



## Dissenting Report—Hon Andrew Robb MP (Deputy Chair), Senator Simon Birmingham, Senator Scott Ryan, Liberal Party of Australia; Hon Bruce Scott MP, The Nationals

Opposition Members and Senators agree with the objective of increasing the number of eligible Australians enrolled and eligible to exercise the franchise. However, maintenance of the integrity of the roll is critical to ensuring both the value of the franchise as well as public faith in our electoral processes.

The proposal to enact a radical and untested provision to automatically enrol voters to the Commonwealth electoral roll endangers the integrity of the electoral roll and potentially the degree of public faith in it.

Opposition Members and Senators oppose the recommendations of the Government majority regarding the application of automatic enrolment procedures to the Commonwealth electoral roll.

### **Exclusion or non-compliance?**

The Government majority base their case for automatic enrolment on an alleged decline in participation. However, no evidence is provided to illustrate that Australia is undergoing a dramatic decline in enrolment or voting due to the current processes, procedures and requirements.

Indeed, improved management of the rolls may lead to a temporary decline in numbers due to the more effective management of the rolls and removal of those not entitled to be enrolled.

Furthermore, the responsibility to enrol to vote lies with the individual. The Commonwealth Electoral Act requires those eligible to enrol to vote. Any implication that this is an onerous requirement should be rejected. To exercise the

right to vote, the law requires an enrolment form or change of enrolment details form be completed. Complying with this requirement is not especially difficult.

Similarly, any implication that effective management of the electoral roll by virtue of regular cleansing processes excludes people otherwise eligible to vote is flawed. The only circumstance in which a person is removed from the roll is when the Divisional Returning Officer is satisfied that the person concerned is not or no longer eligible to vote in the manner recorded on the roll. Such processes are critical to maintenance of public faith in our electoral processes and, as such, the results should be commended.

Opposition members and Senators reject the assertion of the Government majority in paragraph 1.6 of the report that *“At the end of December 2009 an estimated 1.39 million eligible Australians were not on the electoral roll and therefore effectively excluded from Australia's democratic processes.”*

At any time, every single one of these eligible people may exercise the franchise simply by completing a valid enrolment form, a form that is widely available and a requirement with which the overwhelming majority of Australians comply.

## **Automatic enrolment—untested, unsafe, unnecessary**

### **Recommendation 1**

**The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission to automatically enrol electors on the basis of data provided by trusted agencies.**

Opposition Members and Senators oppose this recommendation.

The provisions of the NSW amendments have not yet been tested either in practice between elections or at an election, and there remain substantial questions about its effectiveness and its impact upon the integrity of the roll. This experiment in moving away from the traditional and well-regarded enrolment procedure should not be replicated in Commonwealth legislation as the risks have not been assessed.

This is not to suggest that current processes cannot be refined, potentially even including online changes of enrolment details, but a move away from an individual enrolling on his or her own initiative in compliance with electoral legislation to a situation where the state can enrol a person of its own accord represents a drastic and dramatic change in our enrolment processes. Such a change should not be enacted without due consideration and deliberation.

The AEC submits that the declining enrolment rate is *“in part caused and perpetuated by enrolment processes based on antediluvian mechanisms and overly*

*prescriptive legislation*".<sup>1</sup> If this statement is to be taken at face value, then this is a reason to reconsider some of these practices – it does not justify a movement away from individual registration to automatic enrolment.

Firstly, the reliance on external data sources that have been collated and that are utilised for other purposes does not make them fit for use in forming the electoral roll. Even the Government majority concedes this in paragraph 2.3 of the majority report:

...there is concern about the potential for the integrity of the electoral roll to be compromised by allowing elector records to be updated based on data received from trusted agencies when that data has not been collected specifically for the purpose of updating the electoral roll.

The current 'paper trail' that sees electors initiate enrolment with a signed form provides a unique security feature to address any questions regarding roll integrity. The placement of people on the roll automatically will undermine this important element of roll integrity.

Given that there is neither consent nor a signature required for automatic enrolment, it remains doubtful that someone could be pursued for false enrolment or other aspects of electoral fraud. Given the relatively light identification requirements present in the Australian electoral system, removing this security feature only weakens an important aspect of protecting the integrity of the roll and its policing.

Furthermore, while the NSW procedures allow the Commissioner to determine 'trusted' data, Opposition Members and Senators remain to be convinced that Government-held data sources are appropriate for such a necessarily rigorous process and compiling the electoral roll.

