The Senate

Finance and Public Administration Legislation Committee

Provisions of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

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Introduction

Background

1.1 The Electoral and Referendum (Electoral Integrity and Other Measures) Bill 2005 (the bill) was introduced into the House of Representatives on 8 December 2005 by the then Parliamentary Secretary to the Minister for Finance and Administration, the Hon. Dr Sharman Stone MP.

Reference of the bill

1.2 On 8 February 2006, the Senate adopted the Selection of Bills Committee Report No. 1 of 2006 and originally referred the provisions of the bill to the Senate Finance and Public Administration Legislation Committee for inquiry and report by 27 March 2006. The Senate subsequently agreed to extend the reporting date to 28 March 2006.

Purpose of the bill

1.3 The purpose of the bill is to implement:

- government supported reform measures arising from the recommendations made by the Joint Standing Committee on Electoral Matters (JSCEM) in its *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (JSCEM Report); and
- some additional reform measures considered a priority by the government.

1.4 The bill amends the *Commonwealth Electoral Act 1918* (Electoral Act), the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) and the *Income Tax Assessment Act 1997* (ITAA 1997). Some consequential amendments are also required to the *Income Tax Assessment Act 1936* (ITAA 1936).

Submissions

1.5 The committee advertised its inquiry in *The Australian* on 15 February 2006. In addition, the committee contacted a number of individuals and organisations in writing alerting them to the inquiry and inviting them to make a submission. A list of submissions received appears at Appendix 1.

Hearing and evidence

1.6 The committee held a public hearing at Parliament House, Canberra on 7 March 2006. Witnesses who appeared before the committee at the hearing are listed at Appendix 3.

1.7 Copies of the Hansard transcript from the hearing are tabled for the information of the Senate. It can be accessed on the internet at http://aph.gov.au/hansard.

Acknowledgment

The committee wishes to thank all those who assisted with its inquiry.

Chapter 2

The Bill

2.1 This chapter briefly outlines the background to, and the main provisions of, the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (the bill).

2.2 The bill represents the most significant change to the Electoral Act since 1983. Many of the measures flow from recommendations in a recent report of the Joint Standing Committee on Electoral Matters (JSCEM) on the 2004 federal election.

Joint committee report on the 2004 federal election

2.3 The JSCEM, and its predecessors, have examined every federal election since 1983. The aim of these inquiries has been to encourage public discussion on the conduct of elections and to formulate recommendations for legislative and practical change if required.[1]

2.4 On 2 December 2004 the then Special Minister of State, Senator the Hon. Eric Abetz, asked the JSCEM to inquire into and report on all aspects of the conduct of the 2004 federal election and matters related thereto (JSCEM Report).[2]

2.5 The JSCEM Report was tabled in Parliament on 10 October 2005. It made 56 recommendations covering a range of issues, including enrolment and the electoral roll, funding and disclosure and the scrutiny of votes. The bill gives effect to some of the recommendations in that report, as well as other changes.

The proposed amendments in the bill

2.6 The then minister said that the purpose of the bill is to promote and ensure electoral integrity.[3]

2.7 The bill amends the Electoral Act and the Referendum Act in relation to:

- closure of the electoral roll;
- disclosure of political donations;
- disclosure requirements in non-election periods for 'third parties';

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1 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 1.

2 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 7.

3 Senator the Hon. Eric Abetz, Special Minister of State, 'Improving the integrity of Australia's electoral system', Press release A05/55, 6 December 2005.

- prisoner voting entitlements;
- proof of identity for enrolment and provisional voting;
- access to the electoral roll and its use;
- deregistration and re-registration of political parties;
- candidate nomination deposits;
- the definition of 'associated entity';
- abolition of broadcaster and publisher returns;
- paid electoral advertising on the internet;
- location of Divisional Offices; and
- the Australian Electoral Commission's (AEC) power to demand information.

2.8 The bill also:

- amends the ITAA 1997 to increase the tax deductibility value of contributions to political parties, independent candidates and members; and
- makes consequential amendments to the ITAA 1936.

2.9 A number of the proposed changes have been the subject of much debate in the past. Some measures have been introduced in previous parliaments but were not passed by the Senate.

2.10 The amendments are outlined in more detail below.

Closure of the electoral roll

2.11 The 'close of roll' period refers to the time by which electors must enrol or change enrolment details prior to an election.[4] Currently, section 155 of the Electoral Act provides for the electoral roll to close seven days after the election writ is issued. Generally, the writ is issued the next working day after the announcement of an election, but this has not always been the case.

2.12 Schedule 1 of the bill reduces the existing close of roll period for new enrolments and re-enrolments to 8pm on the day the writ is issued.[5] There are exceptions to this for 17 year-olds who turn 18 between the day the writ is issued and election day, and for people who are granted citizenship between those times.[6] The date for the close of roll for these people shall be at 8pm three working dates after the

4 Davidson, J., 'Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005', *Bills Digest*, No. 95, 2005-06, 8 February 2006, p. 3.

5 *Explanatory Memorandum*, p. 10.

6 Davidson, J., 'Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005', *Bills Digest*, No. 95, 2005-06, 8 February 2006, p. 3.

issue of the writ. People who are currently enrolled, but who need to update their details, also have until 8pm on the third working day after the issue of the writ.[7]

2.13 Corresponding amendments will also be made to section 4 of the Referendum Act.

2.14 These amendments commence on Royal Assent and give effect to majority recommendation 25 in the JSCEM Report.

Scheme of provisional enrolment for new citizens during the three day close of rolls period

2.15 The measure creates a 'scheme of provisional enrolment' for persons who will become Australian citizens between the issue of the writ and polling day for an election or referendum.[8] As a provisional new citizen's name will not appear on the certified list of voters, the person cannot cast an 'ordinary vote'[9]. Instead, any type of 'declaration vote'[10] may be made. This vote will be treated as a 'provisional vote'[11] due to the requirement to provide proof of citizenship as well as proof of identity.[12]

2.16 These amendments commence on Royal Assent.

Disclosure of political donations

2.17 Schedule 2 of the bill increases the threshold for disclosing 'gifts' to political parties and candidates from $1,500 to $10,000. This $10,000 figure will be amended for changes in the consumer price index (CPI) with effect from the date of introduction of the bill (the threshold amount will be rounded to the nearest $100).[13]

2.18 Currently section 287 of the Electoral Act defines 'gift' as:

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7 *Explanatory Memorandum*, p. 10.

8 *Explanatory Memorandum*, p. 5.

9 An 'ordinary vote' is a vote cast at a polling place in the elector's home division on polling day. Austrailan Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed 9 March 2006).

10 A 'declaration vote' is cast when: the voter's name cannot be found on the certified list; the voter's name is marked off the certified list as already having voted; the voter is registered as a silent elector (ie. his/her address does not appear on the roll); or the voter casts an absent, pre-poll or postal vote. Austrailan Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed 9 March 2006).

11 A 'provisional vote' may be claimed by a person whose name cannot be found on the certified list of voters, or whose name is already marked off the roll but claims not to have voted. Austrailan Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed 9 March 2006).

12 *Explanatory Memorandum*, p. 5.

13 *Explanatory Memorandum*, p. 14.

> …any disposition of property made by a person to another person…being a disposition made without adequate consideration in money or money's worth…

2.19 Cash and non-cash items may count as a gift, but commercial transactions (for example, returns on investments) do not.

2.20 The amendments commence on the date of introduction and give effect to majority recommendation 49 of the JSCEM Report.

Disclosure requirements in non-election periods for 'third parties'

2.21 The definition of a 'third party' is discussed at paragraph 13.130 of the JSCEM Report.

> A 'third party' is a person or organisation under an obligation to lodge a disclosure return because of indirect involvement in federal elections through (typically) making political donations or placing electoral advertising. Third parties are different from registered political parties, candidates, Senate groups, associated entities, broadcasters and publishers all of which have separate disclosure obligations under the CEA [*Commonwealth Electoral Act 1918*].

2.22 The current disclosure scheme extends to third parties who make or receive political donations or who incur electoral expenditure.[14] Unlike other entities, third parties only need to lodge disclosure returns for election periods.

2.23 Schedule 1 of the bill imposes an obligation on third parties to complete annual disclosure returns in relation to:

- expenditure of more than $10,000 incurred for a political purpose during a financial year; or
- gifts of more than $10,000 received which enable expenditure for a political purpose during a financial year.[15]

2.24 The amendments commence on Royal Assent and give effect to majority recommendation 53 of the JSCEM Report.

Prisoner voting entitlements

2.25 Subsection 93(8) of the Electoral Act says that prisoners serving sentences of three years or longer are not entitled to vote in federal elections or remain on the roll. Prisoners currently serving sentences of less than three years are still entitled to vote

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14 Australian Electoral Commission, *Funding and Disclosure Handbook for Donors and Third Parties*, 2005, http://www.aec.gov.au/_content/how/political_disclosures/handbooks/third_parties/page02.htm (accessed 20 February 2006).

15 *Explanatory Memorandum*, p. 7.

and remain on the roll (or if unenrolled, apply for enrolment).[16] Persons released on parole and other similar release schemes are also entitled to vote.

2.26 Schedule 1 of the bill will remove the right of all prisoners serving sentences of full-time imprisonment to vote. Despite this, all prisoners may still remain on the roll, or if unenrolled apply for enrolment (though their names will be excluded from the certified list). People serving alternative sentences such as periodic or home detention, or non-custodial sentences or who have been released on parole, will still be eligible to enrol and vote.[17]

2.27 These changes commence on Royal Assent.

Proof of identity requirements

Increased requirements for identification for enrolment or updating enrolment

2.28 Section 98 of the Electoral Act currently says that people seeking to enrol, or to transfer their enrolment, or to claim age 17 enrolment[18] must submit a signed enrolment form witnessed by an elector or person entitled to enrolment.

2.29 Schedule 1 of the bill introduces stricter proof of identity requirements for electors seeking to enrol or update their enrolment. These changes will repeal the relevant provisions in the *Electoral and Referendum (Enrolment Integrity and Other Measures) Act 2004* which are still yet to come into effect.

2.30 The then Parliamentary Secretary, the Hon. Dr Sharman Stone MP, in her second reading speech, said that the measure will:

> introduce a proof of identity requirement for people enrolling or updating their enrolment by requiring that they provide their driver's licence number on their enrolment application. If they do not have a driver's licence, the elector can show a prescribed identity document to a person who is in a prescribed class of electors and who can attest to the identity of the applicant. If an elector does not have a driver's licence or a prescribed identity document, then they must have their enrolment application signed by two referees who are not related to the applicant, who have known the applicant for at least one month and who must provide their driver's licence number.[19]

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16 *Explanatory Memorandum*, p. 6.

17 *Explanatory Memorandum*, p. 6.

18 Australian citizens who are 17 years old can apply for enrolment by completing an electoral enrolment form. The applicant's name will then be placed on the electoral roll so they will be able to vote in Commonwealth, State and Territory elections as soon they turn 18. Australian Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed 9 March 2006).

19 The Hon. Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 8 December 2005, p. 20.

2.31 Item 29 of Schedule 1 lists the prescribed identification documents and the class of prescribed electors.

2.32 The amendments will commence on Proclamation or at the end of eight months if not proclaimed earlier.[20] The changes give effect to recommendation 3 in the JSCEM Report.

Establish a proof of identity requirement for provisional voting

2.33 Schedule 1 of the bill also establishes proof of identity requirements for persons casting a provisional vote. At present, a provisional vote may be claimed by a person whose name cannot be found on the certified list of voters, or whose name is already marked off the roll but claims not to have voted.[21] The provisional voter's name is checked at the Divisional Office before the vote is included in the count.

2.34 The requirements in Schedule 1 will mean that a person wanting to cast a provisional vote on election day will need to show:

- His or her's driver's licence or a prescribed identity document at the time of casting the provisional vote; or
- an original, or an attested copy of, his or her's driver's licence or a prescribed identity document to an officer before the close of business on the Friday after election day.[22]

2.35 The vote will only be added to the count if the provisional voter has provided suitable identification. If his or her omission from the roll was the result of an AEC error – such as inadvertent removal or marking off – the vote will also be added to the count.[23]

2.36 The amendments commence on Royal Assent and give effect to majority recommendation 25 in the JSCEM Report.

Tax deductibility of contributions to political parties, members and independent candidates

2.37 Schedule 4 of the bill extends the existing arrangements for tax deductibility of political contributions.

2.38 Currently under section 30-15 of the ITAA 1997 an individual who makes a contribution of $2 or more to a registered political party in any one income year can

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20 *Explanatory Memorandum*, p. 10.

21 Australian Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed on 20 February 2006).

22 *Explanatory Memorandum*, p. 11.

23 The Hon. Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 8 December 2005, p. 20.

deduct up to $100 in that income year.[24] This provision does not extend to contributions from companies.

2.39 The measure amends the ITAA 1997 by:

> a) raising the tax deductible threshold from $100 to $1,500 for an income year;
>
> b) allowing deductibility for contributions made to political parties registered under State and Territory electoral legislation;
>
> c) allowing deductibility for gifts to independent candidates and members; and
>
> d) extending deductibility for donations from companies.[25]

2.40 Minor consequential amendments will be required to the ITAA 1936 and other provisions in the ITAA 1997.

2.41 The proposed amendments give effect to recommendations 51[26] and 52 in the JSCEM Report and will apply to gifts or contributions made after Royal Assent.

Access to the electoral roll and its use

2.42 Schedule 1 of the bill will enable persons and organisations to access the electoral roll to verify the identity of persons for the purposes of the *Financial Transactions Reports Act 1988* (FTR Act).

2.43 The FTR Act requires cash dealers, including financial institutions, to verify the identity of signatories to accounts and thereby minimise the risk of accounts being used for criminal purposes.[27] The standard identity verification procedure is known as the '100 point test'. This test means that certain signatories may need to verify their identity using a range of documentation, each of which is assigned a value. The electoral roll is a source that is worth 25 points. The Explanatory Memorandum says that:

> Recent amendments to the Electoral Act, which removed the electoral roll from sale, have created difficulties for financial institutions attempting to satisfy their obligations under the FTR Act.[28]

2.44 The measure will also provide that such use of the electoral roll is not subject to the commercial use prohibition.

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24 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 337.

25 *Explanatory Memorandum*, p. 16.

26 JSCEM recommendation 51 recommended an increase to $2,000 (inflation-indexed).

27 *Explanatory Memorandum*, p. 8.

28 *Explanatory Memorandum*, p. 8.

2.45 The amendments will commence on Royal Assent.

Deregistration and re-registration of political parties

2.46 Schedule 3 of the bill introduces changes to deregistration and re-registration processes for political parties. These changes will commence on Royal Assent.

2.47 The measures will freeze the register of political parties from the date of Royal Assent for a period of six months (that is, no changes may be made except in relation to registered officers and secretaries). At the end of the six month period, all currently registered political parties will be automatically deregistered, with exemptions for parliamentary parties and parties with past representation in federal parliament.[29]

2.48 Registered political parties with parliamentary representation in the 41st Parliament are exempt from de-registration if, at the time of Royal Assent, they have satisfied the AEC of their party status in accordance with a section 138A review.[30] Section 138A of the Electoral Act formally provides authority for the AEC to check whether parties continue to be eligible political parties, or whether they should be deregistered. Schedule 3 also provides avenues for parties that do not satisfy the section 138A review.

2.49 Registered political parties which have previous parliamentary representation have three months (from Royal Assent) to claim an exemption from de-registration. To claim the exemption, a party must provide sufficient evidence to the AEC to determine the application.[31]

2.50 Any political party that is deregistered will be required to reapply for registration and must comply with the current requirements in the Electoral Act, including the existing naming provisions.

2.51 The amendments give effect to majority recommendation 20 in the JSCEM Report.

Candidate nomination deposits

2.52 A candidate in a federal election is required to pay a nomination deposit. At the 2004 election, a House of Representatives candidate was required to pay a $350 deposit, which was refundable if the candidate achieved four per cent or more of the formal first preference votes for the relevant division. A Senate candidate was required to pay a deposit of $700 which was refundable if the candidate (or if

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29 The Hon. Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 8 December 2005, p. 20.

30 *Explanatory Memorandum*, pp 14-15.

