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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**COMMONWEALTH ELECTORAL AMENDMENT
(DEMOCRATIC PLEBISCITES) BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated with the authority of the Special Minister of State,
the Hon Gary Nairn MP)

COMMONWEALTH ELECTORAL AMENDMENT (DEMOCRATIC PLEBISCITES) BILL 2007

OUTLINE

The *Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007* (the Bill) contains measures arising from the Prime Minister's announcement on 7 August 2007 to allow the Australian Electoral Commission (the AEC) to undertake any plebiscite on the amalgamation of any local government body in any part of Australia.

The Bill amends the *Commonwealth Electoral Act 1918* (the Electoral Act) to authorise the AEC's use and disclosure of any information held by the AEC, including information contained in an electoral roll, for the purpose of conducting an activity, such as a plebiscite, under subsection 7A(1).

Additionally, the Bill seeks to override a State or Territory law which prohibits, penalises or discriminates against a person or a body who has entered, or proposes to enter, into an arrangement with the AEC, or who takes part in or assists with (or proposes to take part in or assist with) an arrangement with the AEC.

The Bill contains provisions that will:

- ensure the use and disclosure by the AEC of any information it holds, including information contained in an electoral roll, for the purpose of conducting an activity, such as a plebiscite, is authorised under the *Privacy Act 1988* and does not contravene any provisions of the Electoral Act;
- ensure that ordinary persons or bodies may approach the AEC or participate in an arrangement made with the AEC under subsection 7A(1) of the Electoral Act, despite any State or Territory law that may make provision to the contrary;
- clarify that it is the intention of Parliament to have regard to Articles 19 and 25(a) of the *International Covenant on Civil and Political Rights*, and that this does not limit the operation of section 15A of the *Acts Interpretation Act 1901*; and
- provide for a regulation-making power in relation to any arrangement made under section 7A.

FINANCIAL IMPACT STATEMENT

The Bill will have a financial impact. However, it is not possible to quantify that impact at this stage as the cost is dependent upon the nature of the arrangements entered into by the AEC.

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NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the short title of this Act.

Clause 2 - Commencement

2. This clause provides that the Bill would commence as an Act upon Royal Assent.

Clause 3 - Schedule(s)

3. This clause provides that each Act specified in the Schedules is amended or repealed as set out in the Schedules, and any other items in the Schedules have effect according to their terms. There is only one Schedule, which only amends the Electoral Act.

Schedule 1 - Amendments

Commonwealth Electoral Act 1918

Item 1 – After subsection 7A(1B)

4. This item inserts subsections (1C) to (1G) which are intended to give effect to the announcement by the Prime Minister on 7 August 2007 that the AEC undertake any plebiscite on the amalgamation of any local government body in any part of Australia.
5. Section 7A of the Electoral Act already provides that the AEC may make arrangements for the supply of goods or services to any person or body. This may include a local government body.
6. New subsections 7A(1C) and (1D) authorise the use by the AEC of any information it holds, including information contained in an electoral roll, for the purpose of conducting an activity, such as a plebiscite, is authorised by law. Further, these subsections authorise any disclosure by the AEC of information for the purpose of conducting an activity, such as a plebiscite, is authorised by law. These subsections also clarify that this particular use and disclosure do not contravene any provision of the Electoral Act.

7. Subsection 7A(1E) provides that a law of a State or Territory has no effect to the extent that it prohibits a person or body from, or penalises or discriminates against a person or a body for, entering or proposing to enter into an arrangement under subsection 7A(1), or otherwise takes part in or assists with (or proposes to take part in or assist with) the conduct of an activity to which an arrangement relates.

8. Subsection 7A(1E) is intended to provide that the benefit of the provision can be delivered to any person or body without them being subject to a State or Territory prohibition, penalty or discrimination affecting their involvement in any arrangement the AEC may make, or activity under any arrangement.

9. Subsection 7A(1F) reinforces subsection 7A(1E) by rendering such State or Territory laws inoperative to the extent of any inconsistency with Articles 19 and 25(a) of the *International Covenant on Civil and Political Rights*, should subsection 7A(1E) exceed the Commonwealth's legislative powers. Article 19 provides that people should have the right to hold opinions without interference and the right to freedom of expression. Paragraph (a) of Article 25 provides that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

10. For clarity, subsection 7A(1G) provides that subsection 7A(1F) does not limit the operation of section 15A of the *Acts Interpretation Act 1901*, which provides:

Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Item 2 – At the end of paragraphs 395 (a) and (b)

11. This item adds the word 'and' at the end of every paragraph in section 395, to improve its readability, as a result of the insertion of a new paragraph by item 3.

Item 3 – At the end of section 395

12. Paragraph 395(e) enables regulations to be made to clarify how the AEC is to supply goods or services under an arrangement under section 7A.