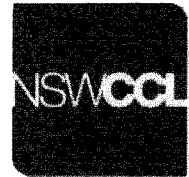


Friday, 24 February 2006



New South Wales
Council for
Civil Liberties

Committee Secretary
Senate Finance and Public Administration Committee
Department of the Senate
Parliament House
Canberra ACT 2600

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Dear Committee Secretary,

**Re: Inquiry into the Electoral and Referendum Amendment
(Electoral Integrity and Other Measures) Bill 2005**

Thank you for this opportunity of making a submission to this inquiry.

The NSW Council for Civil Liberties ('CCL') is a non-government organisation committed to the protection and promotion of the civil liberties of all Australians.

This submission deals with two aspects of the proposed Bill. CCL is concerned about that the early closure of the electoral rolls will unnecessarily disenfranchise thousands of eligible Australian voters. CCL is also concerned about the attempt to disenfranchise prisoners in full-time custody.

The early closure of the electoral rolls

CCL is concerned about the proposed provisions to close the electoral rolls, for people who are not enrolled or who need to re-enrol, on the same day that writs are issued. Currently, such people have 7 days from the issuing of writs to enrol. This Bill will disenfranchise eligible voters who have not yet enrolled or re-enrolled to vote. The Australian Electoral Commission ('AEC') estimates the numbers as 'tens of thousands of electors'.¹

The Minister has not offered a rational policy objective to justify this amendment. The Minister is quoted as explaining that the Australian Electoral Commission ('AEC') cannot effectively cope with the influx of enrolments over this 7 day period.² However, the AEC has categorically stated that this is not a problem.³ There is no legitimate policy reason to make this change. The Minister has not offered any reason for removing the one week 'period of grace' in which electors have the

¹ Jerome Davidson, Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, Bills Digest No. 95 2005-06 (8 February 2006), 3.

² Jerome Davidson (2006), n 1, 3.

³ Jerome Davidson, *Inside outcasts: prisoners and the right to vote in Australia* (24 May 2004), Current Issues Brief No.12 2003-04 (Parliamentary Library)
<<http://www.aph.gov.au/library/pubs/CIB/2003-04/04cib12.pdf>>.

opportunity to ensure that they are enrolled. This change will lead to citizens being unable to exercise their democratic right to vote.

Given that this proposal will deprive some citizens of their democratic right to vote by unnecessarily closing the roll for new enrolments and re-enrolments on the day on which writs are issued, this proposed amendment should be removed from the Bill.

disenfranchisement of prisoners

CCL commends to the Committee the excellent Issues Brief written by Jerome Davidson.⁴

CCL endorses the conclusion of Mr Davidson that the disenfranchisement of full-time prisoners is unconstitutional.⁵ It is a violation of the fundamental political right of every citizen, 'who is not under some special disability', to vote. As such, it also breaches Article 25 of the *International Covenant on Civil and Political Rights*.

CCL also endorses the words of Kirby J in a recent High Court case:⁶

Prisoners are human beings. In most cases, they are also citizens of this country, "subjects of the Queen" and "electors" under the Constitution. They should, so far as the law can allow, ordinarily have the same rights as all other persons before this Court. They have lost their liberty whilst they are in prison. However, so far as I am concerned, they have not lost their human dignity or their right to equality before the law.

CCL notes that decisions of the European Court of Human Rights, the Canadian Supreme Court and the Constitutional Court of South Africa make it clear that there is no legitimate reason to deny prisoners their political right to vote. All of these decisions conclude that it is not proportionate to disenfranchise prisoners.

CCL believes that the proposal to disenfranchise prisoners should be abandoned and replaced with a provision to repeal the existing unconstitutional provisions.

If the provisions are to be passed, then proposed subsection 109(2) should be amended to provide that a prisoner who is released before the date of the election (not the date of the writ) should be allowed to vote. Provision also needs to be made for a prisoner granted parole between the date of the writ and the date of the election. Numbers will be relatively small and should be easily accommodated by the AEC.

I, and other members of the CCL Committee, would be happy to expand upon any of these submissions either orally or in writing.

Yours sincerely,

Michael Walton
Committee Member
NSW Council for Civil Liberties

⁴ Jerome Davidson (2004), n 3.

⁵ Jerome Davidson (2004), n 3, 12.

⁶ *Muir v The Queen* [2004] HCA 21, 25 (Kirby J).