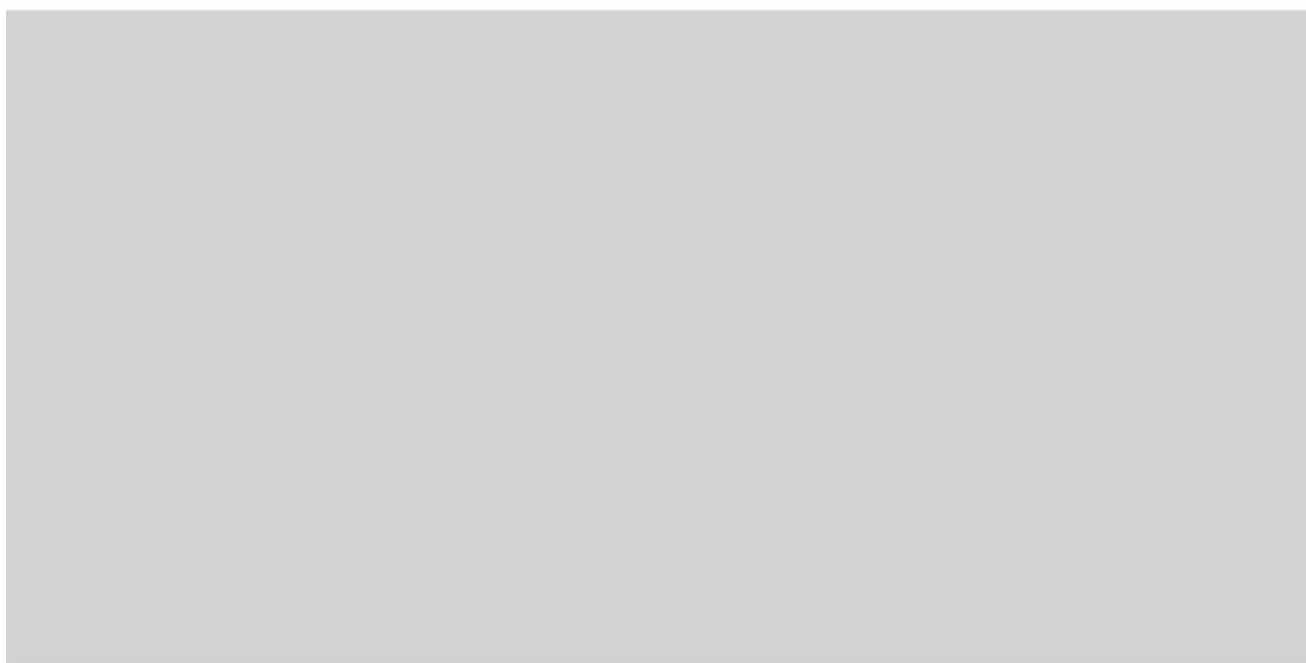


Submission to the Inquiry by the Joint Standing Committee on Electoral Matters into the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012

24 February 2012



Contents

1. Introduction	2
2. Why is direct enrolment necessary?	2
State of the roll	2
Summary of the AEC view	4
3. How would direct enrolment work?	4
Direct enrolment process.....	4
Data sources	5
Data matching and establishing eligibility to enrol.....	6
Valid address for enrolment purposes	7
Scope of administrative decision making powers.....	7
4. Declaration votes	8
Attachment A.....	10
Attachment B.....	11
Attachment C.....	12

1. Introduction

- 1.1 On Friday, 17 February 2012 the House of Representatives Selection Committee referred the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012 (the 'Protecting Elector Participation Bill') to the Joint Standing Committee on Electoral Matters (JSCEM) for inquiry and report.
- 1.2 In a letter dated the same day, the Chair of the JSCEM, Mr Daryl Melham MP invited the Australian Electoral Commission (AEC) to make a submission to the inquiry. This submission is provided in response to that letter.
- 1.3 Parts 2 and 3 of the submission address that part of the Bill proposing to enable a system of direct enrolment of eligible Australians. That is, the Bill proposes to allow the Electoral Commissioner to enrol a person if the Electoral Commissioner is satisfied that the person is entitled to enrolment, has lived at an address for at least one month, and that the person is not enrolled.
- 1.4 The AEC notes that the JSCEM is currently conducting an inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 (the 'Maintaining Address Bill'), which proposes a system of direct update of electors' enrolment address details, to which the AEC has provided a submission and given evidence at the public hearing of 8 February 2012. This submission will therefore focus on those areas of difference between the proposed system of direct enrolment and direct update of enrolment address details.
- 1.5 Part 4 of the submission addresses that part of the Bill proposing to amend the treatment of declaration votes cast by persons who have been omitted from the electoral roll due to an 'error or mistake of fact'.