31 *Commonwealth Electoral Act 1918*, section 138A.

applicable, the Senate group in which the candidate was included) achieved four per cent or more of the formal first preference votes for the relevant State or Territory.[32]

2.53 Schedule 1 of the bill will increase nomination deposits for House of Representatives candidates to $500 and to $1,000 for Senate candidates. The threshold for returning the nomination deposit will remain at four per cent.

2.54 The amendments commence on Royal Assent.

Extend the definition of 'associated entity'

2.55 Under section 314AEA of the Electoral Act associated entities must give annual returns to the AEC.

2.56 Currently, subsection 287(1) of the Electoral Act defines an 'associated entity' as an entity that:

> (a) is controlled by one or more registered political parties; or
>
> (b) operates wholly or to a significant extent for the benefit of one or more registered political parties.

2.57 Schedule 1 of the bill extends the definition of 'associated entity' at Item 74 to also include:

> …
>
> (c) an entity that is a financial member of a registered political party; or
>
> (d) an entity on whose behalf another person is a financial member of a registered political party; or
>
> (e) an entity that has voting rights in a registered political party; or
>
> (f) an entity on whose behalf another person has voting rights in a registered political party.

2.58 The amendments commence on Royal Assent.

Abolition of publisher and broadcaster returns

2.59 The Electoral Act requires broadcasters and publishers to provide returns to the AEC containing details about electoral advertisements broadcast or published during the election period.[33] The returns must include the identity of the advertiser, the authority for the advertisement and the amount charged for the advertisment. Electoral advertisements broadcast or published from the issue of the election writ until the

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32 Australian Electoral Commission, 'Nominations', *Election 2004 Report*, http://results.aec.gov.au/12246/nominations.htm (accessed on 21 February 2006).

33 *Commonwealth Electoral Act 1918*, s. 310 and s. 311.

close of polling must be disclosed, irrespective of when the booking or payment for the advertisement was made.[34]

2.60 Schedule 1 of the bill abolishes the requirement for these returns from the date of Royal Assent.

2.61 Corresponding changes will be made to Part IX of the Referendum Act.

Paid electoral advertising on the internet

2.62 In its present form, the Electoral Act does not regulate electoral advertising on the internet. Section 328 of the Electoral Act governs the printing and publication of electoral advertisements. During the JSCEM inquiry into the 2004 federal election, the AEC 'reported legal advice that section 328 does not apply to internet publications' but noted this had not been tested by the courts.[35]

2.63 Schedule 1 of the bill requires that paid electoral advertising on the internet be authorised in the same way as printed electoral advertisements.[36]

2.64 In line with recommendation 44 of the JSCEM Report, the measure provides that electoral advertisements will be distinguished from 'general commentary' on the internet. This is achieved by:

- removing the term 'electoral matter' from the Electoral Act;
- requiring 'intent to affect voting' in an election;
- requiring the advertisement to have been paid for; and
- specifying that general commentary on a website is a defence to a breach of the provision (the evidential burden is on the defendant).[37]

2.65 The measure will have extra-territorial application to 'counter the ease with which electoral advertising can be "hosted" on overseas websites'.[38] Despite this, only persons situated in Australia will be eligible to authorise an electoral advertisement placed on the internet.

2.66 Changes will also be made to section 121A of the Referendum Act.

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34 Australian Electoral Commission, 'Electoral Advertisements', *Funding and Disclosure Handbook for Broadcasters and Publishers*, 8 September 2005, http://www.aec.gov.au/_content/how/political_disclosures/handbooks/broadcasters/part2.htm (accessed on 21 February 2006).

35 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 275.

36 The Hon. Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 8 December 2005, p. 20.

37 *Explanatory Memorandum*, p. 13.

38 *Explanatory Memorandum*, pp 13-14.

2.67 The amendments commence on Royal Assent.

Location of Divisional Offices

2.68 There are some AEC Divisional Offices currently located outside divisional boundaries. This is often because Divisional Offices are co-located with other Divisional Offices, and consequently they can only be physically located in one division.

2.69 Schedule 1 of the bill provides that, in future, any Divisional Offices being established or re-located after the date of Royal Assent must be located within the divisional boundaries unless otherwise authorised by the minister in writing. No changes will be made to Divisional Offices currently located outside relevant divisions.[39]

The Australian Electoral Commission's power to demand information

2.70 The Electoral Act requires the AEC to undertake reviews of electoral rolls. Subsection 92(1) gives the AEC the power to demand information from all Australian government and limited State and Territory government agencies for the purpose of preparing, maintaining or revising the rolls.

2.71 The AEC indicated in its submission to the 2004 JSCEM inquiry:

> …that there were data sources which are currently unavailable to the AEC due to State and Territory privacy legislation, that would be of significant benefit to its CRU [continuous roll updating] processes if an amendment was made to section 92 of the CEA [the Electoral Act].[40]

2.72 Schedule 1 of the bill amends subsection 92(1) to include officers of State and Territory governments amongst those who must provide information to the AEC for the purpose of preparing, maintaining or revising the rolls.[41] This will enable the AEC direct access to a range of different data without having to negotiate with individual jurisdictions. Furthermore, given the disclosure of data by the State or Territory would be 'required or authorised by law', the privacy requirements would be satisfied.

2.73 These changes give effect to majority recommendation 6 in the JSCEM Report and commence on Royal Assent.

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39 *Explanatory Memorandum*, p. 7.

40 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 43.

41 *Explanatory Memorandum*, p. 8.

Chapter 3

Key issues

3.1 This chapter discusses the main issues and concerns raised in submissions and evidence given at the committee's public hearing on the bill. These include:

- closure of the electoral roll;
- disclosure of political donations;
- disclosure requirements in non-election periods for 'third parties';
- prisoner voting entitlements;
- proof of identity for enrolment and provisional voting;
- tax deductibility of contributions to political parties, members and independent candidates;
- access to the electoral roll and its use;
- deregistration and re-registration for political parties; and
- candidate nomination deposits.

3.2 As mentioned in Chapter 2, many of the key changes in the bill stem from the majority recommendations in the JSCEM Report on the 2004 federal election. Reference is therefore also made to the submissions and evidence given as part of that inquiry. Of the submissions to this committee that provided detailed analysis of the bill in a broader sense, these tended to express either strong support or opposition to key parts of the bill.

Closure of the electoral roll

3.3 Section 155 of the Electoral Act currently provides that electors have seven days after the writ for an election has been issued to enrol or change their enrolment details. Schedule 1 of the bill reduces the close of roll period and proposes that the date and time fixed for the close of the rolls be 8.00pm on the day of the writ (with some exceptions).

3.4 The majority of submissions on this issue largely repeated arguments for or against changing the close of roll period that have been raised on previous occasions. In the JSCEM Report, government members and opposition and minor party members were divided on the issues.

3.5 An argument in favour of the amendment stated that the close of roll period is the most vulnerable time for electoral fraud, due to the inability, it is said, of the AEC

to thoroughly check the veracity of enrolments.[1] In an address to the Sydney Institute on 4 October 2005, the then minister said:

> This seven day grace period does nothing for our electoral system other than increase opportunities for fraud or errors.[2]

3.6 In its submission to the 2004 JSCEM inquiry, the Liberal Party of Australia stated:

> The integrity of the electoral roll remains a central concern for us, and in that regard we express our support for the attempts made by the Government to legislate for closing the roll to new enrolments on the day of issue of the writs for an election…We continue to be of the view that a flood of new enrolments in the days after writs are issued, at a time when they cannot be properly checked, are to the detriment of the integrity of the roll.[3]

3.7 This view was supported by the Festival of Light Australia in evidence to this committee.

> The integrity of the electoral roll is essential to the maintenance of our democratic system, and the proposed measures reduce the capacity to perpetrate fraud on the roll.[4]

3.8 The Festival of Light also claimed that while there is little evidence of electoral roll fraud in Australia, preventing fraud in the close of roll period before it can occur is important.

3.9 However, a number of submissions indicated concern with the proposed changes.

3.10 In response to the claim that particular abuses occur in the close of roll period, Professor Colin Hughes stated in his submission to the 2001 JSCEM inquiry:

> There is an inherent implausibility in the argument on which the case for instant closure rests as it alleges that there is a vast, totally concealed conspiracy able to produce very large numbers of false enrolment documents within 7 days that would be quite unable to do so a couple [of] weeks or a couple [of] months earlier – if that is indeed what the conspirators seek to do.[5]

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1 Dr David Phillips, National President, Festival of Light Australia, *Committee Hansard*, 7 March 2006, pp 33-34.

2 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

3 Liberal Party of Australia, *Submission 95*, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 4.

4 Festival of Light Australia, *Submission 5*, p. 2.

5 Professor Colin Hughes, *Submission 21*, p. 2 (Attachment A).

3.11 The Human Rights Law Resource Centre (HRLRC) highlighted that the calling of an election acts as a catalyst for the notification of changes to the roll and new enrolments and that earlier closure of the roll would mean that people could be disenfranchised.

> While the Act [*Commonwealth Electoral Act 1918*] requires that electors update their information on the roll within 21 days of a change of address, it is recognised that many people…do not discharge this requirement. It is only when a federal election is announced that most individuals notify the AEC of their changed circumstances.[6]

3.12 A number of other submissions also stressed that a shorter close of roll period would create an impediment to people exercising the right to vote and would disenfranchise large numbers people in federal elections.[7] The Australian Labor Party stated:

> Given that the roll will now close for new enrolments on the day writs are issued, and for the updating of details three days after this, it is possible that hundreds of thousands of people will be denied a vote.[8]

3.13 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, provided recent AEC figures on the number of changes made to the electoral roll in the seven day period before the close of the rolls prior to the 2004 federal election. He stated that 423,000 people either enrolled for the first time or changed their enrolment details.[9] Of this figure, 78,908 people enrolled for the first time; 78,494 people re-enrolled (that is, they had been enrolled, they had been objected off the roll,[10] but the AEC still had a record for them); and 255,000 people had changed their enrolment details. Mr Campbell stated:

> If the legislation is passed by the parliament and nothing happens – nothing is done by us [the AEC] or by the parties before the next election – you might assume that some similar number of people might come in in the

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6 Human Rights Law Resource Centre Ltd, *Submission 3*, p. 15.

7 Dr Brian Costar, *Submission 2*, p. 1; Australian Labor Party, *Submission 10*, p. 3; The Greens NSW, *Submission 14*, p. 2; The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3; Human Rights and Equal Opportunity Commission, *Submission 50*, p. 9.

8 Australian Labor Party, *Submission 10*, p. 3.

9 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

10 Procedures exist in the *Commonwealth Electoral Act 1918* to remove a person from the electoral roll. Under subsection 114(1) 'a person enrolled for a Subdivision may object to the enrolment of another person for that Subdivision on the ground, other than the ground specified in paragraph 93(8)(a), that the other person is not entitled to be enrolled for that Subdivision'.

> seven days and find that their enrolment is not updated and therefore some of them will not be able to vote.[11]

3.14 Particular concern was expressed by the Queensland Attorney-General and Minister for Justice, the Hon. Linda Lavarch MP about the impact of the measure on groups with traditionally low participation rates in federal elections – for example, young people, people in rural and remote communities and people from disadvantaged backgrounds.[12] The HRLRC claimed that the measure would also have a 'disproportionate and discriminatory effect on homeless people' because these people, it argued, do not have a stable place of residence, often cannot access mainstream media coverage and have reduced literacy.[13]

3.15 The Hon. Linda Lavarch MP also emphasised the confusion the changes might create for voters in State elections.

> While the close of rolls period for Queensland [State] elections will remain a minimum of five and a maximum of seven days following the issue of the writ, people seeking to enrol or change enrolment may not be aware of the difference between the close of roll periods for Federal elections and State elections.[14]

3.16 Similar statements promoting uniformity between Commonwealth and State electoral processes were advanced by Professor Colin Hughes in his submission to the 2001 JSCEM inquiry.[15]

Committee view

3.17 The committee notes the concern about the possible side effects of the reduced time for enrolment. However, it considers that measures designed to strengthen and protect the integrity of the electoral roll are essential for upholding Australia's democratic system. Limiting the scope for electoral fraud is therefore important, both in principle and practice. To counteract any unintended consequences that might flow from the measure, the committee supports the AEC's proposal to conduct public awareness campaigns and to modify the format and wording of the reminder letters sent to people about electoral enrolment. The committee also supports the AEC's plan to disseminate the AEC analysis of people (broken down by age, division and day) who enrolled in the seven days after the writ was issued for the 2004

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11 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

12 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3.

13 Human Rights Law Resource Centre Ltd, *Submission 3*, pp 15-16.

14 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3.

15 Professor Colin Hughes, *Submission 73*, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2001 Federal Election and Matters Related Thereto, p. 2.

federal election. This information should provide a deeper understanding of enrolment trends in the close of roll period.[16]

Disclosure of political donations

3.18 Schedule 2 of the bill increases the declarable limit for disclosing gifts to political parties and candidates from $1,500 to $10,000. The threshold will be indexed to the Consumer Price Index (CPI) to provide it 'will not be reduced in years where the indexation figure is negative'.[17]

3.19 The then minister said in 2005 that the arguments in favour of lifting the threshold were 'clear and unassailable'.[18]

- The existing threshold has been eroded by inflation and was 'too low' when originally set.
- It would 'substantially reduce the administrative burden on both the Australian Electoral Commission and our voluntary political parties'.
- It would 'also protect individuals' and organisations' legitimate right to privacy' while still maintaining adequate transparency.[19]

3.20 The Government Coalition parties, the Liberal Party and the Nationals, both argued in favour of the measure. The Nationals stated:

> The proposed changes to disclosure limits will bring a system which has not been indexed for more than 15 years, back into line with the original intention of the disclosure provisions.[20]

3.21 The Festival of Light also supported raising the threshold. It recommended, however, that the threshold only be raised to $5,000. The Festival of Light argued that this amount would balance the need to have 'openness and accountability' with the preservation of privacy for citizens and businesses and a reduction in the administrative burden for political parties.[21]

3.22 However, strong opposition to the changes was raised in a number of submissions.

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16 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 3.

17 *Explanatory Memorandum*, p. 14.

18 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

19 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

20 The Nationals, *Submission 1*, p. 1.

21 Festival of Light Australia, *Submission 5*, p. 1.

3.23 The Labor Party said that the current provisions in the Electoral Act 'provide a fair balance between optimum disclosure and practicability'.[22] It expressed strong concerns that the increase 'will weaken the democratic process and potentially lead to corruption'.[23]

3.24 Professor George Williams went further and emphasised the need for reform of the existing disclosure scheme.

> No increase in the threshold can be justified, let alone such a major increase. The change would have a harmful effect on our democracy. Reform should instead be aimed at the more effective and more frequent disclosure of political donations.[24]

3.25 Mr Joo-Cheong Tham rejected the arguments put forward by proponents of the changes. He thought it was implausible to justify the higher threshold on the basis of increases in the CPI.

> None of the [CPI] adjusted figures come close to even a third of $10,000. The adjusted figure for the disclosure thresholds of the annual returns of parties and associated entities, for instance, is barely a fifth of $10,000.[25]

3.26 Dr Brian Costar echoed this view, but stated that the threshold amount was worth $3,404 in today's terms.[26]

3.27 Mr Tham also contended that the measure would reduce the transparency created by the current law as it would allow greater numbers of donations to go undisclosed.[27] The Greens NSW supported this view.

> If [the bill] becomes law it will be easier for supporters to donate to political parties without any public awareness of who is buying access to those who make policy decisions affecting all citizens.[28]

3.28 Those who supported raising the threshold argued, however, that these concerns are overstated and out of touch with contemporary political reality. In evidence given to the 2004 JSCEM inquiry, Mr Brian Loughnane, Federal Director of the Liberal Party, contended that:

> …if the threshold had been lifted to $10,000, 88 per cent of donations made to the major political parties last financial year would have been disclosed.

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22 Australian Labor Party, *Submission 10*, p. 2.

