

Damaging Democracy? Early Closure of Electoral Rolls

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Australia has long been a source of best practice in terms of non-partisan professionalism in electoral governance. Over the past decade, however, Australia has slipped behind comparator democracies in a number of areas, most notably the regulation of political finance. Proposals currently before the federal parliament, contained in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, would further erode the quality of Australia's electoral governance. My focus here is on the early closure of the Commonwealth electoral roll.

The utilitarian legacy of the 19th century helped shape Australian electoral administration. Jeremy Bentham and his followers believed responsible government required comprehensive and accurate registering of the preferences of the whole population, and this in turn required effective electoral machinery with independent electoral officials.

Once the new Commonwealth parliament was elected in 1901 it set about legislating for uniform electoral governance across the country and 'the most complete recording of the opinions of all Australians' as the government leader in the Senate put it.¹ In 1903 almost two million names were entered on the first Commonwealth electoral roll, believed to be some 96 per cent of the adult population at the time.² It was the most comprehensive enrolment of any nation up to that time for the purposes of democracy. It was a harbinger of the Australian Electoral Commission's current performance. In March 2005 an AEC audit found 96.3 per cent of the eligible population to be enrolled for the correct division.³

* My thanks to Norm Kelly for his editorial and other suggestions.

¹ Commonwealth, *Parliamentary Debates*, Senate, 9 April 1902, 11451 (Senator Richard O'Connor, Vice-President of the Executive Council). O'Connor got his way in relation to women's suffrage but not in relation to Aborigines. Nonetheless, Aborigines were included on the first Commonwealth roll in States such as South Australia and NSW.

² See Conference of Commonwealth Electoral Officers, *Report* (1904) 4. For more detail on the epic nature of the 1903 Roll see Marian Sawer, 'Enrolling the People', in Graeme Orr et al (eds) *Realising Democracy: Electoral Law in Australia*, Leichhardt, NSW: Federation Press, 2003, pp. 52-65.

³ Australian Electoral Commission, *2004-05 Annual Report*, Canberra: Commonwealth of Australia, 2005, p. 25.

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Nonetheless the eligible population is now a much smaller part of the adult population than in 1903. Only about 86 per cent of the adult population are now enrolled, despite enrolment being compulsory. This is due to the restriction of the franchise to Australian citizens, excluding some one million permanent residents who are not Australian citizens. The United Kingdom, for example, has a much more inclusive franchise than does Australia. Citizens of any of the 53 member states of the Commonwealth of Nations can enrol and vote in UK parliamentary elections, as can citizens of the Irish Republic (Table 1). Additionally European Union citizens may vote for bodies such as the Scottish Parliament, because its franchise is tied to the local government franchise, which includes European Union, Commonwealth and Irish citizens.

Table 1. Parliamentary voting rights

Australia	Australian citizens plus British citizens on roll before 1984
Canada	Canadian citizens only
New Zealand	All permanent residents, 12 months qualifying period
UK*	UK citizens plus Irish citizens and citizens of Commonwealth countries resident in the UK

* EU citizens can vote in European parliament elections, for local government and for devolved bodies such as the Scottish Parliament or the Welsh Assembly.

The Commonwealth electoral roll may no longer be as inclusive of the adult population as it once was, but the AEC has pursued with considerable professionalism the twin objectives of accurate and comprehensive enrolment of those eligible. The first indication of the changed priorities brought by the Howard government was the axing of the \$2 million Aboriginal and Torres Strait Islander Electoral Information Service in the 1996 Budget. Apart from its impact on Aboriginal enrolment, this was the first time that that the Australian Electoral Commission, supposedly an arms-length electoral management body, had been subject to government direction as to how to spend its budget.