2. Why is direct enrolment necessary?

State of the roll

- 2.1 In its review of the AEC's conduct of the 2007 federal election, the ANAO noted that '[t]he most significant long-term issue facing the AEC remains the state of the electoral roll.'¹ The current state of the electoral roll was outlined at paragraphs 2.1 and 2.2 of the AEC's submission to the JSCEM's Inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 ('the Maintaining Address Bill Inquiry'). The AEC estimates that approximately 1.5 million entitled

¹ Australian National Audit Office, *Audit Report No.28 2009–10 The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, 2010, p. 15.

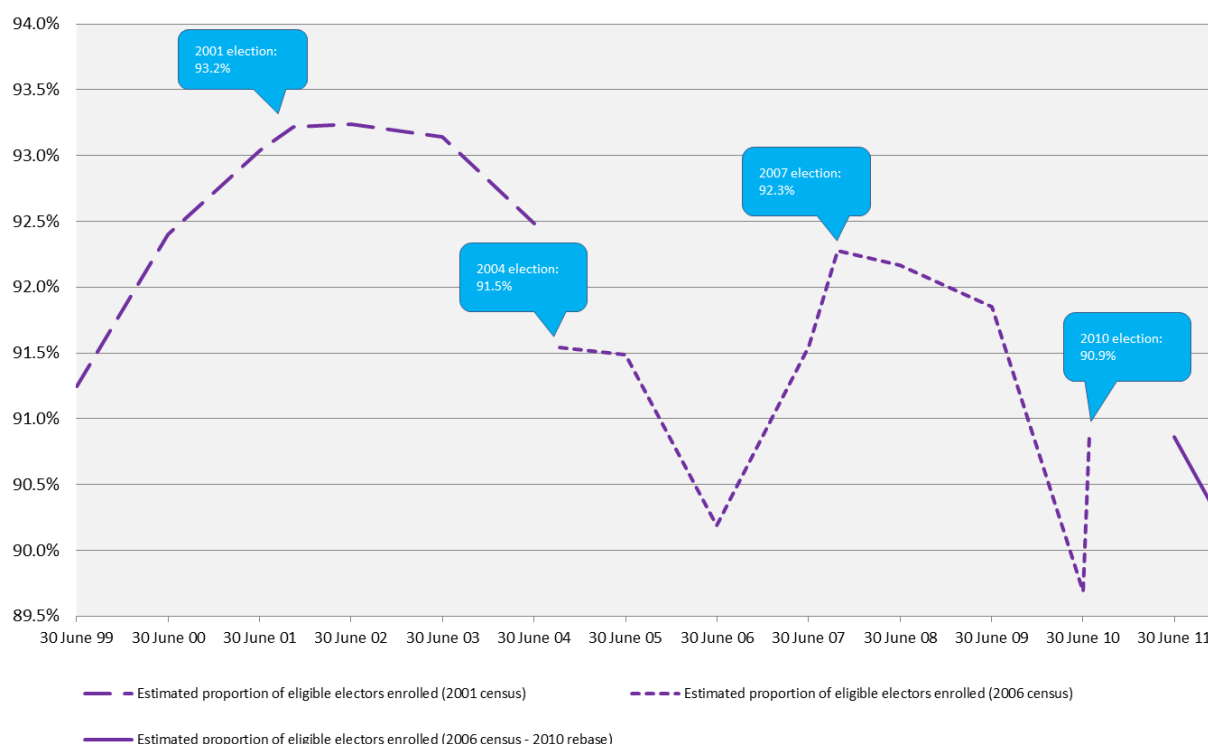
Australian citizens are not enrolled to vote at federal elections. A table demonstrating the estimated number of unenrolled eligible persons by state/territory is provided at **Attachment A**.

