

Fiddling the ballot books Nov 3 2005

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Proposed changes could deny hundreds of thousands of Australians a vote.

AMID debates about terrorism and industrial relations, the 464-page report of the parliamentary committee inquiry into the conduct of the 2004 federal election had to struggle for media space. Yet if Federal Parliament adopts some of its key recommendations, the right to vote will be significantly restricted, thereby diminishing Australia's well-earned reputation as a world leader in democratic practice.

The report contains much useful information about the electoral system and makes sensible recommendations about how to improve it. But in one crucial area, the inclusiveness of the franchise, the committee's majority of Government members has favoured conspiracy theories over democratic common sense. The result will disenfranchise hundreds of thousands of otherwise eligible citizens at federal elections.

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 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 parliamentary committee's recommendation that the roll close at 8pm on the day the election writs are issued — usually the day after the prime minister announces an election — could rob something like 300,000 citizens of their voting rights.

Since 1984, the Electoral Act has required a seven-day "period of grace" between the issue of the writs and the close of the roll. In that one-week period before last year's federal election 284,110 citizens updated their enrolments. Of those, 78,816 were new

voters, most of whom would have turned 18 since 2001.

The committee advanced two major justifications for abolishing the statutory period of grace. One was that by not keeping their enrolment up to date the 284,110 souls were guilty of offences under the Electoral Act and should not be allowed any leeway. This excessive legalism runs counter to the sensible, long-established practice whereby the Australian Electoral Commission does not pursue prosecution for non-enrolment if the neglect is remedied.

The committee also claims 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, in its submission to the inquiry, stated 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, the committee itself admits that there is minimal evidence of actual roll fraud, but insists that it must take measures to prevent it occurring in the future.

This second assertion ignores the thorough review of the electoral roll conducted in 2002 by the Australian National Audit Office, which concluded "that, overall, the Australian electoral roll is one of high integrity, and can be relied on for electoral purposes". There are adequate safeguards in the current electoral laws and procedures to deal with any future attempts at fraud without stripping the vote from hundreds of thousands of citizens.

Before the Government proceeds to legislate, it might contemplate a potential constitutional entanglement. This arises from the fact that the governor-general, on the advice of the prime minister, issues the writs for the House of Representatives and the four territory 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 slated to lose their voting rights are 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 parliamentary committee recommends that "persons sentenced to a period of full-time imprisonment should not be allowed to a (sic) vote during that time". On current statistics, this would disenfranchise 25,000 citizens.

The committee advanced no sustained argument in favour of this recommendation, but during a 2004 parliamentary debate on the same issue, 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. It is also highly discriminatory since the prison population is skewed: 94 per cent are male, 56 per cent are aged between 20 and 35 and the rate of Aboriginal imprisonment is 15 times the national average.

The enthusiasm for disenfranchising prisoners may derive from practice in the United States, which is notorious for the practice. Currently nearly 5 million convicted felons are denied the vote (some of them forever), which is more than enough to swing elections. At the moment there is a person in a Milwaukee jail awaiting sentencing for "illegally voting" while serving a sentence for a felony. How this Orwellian silliness serves democracy is not obvious.

Four days before the committee's report was tabled in Federal Parliament, the European Court of Human Rights ruled, for the second time, that the section of the UK Representation of the People Act that imposes a blanket ban on all prisoners in detention is in breach of the European Convention on Human Rights. The Canadian Supreme Court invalidated a similar law in 2002. Yet Australia is on the verge of enacting similar, discriminatory legislation.

An inclusive franchise is basic for modern democracy. Legislators should not restrict the right to vote for some short-sighted partisan advantage.

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