

ACT Electoral Commission

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The Secretary
Standing Committee on Education, Training and Young People
Legislative Assembly for the Australian Capital Territory
Civic Square, London Circuit
CANBERRA ACT 2601

Inquiry into Voting Age Eligibility

Thank you for the invitation to make a submission to the Standing Committee on Education, Training and Young People *Inquiry into Voting Age Eligibility*.

The ACT Electoral Commission's submission is attached.

If you would like further information, I can be contacted at elections@act.gov.au or on 6205 0033.

I would also be available to give evidence at a public hearing if desired.

Phillip Green
Electoral Commissioner

17 July 2006

**Submission by the ACT Electoral Commission
to the Standing Committee on Education, Training and Young People**

Inquiry into Voting Age Eligibility

Introduction

This submission is provided to the Standing Committee on Education, Training and Young People in response to its Inquiry into Voting Age Eligibility. The submission addresses the issues listed in the Committee's terms of reference for this inquiry.

In summary the Commission considers it would be appropriate to retain the minimum age of voting of 18.

Enrolment and voting age eligibility at present

Currently, a person is entitled to enrol on the joint Commonwealth/ACT electoral roll if he or she is 17 or over. A person is entitled to vote in an election for the ACT Legislative Assembly if he or she is 18 or over on polling day.

A person who enrolls at 17 is taken to be provisionally enrolled. The facility to provisionally enrol at 17 is primarily intended to ensure that people who turn 18 between the close of rolls for an election and polling day are able to enrol at 17 before the rolls close. As an ancillary benefit, allowing 17 year olds to enrol increases the number of people who are able to be encouraged to enrol while still at school.

Provisional enrolment at 17 is voluntary. Enrolment is compulsory for citizens who are 18 or over.

National conformity and consistency with other jurisdictions

The minimum voting age for all Federal, State and Territory elections is 18. Provisional enrolment for 17 year olds is also available nationally.

No other Australian jurisdictions appear to be moving towards lowering the voting age. In South Australia, a private member's bill was tabled by an independent member on 31 May 2006 proposing to lower the voting age to 16. However, indications are that the bill does not have the support of the parliament.

Reducing the minimum voting age to 16 in the ACT would take the ACT out of line with all other Australian jurisdictions. This would be expected to lead to a great deal of confusion, particularly for 16 and 17 year olds who move into or out of the ACT from other States.

The legal implications of compulsory enrolment and voting for young people

The following discussion is based on the Commission's understanding of the relevant legal provisions. The Committee may wish to seek formal legal advice on these issues.

The ACT's electoral laws, insofar as they relate to enrolment and voting for Legislative Assembly elections, have 3 main elements. (Relevant extracts are shown in the Appendix.)

The Commonwealth enactment, the *Australian Capital Territory (Self-Government) Act 1988*, gives the Assembly the power to legislate for electoral matters, but places limits on what may be enacted by the Assembly and provides for minimum requirements.

The Assembly enactment, the *Electoral Act 1992*, provides for the establishment of the ACT Electoral Commission and for the conduct of elections, within the constraints imposed by the Self-Government Act.

The Assembly enactment, the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*, provides that various electoral principles are entrenched. This means that the Electoral Act cannot be amended in a way that is inconsistent with those principles without the amendments being passed either by a 2/3 majority in the Assembly, or by a simple majority in the Assembly and a majority of electors at a referendum.

Compulsory enrolment

The Self Government Act provides in section 67B that “An electoral enactment is to provide, among other things: ... (c) that every person who is entitled to be enrolled on that Roll and who is resident in the Territory is required to claim enrolment”.

In effect, this provision requires the ACT to enact a scheme of compulsory enrolment for all those entitled to vote. This requirement is met by section 73 of the ACT’s Electoral Act, which provides that enrolment is compulsory and that failure to enrol is subject to a penalty of 0.5 penalty units (currently \$50).

The compulsory enrolment provision in the ACT’s Electoral Act currently mirrors the compulsory enrolment provision in the *Commonwealth Electoral Act 1918*. However, if the ACT lowers the enrolment and voting age to 16, the ACT’s Electoral Act would need to be amended to provide for compulsory enrolment for 16 and 17 year olds under the ACT enactment only in order to comply with the Self-Government Act.

The Self-Government Act requirement to provide for compulsory enrolment is the reason why the current 17 year old enrolment scheme is known as provisional enrolment, in order to allow for voluntary enrolment for 17 year olds.