2.2 The evidence suggests that as each year passes the number of unenrolled citizens will continue to increase. Figure 2.1 below demonstrates that the percentage of enrolled electors as a proportion of those eligible has been in general decline since the 2001 election. The AEC estimates that as at 31 December 2011, some 90.2 per cent of the eligible population were enrolled. This level of enrolment participation is particularly concerning given that:

- it sits near the bottom of any recently recorded measure; and
- the problem of non-enrolment extends beyond an asserted ‘disengaged youth’ issue:
 - enrolment rates do not reach 90 per cent until electors reach 40 years of age; and
 - the AEC’s (whole-of-population) target of 95 per cent enrolment is not met until electors reach mid to late fifties.

A table demonstrating the estimated enrolment participation levels by age group is provided at **Attachment A**.

Figure 2.1 – Estimated proportion of eligible electors enrolled, 1999-2011



Summary of the AEC view

- 2.3 The AEC is of the view that direct enrolment of eligible persons using reliable third party information is an appropriate next step in the development of enrolment administration. Direct enrolment would be a comparatively sustainable approach to addressing the low level of enrolment amongst eligible persons. The AEC noted in its evidence before the Maintaining Address Bill Inquiry that, when assessed against the five components of roll integrity of entitlement, accuracy, completeness, processing correctness and security, 'the greatest risk to the integrity of the electoral roll relates to its completeness'.²
- 2.4 In addition, direct enrolment is also administratively appropriate in that it:
- builds on current approaches used in electoral roll administration by extending the existing Continuous Roll Update (CRU) program data-matching and contact processes; and
 - reflects the commonplace practice of using government and third party data sources to compile and maintain voter lists.³
- 2.5 The AEC reiterates its previous advice to JSCEM that direct enrolment would be one of a range of tools to assist in addressing low enrolment participation. It is not a panacea. Rather it should be considered as an adjunct to other tools and existing processes which will continue to operate.

3. How would direct enrolment work?

- 3.1 Provisions of the Protecting Elector Participation Bill will allow the Electoral Commissioner to commence a process to directly enrol a person at a particular address. This process will follow the receipt and analysis of reliable and current data from third party sources external to the AEC that indicate an individual is eligible to enrol but is not currently enrolled.
- 3.2 A figure illustrating in general terms how a direct enrolment process would work, is provided at **Attachment B**.

Direct enrolment process

- 3.3 The direct enrolment process would operate similarly to the high-level direct update process outlined at Attachment A of the AEC's submission to the

² Evidence to JSCEM, *Inquiry into the Electoral and Referendum Amendment (Maintaining Address Bill) 2011*, 8 February 2012, p. 4 (Mr Ed Killesteyn, Electoral Commissioner).

³ See discussion at paragraphs 2.22 to 2.35 of the AEC's submission to the Maintaining Address Bill Inquiry.

Maintaining Address Bill Inquiry. Under a direct enrolment process, the AEC would receive data from a third party data source, conduct a data matching process including a check of the eligibility of individuals to enrol, notify eligible individuals and, after a period of 28 days, make additions to the electoral roll and inform electors of the AEC's action.

Data sources

- 3.4 The third party data sources which the AEC envisages using for direct enrolment process would generally have the following characteristics:
- the third party requires a client to establish their unique identity;
 - documentation establishing the unique identity of the individual is required to be an original document or a certified copy of the original;
 - 'identity' documents include an Australian birth certificate, Australian passport or an Australian citizenship certificate, or a document which requires one or more of the latter to be provided prior to issue;
 - multiple documents are usually required to establish the identity of the individual; and
 - residential address must be shown on one of the 'identity' documents, otherwise an extra document must be provided showing current residential address.
- 3.5 The level of information and documentation required by the third party will provide the AEC with confidence that the person is who the third party identifies the person as being. The AEC will use data from third party sources where processes are employed that are comparable to, if not stronger than, those contained in the evidence of identity provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act).
- 3.6 Data collected by particular Government agencies, such as Centrelink and Road Transport Authorities, satisfy the characteristics outlined at paragraph 3.4, and have processes to establish the identity of individuals that are generally equal to the Gold Standard Enrolment Framework (GSEF). The GSEF is part of the National Identity Security Strategy.⁴ It aims to facilitate a whole of Government

⁴ The National Identity Security Coordination Group (NISC) coordinates and implements the National Identity Security Strategy (NISS). The NISC consists of representatives from central agencies of the Australian and State and Territory governments, the Council of Australasian Registrars for Births, Deaths and Marriages, Austroads and the Privacy Commissioner. The website of the Attorney-General's Department provides information relevant to the GSEF, the NISS and the NISC and identity security policy in general. For example, the GSEF is described in *Report to the Council of Australian Governments on the elements of the National Identity Security*

approach to establishing the unique identity of an individual when that individual applies for a Government service.

