day period from the issue of the writ.
  
- 1.2 Approximately 300 000 citizens have taken advantage of this period of grace period at each election- about 80 000 of whom are 'new' enrollees.
  
- 1.3 Prior to 1983 the roll closed at 5pm the day the writ was issued.
  
- 1.4 If the pre-1983 practice were reinstated 300 000 citizens would be disenfranchised.
  
- 1.5 Good reasons would need to be adduced to justify the denial of the vote to such a large cohort of citizens; especially the new enrollees, most of whom would be young people, who need encouragement to become civically engaged.
  
- 1.6 The most commonly articulated reasons for closing the roll on the day of the issue of the writs are a) that, it being compulsory to enrol when eligible, those benefiting from the current grace period are lawbreakers subject to fines; and b) that the large volume of last-minute applications makes it difficult for AEC District Returning Officers (DROs) to certify the validity of the enrolment details.

1.7 Re a): while it is true that the law requires enrolment, the point of that law is to get as many eligible citizens onto the electoral roll as possible, not to pursue them for modest fines. This is a case where the public good is better served by judicious discretion rather than a strict and complete legalism.

1.8 Re b): earlier JSCEM Inquiries have heard varying evidence as to whether the 150 DROs are able accurately to process 300 000 applications over seven days, but if there are lingering doubts as to the integrity of the roll ( despite Audit Australia's findings) then extra resources should be directed to those Divisions which have higher than average late enrolments.

1.9 With few constitutional restrictions, the choice of when to announce an election is the preserve of the Prime Minister. However, if we were to adopt fixed term parliaments including a prescribed election day (as in New South Wales and Victoria), controversy about when to close the roll would evaporate.

## **Section Two                      Prisoners and the Franchise**

2.1 From 1983 to 2004 the only prisoners liable to have their enrolment status challenged were those serving a prison sentence of five years or more.

- 2.2 By passage of the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004* the length of the disbarring sentence was reduced to three years.
- 2.3 There have been reports that legislation may soon be proposed to effectively deny the vote to all convicted prisoners.
- 2.4 At the 1891 Constitutional Convention in Sydney the Premier of Victoria, James Munro, proposed to deny convicted felons their civil rights [including the right to vote] for all time, but the proposal was rejected.
- 2.5 In 1993 the JSCEM recommended the removal of all limitations on the rights of all prisoners, but legislation was not forthcoming.
- 2.6 It can be argued that by their crimes prisoners have fractured the Social Contract and deserve to forfeit their civil rights. Yet this argument rests on the legally dubious and outmoded concept of *civil death*, which the constitution framers so clearly rejected in 1891.
- 2.7 While one can understand the lack of public sympathy for killers, rapists, drug dealers, bashers and recidivist property offenders' [not to mention corporate criminals] (*Canberra Times*, 15 July 2004), it is not good public policy to deny the right to vote to convicted prisoners.

2.8 In liberal societies such as Australia, offenders are incarcerated *as* punishment, not *for* punishment. Since almost all those currently imprisoned will be released, it is poor rehabilitative policy to further alienate them from society by stripping them of the franchise.

2.9 To deny prisoners the vote is highly discriminatory since the prison population is not a mirror of society: most prisoners are male (94 %) and aged between 25 and 35 (56%). The imprisonment rate of indigenous Australians is 15 times that of the non-Aboriginal population and is still rising.

2.10 The United States is sometimes cited as a model of denying felons the right to vote. Yet the multitude of US laws on the subject are so inconsistent and partisan that Australia should not follow them ( see [www.thesentencingproject.org](http://www.thesentencingproject.org)).

2.11 Australian moves to tighten enfranchisement laws for prisoners run counter to recent decisions in comparable jurisdictions: the Canadian Supreme Court invalidated a law restricting voting rights for prisoners in 2002; and in 2004 the European Court of Human Rights declared that section of Britain's *Representation of the People's Act 1983* which denied all prisoners the vote was in breach of the European Convention on Human Rights.

2.12 In *Muir v The Queen* (2004) Kirby J. commented

*Prisoners are human beings. In most cases, they are also citizens of this country, 'subjects of the Queen' and 'electors' under the*

*Constitution. They should, as far as the law can allow, ordinarily have the same rights as all other persons before this Court. They have lost their liberty whilst they are in prison. However, as far as I am concerned, they have not lost their human dignity or their right to equality before the law (HCA 21 2 April 2004 at 7).*

#### Conclusion

An inclusive franchise is a necessary condition of representative democracy. Historically Australia [together with New Zealand] has been a world leader in extending the right to vote beyond the narrow confines of male property owners. The onus of proof is on those who wish to restrict the franchise, particularly so when there is no constitutionally entrenched right to vote in Australia.