Since 1996 the Howard government has frequently called for greater emphasis on 'electoral integrity' over comprehensiveness of enrolment, through measures such as introducing

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evidentiary requirements for enrolment and the early closing of the electoral roll. This preference for one of the two objectives of electoral enrolment was expressed by former Special Minister of State, Senator the Hon. Eric Abetz, as follows: 'There can be no doubt that there is no more fundamental underpinning of our democracy than the need to have an accurate roll'.⁴

Much publicity was given to 'rorrts' of the electoral roll in Queensland, whereby voters were enrolled at a wrong address in order to vote in a Labor Party pre-selection. A handful of people enrolled at a wrong address could affect outcomes in party elections because the number of party members was very small. It is highly unlikely that the handful of votes involved in Queensland in the mid-1990s could have affected the outcome of a parliamentary contest, particularly with compulsory voting. Federal electorates in 2004 had an average enrolment of 87,000 voters (or 115,000 in the ACT) and an average turnout of around 95 per cent. Compulsory voting is an effective hedge against the kinds of fraud that can affect electoral outcomes when relatively small numbers of voters are involved. This makes it odd that some of the senior members of the government most concerned about electoral fraud are also in favour of abolishing compulsory voting.

The exhaustive inquiries and audits of the electoral roll instigated by the Howard government have confirmed this general picture. In 2002 the Australian National Audit Office found over 96 per cent accuracy, which rose to over 99 per cent when matching the roll against Medicare data. No evidence has been found to confirm suggestions of widespread electoral fraud. Nonetheless, fear of 'rorrts' has served as the justification for moves to tighten up enrolment procedures in a way likely to diminish the comprehensiveness of the roll. Such tightening up is likely to have a disproportionate impact on young and disadvantaged sections of the community.

The Howard government's repeated attempts to introduce evidentiary requirements for new enrollees were strongly resisted by State Labor governments, who have joint electoral roll arrangements with the Commonwealth. They argued that the cost and inconvenience of

⁴ Senator the Hon. Eric Abetz, 'Electoral reform: Making our democracy fairer for all', Speech to the Sydney Institute, 4 October 2005, p.3.

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having to produce original documents such as a birth certificate or, alternatively, referee reports from a prescribed class of witness, would discourage eligible voters. Such requirements were likely to exacerbate existing problems of under-enrolment amongst youth and other groups such as Indigenous Australians and the homeless. They had this effect when introduced in Western Australia in 1979.

A compromise was finally reached on evidentiary requirements with the *Electoral and Referendum (Enrolment Integrity and Other Measures) Act 2004*. Regulations were to require new enrollees to provide the number of their driver's licence or, if they did not possess a driver's licence, to have their application countersigned by two people on the electoral roll who could confirm the applicant's identity and address. These regulations were never tabled as the government was not satisfied with the compromise involved. More stringent evidentiary requirements are part of the subject matter of the current Electoral and Referendum Amendment Bill introduced into parliament in December 2005. Such evidence is not required for enrolment in Canada, New Zealand or the United Kingdom.

Meanwhile the Howard government had been unable to make any headway on early closing of the roll while it lacked a majority in the Senate. The Joint Standing Committee on Electoral Matters (JSCEM) had recommended in its report on the conduct of the 1996 election that the roll be closed for new voters on the day the writs were issued and three days later for voters changing their address details.⁵ These are the provisions contained in the Bill currently before the federal parliament.

The reason given for closing the roll so early is to safeguard the integrity of the enrolment process and to ensure that no one gets away with enrolling at the wrong address in the rush after the calling of the election. There have been many anecdotes but little evidence of party activists enrolling in marginal seats for the duration of a federal election.

⁵ Parliament of the Commonwealth of Australia, Joint Standing Committee on Electoral Matters (JSCEM), *Report of the Inquiry into the Conduct of the 1996 Federal Election and Matters Related Thereto*, Canberra: Australian Government Publishing Service, 1997, Recommendation 6.

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For example, Chris Gallus MP, then Member for the marginal seat of Hindmarsh, reported what she believed to be a case of fraudulent enrolment in her submission to the inquiry into the 2001 election. The case she reported had occurred in 1993: a constituent had allegedly found that her daughter's boyfriend had enrolled at her house rather than his parents' house because his parents lived in a safe seat.⁶ In response to such concerns, the AEC undertook intensive checks of all enrolment changes in South Australia made in the week after the issuing of the writs. Out of just over a million enrolled voters in South Australia two voters were found who had moved to a new address during the close of roll period and then subsequently back to an old address. Further investigation of these two cases, however, did not reveal any evidence that the enrolment changes were fraudulent.

