

SUBMISSION NO. 34

Joint Standing Committee on Electoral Matters
Submission No. 34
Date Received 15-3-05
Secretary <i>John W. Clarkson</i>

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→ **To: The Joint Standing Committee on Electoral Matters – the Committee Secretariat;**

For Information:

cc: The Australian Electoral Commission, The Acting Electoral Commissioner, Mr Paul Dacey,
The Prime Minister, Hon. Mr John Howard, MP,
The Leader of the Federal Opposition, Hon. Mr Kim Beazley, MP,
The Member for the Electorate of Longman, Hon. Mr Mal Brough, MP.

11th March 2005.

Proposed Amendment (Rev 2) to the Commonwealth Electoral Act 1918

Dear Sir,

I refer to the Commonwealth Electoral Act 1918 – Section 163, Qualifications for Nomination. For some time I have been investigating the possibility of an amendment to this section of the Act as public interest has been aroused on several occasions regarding the manner in which some people have been approved as a candidate for either a member for the House of Representatives or as a candidate for the Senate.

In December 2004, I wrote to the Minister for Finance and Administration, Senator Nicholas Minchin, MP, with courtesy copies addressed to the Chairman of the Australian Electoral Commission, the Prime Minister and my local Federal Member, Hon. Mr Mal Brough, MP. From that submission, (Rev 1) I received a most constructive response from the Acting Electoral Commissioner, Mr Paul Dacey, in which he suggested a number of minor amendments to my initial proposal. *(One of my initial proposals included a requirement that a prospective candidate be enrolled in the very electorate in which he/she aspired to represent).* In the meantime, I have modified my initial proposal sufficiently, I believe, to satisfy the suggestions of the Acting Electoral Commissioner, whilst still following my initial beliefs for electoral reform. It is also at the Acting Electoral Commissioner's suggestion that I forward any future modified proposals to your office for further perusal and consideration.

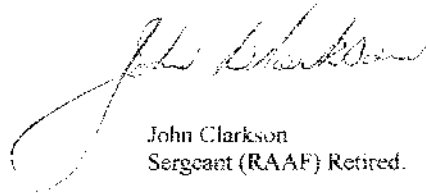
May I publicly express my sincere appreciation for the constructive advice given to me by Mr Paul Dacey and for the effort he took to respond. Such comprehensive and courteous responses are not common today and are very much appreciated.

Please find enclosed Revision 2 of my proposal, which illustrates track changes from the currently approved text of Section 163 of the Act. I have also enclosed my initial Revision 1, as well as a "Revision Introduction and Highlights". This document describes in detail all changes, the reason for change and any background motivation behind the change.

As a retired Technical Officer, I have had considerable experience in investigation, drafting, writing and introducing amendments to a number of technical publications within the Aviation Technical and Operation areas. Therefore, to tackle this project has been and continues to be an interesting challenge.

I sincerely hope that you may discuss this proposal with your colleagues and respond with your appropriate comments. If, for example, you disagree with one aspect of the proposal, yet consider other parts of the proposal as constructive, please let me know which areas met with your approval.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read 'John Clarkson', written in black ink.

John Clarkson
Sergeant (RAAF) Retired.

**Proposed Amendment (Rev 2) to the Commonwealth Electoral Act –
1918.**

Revision Introduction and Highlights

The following proposed revision to the Commonwealth Electoral Act – 1918, Section 163, has been designed to fulfil several intentions, namely:

- To clarify the citizen qualifications to comply with the Australian Constitution;
- To insert appropriate qualifications for previous conduct searches to comply with the Australian Constitution and to improve the qualifications of a candidate to at least equal those of an enlisted member of the Australian Defence Forces, in compliance with existing Queen's Regulations;
- To assure the voting public that all candidates for their particular electorate are actually enrolled in an electorate within the State or Territory in which they reside.

A comprehensive and detailed table of amendment affects is listed below. When reviewing this table, please have the original page of the Act and the proposed amendment available so easy comparisons can be made.

Para	Sub-Para	Amendment	Description and Intent
1.	a.	Insert "and" at end of sub-para	To emphasise all sub-paragraphs are required for qualification.
1.	c.	Inserted text to emphasise citizenship in any country other than Australia disqualifies the candidate for eligibility.	To comply with the Australian Constitution, Chapter 1, Part 4, Paragraph 44 (i).
1.	d.	Inserted text to emphasise candidate must not have any pending charges or previous convictions of an indictable offence.	Drawn from the Australian Constitution Chapter 1, Part 4, Paragraph 44 (ii). Whilst the Constitution prevents any person who "has been convicted or subject to be sentenced", the author has extended this qualification to comply with the Queen's Regulation from which it was written. It is of interest to note that this paragraph in the Constitution, drawn from Queen's Regulations, has applied to all Sworn Servants of the Crown for many years. The author has had personal observations of men who have been either disqualified from becoming a Sworn Crown Servant, or have been suddenly terminated from office due to a previous or recent conviction.
1.	e.	Deleted the word "either".	To emphasise both sub-paragraphs (i) and (ii) are a requirement for qualification.
1.	e (i).	Inserted "and" at end of sub-para.	To emphasise both sub-paragraphs are required for qualification.