23 Australian Labor Party, *Submission 10*, p. 2.

24 Professor George Williams, *Submission 22*, p. 1.

25 Mr Joo-Cheong Tham, *Submission 4*, p. 11.

26 Professor Brian Costar, *Submission 2*, p. 1.

27 Mr Joo-Cheong Tham, *Submission 4*, p. 2; Professor Brian Costar, *Committee Hansard*, 7 March 2006, p. 27.

28 The Greens – NSW, *Submission 14*, p. 1.

> The first and fundamental point is: is there a sufficient level of public disclosure of major donations to political parties? I would assert very strongly that there is.[29]

3.29 Mr Loughnane went further:

> …a donation of $1,500 to a political party does not translate into significant or indeed any influence on the policy direction of a political party. I would assert very strongly that a donation of $10,000, or any donation for that matter, does not have that impact.
>
> …
>
> I do believe it is appropriate that a level of $10,000 is disclosed, and we would support that, but we believe that the current system imposes unnecessarily restrictive [administrative] requirements on political parties and on the Electoral Commission.[30]

Committee view

3.30 The committee considers that political donations are a way for individuals or organisations to support their party of choice. A higher donation threshold will protect individuals' or organisations' legitimate right to privacy, reduce the administrative burden on political parties and the AEC and provide a strong level of transparency. The committee supports increasing the thresholds for disclosing gifts to parties and candidates from $1,500 to $10,000.

Disclosure requirements in non-election periods for 'third parties'

3.31 'Third parties' currently have separate disclosure obligations under the Electoral Act to those that exist for registered political parties, candidates, Senate groups, associated entities, broadcasters and publishers. Third parties are only required to lodge disclosure returns for an election period (that is, from the issue of the election writ to the end of polling on the election day), within 15 weeks of polling day.[31]

3.32 Schedule 1 of the bill proposes that third parties furnish annual disclosure returns in addition to the current requirement that they lodge election returns.

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29 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, *Committee Hansard*, JSCEM, 8 August 2005, p. 33.

30 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, *Committee Hansard*, JSCEM, 8 August 2005, p. 39.

31 *Commonwealth Electoral Act 1918,* ss 309(4).

3.33 The measure gives effect to the JSCEM recommendation that the financial reporting arrangements for third parties be consistent with all other entities in the political process.[32]

3.34 The then minister asserted in 2005 that third partes should be made accountable for the money they spend on campaigns which seek to influence the policies of the major parties.[33] With particular reference to organisations that were 'effectively campaigning in favour of the ALP' in the lead up to the 2004 federal election, Senator Abetz advocated changes to the law to ensure greater transparency and stronger accountability mechanisms.[34]

3.35 Mr Paul O'Callaghan, Executive Director, Australian Council for International Development (ACFID), representing the National Roundtable of Nonprofit Organisations, supported the measure on the grounds that it increased transparency and accountability for non-profit and for-profit organisations that engage in activities relating to electoral matters.[35]

3.36 However, Mr O'Callaghan was concerned that, in its current form, the measure would give rise to a series of unintended consequences that were not considered by the JSCEM when forming its recommendation. He argued that proposed section 314AEB's interaction with the existing broad definition of 'electoral matter' in subsection 4(9) of the Electoral Act could:

> …require disclosure of expenditures that absolutely bear no reasonable relationship to politics, government or elections and…inadvertently undermine the very transparency and timeliness that the draft is seeking to achieve.[36]

3.37 Mr O'Callaghan pointed to the impact of subparagraph 314AEB(1)(a)(i) that proposes annual disclosure of expenditure on the production or publication of electoral matter by any means (including radio, television or the Internet). He said that it could result in:

- additional administrative burdens on non-profit organisations to ensure compliance with broad disclosure obligations;

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32 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 343.

33 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

34 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

35 Mr Paul O'Callaghan, Executive Director, Australian Council for International Development, *Committee Hansard*, p. 51; National Roundtable of Nonprofit Organisations, *Submission 12*, p. 2.

36 Mr Paul O'Callaghan, Executive Director, Australian Council for International Development, *Committee Hansard*, p. 51.

- potential donors perceiving non-profit organisations to be engaged in electoral matters and developing the 'false impression that there is some partisanship or there is some engagement in political matters';
- a deterrent to future donors donating because the disclosure requirements may prevent anonymity;
- organisations refraining from referring to past or present governments, and their programs or initiatives, to ensure that activities do not fall within the definition of 'electoral matter'; and
- an excessive workload for the AEC due to receipt of an 'exceptional volume' of returns in which it would be difficult to identify electorally-relevant material.[37]

3.38 Mr O'Callaghan also argued that the proposed measures could unintentionally reduce transparency as third parties would have within 20 weeks after the financial year to meet the annual filing requirement.

> For example, if an election occurs on 31 October of a given year and a third party expends $50,000 in October on electoral publications…that expenditure would have to be incurred in the financial year ending the following 30 June, with the effect that the corresponding disclosure statement would not be due until mid-November, more than a full year after the election to which such expenditure related. [38]

3.39 The National Council of Churches in Australia maintained that the desirability of the new disclosure requirements 'should be carefully reconsidered' citing the similar reasons to those articulated by Mr O'Callaghan.[39]

3.40 The minister, the Hon. Gary Nairn MP, wrote to the committee to say he was aware of the issues raised about the impact of third party disclosure provisions on non-profit bodies. The minister said he had written to some of these bodies, including the National Roundtable, offering to meet with them to discuss their concerns and solutions. A copy of the minister's letter is at Appendix 4.

Committee view

3.41 The committee supports the strengthening of the disclosure provisions for third parties and the alignment of the regime with that which exists for other entities

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37 Mr Paul O'Callaghan, Executive Director, Australian Council for International Development, *Committee Hansard*, pp 52-54; National Roundtable of Nonprofit Organisations, *Submission 12*, pp 2-6.

38 Mr Paul O'Callaghan, Executive Director, Australian Council for International Development, *Committee Hansard*, p. 52; National Roundtable of Nonprofit Organisations, *Submission 12*, pp 5-6.

39 National Council of Churches in Australia, *Submission 7*, p. 1.

under the Electoral Act. However, the committee believes that the concerns raised in evidence regarding this measure are well founded.

3.42 The committee, therefore, welcomes the minister's preparedness to meet with members of the non-profit sector to discuss the possible impact of this measure and to explore possible solutions.

Prisoner voting entitlements

3.43 Schedule 1 of the bill proposes to remove voting rights for all prisoners.

3.44 Currently the Electoral Act allows prisoners serving sentences of less than three years to vote. Prisoners serving a sentence of three years or longer are not entitled to enrol and vote. These prisoners are also removed from the roll by objection following receipt of information from the prison authorities.[40]

3.45 This is a controversial issue and the evidence presented to this committee highlighted that the community and political parties are divided on whether prisoners should be denied the vote in federal elections.

3.46 In the JSCEM Report, the committee urged the government to pursue a legislative change to remove the right to vote from prisoners 'as soon as possible'.[41]

3.47 In his speech to the Sydney Institute on 4 October 2005, the then minister outlined the rationale for the change.

> If the community, through the courts under the rule of law, has judged an individual to have so offended against society's law that they should forfeit their fundamental right of freedom by being separated from society, then it seems passing strange that they should retain their right to vote and a voice in the future direction of that society.[42]

3.48 Thus, the rationale for the denial of the right to vote is twofold: educative (to ensure that people realise the importance of the role of the democratic system in society) and punitive (as a punishment for the commission of a crime).[43]

3.49 The Liberal Party welcomed this measure. Drawing attention to an earlier attempt by the current government to revoke the voting entitlement of prisoners, it stated that:

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40 *Commonwealth Electoral Act*, paragraph 93(8)(b)*; Explanatory Memorandum*, p. 6.

41 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 129.

42 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005

43 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 129.

> We believe that the matter of stopping prisoners voting, as in the Government's legislation [in 2004], should again be brought before the Parliament.[44]

3.50 The Festival of Light also supported the measure. In evidence to this committee, Dr David Phillips, National President, Festival of Light Australia said:

> We take the view that there needs to be a balance struck between an entitlement to vote—everyone should have the opportunity to vote—and an obligation on citizens to live in accordance with the laws of the land. If people flout the laws of the land with sufficient severity that they are convicted of an offence which results in imprisonment…[we] believe it is appropriate that they also lose their entitlement to vote until they have served their term...[45]

3.51 The measure attracted more opposition in evidence than any other proposal or change in the bill. The Council of Social Service of New South Wales (NCOSS) said that the measure puts forward a punitive 'one size fits all' approach.[46] NCOSS supported the existing law which denies voting rights for prisoners serving a sentence of three years or more. In NCOSS's view, the current approach:

> …strikes a balance between the right to sanction serious offenders and maintaining the civic rights and responsibilities of the majority who serve much shorter sentences.[47]

3.52 Many arguments against the changes were expressed. Submissions argued that disenfranchising prisoners:

- was detrimental to rehabilitation;[48]
- undermined the integrity of the democratic process and was discriminatory (particularly to Indigenous people who are disproportionately represented in Australia's prison population);[49]
- was inconsistent with a range of international human rights norms and principles;[50]

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44 Liberal Party of Australia, *Submission 95*, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 2.

45 Dr David Phillips, National President, Festival of Light Australia, *Committee Hansard*, 7 March 2006, p. 39.

46 Council of Social Service of New South Wales, *Submission 19*, p. 1.

47 Council of Social Service of New South Wales, *Submission 19*, p. 2.

48 A significant number of submissions raised this concern. See *Submissions 3, 14, 19, 23-36, 38-41, 43-49 and 51*. Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 45; Mr Anthony York, Mentor, Justice Action, *Committee Hansard*, 7 March 2006, p. 64.

49 A significant number of submissions raised this concern. See *Submissions 3, 14, 17, 23-26, 31-41, 43-50*. Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 45.

- was contrary to recent legal decisions in Europe, Canada and South Africa;[51]
- was potentially invalid under sections 7 and 24 of the Australian Constitution;[52] and
- was disproportionate to any legitimate aim and arbitrary in application.[53]

Committee view

3.53 The committee believes that people serving a sentence of full-time imprisonment should not be entitled to vote in federal elections. Imprisonment is intended to deny people a range of freedoms and entitlements in order to provide a disincentive to commit future crimes. To allow prisoners to vote weakens that disincentive and sends mixed signals. The measure will not deny prisoners from accessing rehabilitation programs during their incarceration.

Proof of identity requirements

Increased requirements for identification on enrolment

3.54 Under section 98 of the Electoral Act, people seeking to enrol, to transfer their enrolment or to claim age 17 enrolment must submit a signed enrolment form witnessed by an elector or person entitled to enrolment.

3.55 Schedule 1 of the bill introduces a proof of identity requirement for people enrolling or updating their enrolment by requiring that they provide their driver's licence number on their enrolment application. Where a person does not possess a driver's licence, the application for enrolment must be countersigned by two persons on the electoral roll who can confirm the person's identity and current residential address.[54]

3.56 There is a great deal of history to the proof of identity issue. The committee received many submissions that largely repeated arguments for and against tightening identity requirements that were the subject of previous parliamentary inquiries, including the 2004 JSCEM inquiry.

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50 A significant number of submissions raised this concern. See *Submissions 3, 6, 17, 23- 25, 31-36, 39-41, 43-46, 47, 49-50*.

51 A number of submissions raised this concern. See *Submissions 2, 6, 31, 41 and 50*. Mr Les Connolly, Spokesperson, Justice Action, *Committee Hansard*, 7 March 2006, p. 68.

52 A number of submissions raised this concern. See *Submissions 6, 22, 41, 46 and 47*. Professor Brian Costar, *Committee Hansard*, 7 March 2006, pp 20-21; Mr Les Connolly, Spokesperson, Justice Action, *Committee Hansard*, 7 March 2006, p. 63.

53 Human Rights and Equal Opportunity Commission, *Submission 50*, pp 4-5.

54 Item 29 of the bill provides that regulations in section 98AA will set out prescribed identification documents and the class of prescribed electors.

3.57 In a speech to the Sydney Institute in 2005, the then minister argued that strengthened identification requirements for enrolment would enhance the integrity of the electoral roll. Senator Abetz said:

> There can be no doubt that there is no more fundamental underpinning of our democracy than the need to have an accurate roll.
>
> Let me be clear: by and large the Australian electoral roll is accurate. But my view, not accurate enough.
>
> …
>
> It has often been said that it is easier to get on the electoral roll than it is to hire a video.[55]

3.58 In the same speech, Senator Abetz referred to the AEC's 'Full Habitation Review' of the federal electorate of Isaacs carried out in February 2004 which 'found that some 89.17 per cent of electors were enrolled at the correct address'.[56] He was concerned that this level of inaccuracy might be replicated across other electorates and claimed that it raised 'questions about the ability of inaccurate and fraudulent enrolments to affect' election results.[57]

3.59 The Festival of Light supported the stricter proof of identity requirements and argued that the 'proposal is an important improvement in the security of the roll'.[58]

3.60 However, a number of submissions maintained that there is no persuasive evidence that the measures currently in place are failing to provide adequate protection for the integrity of the electoral roll.[59]

3.61 In addition, the Labor Party claimed that that there has been no evidence of fraud on the electoral roll such as to affect an election result.[60]

3.62 Others questioned the value to the roll's integrity of requiring drivers' licences as proof of identity. Whilst he expressed support for more 'rigorous' requirements, Professor Colin Hughes argued that a driver's licence was not the appropriate form of identity to include in the measure. Citing the fact that some Australians do not have a

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55 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

56 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

57 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

58 Festival of Light, *Submission 5*, p. 2.

59 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 2; Australian Labor Party, *Submission 10*, p. 4; Australian Privacy Foundation, *Submission 42*, p. 2.

60 Australian Labor Party, *Submission 10*, p. 4.

driver's licence and the frequency of media reports on identity theft involving drivers' licences, he argued that they are 'a broken reed to start with'. [61]

3.63 Concern that the 'complexity' and 'inconvenience' caused by the measure would impair the ability of people to enrol to vote, or deter them from enrolling, was also raised.[62] The Hon. Linda Lavarch MP claimed that the changes would particularly affect young people, people from disadvantaged backgrounds and people in remote communities. Further to this, the HRLRC expressed particular concern about the impact on homeless people who did not have a driver's licence and therefore would be required to use alternative mechanisms for enrolment.

> Many financially and socially disadvantaged people cannot access, or are unwilling to access, persons proposed to be in the 'prescribed class', including members of the police force, Justices of the Peace, doctors and lawyers.[63]

3.64 The HRLRC also argued that the proposed 'evidence of residence' requirements would disenfranchise people staying in temporary or unconventional accommodation for periods of more than one month. Such people would be ineligible to enrol as 'itinerant electors',[64] but would be unable to meet the evidence of residence requirements in the measure to enrol as 'ordinary electors'.[65]

Establish a proof of identity requirement for provisional voting

3.65 Schedule 1 of the bill also requires that people casting a provisional vote must provide documentary proof of identity.

3.66 This requirement follows from majority recommendation 25 of the JSCEM Report where the committee considered that:

> …requiring provisional voters to identify themselves would remove the possibility of provisional votes being cast by persons with assumed identities.[66]

3.67 Senator Abetz, when minister, also expressed concern at AEC figures that indicated 27,000 voters who cast provisional votes in the 2004 federal election (and

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61 Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 45.

62 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 2.

63 Human Rights Law Resource Centre, *Submission 3*, p. 14.

64 An 'itinerant elector' is a person who is in Australia; and because the person does not reside in any subdivision, is not entitled to be enrolled for any subdivision. Austrailan Electoral Commission, *Glossary*, 28 July 2005, http://www.aec.gov.au/_content/What/glossary.htm (accessed 9 March 2006).

65 Human Rights Law Resource Centre, *Submission 3*, p. 14.

66 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 127.

were subsequently unable to be put on the electoral roll because they failed to qualify) were potentially included in the count incorrectly.[67]

3.68 The JSCEM thought that a driver's licence was a convenient form of identification for the majority of voters and provided a means of 'speedy identification' for those casting a provisional vote.[68]

3.69 While the Nationals preferred the 'total removal of provisional voting', the party expressed support for the changes as they would assist in the improving integrity of provisional voting.[69]

3.70 The then minister, Senator Abetz did raise concern, however, that the requirement for provisional voters to provide evidence of identity on election day could give rise to a number of practical issues - for example potential delays and the need for extra AEC staff.[70]

Committee view

3.71 The committee considers that confirming the identity of a person claiming enrolment is important for maintaining the integrity of the roll and thereby the electoral system. The committee believes that verification of identity is a concept that the Australian public is familiar with and a practice which occurs regularly in the course of people's lives (for instance, when opening a bank account or obtaining video library membership).

