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The Committee Secretary
Joint Standing Committee on Electoral Matters
Parliament House
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Submission

Dear Sir/Madam,

This submission is in response to the JSCEM's invitation for public comment as part of its Inquiry into the Conduct of the 2001 Federal Election.

1. My Personal Story and Overseas Voting History

I am an Australian citizen, born in Canberra in 1966. I grew up in Canberra, where I also went to university, and worked in ACT Attorney-General's Department for a brief period after graduation. From the age of 18 I was on the electoral roll for the sub-division of Fraser.

In August 1991 I left Australia to go to Hamburg to study on a German Academic Exchange Service scholarship, initially for one year. My scholarship was extended for a further twelve months, and I completed an LL.M. in Hamburg. I voted in the 1993 federal election by post, through the Australian Embassy in Bonn. I remember that it was a complicated procedure, involving signatures from witnesses (Australians I knew in Hamburg), and that the deadlines were tight. I do not know if my vote arrived back in time to be counted. I only discovered what I had to do through friends of friends. At that time there was no Internet.

In October 1993 I moved to Brussels, to do a traineeship in the European Commission for five months. In March 1994, I started work in the Brussels office of a German law firm. I remained resident in Brussels until May 2000.

At some time following the 1993 election, I was removed from the electoral roll. I do not know whether the Australian Electoral Commission wrote to me at my father's address in Fraser. In any event, I never saw any letter from the AEC asking whether I still lived at that address.

I did not vote in the 1996 or the 1998 federal elections or the November 1999 Referendum on the Republic. I was aware that I was no longer on the electoral roll and could not vote.

After leaving Brussels at the end of May 2000, I spent a couple of months in the United States, and then most of August and September 2000 in Australia with my father in Canberra.

In October 2000 I moved to Washington DC to take up employment. I remained there until the end of November 2001. I spent December 2001, January and most of February 2002 living in Canberra, before returning to Brussels to take up my current job.

While researching the issue of overseas voting, and reading previous reports of the JSCEM, I realised in mid-2001 that I could go back on the electoral roll, because I had lived in Australia during 2000 for a period of one month or more. I consequently at that time enrolled from overseas (i.e. within two years of leaving the country after living there during August and September 2000). My application for enrolment from overseas was accepted and I became an Eligible Overseas Elector in mid-2001.

I then voted in the November 2001 election, in person at the Australian Embassy in Washington. Ballot papers for the November 2001 election arrived very late in Washington. It seems that the AEC did not send the Australian Embassy all the ballot papers from Australia in time. One would have thought that these would have been sent by private courier or in the diplomatic bag.

I understand that many people who were not in the DC area and could not vote in person at the Embassy, who had to wait for their postal votes to be sent to them from the Embassy once the ballot papers actually arrived at the Embassy from Australia, were thwarted in their attempts to vote by post because there was not enough time for the votes to be sent out and returned. The US Postal Service was experiencing delays due to the anthrax scare.

I consider myself extremely fortunate in that I am one of the few overseas Australian citizens who currently have the right to vote. Nevertheless, I experienced several frustrating years while living overseas when I was

disenfranchised. After thinking about this issue and doing my own research over a number of months, I would like to set out the following comments on the shortcomings of the current overseas voting system.

2. Non-Australian Citizens Have Greater Voting Rights than Some Australian Citizens

I, along with many overseas Australian citizens, was extremely disappointed that I was not able to vote in the 1999 Referendum on the Republic, a matter of great importance for the future of Australia.

British subjects who are not Australian citizens, but who are resident in Australia and who were on a Commonwealth Electoral Roll on 25 January 1984 were eligible to vote in the referendum on the Republic, whereas myself, and a number of other Australian citizens, were prevented from doing so. While the exact number of non-Australian citizens on the Electoral Roll today seems to be unknown, media reports would indicate that between 200,000 and 600,000 non-Australian citizens were able to vote in the Referendum on the Republic.

The Department of Foreign Affairs and Trade (DFAT) estimates that in 2001, there were approximately 860,000 Australians overseas. If three-quarters of that population is of eligible voting age, approximately 645,000 overseas Australians should be able to vote. However less than one-tenth of this number had votes issued to them overseas in the November 2001 election. Many of those who voted overseas would have been tourists, rather than those actually resident overseas. It is an inescapable fact that many overseas who did not vote are simply not entitled to vote under the relevant provisions in the *Commonwealth Electoral Act 1918*. Several hundred thousand Australian citizens overseas are disenfranchised, perhaps as many as 500,000.