Para	Sub-Para	Amendment	Description and Intent
1.	c - ii	Deleted "qualified to become such an elector", and new qualification added to require the candidate to be enrolled in an electorate within the State or Territory in which he/she resides.	Phrase deleted as these words permit and encourage undisciplined and unworthy persons to apply to become candidates. It is the opinion of the author that only enrolled persons should be qualified to become candidates for an election.
1.	Nil.	Final portion of Paragraph 1 amended to clarify the fact that a candidate may only represent an electorate within a State or Territory in which he/she resides.	Continued emphasis to ensure only enrolled persons are qualified to become candidates for election to either the House of Representatives or the Senate.
2.	All.	No Change.	No Change.

It is interesting to note that of the Australian Constitution, Chapter 1, Part 4, Paragraphs 44 (i) to 44 (v), only (i) and (ii) have been mentioned in my proposed amendment. I do believe that there have been a number of candidates standing for either house who would not have passed a screening from Paragraph 44 of the Constitution, rather than the candidate just ticking the appropriate box in the Form. However, the author does concede that it would be logistically impossible for the Australian Electoral Commission to fully screen candidates prior to their acceptance. It still remains the responsibility of the individual candidate to ensure all details on his/her submission are correct and without blemish.

I thank you for reading and evaluating this proposed amendment. If there are any particular paragraphs you find difficult, please let me know without discarding the whole amendment. The author considers the eligibility of the candidates for both houses of Parliament so important that the Act should reveal and imply just how precise qualifications should be prior to their being permitted by the Electoral Commission to stand.

Kind Regards,


John Clarkson.

Proposed Amendment to the Electoral Act – Rev 2

(Proposed Amended Text (Rev 2) of the Electoral Act).

Commonwealth Electoral Act 1918 – Section 163 Qualifications for Nomination [See Note 6]

1. A Person who:

- a. has reached the age of 18 years; and
 - b. is an Australian citizen; and
 - c. does not claim citizenship in any country other than Australia; and
 - d. has not ever been convicted or sentenced in an Australian Court for an indictable offence; and
- c. is:
- i. an elector entitled to vote at a House of Representatives election; and
 - ii. a person who has been on the electoral roll of a particular Australian electorate within one of the Australian States or Territories in which he/she resides for a minimum of twelve (12) calendar months at the time an election is called in one or more electorates of the House of Representatives;

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is qualified to be elected as a Senator or a member of the House of Representatives representing an electorate within the State or Territory in which the person is enrolled.

2. A person is not entitled to be nominated for election as a Senator or a member of the House of Representatives unless the person is qualified under sub-section 1.

Proposed Amendment to the Electoral Act – Rev 1

(Proposed Amended Text of the Electoral Act).

Commonwealth Electoral Act 1918 – Section 163
Qualifications for Nomination (See Note 6)

1. A Person who:

- a. has reached the age of 18 years; and
- b. is an Australian citizen; and
- c. ~~does not claim citizenship in any country other than Australia; and~~
- d. ~~has not ever been convicted or sentenced in an Australian Court for an indictable offence; and~~
- e. is:
 - i. an elector entitled to vote at a House of Representatives election; and
 - ii. ~~a person who has been on the electoral roll of a particular Australian Electorate for a minimum of twelve (12) calendar months at the time an election is called in one or more electorates of the House of Representatives;~~

~~is qualified to be elected as the member of the House of Representatives for the electorate in which the person is enrolled.~~

2. A Person who:

- a. has reached the age of 18 years; and
- b. is an Australian citizen; and
- c. ~~does not claim citizenship in any country other than Australia; and~~
- d. ~~has not ever been convicted or sentenced in an Australian Court for an indictable offence; and~~
- e. is:
 - i. an elector entitled to vote at a House of Representatives and Senate election; and
 - ii. a person who has been on the electoral roll within one of the Australian States or Territories in which he/she resides for a minimum of twelve (12) calendar months at the time either a partial or full Senate election is called;

~~is qualified to be elected as a Senator representing the State or Territory in which the person is enrolled.~~

3. A person is not entitled to be nominated for election as a Senator or a member of the House of Representatives unless the person is qualified under sub-sections 1 and 2.

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Superseded by Rev 2