3.72 The committee suggests that the AEC take steps to minimise any impact on the time taken for electors to submit or update their enrolment details or to cast a provisional vote on election day. The committee further suggests that a public awareness campaign would be a necessary, complementary measure which would help counteract any unintended consequences flowing from the new requirement.

Tax deductibility of contributions to political parties, members and independent candidates

3.73 Schedule 4 of the bill extends the existing arrangements for tax deductibility of political contributions.

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67 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

68 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 127.

69 The Nationals, *Submission 1*, p. 1.

70 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

3.74 The Liberal Party stated in 2005 that the current limit of $100 for deductibility for political contributions was 'inadequate'.[71] Mr Loughnane commented that the appropriate figure would be 'well into four figures'.[72]

3.75 In support of the measure, Mr Loughnane claimed that giving a contribution to a political party is 'critical to the health of Australian democracy' and warranted 'recognition at a significantly greater level than the current level of tax deductibility'.[73]

3.76 Some witnesses, however, disagreed with the measure and its rationale. Mr Joo-Cheong Tham opposed any increase in the amount that is tax deductible. He argued that the proposed amount of $1,500 is an 'excessive subsidy'.[74] He also claimed that:

> …the changes seek to extend tax deductibility beyond contributions by citizens to commercial corporations – entities that in my view have no claim to democratic representation.[75]

3.77 In also expressing opposition to the measure, the Labor Party said:

> …in conjunction with the $10,000 disclosure limit, this measure will be used to buy access to political parties for political agendas which the proponents would rather not see in the public realm. The tax-deductibility will be an added financial bonus for such people.[76]

Committee view

3.78 The committee agrees that the threshold for tax deductibility of contributions made to political parties, members and independents at a State or federal level should be increased from $100 to $1,500 to reflect contemporary economic reality. The committee considers that a higher threshold should have the benefit of encouraging more people to participate in the democratic process.

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71 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 8 August 2005, p. 27.

72 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 8 August 2005, p. 37.

73 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 8 August 2005, p. 37.

74 Mr Joo-Cheong Tham, *Committee Hansard*, 7 March 2006, p. 57.

75 Mr Joo-Cheong Tham, *Committee Hansard*, 7 March 2006, p. 57.

76 Australian Labor Party, *Submission 10*, p. 3.

Access to the electoral roll and its use

3.79 Schedule 1 of the bill will allow for the provision of electoral roll information (name and address details only) to persons or organisations (which have been prescribed by regulation) for the purposes of verifying the identity of persons as required by the *Financial Transaction Reports Act 1988* (FTR Act).

3.80 A number of financial services companies and representative bodies wrote to the committee and expressed support for the measure on the grounds that it gave them access to the roll and increased the roll's integrity as a verification source.[77] The Investment and Financial Services Association (IFSA) argued that access should be extended to include details of occupation and date of birth as this information would improve identity checking. IFSA contended that greater access would help combat identity fraud, which in turn would strengthen the integrity of the roll.[78]

3.81 These submissions drew the committee's attention to the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Bill 2005. This bill proposes to replace the FTR Act and contains requirements that relate to access to the electoral roll. It was argued, among other things, that to strengthen the overall identity verification regime the AML/CTF bill should also contain measures for access to the electoral roll.[79]

3.82 On the other hand, the Australian Privacy Foundation (APF) took a less favourable line.[80] The APF argued that the privacy implications of permitting access to information on the roll, for a purpose other than what was initially intended, needed additional consideration. It also claimed that the bill pre-empted scrutiny of the AML/CTF bill (currently the subject of inquiry by the Senate Legal and Constitutional Committee) and that it was at odds with the current prohibition on 'commercial use' of electoral roll information.

Committee view

3.83 The concerns raised about identity verification essentially relate to the AML/CTF bill. These are best addressed by the Senate Legal and Constitutional Committee which is currently examining that bill.

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77 A number of submissions raised this concern. See *Submissions 8, 9, 11, 13, 15 and 20.*

78 Investment and Financial Services Association, *Submission 9*, p. 2.

79 Citigroup, *Submission 8*, p. 1; Investment and Financial Services Association, *Submission 9*, p. 2; American Express Australia Limited, *Submission 13*, p. 1; ING Direct, *Submission 15*, p. 1; HBOS Australia, *Submission 16*, p. 1; ING Australia Limited, *Submission 20*, p. 1.

80 Australian Privacy Foundation, Submission 42a, p 1-2.

De-registration of political parties and requirement for re-registration

3.84 Schedule 3 of the bill amends the Electoral Act to deregister all registered political parties, with exceptions for parliamentary parties (as defined in section 123) and parties that have satisfied the requirements under Part XI that have, in the past, had parliamentary representation. These parties are exempt from de-registration if they have satisfied the AEC that they have met the criteria in the Electoral Act for being a parliamentary party during the 41st Parliament.

3.85 The purpose of the change is primarily to give effect to concern over misleading party names. In addition, since the amendments to party naming and registration requirements made to the Electoral Act 2004 cannot apply retrospectively, the measure will also ensure that these amendments apply equally to all political parties operating in the Australian federal political system.

3.86 The Nationals supported the measure and claimed:

> The proposed changes to the party registration rules will ensure that all parties are subjected to the same rules and should ensure that frivolous groups are not able to register as political parties.[81]

3.87 The Greens NSW disagreed with this view and argued that the measure 'is an extraordinary attack on the democratic rights of many minor parties'.[82]

Committee view

3.88 The committee supports this measure. It will harmonise the pre-2004 requirements with the 2004 changes to party registration. This means the registration rules will apply equally across the board. Rather than discriminating against smaller parties, the measure will create a level playing field, while also resolving some of the confusion that has arisen over party names in recent elections. The measure is a positive step.

Candidate nomination deposits

3.89 The measure increases the nomination deposits for candidates in the House Representatives to $500 and, for candidates in the Senate, to $1,000. The existing four per cent threshold for returning the nomination deposit will not be changed.

3.90 The Nationals argued that the increase was justified due to the 'lack of inflationary adjustments since the laws were originally introduced'.[83]

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81 The Nationals, *Submission 1*, p. 1.

82 The Greens NSW, *Submission 14*, p. 2.

83 The Nationals, *Submission 1*, p. 1.

3.91 The Festival of Light also supported the measure claiming that the amount would be attainable by 'those who have significant community support' but high enough to deter 'unrealistic candidates' who were not seriously running in an election.[84]

3.92 In opposition to the measure, the Greens NSW asserted that the increase would be prohibitive for small parties planning to contest many electorates.[85]

Committee view

3.93 The committee supports the increases to candidate nomination deposits on the basis that the increases are not large and take inflationary adjustments into account. The increases are consistent with the purpose of the deposits and will strengthen the discipline on candidates and parties intending to run at elections.

Conclusion

3.94 The committee considers that the changes the bill proposes are, in many cases, overdue and entirely justified. It believes that the bill, if passed, will strengthen the electoral system and underpinnings of Australia's democracy. As noted above, the committee welcomes the minister's preparedness to meet with members of the non-profit sector to discuss the possible impact of the third party disclosure measure on their work and to explore solutions. The committee considers that the bill should be passed.

Recommendation 1

3.95 The committee recommends that the bill be passed.

Senator Brett Mason

Chair

84 Festival of Light, *Submission 5*, p. 4.

85 The Greens NSW, *Submission 14*, p. 3.

Dissenting Report

Senator Michael Forshaw and Senator Carol Brown

Introduction

1.1 Labor is strongly committed to ensuring as many eligible Australians as possible are able to vote in federal elections and that our electoral system is as transparent as possible.

1.2 The Electoral Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 works in complete contradiction to these goals. The changes outlined in the bill could disenfranchise thousands of eligible Australians voters. It will also make it far easier for political parties to secretly receive large donations. Labor is particularly concerned about sections of the bill which:

- provide for the earlier closure of the electoral roll;
- reduce the amount of time a voter has to change their existing details on the electoral roll;
- introduce a new proof of identity requirement for people enrolling or updating their enrolment;
- establish a proof of identity requirement for provisional voting;
- increase a number of the disclosure thresholds to above $10,000;
- increase the size and scope of the tax-deductibility of political donations; and
- further restrict the electoral rights of prisoners.

1.3 After reading the submission and hearing evidence from the National Roundtable of Nonprofit Organisations ALP committee members are also concerned about the possible impact of changes to the reporting obligations of third parties on charities and community groups.

1.4 ALP committee members consider the bulk of the Majority Government Senator's report to be a satisfactory summary of the evidence. In fact much of the evidence provided reinforces Labor's views on these issues. The recommendations of the Government Senator's, however, do not reflect the weight of the evidence.

1.5 When the submissions from the Liberal and National parties are removed the only support that remains for the Government's proposals to close the electoral roll early, introduce the proposed proof of identity regime, increase disclosure thresholds and increase the size and scope of tax-deductibility of political donations, comes from the Festival of Light.

1.6 The changes outlined in this bill are nothing more than an attempt by the Coalition Government to try and secure a perceived electoral advantage at the expense of ordinary Australians and the transparency of the electoral system. As the reasons outlined in this dissenting report demonstrate, the ALP members believe that the bill is fundamentally flawed and therefore should not be passed.

Early closure of the electoral roll

1.7 The bill proposes substantial reductions in the amount of time available to persons to enrol or amend their details of enrolment once an election is called.

1.8 Under the current provisions of the Electoral Act a period of 7 days from the day the writs are issued is available to persons to enrol or update their enrolment details.

1.9 The bill proposes to reduce this period as follows:

- For persons who are not already on the roll (with two exceptions) the roll will close at 8pm on the day the writs are issued. The two exceptions are for persons who turn 18 years of age or who will be granted citizenship during the period between the day the writs are issued and polling day. Persons in these two categories will have 3 working days after the day the writs are issued to enrol.
- Persons who are already on the roll will have 3 working days from the day the writs are issued to update their details (eg: notify a change of address).

1.10 Labor has voiced sustained opposition to these proposals. The ALP committee members believe that these changes, particularly when taken in conjunction with the new proof of identity provisions (as discussed below), will only serve to disadvantage those in our community who already have the greatest difficulty accessing decision makers. Such groups include:

- young Australians;
- Australians from non-English speaking backgrounds;
- indigenous Australians; and
- the homeless.

1.11 The Government has provided little, if any, justification for these changes which will seriously impact upon the opportunity for various groups or persons to enrol or update their enrolment details once an election is called. There is nothing in the Explanatory Memorandum or in the Minister's Second Reading Speech to support the proposed reduction.

1.12 When questioned during the inquiry the Electoral Commissioner Mr Ian Campbell, stated that it was a matter of Government policy and declined to provide any reason or evidence supporting the change.

> **Senator Forshaw** - …What is the rationale for moving from seven days to three days?
>
> **Mr Campbell** – I do not think that is for me to answer.
>
> **Senator Forshaw** – Does anybody want to answer that?
>
> **Mr Campbell** – I do not think that is a matter for the Commission to answer.[1]

1.13 Similarly, Mr Jonathan Hutson, General Manager, Corporate Division, Department of Finance & Administration, was unable to explain the reasons for the proposed changes:

> **Senator Forshaw** - …If I can put it another way, is there something about a three day cut-off that is more conducive to improving the accuracy of the roll than a seven day cut-off?
>
> **Mr Hutson** – I am not sure, given the debate here, that I have a lot to add to the question. There are some categories of people who were admitted to enrol in the three days after the writs were issued I think it is a Government policy decision that has been made. I am not sure that I am in a position to give you any rationale in detail beyond that.[2]

1.14 Whilst it is a policy decision by the Government, the position of the Australian Electoral Commission (AEC) in refusing to comment on these changes contrasts with its strong objection to previous proposals to close the rolls earlier. In its submission to the Joint Standing Committee on Electoral Matters inquiry into the Integrity of the Electoral Roll in 2001, the AEC stated:

> Expert opinion within the AEC is that the early close of rolls will not improve the accuracy of the rolls for an election, simply because the need for field checking or any other kind of checking will be eliminated, or because the potential for enrolment fraud has been closed off. In fact, the expectation is that the rolls for the election will be *less accurate*, because less time will be available for existing electors to correct their enrolments and for new enrolments to be received.[3]

1.15 Given that the AEC has been happy to offer an opinion on these matters in the past, ALP committee members are concerned about their reluctance to do so on this occasion.

1.16 The AEC informed the committee that at the 2004 Federal Election around 423,000 persons enrolled, re-enrolled or changed their enrolment details in the 7 days

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1 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 4.

2 Mr Jonathan Hutson, General Manager, Corporate Group, Department of Finance and Administration, *Committee Hansard*, 7 March 2006, p. 5.

3 Australian Electoral Commission, Joint Standing Committee on Electoral Matters' Inquiry into the Integrity of the Electoral Roll, *Submission 26*, 17 October 2000, p. 516.

after the issue of the writs. This figure included 78,908 new enrolments and 78,494 re-enrolments – that is, persons who had previously been on the roll but had been removed. A further 255,000 persons changed their enrolment details.

1.17 The AEC also informed the committee that approximately 130,000 of the total number came in on the last day before the rolls closed and a further 150,000 sought to enrol or change their details after the 7 day period.

1.18 The only submissions to the inquiry supporting the early closure of the electoral roll were made by the Liberal and National Parties and the Festival of Light. They argued that due to the alleged heavy workload of the AEC the current 7 day period provides a potential for fraudulent enrolment to occur - on such a large scale that it could affect the outcome of an election. It is asserted, by the proponents of these changes, that large numbers of persons can be moved on and off the roll in specific electorates during this 7 day period.

1.19 These arguments lack both evidence and credibility. No evidence that this has ever occurred, or even been attempted in previous elections, was presented to the committee.

1.20 In contrast, there is substantial historical and expert evidence that the electoral roll and the conduct of elections by the AEC in Australia are of the highest integrity. The AEC has an enviable record of maintaining the integrity of the electoral roll over many years.

1.21 In 2001/02 the Australian National Audit Office (ANAO) conducted a performance audit of the integrity of the electoral roll. The ANAO found that the roll is one of high integrity. The ANAO concluded that the electoral roll was likely to be 95 per cent accurate. Appendix A provides the relevant ANAO conclusions.

1.22 The proposition that large scale fraud has occurred, or could occur, has been previously refuted by the AEC:

> It has been concluded by every parliamentary and judicial inquiry into the conduct of federal elections, since the AEC was established as an independent statutory authority in 1984, that there has been no widespread or organised attempt to defraud the electoral system…and that the level of fraudulent enrolment and voting is not sufficient to have overturned the result in any Division in Australia.[4]

1.23 Professor Brian Costar, a noted expert in electoral matters, rejected the "conspiracy theory" of potential electoral fraud:

> I think that this conspiracy theory, if I can call it that, that there is out there a vast army of villains who want to take advantage of every nook and cranny of the law to sign up phantom voters … to rort the system is not

4 Australian Electoral Commission, 'Electoral Fraud and Multiple Voting', *AEC Electoral Backgrounder 14*, 24 October 2001.

> based on evidence … there have been 600 pages of investigation in a number of reports over the last few years on this, most notably the National Audit Office report on the integrity of the roll. No document is perfect – we all know that – but it seems to me that the section of the act addressing enrolment is solving a problem that does not exist and, in seeking to solve it, is creating other problems that need to be discussed.[5]

1.24 The 7 day period was introduced following the 1983 federal election when substantial problems occurred on polling day due to the early closure of the rolls. In evidence to the Joint Standing Committee on Electoral Matters inquiry into the 2004 election Mr Ivan Freys, an AEC employee who recalled the 1983 election, stated:

> It created a lot of confusion and a lot of provisional votes, and a lot of people go in to vote, find they are not on the roll and just walk out.[6]

1.25 Professor Colin Hughes, a former Electoral Commissioner from 1983 until 1988, also referred to these difficulties in his evidence to the current inquiry:

> So what you are looking at is a large number of concerned people turning up at the polling place and trying to get their affairs sorted out. This will produce a great deal of congestion. They will be seeing not the DRO, the couple of permanent divisional staff regulars who conduct business in the close of roll period at the divisional office, as their pieces of paper would have been, but the polling officials, who would have to be trained quite substantially to cope with the complexities that would be put upon them.[7]

1.26 We have already noted the submission by the AEC to the 2001 inquiry by the JSCEM that an early closure could mean that the roll is less accurate. For instance, persons already on the roll will only have 3 days rather than 7 days to update their enrolments such as when they have changed their address. This must inevitably mean that more people will remain on the electoral roll with incorrect details than previously, thus reducing the integrity of the roll. Further, it would increase the potential for fraudulent voting if such potential exists.

