



SUBMISSION TO

**THE INQUIRY INTO THE ELECTORAL AND REFERENDUM
(ELECTORAL INTEGRITY AND OTHER MEASURES) BILL 2005**

BY

**THE SENATE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
COMMITTEE**

**Colin A. Hughes
23 Arrabri Avenue
Jindalee Qld 4074
Tel 07-3279-162**

The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 is complex and relates to a number of electoral matters. My submission will concern only one, the proposal for early closing of the roll in ss.51-52, which I consider to be the most pressing issue the Bill raises. I believe that those sections should not be passed, and the present provisions of the Commonwealth Electoral Act 1918 about roll closing should remain as they are.

My arguments to that effect were previously put to the Joint Standing Committee on Electoral Matters (JSCEM) at its Inquiry into the 2001 Federal Election (its Submission 73) and I remain of the opinions expressed then. A copy is attached as Attachment A. I would call the Committee's attention to Senator Ray's related remarks at the JSCEM's hearing on 2 October 2002 at p.EM189; for the Committee's convenience a photocopy of that page is attached as Attachment B. Finally I would call the Committee's attention to the JSCEM's account of my submission in its Report on that inquiry (para.2.167) and its conclusion that the existing provision should be retained (paras.2.174-2.175); again for the Committee's convenience, photocopies of the relevant pages of the 2001 Election Inquiry are attached as Attachment C. I am of course aware that the next JSCEM after its Inquiry into the 2004 Federal Election abandoned the previous Committee's recommendation and reverted to an early closing view, but I believe the majority erred in doing so and that the considerations which applied in 1983 and were embodied in the CEA 1918 are still valid.

If, for any reason, it should be thought preferable to have a proclamation of the impending election issue at an equivalent period of time prior to the closing of the roll, that is the Tasmanian device which the Joint Select Committee on Electoral Reform had originally recommended and which the previous Special Minister of State implicitly endorsed recently, there could be no objection to such a course. The objective should be to preserve what was an invariable practice before 1983 and a statutory requirement from 1984 onwards, and thereby protect the right of Australian citizens to vote even though some of them may have been sleeping on those rights.

Attachment A

SUBMISSION TO
THE INQUIRY INTO THE 2001 FEDERAL ELECTION
BY -
THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Colin A Hughes
23 Arrabri Avenue
Jindalee Qld 4074
Tel 07-3279-1625

The time has come for the Joint Standing Committee to abandon its previous recommendation that "the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00pm on the third day after the issue of the writ", first endorsed by a majority of the Joint Standing Committee in June 1997 in its Report of the Inquiry into ... the 1996 Federal Election (p.14) and repeated in June 2000 in its Report of the Inquiry into ... the 1998 Federal Election (p.15). It should allow the present arrangements for a period of 7 days in which roll transactions may take place to continue.

History

In the first place, the recommendation apparently rests on a misunderstanding of the previous position e.g. the 1996 Report says: "This statutory period was introduced following the 1983 election, when the rolls closed the day after the election was called." (p.14) thereby making it one more escapee from the so-called Pandora's box of 1983 amendments. The recommendation's phrase "the election was called" should be noted.

In fact the statutory period set in 1983 did no more than regularise what had previously been unchallenged practice. Taking just the 7 Commonwealth general elections prior to the 1983 election, the first date set out below is when the election date was announced (with Hansard page reference) and the second is when the writs were issued and the rolls closed:

1966 12/10/1966 (p.1613); 31/10/1966

1969 Parliament adjourned in May; by early August speculation was that polling day would be 15/10; this was confirmed by the Prime Minister on 21/08/1969; 29/09/1969

1972 10/10/1972 (p.2295); 2/11/1972

1974 10/04/1974 (p.1359); 20/04/1974

1975 11/11/1975 (p.2929) when the statement was that the House would be dissolved as soon as requisite papers could be prepared; 17/11/1975 (SA & WA 21/11/1975)

1977 27/10/1977 (p.2477); 10/11/1977

1980 11/09/1980 (p.1224); 19/09/1980

As, for example the Australian Electoral Office's Annual Report for 1980-81 made clear: "The election, announced by the Prime Minister in Parliament on 11 September, was conducted on the following timetable: the issue of writs (and close of polls) on 19 September 1980 ..." (p.7). Prior to 1983 there was always a period of some days, usually more than 7, between the announcement of polling day and the close of rolls at 6pm on the day the writs were issued.