If the ACT was to lower the voting age to 16, the Self-Government Act would require the Assembly to maintain compulsory enrolment for all eligible voters, including 16 and 17 year olds. If the Assembly wished to provide for voluntary enrolment of 16 and 17 year olds, the Commonwealth parliament would need to amend the Self-Government Act accordingly.

If the voting age was lowered to 16, it would be desirable to provide for provisional enrolment at 15, for the same reason that provisional enrolment at 17 is now available – to allow people to vote where they turn 16 after the close of rolls and on or before polling day for an election. Provisional enrolment at 15 would not have to be compulsory.

The necessity of enforcing compulsory enrolment of 16 and 17 year olds would be a significant disincentive to lowering the voting age. It would have the effect of imposing a criminal penalty on minors, which could be seen as unacceptable.

The recent changes to the Commonwealth enrolment scheme contained in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* may also impact unreasonably on 15-17 year olds if the ACT's enrolment age is lowered. Under the Commonwealth changes, there will be a three tiered approach for electors to verify their identity. Most electors will be able to enrol by stating their driver's licence number. People who do not have a driver's licence will be required to show documentary evidence of identity to a special class of witness. People who do not have a driver's licence or any other documentary proof of identity will be required to have their identity verified by two people who have known the person for one month.

Lowering the voting age to 16 (and lowering the age for provisionally enrolling to 15) will mean that many young people applying for enrolment will not be eligible to have a driver's licence, and will have to enrol by the more onerous method of producing documentary evidence to a special class of witness. This may deter young people from enrolling and may be considered unreasonable, as the easiest method of enrolling will be unavailable to electors who are too young to obtain a driver's licence.

Compulsory voting

While compulsory voting is not required under the Self-Government Act, it is entrenched under ACT law by the Proportional Representation (Hare-Clark) Entrenchment Act, which entrenches the principle that "voting in an election shall be compulsory".

The Electoral Act currently provides for compulsory voting for all electors eligible to vote at an election. Electors who fail to vote without a valid and sufficient reason may pay a \$20 penalty or, if convicted by a court, a \$50 penalty, plus court costs. Accordingly if the voting age is lowered to 16 without provision of a voluntary voting clause, voting would be compulsory for 16 and 17 year olds.

If on the other hand the Assembly wished to introduce voluntary voting for 16 and 17 year olds, to be effective such a measure would either have to be passed by a 2/3 majority of Assembly members or be passed by a simple majority in the Assembly and then put to electors at a referendum.

The fact that compulsory voting is entrenched in the ACT is an indicator that the concept of compulsory voting is supported by a majority of ACT electors. An argument could be mounted that it would be inappropriate to water down the compulsory voting principle by extending voluntary voting to a class of voters simply on the basis of youth.

As with compulsory enrolment, it is suggested that the necessity of enforcing compulsory voting of 16 and 17 year olds would be a significant disincentive to adopting a lowered voting age if it was to include compulsory voting. Again it would be imposing a criminal penalty on minors, which could be seen as unacceptable.

Eligibility for election to the ACT Legislative Assembly

At present, all electors who are eligible to vote are also eligible to stand as candidates and be elected as Members of the Assembly. That is, any person aged 18 or over is eligible to be elected to the Assembly. In turn, any Member of the Assembly is eligible to be appointed as a Minister.

If the voting age was lowered to 16, the Assembly could choose to also lower the age of candidacy to 16, or to keep the age of candidacy at 18.

Lowering the age of candidacy to 16 could be seen as unacceptable, if the view was taken that it would be inappropriate for a minor to be a Member of the Assembly, and/or a Minister. Given that the role of Member of the Assembly is taken to be a full-time occupation, it could also be seen as inappropriate for a 16 or 17 year old to take up a seat as a Member if he or she had not yet completed secondary schooling, and would be prevented from doing so by virtue of being elected.

Resource implications of extending and maintaining the ACT electoral roll

Allowing 16 and 17 year olds to enrol and vote would entail ongoing additional spending on a range of services related to electoral education, the electoral roll and elections.

Education campaigns

One important consideration would be the need for an ongoing education campaign to inform 16 and 17 year olds of their new rights and responsibilities. If the voting age is lowered, there will be a need for a special education campaign to publicise the change in the lead up to the 2008 election. After that, there will need to be ongoing education activities to inform new generations of 16 and 17 year olds of the ACT's special provisions.

While these campaigns could tap into existing electoral education programs, additional funding would be needed to ensure these campaigns reached all of the target audience.

Electoral roll costs

Extending the right to enrol to 16 and 17 year olds would not require the ACT to establish a separate electoral roll for these new electors. It would be possible to include these new electors on the joint Commonwealth/ACT electoral roll as "ACT-only electors".