It is astounding that a non-Australian should be able to vote on an issue of such critical importance for Australia's future, as well as in federal elections, when up to 500,000 Australian citizens are prevented by the law from doing so. The right to vote is, after all, a fundamental right attached to citizenship. A poll taken by AGB-McNair in August 1996 indicated that over 80 percent of Australians believe that only Australian citizens should have the right to vote in Australian elections and referendums.

3. Enrolment from Overseas

Amendments to the *Commonwealth Electoral Act 1918* made just before the 1998 federal election have allowed Australians to enrol to vote from overseas for the first time in history. Clearly, this was a welcome improvement.

However, the limitations attached to this mechanism render it useless for many overseas Australians.

3.1 Prerequisites for Enrolment from Overseas

3.1.1 Two-Year Time Limit

The time limitation on enrolment from overseas is self-defeating. What is the policy justification behind the requirement that one can only enrol to vote from overseas within two years of leaving Australia?

For those Australians who left Australia to live overseas more than just a few years ago, the provision is useless. They had already been wiped off the electoral roll long ago and at the time the provision was introduced, had left Australia much longer than two years before.

Even for those who have left Australia more recently, the provision is extremely limiting, especially when combined with the total lack of information which is made available on overseas voting and enrolment to Australians departing the country. A person in the middle of a move to live overseas will rarely think to check the AEC website, the only Government source where proper information is provided. Until an election is imminent, an Australian who has recently moved overseas may not think to address the issue of his enrolment status.

Almost all Australian citizens are already on the electoral roll (indeed it is a legal requirement for Australian citizens aged 18 or over) when they leave the country. Most will actually stay on the roll for a period of months or several years after they leave Australia, even if they do not tell the AEC that they have left Australia. This is because it will take the AEC some time to realize that they have left. If a person is wiped off the electoral roll, very often it will not be until two years after they left the country, and by the time they discover that they have been wiped off, perhaps just before the next federal election, the two-year window of opportunity will be long since past.

Re-enrolment is then impossible for the person, unless he or she returns to live at an address in Australia for one month or more. A person who is prevented from enrolling to vote is effectively disenfranchised.

It is submitted that there is no relevant or sound policy justification for limiting the period for enrolment from overseas to two years after the date of departure. Any Australian citizen should be able to enrol to vote, at any time. Enrolment at any time is possible for those Australian citizens living in Australia. Why is it not possible for Australian citizens living overseas?

United States citizens living overseas may vote at home no matter where they live or how long they have been away from the United States. Before each election, they simply register to vote. For example, notices are currently

appearing in English language publications in Belgium encouraging US citizens to register to vote in November, in the following terms:

American Elections Voter Registration

You can register for the November elections on June 22 at the American College in Leuven, 100 Naamsestraat, from 14.00 to 16.00. Bring your passport, social security number and address of your last residence in the US. Email Gail Fagan at gafagaen@tiscalik.be for details.

3.1.2 Reasons for Leaving Australia

Another restrictive prerequisite for overseas enrolment concerns the reason for leaving Australia. Enrolment from overseas is currently only possible if a person has ceased to reside in Australia “for reasons related to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse”.

An Australian citizen and passport holder has the right to enter and leave Australia at any time. The reasons why a person leaves the country should be irrelevant to their right to vote. What policy justification could possibly be presented to limit the category of those who can enrol from overseas to those who go overseas for work reasons, and their spouses?

Does the Government find it acceptable for Australian citizens to go overseas for career or employment, but want to disadvantage those who go overseas for an extended holiday? Those who are not gainfully employed overseas, and their spouses, it would seem, are less worthy of the right to enrol, and therefore less worthy of the right to vote, when outside the country.

As the law is currently worded, a young person wanting to backpack around South America for several years is excluded from enrolling to vote from overseas. In addition, a retired Australian senior citizen who lives overseas with a family member for several years would also not qualify to enrol from overseas. The only route to overseas voting for these people, it would seem, is to make sure they are on the electoral roll before they leave, and then transfer to Eligible Overseas Elector Status within two years of leaving Australia. But if they are unaware of the formalities they have to comply with, and are wiped off the roll while overseas, the right to re-enrol is denied them, purely because they did not leave Australia for the “right” reasons.

3.1.3 Intention to Return

Another illogical prerequisite for enrolment from overseas is that the applicant must *intend to resume residing in Australia* not later than six years after he or she ceased to reside in Australia. I will discuss this below, as the same restriction forms one of the prerequisites for the application for Eligible Overseas Elector status.

4. Eligible Overseas Elector Status

4.1 Prerequisites for Eligible Overseas Elector Status

Quite apart from the difficulties surrounding the provisions on enrolment from overseas, the eligibility requirements for registration as an Eligible Overseas Elector, which apply to those on the electoral roll when they leave Australia, are discriminatory in more than one respect.