When this did not happen in 1983, the Joint Select Committee on Electoral Reform wrote: "The Committee considers that the closing of the rolls almost immediately an election is announced as occurred in February 1983, is not in the best interests of parliamentary democracy. The Committee believes that a statutory minimum period should be provided before the rolls are closed after an election is announced. The Committee therefore recommends that section 45 be amended to provide that the Governor-general shall, by proclamation, announce the intention of dissolution and the dates proposed in connection with the election at least 7 days before the issue of the writs and therefore the closing of the rolls." (p.110) The Joint Select Committee's point about protecting parliamentary democracy remains just as valid today.

For some reason the then Government chose not to formalise the announcement of the election in a viceregal proclamation but to separate the issue of the writs and closing of the rolls instead. The effect was and is the same: to ensure a period of time to allow potential electors to get their enrolments into order.

Relevant evidence

Following the 1993 general election, the majority in the then Joint Standing Committee considered 2 inquiries by the Australian Electoral Commission, with 1990 election data of 23,000 new enrolments and with 1993 data of new enrolment gross numbers, and concluded that those wishing to introduce instant closure had "not substantiated their case", whilst the change "would be highly regrettable" (pp.34-35). Subsequent inquiries, such as Shepherson and the Australian National Audit Office, have not uncovered anything that suggests particular abuses in the pre-close period, and certainly nothing that would warrant adjectives like "huge" and "enormous", or numbers like "thousands" and "hundreds of thousands" that are bandied about on this subject. On the other hand, most recently in the 1998 election report, the minority in the Joint Standing Committee pointed to the likelihood that about 80,000 new enrollees would be barred from voting, and that more than 200,000 current electors would be left at non-current addresses by instant closure.

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~~ so a couple weeks or a couple months earlier – if that is indeed what the conspirators seek to do.

Finally, a number of improvements in enrolment procedures now in place would require a more sophisticated and demanding operation by anyone proffering false enrolment documents.

Uniformity

It is highly desirable that Commonwealth and State electoral processes resemble each other as much as possible. If the States continue to allow a post-announcement period for enrolment activities, as I expect they will, Australian citizens will believe that this opportunity is available for them for Commonwealth elections too. In 1973 (13/03/1973, p.478), the previous Minister for the Interior, the late Ralph Hunt, explaining why the Coalition Government had resisted legislation for the enfranchisement of 18-20-year-olds in 1968, said: "The most elementary consideration in any franchise system is that it should be clear and fair and that the circumstances in which the right to vote is to be exercised should be uniform. Franchise uniformity is, I believe, a most essential objective to avoiding confusing State by State or between the Commonwealth and the States. I submit that if unilateral action had been taken by the Commonwealth considerable disruption among the joint roll States would have resulted." It would be just as unfortunate if unilateral action by the Commonwealth were now effectively to disfranchise young electors, whether that be a deliberate attempt to partially reverse the 1973 legislation or in pursuit of a will-o'-the-wisp claiming to be "integrity".

the concern that had been raised. But what went on between the then Australian Electoral Office, the government and the committee I could not say; I am not sure. I suspect that Mr Maley would probably be best to ask—

Senator ROBERT RAY—I could say but I do not want to because I do not want embarrass conservative members by saying it was Sir John Carrick that pushed so hard for this seven-day period, this window of opportunity. He was at us for month after month until we finally gave in on it.

CHAIR—It is nice to see that we overcame the resistance of the Labor Party on this occasion.

Senator ROBERT RAY—It was not resistance. We wanted to know what he was up to. When it came to strategy he could outrank anyone at this table, including me.

Mr DANBY—Professor Hughes, I would like to ask about new enrolments. In the March 1996 elections there were 428,000 new and updated enrolments; in 1998, 351,000. Then it started to increase in the most recent election to 369,000. How do you interpret the decrease in the number of new enrolments in that period of 1996 to 1998? Is that perhaps because of the adoption by the AEC of a more efficient updating of the roll in the meantime?

Prof. Hughes—It is one of those questions that I am afraid you need notice of because that involves procedures, hardware, software and also the coincidence of state electoral events. If New South Wales had had an election shortly before that, then all that action would have taken place getting the New South Wales roll into order and there would be very few stragglers left to be swept up by the federal election. You need to look at it in the context of electoral events. It is conceivable that a good habitation review in the days when these were massive operations had improved things as well. Those sorts of figures are substantial, but expressed as a percentage of the total population then of course it is a relatively small number.

Mr DANBY—Do you have any feeling about the change in the number or the overall number of people who are not enrolled?