1.27 The Government has stated that it will provide the AEC with additional funding to support increased advertising and public awareness activities. In evidence to the inquiry the Electoral Commissioner Mr Campbell stated that this would be directed to informing the electorate of the new requirements for closing the roll and proof of identity.

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5 Professor Brian Costar, *Committee Hansard*, 7 March 2006, p. 20.

6 Mr Ivan Freys, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 12 August 2005, p. 35.

7 Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 44.

1.28 Neither Professor Brian Costar, nor Professor Colin Hughes, were convinced that an advertising campaign would be an adequate substitute for the current 7 days grace. Professor Costar stated:

> Let us remember that, at that period, lots of other noise is going to crowd out an election advertising campaign. Who is interested? They are interested in what the Prime Minister is saying about this or whatever.[8]

1.29 Professor Hughes, in relation to advertising and information campaigns providing an alternative to the 7 day period of grace, stated:

> I don't think it is an alternative … You can pump out a vast amount of material. The difficulty is catching the electors' attention.[9]

1.30 The earlier closure of the rolls will impact most severely on persons who have not previously been enrolled, especially young people. It is an acknowledged fact that people don't necessarily enrol as soon as they reach 18 years of age notwithstanding the publicity and enrolment campaigns conducted by the AEC. The ALP committee members contend that the current provisions allowing such persons a period of 7 days after the writs are issued to enrol are reasonable. It ensures that such persons are encouraged, and able, to participate in the electoral process at their first opportunity.

1.31 The additional funding allocated to the AEC in the bill is welcome but it should not be tied to an earlier closure of the rolls. While it is important to maintain an ongoing roll that is accurate as possible (and the AEC already achieves a 95 per cent success rate) the crucial issue is the accuracy of the electoral roll at the time the election is held. The current provisions should be maintained because they help ensure this high degree of accuracy.

Recommendation 1

1.32 The ALP committee members recommend that the proposals in the bill to close the electoral roll earlier be rejected. The current provisions should be retained.

Proof of identity

1.33 The bill proposes to introduce a new proof of identity regime for new enrolees and those people updating their existing details on the electoral roll. The outlined changes propose that these people will be required to provide their driver's licence number on their enrolment application. If they do not have a driver's licence, the elector can:

- show a prescribed identity document to a person who is in a prescribed class of electors and who can attest to the identity of the applicant; or

8 Professor Brian Costar, *Committee Hansard*, 7 March 2006, p. 24.

9 Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 44.

- if an elector does not have a driver's licence or a prescribed identity document, they must have their enrolment application signed by two referees who are not related to the applicant, who have known the applicant for at least one month and who must provide their driver's licence number.[10]

1.34 The bill also establishes a new proof of identity regime for people lodging a provisional vote. The proposed regime will require that an elector:

- will need to show either their driver's licence or a prescribed identity document (of the same type required for enrolment proof of identity) to an officer either at the time of casting the provisional vote or by close of business on the Friday following polling day;
- if the elector cannot show the document in person, they may post, fax or email an attested copy to the AEC. Ballot 2 papers will only be admitted to the count if the provisional voter has provided suitable identification and, if they were not enrolled, if their omission from the roll was the result of an AEC error.[11]

1.35 The ALP committee members contend that this change to the Act will make it more difficult for people to enrol or to update their enrolment, and will have the effect of increasing the number of people who are unable to vote. Those least likely to be able to comply with these requirements will once again be:

- young Australians;
- Australians from non-English speaking backgrounds;
- indigenous Australians; and
- the homeless.

1.36 We point out that in all states and territories between 10 and 20 per cent of adults do not have a driver's licence, and that many of these will also lack other forms of documentation.

1.37 Such disadvantageous changes could only be justified if it were to be shown that the current system for enrolment and re-enrolment allowed a significant level of false enrolments or other kinds of electoral fraud. No convincing evidence in support of these claims was shown to the inquiry.

1.38 ALP committee members also point out that the extra time which would be required for the AEC to process applications substantiated with a range of verifying documentation would create a backlog of applications in the period prior to the closing of the rolls, particularly when considered in conjunction with provisions of the bill to close the rolls on the day of the issuing of the writs. In sum, the effects of this

10 *Explanatory Memorandum*, p. 1.

11 *Explanatory Memorandum*, p. 1.

legislation may lead to an unnecessary and unacceptable increase in the workload of the AEC.

1.39 People lodging a provisional vote will be required to supply identification at the time of lodging a vote or supply the AEC with the identification by the Friday following polling day. At the 2001 Federal Election over 100,000 people lodged a provisional vote, as a percentage of total votes this did not change in the 2004 Federal Election. If similar numbers of voters had to lodge a provisional vote in future elections, under this regime, the AEC could be faced with a large amount of unnecessary administrative work after polling day if voters did not have the appropriate identification with them when casting their vote.

1.40 ALP committee members are also concerned that the early closure of the roll, as discussed earlier, could lead to a greater number of provisional votes being lodged. When combined with the proof of identity provisions the workload on the AEC may increase further.

1.41 In his evidence to the committee on the proposed proof of identity requirements former Electoral Commissioner Professor Colin Hughes emphasised the problems with using a drivers licence as the primary means of identification. He stated:

> … the driver's licence is really a broken reed to start with, as is evidenced every few weeks in the papers by an announcement of some sort of massive fraud that has been conducted using bogus drivers licences that are easily produced.[12]

1.42 ALP committee members believe it is counter productive to introduce a burdensome proof of identity regime, to an electoral roll where there is little evidence of fraud, based on a form of identification that is fraudulently produced on a regular basis.

1.43 Professor Hughes also expressed his concern that introducing a proof of identity regime based on the driver's licence was similar to introducing a "poll tax". He stated that:

> What do you do about people who do not have a drivers licence?… If you say a driver's licence is sufficient proof of identity to enrol et cetera, what you have done is come at a poll tax by the back door because you are having to pay for it.[13]

1.44 This statement supports the contention of ALP committee members that these new requirements will place an unnecessary and discriminatory burden on people enrolling to vote, updating their existing details on the roll or lodging a provisional vote – making it much harder for people to participate in the electoral process.

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12 Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 45.

13 Professor Colin Hughes, *Committee Hansard*, 7 March 2006, p. 45.

1.45 Given the complete lack of evidence pointing to widespread electoral fraud the ALP committee members regard the proposed proof of identity regime as an unnecessary burden on those Australians who can least afford it. We also believe that the new regime would put the AEC under increased and unnecessary administrative pressure.

Recommendation 2

1.46 The ALP committee members recommend that the proposals in the bill to introduce a new proof of identity regime be rejected.

Increased disclosure thresholds

1.47 The bill proposes to substantially increase the current disclosure thresholds for all political donations to above $10,000. Further, the amounts will be increased annually in line with increases in the Consumer Price Index (CPI). The changes will reduce the current disclosure obligations which have ensured greater transparency and public accountability.

1.48 The following table, included in the detailed submission by Mr Joo–Cheong Tham, sets out the current and proposed thresholds that apply to returns lodged by the various types of donors and recipients.[14]

Table 4: Increase in disclosure thresholds proposed by Bill

Return	Current disclosure threshold ($)	Proposed disclosure threshold ($)
Post-election returns by donors of gifts to candidates	200	More than 10,000
Post-election returns by donors of gifts to groups of candidates	1,000	More than 10,000
Post-election returns by candidates of gifts	200	More than 10,000
Post-election returns by groups of candidates of gifts	1,000	More than 10,000
Annual returns of advertising etc expenditure of Cth govt departments	1,500	More than 10,000
Annual returns by donors	1,500	More than 10,000
Annual returns by registered parties	1,500	More than 10,000
Annual returns by associated entities	1, 500	More than 10,000

1.49 The only support for increasing the threshold limits to $10,000 came from the Liberal and the National parties. Indeed, the bill's proposals are identical to submissions by these parties at the JSCEM's inquiry into the 2004 Election.

14 Mr Joo-Cheong Tham, *Submission 4*, p. 10.

1.50 According to the Government one of the key justifications for the increase to $10,000 is that the amounts have not been sufficiently increased since their inception to take account of inflation. However, in each disclosure threshold category the proposed amount of $10,000 is substantially higher than what it would be if adjusted for inflation. The increases range from six times to almost fifty times the current threshold.

1.51 The following table shows what the new amounts would be if they were adjusted for inflation.[15]

Table 5: Adjusting disclosure thresholds for inflation[11]

Return	Disclosure threshold ($) upon introduction ('IN')	Threshold adjusted for inflation ($)
Introduced in 1984		IN x 149.8/68.1
Post-election returns by candidates of gifts	200	439.94
Post-election returns by groups of candidates of gifts	1,000	2199.71
Introduced in 1991		IN x 149.8/105.8
Annual returns of advertising etc expenditure of Cth govt departments	1,500	2123.81
Introduced in 1992		IN x 149.8/107.6
Post-election returns by donors of gifts to candidates	200	278.44
Post-election returns by donors of gifts to groups of candidates	1,000	1392.19
Annual returns by registered parties	1,500	2088.29
Annual returns by associated entities	1,500	2088.29
Introduced in 1995		IN x 149.8/114.7
Annual returns by donors	1,500	1959.02

1.52 It is also suggested that the increased amounts will not affect the transparency of the funding and disclosure scheme. This argument was refuted by Professor Costar who pointed out that the threshold could actually equate to $90,000, since the State and Territory divisions of political parities are legally separate entities:

> But remember, as has been pointed out by people better informed on this than me, that $10,000 donations means $90,000 if you donate to the state

15 Mr Joo-Cheong Tham, *Submission 4*, p. 11.

> divisions of your party and to the federal division. We are not talking about $10,000; we are potentially talking about $90,000.[16]

1.53 Similarly, Mr Tham, in his submission, stated that:

> Increasing the disclosure threshold to more than $10,000 will create such a gap in the disclosure scheme that describing this as a 'loophole' seems almost laughable.[17]

1.54 Finally, it is argued by the Coalition that the current limits in Australia are less than in comparable countries such as New Zealand and the United Kingdom. However, they are higher than the United States and Canada. Such comparisons miss the point. The object of the disclosure regime is transparency and the focus should be on improving disclosure not reducing it.

1.55 As Professor Costar stated, and Liberal Senator George Brandis acknowledged:

> **Prof Costar** - …But it seems to me that disclosure has to be the main game.
>
> **Senator Brandis** – Yes. I agree with you.[18]

1.56 ALP committee members are also extremely concerned about changes in the thresholds which pertain to "anonymous donations". Currently section 304 of the Act requires that the 'details' of any person or group donating in excess of $1,000 to a political party or $200 to an individual candidate be recorded.

1.57 Under the Government's proposed changes both these amounts will be increased to $10,000 or less. This effectively means that a donor will be able to donate amounts of $10,000 or less to a political party or individual candidate anonymously.

1.58 Mr Joo-Cheong Tham explained this during the inquiry:

> I will add two others reasons for saying that it is more than just a $1,500 to $10,000 increase. The first reason is one I have given—the lifting of the prohibition against permissible anonymous donations. We do not know how it is going to pan out, but my strong suspicion is that it will have deleterious effects in terms of adequate transparency. The other reason is that once people get used to the idea that donations do not have to be disclosed, there is a danger of normalising non-disclosure, if you like. One possibility is that somebody who is making donations of $50,000 right now might decide to actually split donations to avoid disclosure in the context of a culture of noncompliance and nondisclosure.[19]

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16 Professor Brian Costar, *Committee Hansard*, 7 March 2006, p. 25.

17 Mr Joo-Cheong Tham, *Submission 4*, p. 14.

18 Senator George Brandis and Professor Brian Costar, *Committee Hansard*, 7 March 2006, p. 25.

19 Mr Joo-Cheong Tham, *Committee Hansard*, 7 March 2006, pp 58-59.

1.59 Given that 80 per cent of the receipts for the funds received by the major parties were $10,000 or below these provisions threaten to dramatically and unacceptably reduce the transparency of the electoral system. In his submission, Mr Joo-Cheong Tham explained the possible implications of these changes:

> Take, for instance, a situation where the Liberal Party, through its various branches accepts anonymous donations from a single company to the amount of $90,000. The company then gives an additional $9,000 that is publicly disclosed. Under the proposed changes, details of the entire $99,000 should be disclosed. The ability to legally accept $90,000 in anonymous circumstances, however, potentially destroys the paper trail required to enforce such an obligation. At best, this change is an invitation to poor record keeping; at worse, it is a recipe for wholesale circumvention of the disclosure scheme.[20]

1.60 Changes contained in the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 also completely fail to address the existing loophole which allows associated entities to receive anonymous donations.

1.61 Because the provisions relating to anonymous donations received by political parties, Senate groups and candidates do not currently extend to associated entities, a number of entities have successfully escaped the disclosure scheme. This is an issue of concern that has been raised in the past; however, the Government's bill does not address the issue.[21]

1.62 The real purpose of the proposal to increase disclosure thresholds is to enable corporations to make larger donations to political campaigns without having to be disclosed. The proposed thresholds are unjustified and unnecessary. The Government should instead focus on addressing real problems with the current system such as the inadequacies in the disclosure of overseas donations.

Recommendation 3

1.63 The ALP committee members are opposed to increasing the threshold to $10,000 as it will seriously undermine the disclosure regime.

1.64 The ALP committee members recommend that the current thresholds, above which political parties and individual candidates cannot receive anonymous donations (currently $200 for individual candidates and $1000 for political parties), be retained.

Recommendation 4

1.65 The ALP committee members also recommend that the proposed annual CPI adjustment to the threshold be rejected as it will introduce greater

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20 Mr Joo-Cheong Tham, *Submission 4*, p. 14.

21 Australian Electoral Commission, Joint Standing Committee on Electoral Matters' Inquiry into disclosure of donations to political parties and candidates, *Submission 11*, p. 25.

complexity and may cause confusion between the disclosure periods and the timing of the annual CPI adjustment.

Increase in tax-deductibility of political donations

1.66 The bill proposes four changes to the current tax-deductibility provisions for political donations. The bill will amend the *Income Tax Assessment Act 1997* to:

- increase the level of tax-deductible contributions made to political parties and candidates from $100 per year to $1,500 per year;
- extend the tax-deductibility to corporations (currently it is only available to individuals);
- allow deductibility for donations to independent members and candidates (currently it is limited to political parties); and
- allow deductibility for contributions made to political parties registered under State and Territory laws (currently it only applies to political parties registered at the federal level).

1.67 The Government's proposal is an unjustified attempt to transfer private political donations into a taxpayer subsidy. According to the Government's own figures set out in the Explanatory Memorandum, this proposal would cost Australian taxpayers 22 million dollars over 4 years ($4.9 million in 2007-08, $6.5 million in 2008-09, $5.4 million in 2009-10 and $5.7 million in 2010-11).

1.68 Once again no supporting argument or evidence is presented to justify an increase of such magnitude or the extension to corporations. The proposals reflect views expressed by Coalition members in the JSCEM Report on the inquiry into the Conduct of the 2004 Federal Election who simply relied on the submissions of the Liberal Party and the Nationals.[22]

1.69 An increase from $100 to $1,500 is completely unwarranted. It is also regressive as it will inevitably favour persons with higher incomes who can afford to make larger donations. In his submission Mr Joo-Cheong Tham asserts that:

> If enacted, the proposal will entrench a blatantly unfair subsidy in the tax system.[23]

1.70 ALP committee members also queried the Government's calculations on the cost to revenue of increasing the tax-deductibility threshold. At the hearing, the Department of Finance and Public Administration were unable to reveal how they arrived at the figures set out in the Explanatory Memorandum and took the question on notice.

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22 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 337-341.

23 Mr Joo-Cheong Tham, *Submission 4*, p. 19.

1.71 On 17 March 2006 the Special Minister of State, the Hon. Gary Nairn MP, wrote to the committee stating:

> I have been advised by the Department of Treasury that the methodology of the Treasury's costing on extending the tax deductibility for political donations has not been published and is not publicly available.[24]

Recommendation 5

1.72 The ALP committee members recommend that the increase in the level of tax-deductibility from $100 to $1,500 and the extension to corporations be rejected.