Under the terms of the Joint Roll Arrangement with the Commonwealth, the ACT would need to negotiate the inclusion of 16 and 17 year olds on the roll for the ACT with the Australian Electoral Commission. This would require changes to the current enrolment form and/or adoption of a special enrolment form just for 16 and 17 year olds for ACT purposes. The actual process of enrolling 16 and 17 year olds on the roll would involve a relatively straightforward programming change.

The ACT currently pays the Australian Electoral Commission a fee for maintaining the joint roll on the basis of an annually-adjusted cost per elector. At present, the ACT pays half of some of the costs of enrolling a person. If the voting age is lowered, the Commonwealth may require the ACT to pay for the full cost of enrolling a significant class of people who are not entitled to enrol for Commonwealth purposes.

Additional costs would include both the Australian Electoral Commission's costs of processing enrolment claims and the costs of printing and posting enrolment forms and targeted mail.

Election costs

Adding a significant number of voters to the electoral roll will lead to increases in the cost of running each ACT election.

Based on the number of 18 and 19 year olds enrolled for the 2004 election, it is estimated that around 8000 16 and 17 year olds would enrol and vote at an Assembly election if they were entitled to and voting was compulsory. Servicing these extra voters would require additional resources at an election. For example, additional vote issuing staff would need to be employed, extra ballot papers would need to be printed, extra voting equipment would be needed, and the counting process would be extended. Additional funding would be required to cover these costs.

Issues affecting the electoral awareness of young people

The under-enrolment of young people is a national problem that all Electoral Commissions around Australia are working to address. However, it is consistently found that large numbers of young people only enrol when an election is imminent. Even then, the proportion of 18 year olds enrolled is still significantly below the participation rates of older age groups.

For example, at 30 June 2004 it is estimated that only 59.1% of eligible 18 year olds were enrolled. At the close of rolls for the 2004 ACT election, it is estimated that 84.3% of eligible 18 year olds were enrolled, compared to 97.5% for the whole eligible population of the ACT. By 30 June 2005, the proportion of eligible 18 year olds enrolled had dropped to 66.1%. These figures indicate the importance of an electoral event in generating enrolment of young people.

While there is a range of factors that impact on the under-enrolment of young people, the Commission considers that their relative lack of maturity and political awareness must be significant contributors. It can be expected that high proportions of 16 and 17 year olds would be inclined not to enrol and vote for the same reasons.

The Youth Electoral Study commissioned by the Australian Electoral Commission gives clear indication that high proportions of young people (Year 12 students were surveyed) feel unwilling and/or unable to participate in traditional electoral activity.

For example:

- 50% of students said they would not vote if it was not compulsory
- 52% said they had enough knowledge to understand political issues
- 49% said they had enough knowledge to understand political parties
- 49% said they had enough knowledge to make a decision when voting
- 48% said they had enough knowledge to be able to vote.¹

¹ Murray Print, Larry Saha, Kathy Edwards, *Youth Electoral Study - Report 1: Enrolment and Voting*, 2004, pp 8, 12. See http://www.aec.gov.au/content/What/publications/youth_study_1/youth_electoral_study_01.pdf

These figures indicate that around half of all the Year 12 students surveyed (who would be expected to be in the 17 to 18 year old age group) feel ill-equipped to vote in elections. It is likely that a higher proportion of 15 and 16 year olds would feel ill-equipped to participate.

An issue to consider is whether it would be reasonable to impose compulsory enrolment and voting on 16 and 17 year olds when a high proportion of people in this age group will be uninterested in the electoral process or otherwise unwilling or ill-equipped to participate in it.

Different electoral models

A survey of the minimum voting age in other countries indicates that the overwhelming majority of countries have set 18 as the minimum voting age. A small number of countries set 20 or 21 as the minimum voting age. Those countries with a lower voting age are²:

Brazil	16
Croatia	16 (if employed, otherwise 18)
Cuba	16
East Timor	17
Iran	15
North Korea	17
Nicaragua	16
Serbia and Montenegro	16 (if employed, otherwise 18)
Seychelles	17
Slovenia	16 (if employed, otherwise 18)
Somaliland	16
Sudan	17

It can be noted that no countries with political systems similar to Australia's have at this time reduced their voting age below 18. For example, Canada, Ireland, New Zealand, the United Kingdom and the United States of America have all set 18 as the minimum voting age.