Prof. Hughes—It is a long time since I had direct responsibility for that sort of thing. I think only people who are inside the machine would really have a feel for that. On the other hand, it is the case that many of the demographic factors seem to be remarkably constant. For example, we have figures about the number of roll changes during a year survived from the 1920s to the 1930s. It does seem that the Australian population is remarkably steady in its habits. All I could say is that you would need, first of all, to narrow your period down quite specifically and see what you could find out about that in respect of the detail that I mentioned a moment ago. Then you would have to look at the long sweep and see if things were happening, but they really amount to a couple of percentage points. If I could shift to a rather different issue: the question of whether seats should be allocated on the basis of population or enrolment. There was a period after the war when you saw great discrepancies start to arise—and Mr Whitlam, for example, in Werriwa was particularly agitated about this—and then the curve goes down again and we are back practically where we were in the late 1940s and early fifties on the ratio of eligible population to vote to total population. So there are long-term cycles as well.

- 2.166 The submissions from the Liberal Party of Australia, the Festival of Light and the Council for the National Interest supported these changes.
- 2.167 Emeritus Professor Hughes' submission supported the existing seven-day period on the grounds that: it essentially formalised what had been the practice before 1983; successive investigations have discovered no evidence of widespread fraud warranting an earlier closing; and that change would confuse electors if the States did not follow suit for their elections.¹³⁹
- 2.168 The ALP argued against reducing the current close of rolls period, submitting that it would: reduce enrolment by the young and socially disadvantaged; result in less accurate rolls for polling day; increase queues, confusion and inconvenience at polling booths; increase declaration voting; and produce delays in the delivery of election results.¹⁴⁰

Committee comments and recommendations

- 2.169 To evaluate the concerns about enrolments during the close of rolls period, the Committee compared the process by which new voters are added or voters' details are altered prior to an election being called with the process during the close of rolls period.
- 2.170 In both periods the processes are essentially identical. Where the matching and checking processes disclose no anomalies, additions are made to the rolls. Where there are anomalies,¹⁴¹ changes or additions are not made to the rolls until these are resolved. This applies at all times including during the close of rolls.
- 2.171 Applicants for enrolment are therefore not added to the roll during the close of rolls period until verification of eligibility is complete,

¹³⁹ Submission (Emeritus Professor Colin Hughes, no. 73), p. 2.

¹⁴⁰ Submission (ALP, no. 153), p. 8.

¹⁴¹ Anomalies occur if, for example, the address is not on the Register, the address is flagged as non-enrollable or inactive, the enrolment limit attributed to that address is exceeded, or if neither the street name nor the street number can be ascertained from the enrolment form. Further anomalies may occur if a match is made with a elector recorded on the RMANS 'DELETED FILE' by reason of being deceased, of unsound mind or not a citizen; there is a match of some special category elector codes (such as itinerant or Norfolk Island electors) and the new form does not indicate that they are to apply to the latest enrolment; there are multiple possible matches; the former name details have been entered and there is no match; or the person is over 18 years and there is no match.

with one exception.¹⁴² If verification is completed after the roll close, the elector is added to the notebook ('additions list') roll and advised on election day to cast a provisional vote. An elector is added to the notebook roll if his or her eligibility for enrolment has been confirmed before election day, but too late to be added to the certified lists of electors used at polling places. As the electors in question are not on the certified lists they must cast a declaration vote (the notebook roll is retained by the DRO for the Division and is not copied to polling places). The AEC advised that for the 2001 election, there were no instances of electors being added to the notebook roll.

- 2.172 The Committee's re-examination of the checking processes indicates that potential difficulties in the close of the roll process are narrower than originally thought. Where anomalies are thrown up by internal checking processes which cannot be field checked, enrolment applications are not added to the roll.
- 2.173 Moreover, insofar as there are residual doubts with respect to enrolments at the close of rolls, the Committee believes that these are addressed by its recommendations relating to proof of identity and address for first time enrolments, re-enrolments, transfers and provisional voters.
- 2.174 In the light of these, the existing checking processes for the close of rolls period, and the prospect of unnecessarily disenfranchising voters by foreshortening the close of rolls, the Committee recommends that the existing seven-day period between the issue of the writs and the rolls closing should be retained.

Recommendation 3

- 2.175 **The Committee recommends that the existing seven-day period between the issue of writs and the close of rolls be retained.**

¹⁴² The only exception is where further verification of the exact location of an address is required. This occurs primarily in rural Divisions. The AEC advised that these enrolments comprise a very small proportion of total close of rolls enrolments – less than ten for most Divisions. Submission (AEC, no. 190), p. 5.