Third party disclosure

1.73 The bill proposes to require that third parties (people other than registered political parties, candidates and associated entities) must complete annual disclosure returns if they incurred expenditure for a political purpose or received gifts over the disclosure threshold which enabled them to incur expenditure for a political purpose during a financial year.[25]

1.74 Currently third parties are required to submit a return to the AEC for any money spent on, or received to allow them to spend on, an 'electoral matter'[26] during an 'election period'.[27]

1.75 The National Round Table of Nonprofit Organisations presented evidence to the committee concerning the likely impact of the proposed changes outlined above. The ALP committee members are concerned that should the Government's proposals outlined in the bill be adopted the ability of charities and community groups to fulfil their important social functions could be severely jeopardised.

1.76 In its submission the Roundtable, acting on legal advice, stated that:

> …we are concerned that the proposed requirements would (1) require disclosure of expenditure that bear no reasonable relationship to elections, politics or government; (2) fail to provide clear guidance on compliance obligations; and (3) undermine the timeliness, relevance and transparency of third party electoral disclosures.[28]

1.77 The concerns of the Roundtable centre on a new obligation for third parties to provide returns on an annual basis, rather than just during an "election period" if they

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24 The Hon. Gary Nairn MP, Special Minister of State, answer to question on notice, 7 March 2006 (received 21 March 2006).

25 *Explanatory Memorandum*, p. 2.

26 *Commonwealth Electoral Act*, subsection 4(9).

27 *Commonwealth Electoral Act*, section 287.

28 National Roundtable of Nonprofit Organisations, *Submission 12*, p. 2.

make comments that are deemed under the Act to be an "electoral matter". The definition of an "electoral matter" is extremely broad and encompasses just about any comment or reference to current or past Government or Opposition policy and or actions.

1.78 In its submission the Roundtable explains that the broad definition of an "electoral matter" is completely unacceptable in the context of an annual disclosure system. It states that:

> The definition, though defensible as the basis for a disclosure requirement that pertains to a narrow pre-election period, is completely unsuitable as the basis for an ongoing annual disclosure requirement.[29]

1.79 If the bill was enacted in its current form any number of non-partisan charity and community groups could find themselves labelled as partisan political players. The effect of this could be that:

- charity and community groups will be unable to even make passing reference to past or present public policy issues – greatly restricting their free speech;
- donors and the public will be scared away from donating to charities and community groups because this bill will see them labelled as partisan political players; and
- the administrative burden on charities and community groups will be increased by requiring them to file annual financial returns with the AEC.

1.80 Another issue raised by the National Roundtable for Nonprofit Organisations pertains to the effect of these changes on transparency. Current provisions in the Act require a third party to lodge a return with the AEC within 15 weeks of polling day. Under the proposed changes this requirement will be replaced by one which requires third parties to file a return within 20 weeks of the end of each financial year.

1.81 In its submission the Roundtable provided an example of what this could mean:

> …if a Federal Election occurs on 31 October of a given year, and a third party expends $50,000 in October on electoral publications, currently that expenditure would have to be disclosed no later than 13 February of the following year. Under the Bill, the expenditure would have been incurred in the financial year ending the following June 30, with the effect that the corresponding disclosure statement would not be due in mid November – more than a full year after the election to which such expenditure related.[30]

1.82 Such a scenario works in complete contradiction to the Government's stated objectives for introducing these changes; to increase the transparency of issues relating to third party disclosure.

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29 National Roundtable of Nonprofit Organisations, *Submission 12*, p. 2.

30 National Roundtable of Nonprofit Organisations, *Submission 12*, p. 5.

1.83 These oversights highlight some very careless drafting by the Government. During the course of the inquiry Senator George Brandis conceded this, stating that the effects listed above were an "unintended consequence" of the bill.

1.84 The Government should consult with charities and community groups and act quickly to ensure the necessary changes are made to the bill to ensure the ability of charity and community groups to carry out their valuable work within the community is not adversely effected by these careless Government mistakes and oversights.

1.85 The Chairman's report acknowledges these concerns and welcomes the proposal of the Special Minister of State, Gary Nairn, to consult with the relevant stakeholders on the possible implications of these changes. The ALP committee members urge the Minister to do this as soon as possible.

Recommendation 6

1.86 The ALP committee members recommend that the Government ensure that the issues raised in the inquiry, in regards to the reporting obligations of third parties, are rectified so that charity groups and community groups do not suffer as a result of careless Government mistakes in the drafting of the bill.

Prisoner voting rights

1.87 The bill proposes to remove the right to vote for prisoners who are serving a full-time sentence. Such prisoners will be able to remain on the electoral roll, or if not enrolled, apply for enrolment.

1.88 Currently prisoners who are serving a custodial sentence of less than three years are entitled to vote.

1.89 Once again no arguments were put forward by the Government to support the change. The only submission to the Senate committee in favour of the abolition of the right to vote for prisoners came from the Festival of Light. It stated:

> While the right to vote is a fundamental entitlement of citizens in a democratic society, that right entails an obligation to obey the laws of that society. Felons convicted of an offence serious enough to result in full-time imprisonment have breached their obligation to society and should forfeit not only their liberty but also the right to vote. Allowing felons to vote could result in an elected parliament or government feeling obliged to make decisions in the interests of criminals rather than the general public.[31]

1.90 Dr David Phillips, appearing at the hearing, expanded on this submission.

> We believe it is appropriate that they [prisoners] also lose their entitlement to vote until they have served their term and then they regain that entitlement to vote, lest those who are serving criminal terms could

31 Festival of Light Australia, *Submission 5*, p. 5.

> influence parties in pitching policies to win the votes of criminals. We believe it is an unhealthy thing for society for parties to be tempted to tailor their policy platform in order to win the votes of criminals. Parliament could suffer and society could suffer as a result.[32]

1.91 The ALP committee members regard this argument as ridiculous and offensive. To suggest that political parties would tailor their policies to influence the votes of criminals demonstrates either a naïve understanding of our political system or a deliberately exaggerated and perverse argument.

1.92 The committee received many submissions from academics, members of the public and interest groups, arguing that this proposal was unnecessary, a denial of basic human rights and detrimental to the rehabilitation of prisoners.

1.93 It was also argued by a number of witnesses and submitters that such a change may be unconstitutional. Sections 7 and 24 of the Australian Constitution provide that the Senate and the members of the House of Representatives shall be "directly chosen by the people". It is argued that excluding all prisoners serving a custodial sentence is to exclude an entire class of people from having a right to vote and hence would be unconstitutional.

Recommendation 7

1.94 The ALP committee members recommend that the removal of the current right to vote for prisoners serving less than a three year sentence be rejected as no evidence or argument has been presented to support it.

Conclusion

1.95 The ALP committee members believe that the issues outlined above will have an extremely detrimental effect on Australia's electoral system. Essentially, the early closure of the rolls, the proposed proof of identity regime and restrictions on prisoners voting rights will make if far harder for eligible Australians to participate in Federal Elections. The Government's justification for these changes, that they are necessary to prevent electoral fraud, is not based on any credible evidence. As this inquiry and previous inquiries heard, Australia has an electoral roll of the highest integrity.

1.96 Proposals contained within the bill to increase the disclosure thresholds will see millions of dollars secretly donated to political parties. The ALP committee members believe that this is a completely unacceptable attack on the transparency of Australia's electoral system. Every argument put by the Government in favour of the increases was rebutted by expert witnesses during the inquiry.

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32 Dr David Phillips, National President, Festival of Light Australia, *Committee Hansard*, 7 March 2006, p. 39.

1.97 Increases in the size and scope of the tax-deductibility of political donations are essentially an unjustified attempt to transfer private political donations into a taxpayer subsidy. The ALP committee members remain opposed to these changes.

1.98 ALP committee members are also concerned that the changes proposed to the reporting obligations of third parties have been poorly and carelessly drafted and as a result may have unintentional consequences. Government committee members appeared to concede this point during the inquiry. The bill should be urgently amended to ensure that the work of important charities and community groups is not jeopardised.

1.99 Labor remains committed to ensuring that Australia's electoral system is both inclusive and transparent. As demonstrated, the major changes proposed in the bill work against these principles. The only real justification ALP committee members can find for this bill is that the Government believes that it will attain some sort of partisan political advantage at future elections.

Senator Michael Forshaw **Senator Carol Brown**

Appendix A

Australian National Audit Office, *Integrity of the Electoral Roll*, Audit Report No. 42 2001-02

Audit Conclusions

- The ANAO concluded that, overall, the Australian electoral roll is one of high integrity and that it can be relied on for electoral purposes.
- We concluded that the AEC is managing the electoral effectively. AEC policies and procedures can provide an electoral roll that is accurate, complete, valid and secure. In particular, the AEC has mechanisms in place to provide assurance that the names and addresses on the electoral roll are legitimate and valid; and that people who are eligible to vote are registered properly.
- Australia has a system of compulsory enrolment and compulsory voting. By law all eligible individuals must enrol to vote. The audit found that the AEC maintains a balance between encouraging enrolment in line with the requirements of legislation and with not overly intruding in the lives of citizens. As a result, it is unlikely, nor indeed feasible, that the roll will achieve 100 per cent completeness.
- For some years, the AEC has set a target of 95 per cent completeness for the roll. ANAO analysis indicated that, at the close of roll for the 2001 federal election, the roll was likely to be 95 per cent complete.

Dissenting Report

Senator Andrew Murray

Introduction

1.1 The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 proposes significant changes to the Australian electoral system. These have far-reaching implications, particularly for voters, and need to be considered carefully.

1.2 Whilst I agree with some of the statements and views expressed by the majority, I will use my dissenting report as an opportunity to identify and discuss those that I do not support, or wish to qualify my support for.

1.3 I make no apology for repeating some of the arguments and observations I have made on previous occasions, including those made recently to the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the 2004 federal election.[1] I reiterate these here because the issues, particularly political donations and disclosure, political governance and enrolment, remain problems. Despite several previous inquiries by the JSCEM, the majority has failed to recommend appropriate reforms in these areas. The issues that I raise are fundamental and of great concern to the Australian Democrats, and to voters at large.

Closure of the electoral roll[2]

1.4 Section 155 of the Electoral Act provides for the rolls to close seven days after the election writ is issued. The bill will result in new enrolments and re-enrolments closing on the day the writ is issued, apart from some minor exceptions. Currently enrolled voters will have to update their details by the third working day after the issue of the writ.

1.5 The Democrats would only support the proposal to close the rolls earlier than at present if federal elections were based on fixed terms. Fixed terms enable voters to know the election date in advance, and thereby the cut-off date for finalisation of their enrolment details. In the absence of fixed terms, I maintain that the rolls should remain open as at present, for seven days after the issue of the election writ.[3]

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1 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005.

2 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 385.

3 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 385.

1.6 Another reason to oppose the change is that it introduces a different regime to the States and Territories. Differing rules for the closure of the rolls is bound to cause confusion.[4]

1.7 It was argued in 2005 by the then Minister of State, Senator the Hon. Eric Abetz, that the close of rolls period is the most vulnerable time for electoral fraud, due to the perceived inability of the AEC to check the legitimacy of new enrolments and changes to enrolments.[5] I fear that the proposal to bring forward the close of roll period to 8.00pm on the day the writ is issued (I note the bill provides some exceptions) would result in registered voters being removed from the roll before they are able to add or amend their details.

1.8 Based on long experience as a JSCEM member taking evidence on allegations of or the possibility of electoral fraud, I argue that the main problem with the accuracy of the electoral roll is one of perception, rather than reality. The Liberal Party and the Festival of Light implied in their submissions that some inherent fraud, although minimal, exists in our electoral system.[6] The Liberal Party argued that the flood of new enrolments in the current seven day period, at a time, it is said, when they cannot be properly checked, 'are to the detriment of the integrity of the roll'.[7]

1.9 Based on detailed evidence to a number of JSCEM inquiries, I do not accept this argument is credible, nor do I believe that the exceptions provided in the legislation adequately protect people's democratic right to vote. I agree with Professor Colin Hughes who argued that it was implausible to suggest that the roll is any more susceptible to fraud in the seven day period than it is in the weeks or months before an election.[8] The changes in the bill will not only ultimately make it more difficult for new voters to register to vote, but will disenfranchise existing voters.

1.10 The changes would be justified only if it could be shown that the current system for enrolment and re-enrolment allowed opportunities for electoral fraud on any measurable scale. In my opinion, no persuasive evidence exists to suggest that the current system has failed to provide adequate protection against fraud on the roll.[9]

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4 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3; Professor Colin Hughes, *Submission 73*, Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 2.

5 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

6 Liberal Party of Australia, JSCEM *Submission 95*, p. 4; Festival of Light Australia, *Submission 5*, p. 2.

7 Liberal Party of Australia, JSCEM *Submission 95*, p. 4.

8 Professor Colin Hughes, *Submission 21*, p. 2 (Attachment A).

9 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 2; Australian Labor Party, *Submission 10*, p. 4; Australian Privacy Foundation, *Submission 42*, p. 2.

1.11 As large numbers of voters do not attach great importance to keeping their details up-to-date on the electoral roll outside of an election, the calling of an election often acts as a catalyst for the notification of changes to the roll and new enrolments. Closing the roll earlier would mean that voters could be disenfranchised.[10] The Labor Party notes:

> These provisions are in place because it is recognised that many people do not focus on an election until the media scrutiny and commentary surrounding the calling of an election begins.[11]

1.12 Therefore, the proposal defies reality and human nature since hundreds of thousands of voters only update their details when an election is called.

1.13 The point is that earlier closure could mean that many of the 423,000 people who either enrolled for the first time or changed their enrolment details in the seven day period before the close of the rolls prior to the 2004 federal election might not be able to vote.[12] Of this 423,000, almost 79,000 people enrolled for the first time.[13] If this early closure arises from a concern that the AEC cannot check applications properly, that is only a danger for new enrolments. Persons already on the roll are validly on the roll, although their address details may need updating.

1.14 The measure is a poor approach to democracy. The government and political parties all know that there are very few examples of fraud on the electoral roll, yet the government is proposing to enact legislation that could disenfranchise hundreds of thousands of voters.[14] This is inconsistent with the aim of improving the integrity of the roll, and of improving citizen participation in elections.

1.15 If there is no plausible policy reason for this amendment, then the only alternative must be a political motive – that being that the Coalition must expect that the class of voters affected are more inclined to vote Labor, because they include the young and disadvantaged. The electoral system should be encouraging groups with traditionally low participation rates (for example, young people, people in rural and remote communities and people from disadvantaged backgrounds) to vote, not

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10 Human Rights Law Resource Centre Ltd, *Submission 3*, p. 15.

11 Australian Labor Party, *Submission 10*, p. 3.

12 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

13 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

14 Australian Labor Party, *Submission 10*, p. 3.

discouraging them as these proposals would have us do.[15] The proposals are anti-democratic as the effect will be to reduce participation.

1.16 The electoral roll is of fundamental importance to democracy. This measure does nothing to enhance its integrity, but acts to exclude some voters from participating in elections.

Proof of identity requirements

1.17 The other significant enrolment 'reform' is the requirement to show proof of identity at the time of enrolment and when casting a provisional vote. The government claims that these changes will improve the integrity of the roll and minimise opportunities for electoral fraud.

1.18 In my supplementary remarks in the 2004 JSCEM Report, I qualified my support for more stringent proof of identity requirements on enrolment – my position remains unchanged. It is essential that agreement from the States and Territories be obtained to measures such as these to ensure that the Joint Roll arrangements remain operative and integrated. If the States and Territories oppose the changes, further consultation should occur.

1.19 My arguments here apply equally to the increased identity requirements for provisional voting.

Disclosure of political donations[16]

1.20 The Australian Democrats have a long history of activism for greater accountability, transparency and disclosure in political finances. These issues have not been dealt with as extensively as they should have been in the JSCEM's Reports on federal elections since 1996, but my own Supplementary remarks in those Reports have examined these matters in some detail. As few changes to funding and disclosure laws have been made in this time, I will repeat many of the issues I have persistently pushed before.