Judging from recent elections, to close the roll when an election is announced will disenfranchise about 80 000 new voters and impact particularly on young people. The reduction in time for voters on the roll to change their address details will create difficulties for a further 200,000 voters.

In 2001 83 000 first-time voters enrolled in the week between the issuing of the writs and the closing of the roll. Many put off enrolling until an election is announced. Other comparable democracies are trying to increase the electoral participation of young people, with Canada allowing them to enrol on the day when they turn up to vote and New Zealand giving them until the day before the election (Table 2). In New Zealand they can now ask for their enrolment form through a free text message—a very popular youth option. Australia is intending to close its electoral roll for new voters far earlier than comparable democracies and at least 33 days (almost five weeks) before an election.

⁶ Chris Gallus MP, Submission to JSCEM Inquiry into the Conduct of the 2001 Federal Election, 18 September 2002, pp. 3-4

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Table 2. Closing of the roll

Australia*	8pm, day writs issued (min. 33 days before polling day)
Canada	Polling day
New Zealand	Day before polling day
UK#	11 days before polling day

* Under the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*. Those on the roll but needing to change their address will now have three rather than seven days to do so.

Under the *Electoral Administration Bill 2005*.

Both the current Special Minister of State, the Hon. Gary Nairn MP, and the previous Special Minister of State, Senator the Hon. Eric Abetz, have claimed that Labor criticism of the proposal for early closing of the roll is mere grandstanding, because where Labor is in government at the State and Territory levels it also closes the roll early. This is a classic *tu quoque* argument, whereby bad behaviour is justified by reference to another party also doing it. But are, in fact, Labor governments guilty of early closure of the rolls?

Nairn cites closure of the rolls on the day the writs are issued in NSW, two days after the writs are issued in the Northern Territory, three days after in Victoria, and 29 days before polling day in the ACT.⁷ However NSW, Victoria and the ACT all have fixed-term elections, so there is plenty of notice of an approaching election (Table 3). In the ACT pre-polling begins three weeks before polling day, so the roll is closed one week before polling starts. Nairn may be on safer ground with the Northern Territory, where elections may be called by the government at any time in the fourth year. The Northern Territory *Electoral Act 2004* requires polling day to be 18 days after the issue of the writ—an exceptionally short election period.

Senator Eric Abetz, in his 2005 speech to the Sydney Institute 'Electoral reform: Making our democracy fairer for all' argued that 'The rolls close on the day the writs are issued in Tasmania and New South Wales (our two oldest States) and yet no-one has ever claimed that

⁷ Gary Nairn, 'ALP's electoral reform claims have to be taken with a grain of salt', *Canberra Times*, 21 February 2006.

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there is a democratic deficit in those States'.⁸ As we have seen, NSW has fixed-term elections so closing the roll on the date of the issuing of the writs does not pose a problem for democracy.

In Tasmania the Electoral Act (s. 63) requires there to be between five and ten days between the proclamation dissolving parliament and the issuing of the writs. This year it was six days. So there is a statutory period of time between the calling of the election and the closing of the roll for new voters, unlike the current federal proposal. At the federal level there is a Constitutional maximum but no minimum period between the dissolution of parliament and the issuing of writs. The normal practice is for them to be issued the next working day. This makes the week's grace after the calling of the election of particular importance.

Table 3. Closure of the roll and fixed term elections

Jurisdiction	Fixed terms	Closure of roll
CTH	No	Day writ issued*
NSW	Yes	Day writ issued
Vic	Yes	3 days after writ issued
Qld	No	5-7 days after writ issued
WA	No	8 days after writs issued
SA	Yes	7-10 days after writ issued
Tas	No	Day writs issued, 5-10 days notice
ACT	Yes	29 days before polling day**
NT	No#	2 days after writ issued

* * Under the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*.

** Pre-polling begins three weeks before polling day, so effectively one week before polling begins.

Fixed term component of three years.

Gary Nairn has also argued that for the first 83 years of federal elections the rolls closed on the day the writ was issued.⁹ This is indeed true, but overlooks the convention that existed up

⁸ Senator the Hon. Eric Abetz, 'Electoral reform: Making our democracy fairer for all', Speech to the Sydney Institute, 4 October 2005, pp. 5-6.