Data matching and establishing eligibility to enrol

- 3.7 A system of data matching for direct enrolment would operate similar to that outlined at paragraph 3.3 of the AEC's submission to Maintaining Address Bill Inquiry. Data matching for the direct enrolment process would require several different matching requirements to that of the direct update process. Specifically, data would be matched against:
- AEC enrolment records to establish whether or not a person is enrolled, and used to identify what further checks are required before enrolling the individual;
 - the AEC address register to establish whether or not an address was valid for enrolment purposes;
 - addresses with no mail service would be excluded;
 - addresses where silent electors are enrolled would be excluded; and
 - pending enrolment applications to identify whether a person has submitted an enrolment application. Where an enrolment application has been submitted and is being processed, the individual would be excluded from the direct enrolment process.
- 3.8 Before proceeding with the direct enrolment process, the AEC would conduct a series of checks to ensure that the individual is entitled to enrolment under the requirements of the Electoral Act.
- 3.9 To be entitled to enrol, a person must:
- be 18 years of age or over, and
 - be an Australian citizen⁵ or a British subject whose name was included on a Commonwealth electoral roll as at 25 January 1984, and
 - have lived at their current address for a period of one month or more.
- 3.10 To establish enrolment eligibility in relation to citizenship, details of individuals identified for direct enrolment will be matched against various datasets. Data proposed to be used for this purpose is passport data held by the Australian Passport Office of the Department of Foreign Affairs and Trade, citizenship data held by the Department of Immigration and Citizenship, and births data held by state and territory births, deaths and marriages registries.

Strategy, April 2007, available at:

<http://www.ag.gov.au/Documents/Item%203%20COAG%20Report%20April%202007.pdf>

⁵ An individual may be an Australian citizen by birth or by grant.

Valid address for enrolment purposes

- 3.11 The Electoral Act currently provides that a person must have lived at his or her address for one month before being eligible to enrol for that address. This may either be a permanent address or a 'real place of living' while the elector is temporarily resident elsewhere. For example, a miner working on a fly-in, fly-out basis may remain on the roll for their home address provided they intend to return to live at that address. This policy is regarded as being consistent with encouraging the franchise.
- 3.12 The AEC checks the residential address against the AEC's address register to ensure that it is a recognised 'enrollable address' (that is, not vacant land or an industrial address). Where an address is not found, the AEC seeks further information from the individual and/or may seek confirmation from the relevant Local Government Authority.

Scope of administrative decision making powers

- 3.13 The proposed administrative decision making power to enrol a person is constrained by the statutory criteria that the person is entitled to enrolment, has lived at an address for at least one month, and that the person is not enrolled (Schedule 1, item 4 of the Bill refers). The making of decisions that affect the rights of an eligible person under the proposed amendments are subject to both merits review (by the Administrative Appeals Tribunal) and then judicial review. Decision makers in the AEC must comply with all of the various legal requirements that apply to making administrative decisions under legislation including ensuring that there is relevant and up to date evidence that supports the making of a decision in relation to a particular person. The AEC is very aware of the need to balance the protection of the exercise of the franchise with the need to ensure the integrity of the electoral roll in relation to the outcome of elections.
- 3.14 The ability to commence a process to directly enrol a person, is contingent on the Electoral Commissioner being 'satisfied' of the statutory criteria outlined above. As noted at paragraph 3.1, this process will follow the receipt and analysis of reliable and current data from third party sources external to the AEC that indicate an individual is eligible to enrol but is not currently enrolled. As the decision making process involves 'personal information', the AEC will comply with the various relevant requirements contained in the *Privacy Act 1988* which include, that a record keeper must take reasonable steps to ensure that before 'personal information' is used it is accurate, up to date and complete.⁶ It is apparent that for the AEC to comply with this requirement, the decision maker will need to be

⁶ Information Privacy Principle 8, section 14 of the *Privacy Act 1988* refers.

satisfied that the data from the third party sources meets the test in Information Privacy Principle 8⁷ before action can be taken to directly enrol an eligible person. Each element of the test in item 4 of Schedule 1 to the Bill (that is, that the person is entitled to enrolment, has lived at an address for at least one month, and that the person is not enrolled) will need to be examined against the requirement contained in the *Privacy Act 1988*. In addition, the AEC intends that the data matching undertaken with the data from third party sources will comply with the Privacy Commissioner's data matching guidelines, *The use of data matching in Commonwealth administration – Guidelines*.