1.21 I have made this statement many times: the aims of a comprehensive disclosure regime are to prevent, or at least discourage, corrupt, illegal or improper conduct; to stop politicians being, or being perceived to be, beholden to wealthy and powerful organisations, interest groups or individuals; and, to protect politicians from pressure being bought to bear on them by 'secret' donors.

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15 Dr Brian Costar, *Submission 2*, p. 1; Australian Labor Party, *Submission 10*, p. 3; The Greens NSW, *Submission 14*, p. 2; The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3; Human Rights and Equal Opportunity Commission, *Submission 50*, p. 9.

16 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 412-419; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Disclosure of Political Donations*, 2004.

1.22 The Democrats strongly oppose the proposal in the bill that increases the disclosure threshold for political donations to candidates, political parties and associated entities to amounts over $10,000. This increase would allow even larger amounts of money to flow, without scrutiny, from donors to political parties. The Liberal Party supports the increase on the basis that it better reflects contemporary economic reality.[17]

1.23 The current threshold amount of $1,500 is an already generous sum and should remain. On this issue, we agree with the Labor Party's claim that the current amount provides 'a fair balance between optimum disclosure and practicability'.[18]

1.24 Professor George Williams also argued that no increase to the threshold could be justified, let alone such a major one.

> The change would have a harmful effect on our democracy. Reform should instead be aimed at the more effective and more frequent disclosure of political donations.[19]

1.25 In addition, we also oppose the proposal to index the disclosure threshold to the Consumer Price Index. This would mean that the threshold could increase by approximately 2-3 per cent annually.[20] Not only does the proposal represent a move away from the existence of a static figure, but a figure that changes annually could cause confusion for donors and recipients alike.

1.26 In relation to the openness of elections, the Labor Party stated:

> …elections should be conducted in the public realm, with all parties' expenditure and fundraising accounted for, disclosed and open to scrutiny.[21]

1.27 It is essential that Australia has a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure.[22] The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in electing representatives, in the formulation or execution of public policy, and helping politicians from the undue influence of donors. The measures proposed will further compound the lack of transparency provided by the existing disclosure laws. In fact,

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17 Liberal Party, *Submission 95*, JSCEM, p. 2.

18 Australian Labor Party, *Submission 10*, p. 2.

19 Professor George Williams, *Submission 22*, p. 1.

20 Reserve Bank of Australia, *Measures of Consumer Price Inflation*, last updated on 25 January 2006, http://www.rba.gov.au/Statistics/measures_of_cpi.html (accessed 15 March 2006).

21 Australian Labor Party, *Submission 10*, p. 2.

22 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 416.

Mr Joo-Cheong Tham argued that the present law already 'is a leaky sieve that permits evasion of adequate disclosure'.[23]

1.28 The Greens NSW also noted the following as a upshot of the bill becoming law:

> ...it will be easier for supporters to donate to political parties without any public awareness of who is buying access to those who make policy decisions affecting all citizens.[24]

1.29 The then minister said in 2005 that lifting the threshold would 'protect individuals' and organisations' legitimate right to privacy' while still maintaining adequate transparency.[25] The Greens NSW argued that 'the real motive is not privacy, but secrecy'.[26] The Democrats have consistently argued that the privacy considerations of the donor must be subordinate to the wider public interest of transparency and accountability. Furthermore, we believe that if donors have no intention of buying political favours for their donations, they will not be dissuaded by an open and transparent scheme.

1.30 Currently, there is a concerning regulatory gap that allows the disclosure threshold to be applied separately to each registered political party. That is to say, where a political party has national, State and Territory branches it has the 'cumulative benefit of nine thresholds'.[27] Effectively the current threshold amount of $1,500 allows donors to make nine donations totalling $13,491 without disclosure. As Mr Tham points out, if enacted, the bill will mean that a donor can give a total of $90,000 to a political party without the party having to disclose the identity of the donor.

> Having such a high threshold in practice can only mean more secret donations.[28]

1.31 A situation like this is unacceptable and further highlights that the disclosure threshold should not be raised. This loophole should be closed to prevent very large and secret donations. The value of funding disclosure rests on the premise of the availability of, and accessibility to, the release of information for public scrutiny.

1.32 The Democrats argue that new principles of disclosure should be included in electoral law. A national debate is needed on how political parties should be funded. In the mean time, the following are changes the Democrats would recommend as

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23 Mr Joo-Cheong Tham, *Submission 4*, p. 5.

24 The Greens NSW, *Submission 14*, p. 1.

25 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

26 The Greens NSW, *Submission 14*, p. 1.

27 Mr Joo-Cheong Tham, *Submission 4*, p. 13.

28 Mr Joo-Cheong Tham, *Submission 4*, p. 14.

going some of the way to establishing a comprehensive funding and disclosure scheme:

- strengthen the law in relation to donations from trusts, foundations and clubs to require that more information is provided about the arrangements for control, beneficiaries and associated entities;
- impose a cap or ceiling of $100,000 on any donation made to parties, independents or candidates;
- disclose any donation to a political party of over $10,000 to the Electoral Commission at least quarterly so that it can be made public straight away, and not left until an annual return;
- prohibit donations that have 'strings attached';
- ban outright donations from overseas individuals or entities unless received from Australian individuals living offshore;
- amend the Corporations Law and Workplace Relations laws so that shareholders and members of registered organisations such as trade unions are required to periodically approve donation policies; and
- where the AEC conducts elections for registered and other organisations, the same provisions governing disclosure of donations for political organisations apply.

1.33 The fundamental principle of Australian electoral funding law is that the AEC, and thereby the public, must be able to verify the nature and source of significant political donations. The Government must reconsider its whole attitude to funding and disclosure law.

Tax deductibility of contributions to political parties, members and independent candidates

1.34 At present, under section 30-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) an individual who makes a contribution of $2 or more to a registered political party in any one income year can deduct up to $100 from their taxable income in that year. Companies or entities do not get this tax concession.

1.35 The bill proposes to raise the deductible amount from $100 to $1,500 and extend deductibility to companies. The Liberal Party argued that the threshold over which tax deductibility ceases is too low and needs to be altered to reflect community standards and expectations.[29] I am not sure what community standards and expectations are referred to – I hardly think there is a clamour for this change.

29 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 8 August 2005, p. 27.

1.36 The Democrats believe that the proposal to extend the tax deductibility arrangements from $100 to $1,500 is questionable on three counts. Firstly there is no evidence that this tax concession increase is needed, and its net effect is just a loss of general revenue to the Government. The second count is whether as a matter of principle political parties should be able to access the same tax concession regime as charities. The third count is that this tax concession to political parties is not available to many other deserving community organisations.

1.37 If it is to be a matter of tax policy and principle that not-for-profit (NFP) community organisations, as a whole, are to be given a standard special status for tax deductibility concessions, then that is a matter for parliament and the community to consider against the usual principles of equity efficiency and simplicity. However, that is not what is intended. This tax deductibility concession is not part of a coherent overall tax regime, and is just opportunistic.

1.38 I have previously argued that tax deductibility concessions should apply on a common basis to donations to NFP community organisations as a whole, amongst which political parties could be said to number. The NFP sector is made up of charitable, religious, public benevolent institutions and community service providers.[30]

1.39 Division 30 of the ITAA 1997 sets out the conditions for tax deductibility of donations of $2 or more made to certain organisations, including prescribed funds. Unlike political parties, tax deductibility to these organisations is not capped. These organisations or funds are generally referred to as deductible gift recipients (DGRs). A deduction is generally not available unless the DGR is:

- endorsed by the Tax Office;
- listed by name in the Division 30 of the ITAA 1997;
- on the register of environmental organisations maintained under Subdivision 30-E;
- on the register of harm prevention charities maintained under Subdivision 30-EA;
- on the register of cultural organisations maintained under Subdivision 30-F;
- on the register of the National Estate kept pursuant to the *Australian Heritage Commission Act 1975*; or
- a political party registered under Part XI of the *Commonwealth Electoral Act 1918* to which item 3 in the table in section 30-15 of the ITAA 1997 applies.

1.40 Subdivision 30-B sets out tables of recipients for deductible gifts. The Table of Sections in Subdivision 30-B refers to the different categories of recipients. There are more than 30 general DGR categories. Examples are: public hospitals, health

30 Inquiry into the Definition of Charities and Related Organisations, 30 June 2001, p. ii.

promotion charities, public universities, school building funds, public benevolent institutions, necessitous circumstances funds, overseas aid funds, public libraries, museums and art galleries and ancillary funds.

1.41 The DGR table on pages 12-19 in the Australian Taxation Office publication *GiftPack – for deductible gift recipients & donors* lists the general DGR categories. For each category; it sets out: the description of the category; the item number; the other conditions relating to endorsement, and the types of deductible gifts that can be received. A deduction is also available for an amount covered by a conservation covenant over land that a person owns subject to certain conditions under Division 31 of the ITAA 1997. Charities can receive tax deductible gifts provided the organisation is endorsed by the Tax Commissioner as a DGR. Some charities are not endorsed as DGRs and therefore cannot received gifts which are tax deductible to the donor.

1.42 I have detailed this at length firstly to indicate what sort of entities do get this concession, but also to emphasise that many community organisations do not fall into this regime and do not get the tax concession.

1.43 It is also important that political parties recognise that material obligations flow from being the beneficiary of tax concessions. This means that transparency, accountability to donors and to society, and regular formal comprehensive reporting utilising key indicators, so that those giving to political parties can do so in a fully informed way, and so that public funding is properly accounted for. Political parties do not provide formal annual reports for the public, which they should as beneficiaries of taxpayer funds and concessions.

1.44 In its Report on the 2004 federal election, the JSCEM majority supported the proposition that a higher tax deductibility level would encourage more people to participate in the democratic process.[31] I agree that tax relief can encourage people to play a role through the making of contributions, but, as a rule, tax concessions should operate to general principles, not just for special interests.

Political governance and the definition of 'associated entity'[32]

1.45 The bill proposes to broaden the definition of 'associated entity' so that it applies to entities with financial membership, and entities with voting rights, in political parties. The definition will also extend to those whose financial membership or voting rights are held on their behalf by others. The change will impose annual reporting obligations on affected organisations.

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31 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 339.

32 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 387-394; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Political Governance: The Regulation of Political Parties*, 2004.

1.46 Mr Tham discussed what he believed to be the key reason for the change:

> The strongest argument for this change is perhaps one based on popular control over public-decision making. Such control requires informed voting which, in turn, implies that voters need to know who controls parties including their members and those who exercise voting rights. There are serious problems in this area. For instance, parties are not required to disclose the level of party membership and have generally shown no inclination to voluntarily disclose.[33]

1.47 The bill's proposal is a step in the right direction and, though a small one, will go some of the way to improving the regulatory regime that oversees the operation of political parties and their associated entities.

1.48 Very few of the submissions received by the committee focussed on this issue.[34] Hence, my report briefly focuses on the arguments put forward by others. As the Democrats have had a long history of promoting changes in the areas of accountability and internal regulation of parties and related organisations, I will focus more heavily on presenting the Democrats' broader position on political governance.

1.49 Mr Tham argued that the measure is both over and under-inclusive in application.[35] Over-inclusive because it imposes annual reporting obligations on organisations that might not have significant influence over the affairs of a political party. For instance, a community group, whose politically focussed work may be incidental to its primary purpose, is a good example.[36] On the flipside, the measure is under-inclusive for two main reasons.

1.50 First, because influence over the affairs of a political party is not confined to financial membership and voting rights.[37] Influence can also be exerted much more informally. To illustrate this point, Mr Tham highlights that sponsorship of the Millennium Forum (which entitles a donor regular access to key Liberal Party officials) could allow donors to influence policy matters through informal affiliation.

1.51 Second, the measure is restricted in its application. Mr Tham claimed:

> It also discriminates against trade unions, organisations that politically participate through formal affiliation to the Labor Party. At the same time, it exempts corporate donors – entities that have no claim to democratic representation – which tend to wield influence through less formal means.[38]

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33 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

34 Mr Joo-Cheong Tham, *Submission 4*, pp 16-18; The Greens NSW, *Submission 14*, p. 2.

35 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

36 The Greens NSW, *Submission 14*, p. 2.

37 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

38 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

Regulation

1.52 In the JSCEM Report on the 2004 federal election, the Democrats argued that it is vital that political parties are more open and accountable. The same applies to unions, corporations and other bodies because they also play an important role in the electoral system and their activities have flow on effects for the integrity of that system.

1.53 I have consistently argued in favour of reform to political governance arrangements more generally.

1.54 Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture, and how transparent and accountable it is.

1.55 Political parties wield enormous influence over the life of every Australian, yet the natural inclination of political parties is towards self-regulation. That natural inclination means that since political parties control the legislature, the regulation of political parties is relatively perfunctory, in marked contrast to the much stronger regulation for corporations or unions. True, the registration of political parties is well managed, as a necessary part of election mechanics, yet the conduct of political parties apart from election mechanics is often poor.

1.56 Political parties by their role, function, importance and access to public funding are not private bodies, but are of public concern. In particular, the public has a right to know the ways in which political parties receive and spend public funds. In addition, the public influence and purpose of political parties demands that they be open to scrutiny and be fully publicly accountable. For the same reason, political parties need the very proper and necessary safeguards and regulations that are there for corporations and unions.

1.57 The integrity of an organisation rests on solid and honest constitutional foundations. Corporations Law and Workplace Relations laws provide a model for organisational regulation. The successful functioning of a company or union is based on its constitution, which must conform to a legal code. Political parties do not operate on the same foundational constructs. What is surely indisputable is that the public interest has to be served. Political parties have to be more accountable because of the public funding and resources they enjoy, and because of their powerful public role.

1.58 The Democrats have argued for a set of reforms that would bring political parties under the type of regulatory regime that befits their role in our system of democracy and accountability.

1.59 The present Electoral Act does not address the internal rules and procedures of political parties.

- The Electoral Act should be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of companies.
- Party constitutions should be required to specify:
  - the conditions and rules of membership of the party;
  - how office-bearers are preselected and elected;
  - how preselection of political candidates is to be conducted;
  - the processes that exist for resolution of disputes and conflicts of interest;
  - the processes that exist for changing the constitution; and
  - the processes for administration and management.
- Party constitutions should provide for the rights of members in specified classes of membership.
- Party constitutions should be publicly available documents updated at least once every electoral cycle. The fact that most party constitutions are secret prevents proper public scrutiny of political parties.
- The AEC should be empowered to oversee all important ballots within political parties to ensure that proper electoral practices are adhered to.
- The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty.

1.60 Simply put, all political parties must be obliged to meet minimum standards of accountability and internal democracy. Given the public funding of elections, the immense power of political parties (at least of some parties), and their vital role in our government and our democracy, it is proper to insist that such standards be met.

1.61 The following are other initiatives that the Democrats support.

- That the Electoral Act and the Workplace Relations laws be amended as appropriate to ensure democratic control remains vested in the members of political parties. Specifically with respect to registered organisations to:
  - require them to have secret ballot provisions in their rules;
  - prohibit the affiliation, or maintenance of affiliation, of a federally or State registered employee or employer organisation with a political party unless a secret ballot of members authorising the affiliation has been held at least once in a federal electoral cycle; and
  - require a simple majority of members voting to approve affiliation to a political party, subject to a quorum requirement being met.
- The relationship between the party machine and the party membership requires better and more standard regulatory constitutional and selection

procedures which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and members.

- The JSCEM and the AEC should give closer scrutiny to branch stacking and preselection abuses in political parties. Regrettably, no party is safe from this abuse, however, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

One vote one value

1.62 'One vote one value' is a fundamental democratic principle recognised by Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Since the 1960s, the Labor Party has been particularly strong about the principle of 'one vote one value', first introducing legislation in the Federal Parliament in 1972-73. In recent years the Labor Party has taken the matter to the High Court with respect to the Western Australian electoral system. They should therefore be expected to support 'one vote one value' as a principle within political parties.

1.63 The democratic principle of 'one vote one value' is well established, and widely supported. As far back as February 1964 the United States Supreme Court gave specific support to the principle.

1.64 During the 1970s, 1980s, and 1990s the principle of 'one vote one value', with a practical and limited permissible variation, was introduced to all federal, State and Territory electoral law in Australia, except Western Australia. That state finally ended the lower house gerrymander in 2005.