⁹ Gary Nairn, Letter to the Editor, *Canberra Times*, 12 March 2006, p. 12.

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until 1983 for there to be about a week between the calling of the election and the issuing of writs—providing plenty of time for voters to get on the roll or update their details. That convention was broken by Prime Minister Malcolm Fraser in 1983. Today the writs are usually issued the day after the calling of an election. That is why, in the absence of fixed terms, it is so important for there to be statutory provision of a week for eligible voters to get onto the rolls, whether that week is between the calling of the election and the issuing of writs or after the issuing of writs.

In general it is the conjuncture of the early closing of the roll with the lack of fixed terms, which creates the potential damage to democracy. Both Senator Abetz and Mr Nairn have suggested that the Liberal Party has no partisan interest in preventing young people from voting, because the 2004 Australian Election Study (AES) shows 41 per cent of young people (under 25) voting Liberal and only 32 per cent Labor. They fail to mention that the AES also shows a big jump in the percentage of young people voting Green—17 per cent.¹⁰ The major proportion of Green preferences flows back to Labor.

The current Bill will also disenfranchise all those serving a prison sentence, of any length. This flies in the face of the Benthamite legacy of Australian electoral administration. Bentham thought it a nonsense to try to disenfranchise felons because a felon could not step into either house of parliament without finding himself in the company of men 'more mischievous than himself, whose principal differences from himself consist in impunity derived from situation and confederacy... Exclude criminals? How will you exclude criminals?'¹¹

The disenfranchisement of prisoners is also contrary to what is happening in other democracies, where voting is seen as part of the rehabilitation of prisoners into the responsibilities of citizenship (Table 4). In 2002 the Supreme Court of Canada found that disenfranchisement of prisoners under the Canada Elections Act violated the Canadian Charter of Rights and Freedoms, while in 2004 and 2005 the European Court of Human

¹⁰ Clive Bean, 'Young People's Voting Patterns', Paper prepared for the Youth Electoral Study Workshop, Old Parliament House, Canberra, June 2005, Figure 1.

¹¹ Jeremy Bentham, *Election Code 1830*, quoted in Frederick Rosen, *Jeremy Bentham and Representative Democracy: A Study of the Constitutional Code*, Oxford: Clarendon Press, 1983, p. 132.

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Rights found that the United Kingdom’s denial of voting rights to all prisoners was arbitrary and harsh, and hence in breach of the European Convention on Human Rights. Imprisonment was not regarded as automatically involving 'civil death' and removal of citizenship rights. Disenfranchisement of prisoners has a disproportionate impact on Indigenous Australians, who, standardising for age, are 11 times more likely to be in prison than non-Indigenous Australians.¹² This again makes us a less inclusive democracy.

Table 4. Prisoner disenfranchisement

Australia*	All prisoners disenfranchised
Canada	No prisoners disenfranchised (since 2002)
New Zealand	Prisoners serving terms of more than three years
UK	In 2004 and 2005 the European Court of Human Rights rules UK in breach of Human Rights Convention for its prisoner disenfranchisement

* Under the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*.

In addition to introducing changes that will reduce the comprehensiveness of the roll, the current Electoral Amendment Bill will significantly weaken the regulatory framework for political finance, a subject analysed in a forthcoming Democratic Audit of Australia report prepared by Joo-Cheong Tham and Sally Young.¹³

Australia was once a pioneering democracy and still is a model for arms-length and non-partisan electoral administration. Yet the changes proposed under the Electoral and Referendum Amendment Bill represent a backwards step in terms of political equality and an inclusive political nation. Let us hope that free and fair elections are not just something we teach other countries about.

¹² ABS Corrective Services data, September 2005.

¹³ Joo-Cheong Tham and Sally Young, *Political Finance in Australia*, Draft Audit Report No. 7, February 2006.

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FURTHER READING

Graeme Orr, 'Ghosts of the Civil Dead: Prisoner Disenfranchisement', *Democratic Audit of Australia*, May 2003 http://arts.anu.edu.au/democraticaudit/papers/20030509_orr.pdf