4.1.1 Two-Year Time Limit

There is a two-year deadline for registration as an Eligible Overseas Elector on leaving Australia – inappropriate for the reasons I have outlined above in the context of the same deadline for enrolment from overseas.

4.1.2 Intention to Return

Why is registration as an Eligible Overseas Elector conditional upon a person having an *intention to return to Australia* within six years? An Australian citizen should be able to vote while they remain an Australian citizen, regardless of where they are, and how long ago they left Australia, and what their intentions are. Eligible Overseas Elector Status should not be restricted to those whom the Government judges to somehow be more “committed” to Australia because they have stated an intention to return to live in Australia within six years.

Furthermore, it is submitted that a person’s life plans and intentions are so subjective that the AEC can never hope to properly police this legislative prerequisite in any case. There is no objective way to assess whether a person really has a particular intention or not. Intentions are only proved by actions over time. Indeed, the AEC presently appears to carry out no checks whatsoever to see whether a person’s declared intention on the application for eligible overseas elector status is genuine at the time it is made or not. How could it possibly do so?

Even if a person’s intention could be objectively assessed to be genuinely made at the time, it is submitted that to require individuals to declare their intentions and their life plans six years hence is simply ridiculous. Thousands of

Australians who left Australia for one year, or a defined period in the beginning, are still living overseas today many years later, their plans having changed due to the formation of personal relationships, career developments or other factors which could never have been foreseen a few years earlier.

The law currently places an obligation on those who are eligible overseas electors to inform the AEC as soon as they “abandon the intention to become resident again in Australia within six years after ceasing to reside in Australia”. It is submitted that few eligible overseas electors will even know of the existence of this requirement. Those who want to remain on the electoral roll and maintain the right to vote are unlikely to come forward and voluntarily disenfranchise themselves. In any case, very few individuals ever make a conscious choice of such a concrete nature.

4.1.3 Length of Status – Six Years

An overseas Australian may only enjoy the status of Eligible Overseas Elector for an initial period of *six years*. Why does an Australian citizen who has been overseas for six years suddenly becomes less worthy of the right to vote? Why is six years the magic number?

As stated above, the right to vote should be available to any Australian citizen overseas, regardless of how long he or she has been overseas. It should not be limited to those whom the Government assesses to have some sort of greater “loyalty” to the country because they are not going to be away for more than six years. Eligible overseas elector status should be an indefinite status.

Although the status can be extended progressively for one-year periods after the initial six years, it is submitted that many eligible overseas electors will be disenfranchised at the six-year point, because they will not know that the onus is on them to renew. While this six-year restriction remains law, does the AEC have a mechanism in place to follow up with people coming up to the six-year mark, to facilitate their continued enrolment?

4.1.4 Reason for Leaving Australia

It is noted that a person who is already on the electoral roll when they leave Australia can apply for eligible overseas elector status without having to state that he or she left for career or employment reasons or those of their spouse. This is as it should be. But the fact that the requirement exists as a prerequisite for enrolment from overseas when the person is no longer on the electoral roll is simply incongruous and unnecessarily restrictive, as discussed above under point 3.1.2.

5. Conclusion

In conclusion, the following amendments should be made to the *Commonwealth Electoral Act 1918*:

- ⊘# The two-year limitation on enrolment from overseas should be deleted and enrolment should be possible for Australians overseas at any time;
- ⊘# The two-year limitation on applying for eligible overseas elector status should be deleted and application for this status should be possible at any time from overseas, as long as the Australian citizen is still on the electoral roll;
- ⊘# The requirement that a person have left Australia for employment reasons or that of his or spouse, in order to qualify for enrolment from overseas, should be deleted;
- ⊘# The intention to resume residing in Australia should no longer be a requirement for either enrolment from overseas or the attainment of eligible overseas elector status;
- ⊘# The six-year limitation on absence from Australia should be deleted from the provisions on overseas enrolment and eligible overseas elector status in the Act.

These amendments would restore the right to vote to all Australian citizens of voting age who live overseas.

In addition, the Australian Electoral Commission must do more for Australian citizens overseas to enable them to exercise their vote and maintain their eligibility to vote. It must also put in place mechanisms to make sure that those citizens departing the country are aware of the administrative formalities they must comply with. Finally, personnel at Australian missions overseas dealing with inquiries from Australian expatriates should be better informed, and receive regular training on the law on overseas voting, so that correct advice can be given to individuals when they ask for information.

Yours faithfully,

Anne MacGregor