- 3.15 The AEC notes that some previous JSCEM recommendations regarding direct enrolment processes provided for Ministerial and Parliamentary approval of the use of third party data sources.⁸ A process requiring Ministerial approval, or the making of regulations would clearly demonstrate the support of political stakeholders for the use of particular third party data sources. However, the proposed process would reinforce the longstanding convention whereby the AEC is independent of the Executive arm of Government in exercising electoral powers. Electoral rolls compiled and maintained by an independent and impartial electoral authority such as the AEC, which has the legislated authority to use of information gained through roll maintenance activities to initiate the addition or deletion of names from the roll, provides an objective means for enabling the impartial and non-partisan management of the electoral roll. In addition to the transparency achieved by regular Senate Estimates Committee hearings, JSCEM inquiries and compliance with the Privacy Commissioner's data matching guidelines, the reviewable nature of all individual enrolment decisions provides further assurance that such decisions will be undertaken using a proper and transparent process.

4. Declaration votes

- 4.1 The proposed arrangements in Schedule 2 of the Bill broadly relate to the treatment of declaration votes cast by persons who have been omitted from the electoral roll due to an 'error or mistake of fact'.

⁷ *ibid.*

⁸ Examples of different approaches can be seen in Recommendation 10 (relating to direct update of enrolment) of JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009; Recommendation 1 (relating to direct enrolment) of JSCEM, *Report on the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections*, February 2010; and Recommendation 1 (relating to direct enrolment) of JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011.

- 4.2 The proposed amendments provide that where a declaration voter who is entitled to vote has been omitted from the electoral roll and the omission was due to an error or mistake of fact, then his or her votes may progress to further scrutiny in certain circumstances:
- if his or her address at the time of voting is in the same division for which he or she was enrolled immediately prior to the omission, his or her House of Representatives, Senate and/or referendum votes will progress to further scrutiny;
 - if his or her address at the time of voting is in the same State or Territory for which he or she was enrolled immediately prior to the omission from the electoral roll but in a different division, his or her House of Representatives vote will be excluded, but the Senate and/or referendum votes will progress to further scrutiny; and
 - if his or her address at the time of voting is in a different State or Territory for which he or she was enrolled immediately prior to the omission from the electoral roll, all votes will be excluded.
- 4.3 The above rules apply to all voters omitted from the electoral roll due to an error or mistake of fact, regardless of the reason for the omission.
- 4.4 The Bill also proposes to amend the Electoral Act to provide that the Electoral Commissioner may enrol a person who meets certain criteria. These are that:
- the person has made a declaration vote;
 - the declaration vote satisfies the requirements of Schedule 3 of the Electoral Act or Schedule 4 of the Referendum (Machinery Provisions) Act;
 - the person is entitled to be enrolled for the division; and
 - the person was omitted from the electoral roll for the division due to an error by an officer or to a mistake of fact.
- 4.5 A high-level summary of the proposed rules relating to admission of votes and reinstatement is provided at **Attachment C**.

Attachment A

Table A1 – Estimated unenrolled electors by state and territory, as at 31 December 2011

State/territory	Estimated unenrolled electors
NSW	458 500
VIC	316 000
QLD	417 500
WA	175 500
SA	94 000
TAS	19 500
ACT	14 000
NT	34 000

Note: Estimated unenrolled electors have been rounded to the nearest 500.