Other factors that influence the democratic participation of young people

The Youth Electoral Study discussed above shows clearly that around half of all Year 12 students in Australia surveyed did not feel equipped or inclined to enrol and vote. There are obviously many factors that are relevant to this finding, including levels of education, knowledge and experience, levels of trust in the political process and perceptions of the relevance of elections and parliaments.

² Information sourced from: [http://epicproject.org/ace/compepic/en/getAnswer\\$ALL+VR01](http://epicproject.org/ace/compepic/en/getAnswer$ALL+VR01) and http://en.wikipedia.org/wiki/Voting_age

The indication that around half of this age group do not feel equipped to vote is of concern in itself, particularly as people in this age group do become entitled to vote at 18. The ACT Electoral Commission, with the ACT Legislative Assembly, conducts an electoral education program designed to equip young people with the knowledge needed to enrol and vote. The Commonwealth Parliament's Joint Standing Committee on Electoral Matters is currently conducting an inquiry into civics and electoral education³. The Commission has made a submission to this inquiry, setting out its current and future plans for electoral education in the ACT⁴. It is hoped that this inquiry will lead to better national outcomes for civics and electoral education in Australia.

Conclusion

The issue at hand – whether to lower the voting age from 18 to 16 – can be reduced to the simple question: “from what age is it appropriate to bear the responsibility of choosing our elected representatives?” The answer to this question must take account of levels of maturity.

Clearly, it would not be appropriate to give the right to vote to a child of 10. It is also widely accepted that it is appropriate to give the vote to an adult of 18. The question essentially comes down to where to draw the line.

There is no general agreement world-wide that it is appropriate to give the right to vote to young people under 18. The vast majority of countries have set 18 as their minimum voting age, as has every jurisdiction in Australia.

While it is apparent that some young people under 18 do feel equipped and willing to enrol and vote, the Youth Electoral Study indicates that at least half of those in the 17 year old age group do not. It can be assumed that similar results (or poorer) would be obtained by surveying 16 year olds.

Given the obstacles described above to the introduction of voluntary enrolment and voting for the ACT Legislative Assembly, it would appear that lowering the voting age to 16 and providing for compulsory enrolment and voting would place a legal obligation, with a pecuniary penalty, on many young people who would not be willing or equipped to participate. This could be considered to be unreasonable.

Even if a way could be found to provide for voluntary enrolment and/or voting, this could be taken as watering down the importance of the concept of compulsory voting, entrenched in the ACT's voting system. It could also be seen as devaluing the contribution of 16 and 17 year olds.

Similarly, if 16 and 17 year olds could vote but not stand as a candidate or be elected to the Assembly, their contribution could be seen to be devalued. Conversely, if 16 and 17 year olds could stand as a candidate it would be reasonable to question the wisdom of allowing minors to be elected and serve as Assembly members or even Ministers.

Given these issues, the Commission considers it would be appropriate to retain the minimum age of voting of 18, keeping this important right in step with the legal ascension to adulthood, which is also set at 18 in the ACT.

ACT Electoral Commission, 17 July 2006

³ See <http://www.aph.gov.au/house/committee/em/education/index.htm>

⁴ See <http://www.aph.gov.au/house/committee/em/education/subs/sub083.pdf>

Appendix: Extracts of relevant legislation

Australian Capital Territory (Self-Government) Act 1988 **(Commonwealth)**

67A General elections

- (1) The members to be elected at a general election are to be elected as provided by sections 67, 67C and 67D and by an enactment that:
 - (a) provides for general elections; and
 - (b) complies with section 67B; and
 - (c) was made after polling day for the second general election.

67B Electoral enactment

An electoral enactment is to provide, among other things:

- (a) for the times of general elections; and
- (b) for a Roll of the electors of the Territory for the purposes of general elections; and
- (c) that every person who is entitled to be enrolled on that Roll and who is resident in the Territory is required to claim enrolment; and
- (d) if the electoral enactment provides for the distribution of the Territory into electorates—that a redistribution of the Territory into electorates is to commence not later than 6 years after the previous distribution or redistribution.

67C Qualifications of electors

- (1) At a general election held on a particular day, a person is entitled to vote if:
 - (a) on that day, the person's name is on the Roll of the electors of the Territory for the purposes of general elections; and
 - (b) the person would be entitled to vote at an election held on that day to choose a member of the House of Representatives for the Territory.
- (2) A person's name is taken not to be on the Roll for the purposes of paragraph (1)(a) if an electoral enactment so provides.
- (3) This section does not prevent an electoral enactment from providing that other persons, in addition to persons entitled under subsection (1), be entitled to vote at a general election.