Recent reports undertaken illustrate some of the problems with existing government data:

A 1999 report by the House of Representatives Standing Committee on Economics, Finance and Public Administration: *Numbers on the Run – Review of the ANAO Report No.37 1998-99 on the Management of Tax File Numbers*, found that:

- There were 3.2 million more Tax File Numbers than people in Australia at the last census;
- There were 185,000 potential duplicate tax records for individuals;
- 62 per cent of deceased clients were not recorded as deceased in a sample match.

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1 Australian Electoral Commission, *Submission 2*, p. 7-8.

Similarly, an ANAO Audit Report (No.24 2004–05 Integrity of Medicare Enrolment Data) stated that “ANAO found that up to half a million active Medicare enrolment records were probably for people who are deceased.”<sup>2</sup>

In simple terms, where there are such examples of inconsistency in Commonwealth data, there cannot be sufficient faith in this data being used to automatically add people to the electoral roll.

Given that there are a number of Federal Electorates that have margins under 100 votes such as McEwen, Bowman and Robertson even a 1% error in the information sourced from the various agencies would have significant ramifications for the outcome of a seat, or even an election.

Despite the fact that Government majority recommends the power to declare data sources as trusted be given to the AEC, Opposition Members and Senators do not believe this addresses this problem in its entirety.

We are also concerned at the power given to the Electoral Commissioner to deem data sources ‘trusted’ in determining the use of such data in compiling the roll as a potential risk to the office.

The inclusion of such data, if erroneous, would be extremely damaging to public faith in our electoral process. Furthermore, the inclusion of such data may well be controversial due to lack of faith in its inclusion or utilisation.

Placing the Electoral Commissioner at the heart of such a potentially charged dispute can only damage the standing of the office and the AEC.

There also remains the issue of public, Parliamentary and media scrutiny of such decisions. In questioning before the Committee, the New South Wales Electoral Commissioner, Mr Colin Barry, confirmed that there is no requirement under the NSW Act to make decisions regarding the use of data sources public:

**Senator RYAN** – One of the issues I would flag would be: are those decisions, about what agencies are deemed to be trusted, public decisions? Or are they decisions that remain within the New South Wales Electoral Commission? Is it required that you notify the public?

**Mr Barry** – The legislation empowers the electoral commissioner in New South Wales to make that decision as to who are the trusted –

**Senator RYAN** – And there is no requirement to make it public?

**Mr Barry** – No. There is no legal requirement.<sup>3</sup>

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2 Australian National Audit Office, *Integrity of Medicare Enrolment Data No. 24 2004-05*, p. 12.

3 Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p.17-18.

Furthermore, there was no information available to the Committee regarding protocols, standards or guidelines in the Electoral Commissioner making decisions about whether data is to be 'trusted' and therefore used in compiling the electoral roll.

**Senator RYAN** – ...I am imagining that, given that it has only been three months, you do not have published criteria yet around what you are going to deem to be a trusted agency.

**Mr Barry** – You are correct – we do not have any published criteria...<sup>4</sup>

The combination of decisions about data sources being utilised to automatically enrol people with the fact that there are no published guidelines or protocols around determining their use or otherwise is a matter of grave concern.

The enactment of automatic enrolment provisions in the Commonwealth Electoral Act also poses problems relating to the incorporation of similar actions by state electoral commissions.

The AEC indicated that if such provisions were enacted it may rely on a state electoral commission as a 'trusted agency' for the purposes of updating the roll:

**Mr Killesteyn** – To a certain extent there is movement already in that direction, on the basis of your recommendation. If the Commonwealth Electoral Act were amended to allow updates of the roll based on third party information, the AEC would regard the New South Wales Electoral Commission as a trusted agency...<sup>5</sup>

This would allow data that is not currently accessible or verifiable by the Commonwealth to be utilised to update the Commonwealth electoral roll. It would effectively mean that data outside the control of the Commonwealth Parliament or Executive would be used to determine the Commonwealth electoral roll. Such an eventuality should be opposed. While currently data from state agencies (such as registries of births & deaths) are used to update the electoral roll, these are used in a markedly different fashion than are proposed for the purposes of automatic enrolment.

The current enrolment process is transparent to all – completion of a form by an eligible individual. To institute a process whereby data is gathered from around government, no public statement is made regarding its use and there being no protocols or standards available to inspect to determine their suitability is to invite public questioning over the validity of the roll – and the lack of third party or media scrutiny of such decisions represent the introduction of a substantial barrier to transparency.

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4 Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p. 17.