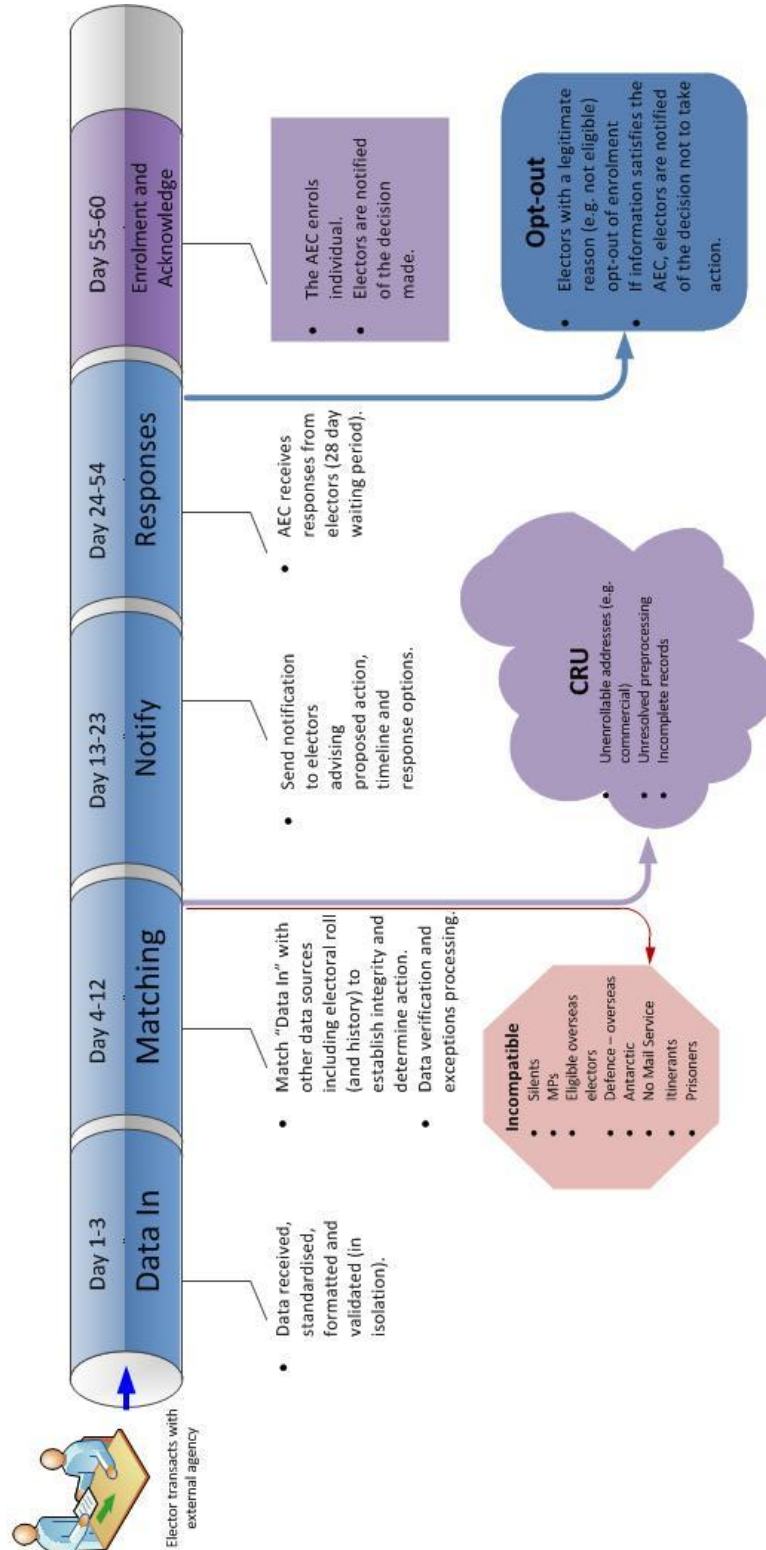
Table A2 – Estimated proportion of eligible electors enrolled by age cohort, as at 31 December 2011

Age cohort	Estimated enrolment participation
18 - 19	53%
20 - 24	82%
25 - 29	85%
30 - 34	89%
35 - 39	88%
40 - 44	93%
45 - 49	91%
50 - 54	94%
55 - 59	96%
60 - 64	96%
65 - 69	99%
70+	96%

Note: Enrolment participation is the number of electors enrolled as a percentage of the estimated number eligible to enrol. Estimated enrolment participation rates have been rounded.

Attachment B

Figure B1 – How a direct enrolment process would work



Attachment C

Table C1 – How declaration votes cast by persons who have been omitted from the electoral roll due to an ‘error or mistake of fact’ would be treated under the proposed Bill

Removed from the roll due to an ‘error or mistake of fact’ including based on objection action				
Address on envelope compared to address on Roll at the time of removal	Elector at same address	Same division but different address	Different division but same state	Different state
Include all votes	✓	✓	✗	✗
Include Senate and/or referendum ballot papers only	N/A	N/A	✓	✗
Reinstate to the roll and for which address (if any)	✓ Address prior to removal from the roll	✓ Latest known address in the division	✓ Latest known address in the state or territory	✗