... [Section 67D deals with redistributions of electoral boundaries]

Electoral Act 1992 (ACT)

72 Entitlement

- (1) A person is entitled to be enrolled for an electorate if—
 - (a) the person is entitled to be enrolled on the Commonwealth roll otherwise than under the Commonwealth Electoral Act, section 100 [which provides for 17 year old provisional enrolment]; and
 - (b) the person’s address is in the electorate.
- (2) A person is not entitled to be enrolled for more than 1 electorate.

73 Compulsory enrolment etc—residents

- (1) A person who—
 - (a) is entitled to be enrolled for an electorate; and
 - (b) is not enrolled on any roll;shall, subject to subsection (5), make a claim for enrolment within 21 days after the day the person became so entitled.
- (2) An elector who—
 - (a) is enrolled for an electorate; and
 - (b) is entitled, following a change of address, to be enrolled for another electorate;shall, subject to subsections (4) and (5), make a claim for a transfer of enrolment within 52 days after the date of the change of address.
- (3) An elector who changes address within an electorate shall, subject to subsections (4) and (5), give the commissioner written notice setting out the particulars of the new address within 52 days after the date of the change of address.

Note For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (4) Subsections (2) and (3) do not apply to an eligible overseas elector, an Antarctic elector or a person who is not at least 18 years old.
- (5) If a person is enrolled on the Commonwealth roll otherwise than under the Commonwealth Electoral Act, section 100 and the address recorded on that roll in relation to the person is an address in an electorate—
 - (a) the person shall be taken—
 - (i) to have made a claim under subsection (1) or (2), or given notice under subsection (3), whichever is appropriate; and
 - (ii) to be enrolled for the electorate; and
 - (b) the particulars recorded on the Commonwealth roll in relation to the person shall, so far as practicable, be taken to be the particulars recorded on the roll for the electorate.

- (6) A person who, without reasonable excuse, contravenes subsection (1), (2) or (3) commits an offence.

Maximum penalty: 0.5 penalty units.

75 Age 17 enrolment

- (1) The commissioner shall enrol a person on the roll for an electorate if the person—
- (a) is at least 17 years old; and
 - (b) would, had the person attained the age of 18 years, be entitled to be enrolled for the electorate; and
 - (c) makes a claim for enrolment.
- (2) If a person is enrolled on the Commonwealth roll under the Commonwealth Electoral Act, section 100 and the address recorded on that roll is an address in an electorate—
- (a) the person shall be taken—
 - (i) to have made a claim for enrolment under this section; and
 - (ii) to be enrolled under this section on the roll for the electorate; and
 - (b) the particulars recorded on the Commonwealth roll in relation to the person shall, so far as practicable, be taken to be the particulars recorded on the roll for the electorate.

128 Entitlement to vote

- (1) Subject to subsection (2), an elector enrolled for an electorate is entitled to vote at an election for the electorate.
- (2) A person who is enrolled is not entitled to vote at an election unless he or she will be at least 18 years old on the day the poll for the election is required to be held.

...

129 Compulsory voting

- (1) An elector who is entitled to vote at an election shall not, without a valid and sufficient reason, fail to vote at the election.

Maximum penalty: 0.5 penalty units.

- (2) Subsection (1) does not apply to—
- (a) an eligible overseas elector; or
 - (b) an Antarctic elector; or
 - (c) an elector who is serving a sentence of imprisonment outside the ACT; or

- (d) an elector who is enrolled because of his or her enrolment on the Commonwealth roll as an itinerant elector.
- (3) Without limiting subsection (1), an elector shall be taken to have a valid and sufficient reason for failing to vote at an election if the elector believes it to be part of his or her religious duty to abstain from voting.

Proportional Representation (Hare-Clark) Entrenchment Act 1994
(ACT)

4 Entrenchment of electoral system

- (1) This Act applies to any law that is inconsistent with any of the following principles of the proportional representation (Hare-Clark) electoral system:
 - ...
 - (c) voting in an election shall be compulsory;
 - ...

5 Special procedures for making certain enactments

- (1) This Act, or any amendment or repeal of this Act, has no effect unless it is passed by—
 - (a) at least a $\frac{2}{3}$ majority of the members of the Legislative Assembly; and
 - (b) a majority of electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*.
- (2) A law to which this Act applies by virtue of section 4 has no effect unless it is passed by—
 - (a) the Legislative Assembly and passed by a majority of electors at a referendum held in accordance with the *Referendum (Machinery Provisions) Act 1994*; or
 - (b) at least a $\frac{2}{3}$ majority of the members of the Legislative Assembly.