Submission to the inquiry on the Electoral and Referendum (Electoral Integrity and Other Measures) Bill 2005

I would like to make the following submission to the Finance and Public Administration Committee's Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005:

1. Disclosure Threshold.

I submit that the argument that the disclosure threshold should be increased from $1 500 to $10 000 to keep pace with inflation is flawed. The amount was set at $1 500 in 1983, according to the ABS Times Series Data 6401.0 that amount is worth $3 404 in 2006 dollars--nowhere near $10 000.

2. Roll Closure.

As no hard evidence has been produced of last minute roll fraud, the decision to close the roll at 8pm the day the writs are issued (with a few, minor exemptions) has the capacity to effectively disenfranchise some 300 000 people on dubious grounds. I submit that the current seven day 'period of grace' be retained. The recommendation of the JSCEM's report on the 2004 federal election on early roll closure is susceptible to political frustration via s 12 of the Commonwealth Constitution in ways which would be regrettable.

3. Prisoner Franchise

The proposal to deny the vote to all convicted prisoners currently in jail is bad penal policy and runs counter to recent legal decisions in Europe and Canada. I submit that all prisoners retain the right to vote.

Further reasons for my submissions are set out in the attached, an earlier version of which appeared in *The Canberra Times* on 8 December 2005.

These views are my own and are not attributable to Swinburne University

Brian Costar
23 February 2006

ATTACHMENT

ELECTORAL INTEGRITY

Ordinary Australians are often suspicious of governments of all political persuasions meddle with the fundamentals of the nation's electoral laws. Sometimes this scepticism is justified and sometimes it is not. From what we have been told by the[then] Special Minister of State, Senator Eric Abetz, of the contents of *The Electoral and Referendum Amendment (Electoral Integrity and Other Measures Bill)* slated to be introduced to the Senate in this last sitting week[December 2005] suspicion appears to be justified.

In proposing to make it harder to get on the electoral roll and easier to make donations of $10 000 or less to political parties without having to publicly disclose them, the government has its priorities upside down. If there is a fault in the current Australian electoral procedures it is not rampant enrolment fraud but the very real perception of secret influence- peddling caused by the excessively free flow of political money.

For over twenty years the Australian Electoral Commission has repeatedly assured the parliament of the integrity of the electoral roll and pointed out the porousness of the regulations governing campaign donations and disclosure. In 2002 the Australian National Audit Office reported 'that, overall, the Australian electoral roll is one of high integrity, and can be relied on for electoral purposes'. If only the same could be said about the disclosure provisions.

Contrary to popular opinion, neither the right to enrol nor the right to vote are enshrined in the Australian constitution, which gives parliament wide discretion over how its members are to be elected. Since Australian citizens have very limited access to judicial protection in electoral matters, great care should be exercised before anyone is deprived of their vote by the parliament.

The right to vote follows automatically once a person's name is entered on the electoral roll. The government's proposal to close off the roll at 8pm the day the election writs are issued – usually the day after the prime minister announces an election – can effectively rob something like 300,000 citizens of their voting rights.

Since 1984 the Electoral Act has provided for a seven day 'period of grace' between the issue of the writs and the close of the roll[prior to 1984, with the exception of 1980 there was always a time gap of about a week between when the PM announced the election and the roll closed]. In that one-week period prior to last year's[2004] federal election 284,110 citizens updated their enrolments – 78,816 of whom were new voters, most of whom would have turned 18 since 2001.

The current Bill makes two cosmetic concessions: anyone who turns 18 or gains citizenship during the 'close of roll period' or who changes their address will have three days to enrol or update their details. This will be of benefit only to a very small number of people.

Some in the Liberal Party and elsewhere have wanted the rolls closed early for many years on the grounds that the current arrangements 'present an opportunity for those

who seek to manipulate the roll to do so at a time where little opportunity exists for the AEC to undertake the thorough checking required ensuring [sic] roll integrity'.

This argument fails on at least two counts. First, the AEC is on the public record stating categorically that it applies its established procedures during the seven-day period after the writs are issued 'with the same degree of rigour as it does in a non-election period'. Second, government members have admittted that there is minimal evidence of actual roll fraud, but insist that measures must be taken take to prevent it occurring sometime in the future. This is 'solving' a non-existent problem and the cure is infinitely more injurious than the disease.

Before the government rushes to legislate, it might contemplate a potential constitutional impediment to early, complete roll closure. The Governor General, acting on the advice of the Prime Minister, issues the writs for the House of Representatives and the four Territorial senators, but the state Governors, acting on the advice of their Premiers, issue the writs for Senate elections. The constitutional power clearly exists for one or more of the state Premiers to advise their Governors not to issue Senate writs for (say) seven days after the Prime Minister announces the election date – thereby keeping the rolls open in those states.

Another category of citizens set to lose their voting rights under this Bill are convicted prisoners. Since 2004 persons convicted of a criminal offence and serving a sentence of three years or more have been denied the vote (before 2004 the sentence had to be five years). The Bill seeks to disenfranchise all convicted prisoners serving a full time jail sentence. On current statistics, this would affect about 20,000 citizens. Bizarrely ,

such prisoners will be permitted to remain on the electoral roll, thus overturning long established laws granting the right to vote to all those listed on the roll.

During a 2004 parliamentary debate, Senator Nick Minchin insisted that any 'pub test' would find that law abiding citizens resented allowing prisoners the vote. Good public policy should be grounded on more than pub polls. Denying the vote to prisoners runs counter to sensible rehabilitative penology.

The enthusiasm for disenfranchising prisoners may derive from the example of the United States, which is notorious for the practice. Currently nearly five million convicted felons are denied the vote (some of them forever and most of them not in prison), which is more than enough to alter elections results— it almost certainly brought George W Bush to power in 2000.

No electoral system is perfect, but Australia's can be improved by keeping open the franchise and closing off the political money trail.

Brian Costar

(Dr Brian Costar is Professor of Victorian State Parliamentary Democracy at Swinburne University.)