5 Mr Ed Killesteyn, *Proof Committee Hansard*, 2 February 2010, p.12.

## Election day enrolment

### Recommendation 2

**The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for electors to enrol on Election Day and to issue a provisional vote, subject to the elector being able to produce suitable identification to the Australian Electoral Commission.**

This recommendation poses a number of problems as it will expose the roll to fraudulent enrolments and potentially cause significant delays on Election Day. The uncertainty of this provision was illustrated by Mr Barry:

We are going into some uncharted territories. There are some risks associated with the uncertainty about how many people are going to turn up on election day...<sup>6</sup>

In order to prevent fraudulent enrolment there may need to be something akin to a point system whereby a person's address is verified against, for example, a utilities, bill but this again would pose additional problems.

In addition it cannot be expected of the election officials, given the pressures and time constraints placed upon them on polling day to closely cross-check every enrolment form accurately. In some cases the election official is also open to the possibility of people claiming to be the person on the driver's license when indeed they are not.

Secondly, the recommendation will cause lengthy queues on Election Day. It will also provide delays in finalising the count while awaiting verification of the enrolments received that day. It is a significant administrative burden for the AEC. This at a time when measures, such as processing pre-poll votes as 'ordinary votes' are being taken to quicken the vote counting process on Election Day.

Thirdly, election day enrolment will inadvertently provide an incentive to people to not comply with the existing law and initially enrol or update their election details when they move residence. The knowledge that one can simply turn up on election day and enrol to vote after turning eighteen, taking out citizenship or moving residence will only weaken the effectiveness of the AEC enrolment and education campaigns. This will reduce the accuracy and integrity of the roll between elections.

Finally, election day enrolment breaches an important principle – that candidates should know their electors.

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6 Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p. 18.

## **Inconsistencies should not be addressed with a flawed approach**

The AEC and the Government majority assert that the introduction of automatic enrolment in NSW poses problems for federal elections, arising from voter confusion regarding eligibility to vote as the result of two different rolls.

This may well be the case, but on its own does nothing to support the case for adoption of automatic enrolment.

## **Primacy of the Australian Electoral Commission**

While the objective of 'one roll, many elections' is a commendable one, it cannot become an approach driven by the lowest common denominator.

Simply because one jurisdiction adopts a particular measure does not necessitate that it should be adopted by all, or that it should be adopted at the federal level simply to avoid 'confusion'. Integrity of the roll is of much greater import than confusion.

Any elector can simply determine their eligibility and enrolment status for federal elections with the AEC. While the confusion that may result from the NSW provisions is regrettable, that does not on its own justify replication of these, with all the associated flaws, in Commonwealth law.

The integrity and primacy of the Commonwealth electoral roll is paramount. Any threat to that integrity and primacy must be resisted.

What the Committee is proposing is, effectively, 'the tail wagging the dog.' Because a single state is moving to radically change the enrolment procedures, the AEC is now being forced lockstep into adopting them.

Perhaps we should consider a more radical example: if a state were to change the voting age from eighteen (either higher or lower), would the threat of a split roll force the Commonwealth and all other jurisdiction to follow suit? It should not – while a joint role is desirable, it should not be at the expense of an accurate Commonwealth roll.

## **Inconsistency between the proposals of this report and the Electoral and Referendum (Close of Rolls and Other Measures) Bill**

One of the notable inconsistencies between the report's recommendations and the current Bill before the Parliament is the handling of provisional votes.

Under the proposed legislation, a provisional voter would not have to produce evidence of their claimed identity before their vote is validly included in the count. Instead, the new Bill proposes "where there is any doubt as to the bona fides of the elector, the signature on the envelope containing the provisional vote be compared with the signature of the elector on the previously lodged enrolment records".<sup>7</sup>

However, if the elector has been automatically enrolled then the Divisional Returning Officer would have no specimen signature for cross-checking purposes. Thus the recommendation, as it is proposed in this report, allows for unverifiable abuses of provisional voting.

## **Conclusion**

Such changes to the Commonwealth Electoral Act 1918 as recommended in this inquiry could exacerbate perceptions in the community of the electoral system being flawed. It is more important to have a system that takes every step to maintain the integrity of the processes involved than to undertake untested measures to increase enrolment numbers.

If the electoral system is seen to be lacking in transparency or integrity there is every chance that Australians will become less likely to participate in the voting process to the detriment of our democratic system.

Opposition Members and Senators oppose the recommendations 1 – 3 of the Government majority of the Committee.

**Hon Andrew Robb MP**  
Deputy Chair

**Senator Scott Ryan**

**Hon Bruce Scott**

**Senator Simon Birmingham**

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<sup>7</sup> Hon Anthony Byrne MP, *House of Representatives Hansard*, 11 February 2010, p. 4.