1.65 In my view it should be a precondition for the receipt of public funding that a registered political party comply with the 'one-vote one-value' principle in its internal rules.

1.66 At least one political party in Australia (the Labor Party) has internal voting systems that result in gerrymandered elections for conventions, preselections and various other ballots. This is largely as a result of the exaggerated factional voting and bloc power of union officials who are allowed to use the large numbers of union members, the great majority of whom are not party members, to achieve and exercise power within the political party.

1.67 If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers of corrupting influences are obvious.

1.68 If 'one vote one value' were translated into political parties' rules, it would mean that no member's vote would count more than another's, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

1.69 We made similar recommendations in our Minority Report on the JSCEM's Inquiry into the 1998 federal election and in my supplementary remarks in the JSCEM's 2004 Inquiry.

1.70 I and other Democrats have made a number of speeches in the Senate and elsewhere over the years concerned about the accountability and governance of political parties. Democrat Issue Sheets have reflected these views, and Democrat traditions and perspectives support these views.

Disclosure requirements 'third parties'

1.71 I support the strengthening of the disclosure provisions for third parties. Governance in both the private and public sector is an issue which has merited and received a great deal of attention in the last decade. My view is that the regulatory system for third parties should be brought into a more coherent and principled framework and also aligned with that which exists for other entities under the Electoral Act.

Prisoner voting entitlements[39]

1.72 In my supplementary remarks in the 2004 JSCEM Report, and on previous occasions, I recommended that the Electoral Act be amended to give all persons in prison, except those convicted of treason or who are of unsound mind, the right to vote.[40]

1.73 It is important to understand that, although prisoners are deprived of their liberty whilst imprisoned, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in prison should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court. Nonetheless, following the 2001 Federal Election existing restrictions on the rights of prisoners to vote were strengthened by increasing the disqualification criteria from individuals serving five years or more to individuals serving three years or more.[41]

1.74 To disenfranchise any citizen serving a jail sentence equates to an extra-judicial penalty. If it is considered necessary to add the removal of citizenship rights to the deprivation of liberty, then that too should be a matter for judicial determination.

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39 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 404-405; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Voting Rights of Prisoners,* 2004.

40 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 405.

41 *Commonwealth Electoral Act*, subsection 93(8).

1.75 As I have consistently argued, there is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

1.76 To complicate this further, there is no uniformity amongst the States or between the States and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their driver's licence rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

1.77 Australia is a signatory to Article 25 of the ICCPR. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without distinction of any kind on the basis of race, sex or other status. The existing provisions in the Electoral Act discriminate against convicted persons in prison on the basis of their legal status. This clearly runs contrary to the letter and spirit of the ICCPR.[42] There is a body of case law building up in Europe and Canada for instance that supports this view.[43]

1.78 A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

Abolition of broadcaster and publisher returns

1.79 The bill proposes to remove the requirement for publishers and broadcasters to lodge returns with the AEC that disclose details of federal election advertisements published or broadcast during the period from the issue of the writ to election day.

1.80 A previous, and I emphasise unsuccessful, attempt was made to repeal these requirements.[44] I can only assume that the rationale is the same this time around.

> These provisions place an administrative burden on publishing and broadcasting businesses that is not required because expenditure on electoral advertising is already disclosed by individuals and organisations

42 A significant number of submissions raised this concern. See *Submissions 3, 6, 17, 23- 25, 31-36, 39-41, 43-46, 47, 49-50*.

43 For example, HIRST v [1] The United Kingdom.

44 Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004.

> that authorise the advertisements as required under other sections of the Electoral Act.[45]

1.81 This measure runs contrary to the spirit of disclosure legislation – to increase transparency – and it will result in the sole onus of reporting donations and expenditure being on political parties and candidates. I recognise that although these returns do not make a major contribution to increasing transparency, the move to abolish them removes an important cross-check.

1.82 The figures in the returns provide an indicator of the truthfulness of the records of political parties and what they have been spending. In a recent radio interview, Professor Colin Hughes stated:

> If the party says: we paid Station X so much, and the station says: we received three times so much, then you begin to wonder if it's not worth looking into it a bit more.[46]

1.83 Arguments that the lodgement of publisher and broadcaster returns provides no material contribution to public disclosure are disappointing and miss the point.

1.84 As a result of this change, I recommend that the penalty provisions in the Electoral Act[47] be tightened to deter parties or candidates from ignoring their disclosure obligations. The current provisions, for example, specify a fine of a mere $5,000[48] where a person, on behalf of a political party, fails to furnish a return on time or a fine of only $1,000 for furnishing false or misleading material.[49] These amounts are clearly too low provide little disincentive against under-reporting.

1.85 I also recommend that the AEC be given broader powers under the Electoral Act to compel broadcasters and publishers when appropriate, in the absence of returns, to provide details of political advertising for an election period. At present, the AEC only has the power to request information if it is relevant to an investigation into whether a political party, associated entity or other entity has complied with the disclosure obligations.[50] For this to occur, the AEC needs to believe, on reasonable grounds, that the relevant party or entity could produce evidence relating to a possible contravention of Part XX of the Electoral Act.

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45 Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, *Explanatory Memorandum*, p. 18; Jerome Davidson, *Bills Digest – Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, p. 8.

46 Professor Colin Hughes, ABC Radio, 'National Interest', 12 February 2006.

47 *Commonwealth Electoral Act*, section 315.

48 *Commonwealth Electoral Act*, paragraph 315(1)(a).

49 *Commonwealth Electoral Act*, subsection 315(3).

50 *Commonwealth Electoral Act*, subsection 316(3).

Access to the electoral roll and its use

1.86 The bill will enable persons and organisations to access the electoral roll to verify identity for the purposes of the *Financial Transactions Reports Act 1988* (FTR Act). The use of the roll will not be subject to the commercial use prohibition. Recent amendments, which have prevented the sale of the electoral roll, have created difficulties for financial institutions attempting to verify the identity of persons for the purposes of the FTR Act. I do not have a problem with this change.

1.87 When considering access to the electoral roll, two competing principles need to be balanced – openness and privacy. I argue that, in a democracy, the electoral roll needs to be an accessible document. On the other hand, I consider that the personal information that Australians compulsorily provide should be given the protection and security expected by them and required by the *Privacy Act 1988*.

1.88 I believe that most Australians have an expectation that the information they provide to the AEC will only be used for the purposes for which it was collected. Proposals to grant access to information contained on the roll therefore needs to be scrutinised and any release of information must outweigh the public interest in protecting the privacy of individuals. It should be borne in mind that the integrity of the electoral roll is of fundamental importance to our system of representative democracy. It would be disappointing to potentially discourage some electors from enrolling because of the thought that their personal information would be used for a wrongful purpose.

1.89 The Electoral Act allows roll and elector information to be given to registered political parties and Members of Parliament for constituency purposes.[51] I recommend that the circumstances in which the information is provided be tightened. For example, the inclusion of 'end-use restrictions' on the data from the electoral roll would be a beneficial step to reducing opportunities for electoral fraud or misconduct.

Deregistration and re-registration of political parties

1.90 The bill introduces new rules for the registration of political parties. The bill provides that all currently registered political parties will be automatically deregistered and will need to reapply for registration, with exceptions for federal parliamentary parties and those with past representation in the federal parliament. As the majority report notes, the purpose of the changes is primarily to address the concern over misleading party names or, more specifically, the name of the party 'Liberals for forests'.[52] More rigorous name registration requirements introduced prospectively after the registration of Liberals for forests will not apply to that party if it seeks to re-register.

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51 *Commonwealth Electoral Act*, Part VI.

52 Jerome Davidson, *Bills Digest – Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, p. 8.

1.91 The Government is concerned that a political party could deliberately and deceptively mislead voters into unintentionally voting for them on the basis of a similar or like name to an existing party. This behaviour is known in commercial law as 'passing off'. 'Passing off' has long been an issue in Australian political life, where one political party attempts to deceive voters that it is another party for which they might have voted. A number of political parties, including the Democrats, have been victims of such behaviour.

1.92 This change will almost certainly result in some presently-registered political parties losing party status.[53] The Democrats would have preferred the behaviour to be prohibited rather than a law change that could lead to loss of party status. Having said that, there is still undeniably a case for addressing 'passing off' in the political field.

Candidate nomination deposits

1.93 The bill proposes to increase nomination deposits for House of Representative candidates from $350 to $500, and for Senate candidates from $700 to $1,000. The deposits are refundable if four per cent or more of first preference votes for the relevant constituency is achieved.

1.94 The Democrats do not support any increase to nomination deposits for candidates in the House of Representatives and the Senate. In opposition to the measure, the Greens NSW argued that it would be prohibitive for small parties planning to contest many electorates.[54]

> If nomination deposits were increased…it would be a very significant increase in expense for a small party planning to contest many electorates. To run in all 150 lower house seats and have full Senate tickets of six in each state and two in each territory would cost a party $115,000 in nomination fees alone. Democracy requires that nomination fees are small, otherwise access to contesting the elections becomes confined to those who are wealthy.[55]

1.95 There is no evidence that the current figures are inappropriate or that they are too low to deter frivolous candidates, or so high as to deter serious candidates.

Conclusion

1.96 The Democrats have a longstanding commitment to improving electoral processes to ensure that the democratic rights of all Australians are protected and enhanced. The changes in the bill are significant for the Australian electoral system. Some are highly controversial, and I have sought to address these in this report. Although regrettably, the Democrats have to date remained largely unsuccessful in our

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53 The Greens NSW, *Submission 14*, pp 2-3.

54 The Greens NSW, *Submission 14*, p. 3.

55 The Greens NSW, *Submission 14*, p. 3.

quest for improvements in many areas of electoral law, we will continue to campaign for better standards and to consistently seek to make a difference.

1.97 The Australian Democrats will move amendments to the bill to reflect the views expressed in this report.

Senator Andrew Murray

Appendix 1

List of Submissions

1. The Nationals
2. Dr Brian Costar
3. Human Rights Law Resource Centre Ltd
4. Mr Joo-Cheong Tham
5. Festival of Light Australia
6. NSW Council for Civil Liberties
7. National Council of Churches in Australia
8. Citigroup Pty Limited
9. Investment & Financial Services Association Ltd
10. Australian Labor Party
11. Australian Finance Conference
12. National Roundtable of Nonprofit Organisations
13. American Express Australia Limited
14. The Greens NSW
15. ING DIRECT
16. HBOS Australia
17. The Hon. Linda Lavarch MP, Attorney-General and Minister for Justice, QLD

17a. The Hon. Linda Lavarch MP, Attorney-General and Minister for Justice, QLD (Supplementary submission)

18. FCS Online
19. Council of Social Service of New South Wales
20. ING Australia Ltd
21. Mr Colin A. Hughes

22. Professor George Williams

23. Ms Sarah Gardner

24. Ms Keren Coutts

25. Professor David Brown

26. Ms Aileen Woo

27. Ms Gabrielle Ewers

28. Ms Louise Roy

29. Ms Joan Kersey

30. Ms Monika Ciolek

31. Justice Action Group

32. Mr Benedict Taylor

33. Ms Magdalena McGuire

34. Ms Inoe Scherer

35. Ms Jacqui Baker

36. Mr Peter McGuire

37. Ms Ariel Marguin

38. Mr Peter Andren MP

39. Community Restorative Centre

40. Ms Joanne Sharpe

41. Social Justice Committee, Conference of Leaders of Religious Institutions (NSW)

42. Australian Privacy Foundation

42a. Australian Privacy Commission
(Supplementary submission)

43. Ms Ellen Unwin

44. Ms Wendy Lown

45. Ms Kirsty Umback

46. State INCorrections Network

47. Brimbank Melton Community Legal Centre

48. Name withheld

49. Mr Tiyan Baker

50. Human Rights and Equal Opportunity Commission

51. Victorian Institute of Forensic Mental Health

52. The Liberal Party of Australia

53. National Association of Community Legal Centres

Appendix 2

Tabled Documents and Answers to Questions on Notice

Tabled documents

7 March 2006

Australian Electoral Commission
- Close of Rolls 2004 Election

Justice Action
- Pamphlet
- Information
- Prisoners' Vote pamphlet
- Media Release
- Correspondence
- Breakout pamphlet
- listen pamphlet
- Framed magazine
- Statement by Ms Potempa
- The Australian Prisoners' Election Newspaper
- Just Us newspaper, December 2004
- Just Us newspaper, September 2005

Answers to questions on notice

21 March 2006

Letter from The Hon Gary Nairn MP, Special Minister of State
- including a response to a Question on Notice to the Department of Finance and Administration, Tuesday 7 March 2006.

22 March 2006

Australian Electoral Commission
- cover letter
- AEC Research Report Number 8 – Analysis of Informality in Werriwa during the March 2005 By-Election
- AEC Research Report Number 9 – Pilot Project on Informality in Port Adelaide

Appendix 3

Public Hearings and Witnesses

Tuesday 7 March 2006 – Canberra, ACT

Australian Electoral Commission

Mr Ian Campbell, Electoral Commissioner
Mr Tim Pickering, First Assistant Commissioner, Electoral Operations
Mr Andrew Moyes, Assistant Commissioner, Roll Management
Ms Kathy Mitchell, Director, Funding and Disclosure

Department of Finance and Administration

Mr Jonathan Hutson, General Manager, Corporate Group
Mr Ian McAuley, Branch Manager, Corporate Group
Mr Damien Hall, Director, Policy Advice Unit, Corporate Group
Ms Robyn Fenwick, Director, Policy Advice Unit, Corporate Group

Professor Brian Costar (Private capacity)

Festival of Light

Dr David Phillips, National President

Emeritus Professor Colin Hughes (Private capacity) (via teleconference)

National Roundtable of Non Profit Organisations

Mr Paul O'Callaghan, Executive Director, Australian Council for International Development
Mr Charles Berger, Legal Adviser (via teleconference)

Mr Joo-Cheong Tham (Private capacity) (via teleconference)

Justice Action

Mr Brett Collins, Acting Coordinator
Ms Kat Armstrong, Spokesperson and Caseworker
Mr Les Connolly, Spokesperson
Ms Vicki Potempa, Member
Mr Anthony York, Mentor

Appendix 4

Ministerial letter to committee

THE HON GARY NAIRN MP
Special Minister of State

17 MAR 2006

Senator Brett Mason
Senator for Queensland
Chair
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Mason Brett

I am writing to you in your capacity as the Chair of the Senate Finance and Public Administration Legislation Committee, following the Committee's public hearing into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005.

As you are aware, the issues of third party disclosure obligations and the possible impact of these obligations on the work of non-profit agencies and the methodology for costing the revenue impacts of extending the tax deductibility for political donations were raised at the Committee's hearing on Tuesday, 7 March 2006.

Following the hearing, and in response to the issues raised in correspondence to me from the National Roundtable of Non-profit Organisations and World Vision Australia, I have written to both organisations offering to meet to discuss their concerns and possible solutions.

I have also been advised by the Department of Treasury that the methodology of the Treasury's costing on extending the tax deductibility for political donations has not been published and is not publicly available. However, I am advised that the data source used on the costing is publicly available from the Australian Electoral Commission. The response to the question on notice is attached.

Yours sincerely

GARY NAIRN

Ph: (02) 6277 7600 Parliament House, Canberra 2600 Fax: (02) 6273 4541

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTION ON NOTICE

Reference: Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

Department of Finance and Administration

Hearing, Tuesday, 7 March 2006

Topic: Revenue cost of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

Hansard Page: F&PA page 16

Senator Michael Forshaw asked:

The financial impact in the explanatory memorandum states that the revenue cost of schedule 4 is estimated to be minus $4.9 million in 2007-08, minus $6.5 million in 2008-09, minus $5.4 million in 2009-10 and minus $5.7 million in 2010-11. That is the cost impact of increasing the tax deductibility figure from $100 to $1,500 and allowing corporations to claim the deduction for the first time.

Can you clarify for me how those figures were derived?

Answer:

The methodology of the Department of the Treasury's costing on extending the tax deductibility for political donations has not been published and is not publicly available.

Advice from the AEC, based on analysis of the party and donor returns, indicates that all donations, not just donations to the major political parties, under $1,500 for the 2003-04 financial year were $0.84 million and $1 million in 2004-05 and not $25 million. The difference in these figures is likely to have contributed to Senator Forshaw's question and assumption that the revenue impact was far too low.