

## Issues in the Bill

### Overview

- 2.1 The Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 (the Bill) introduces a suite of measures in response to seven recommendations of the committee's report *The 2010 Federal Election: Report on the conduct of the election and related matters*.<sup>1</sup>
- 2.2 In brief, the measures introduced by the Bill will:
- set out the procedures to be followed when a ballot-box is opened prematurely (Recommendation 9);
  - remove the requirement for an applicant for a pre-poll ordinary vote to complete and sign a certificate (Recommendation 10);
  - provide that pre-poll voting cannot commence earlier than 4 days after the date fixed for declaration of nominations (Recommendation 11);
  - bring forward the deadline for applications for postal votes by one day (Recommendation 15);
  - provide for further fixed periods of time to complete inquiries into objections against a proposed redistribution of electoral boundaries (Recommendations 29 and 30);
  - allow the Commissioner of Taxation and other taxation officers to provide some forms of taxpayer information to the Australian Electoral Commission with a view to maintaining the veracity of the roll of electors (Recommendation 3); and
  - make a number of related minor and technical amendments.

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1 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012, p. [3].

- 2.3 During the inquiry into the Bill, issues arose regarding the exclusion of ballots from the poll if a ballot box is opened prematurely, the new pre-poll voting arrangements, and the use of taxpayer information by the AEC to update the roll. These issues are discussed in this chapter.

## Premature opening of a ballot box

### Background

- 2.4 The bill sets out new procedures to be followed if ballot boxes are opened before the close of the poll, other than in accordance with the *Commonwealth Electoral Act 1918* (the Electoral Act). In such a circumstance, the ballots in these boxes will be sealed in a parcel to be given to the Divisional Returning Officer (DRO) and not scrutinised. The bill makes equivalent amendments to the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) and these new procedures will also apply to polls taken in Antarctica.
- 2.5 The AEC states in its submission to this inquiry that ‘under the Electoral Act, it is lawful to open a ballot box containing declaration votes before the close of polling in certain circumstances.’<sup>2</sup> The AEC stated:
- ...subsection 266(1) of the Electoral Act currently allows a Divisional Returning Officer (DRO) to conduct a preliminary scrutiny of declaration votes in envelopes from the last Monday before the close of poll. It follows that, in order for a DRO to conduct a preliminary scrutiny, the ballot box must be opened.<sup>3</sup>
- 2.6 The AEC further notes in this regard however that ‘because pre-poll ordinary votes do not need to go through preliminary scrutiny processes, there is no requirement for these ballot boxes to be opened until after the close of polling, when the counting (further scrutiny) can commence’.<sup>4</sup>
- 2.7 At the 2010 federal election, ballot boxes containing pre-poll ordinary votes were opened prematurely at pre-poll voting centres (PPVCs) at Oaklands Park in the division of Boothby (SA) and at Blackwater and Emerald in the division of Flynn (Qld).<sup>5</sup>

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2 AEC, *Submission 3*, p. 15.

3 AEC, *Submission 3*, p. 15.

4 AEC, *Submission 3*, p. 15.

5 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 46.

- 2.8 The AEC notes that the term ‘premature’ in this case means:
- for ballot boxes containing any ordinary votes – opened before 6 pm on polling day; and
  - for ballot boxes containing only declaration votes – opened other than in accordance with the DRO’s direction in relation to scrutiny under subsection 266(2) of the Electoral Act, before the Monday prior to polling day.<sup>6</sup>
- 2.9 As specified in part XVA of the Electoral Act, ballot boxes at PPVCs must be sealed at the close of voting each day. AEC handling procedures stipulate that the security seal number must be entered on the ‘record of seals’ page, signed, and countersigned by a witness. If the ballot box is to be used on subsequent days, it must be reactivated using the following steps:
- show the sealed box to all people present;
  - check all seal numbers to see that they match the record of seals page;
  - sign the entry on the record of seals page certifying the number of the seals on the ballot box;
  - ask a person to check the seals and sign as witness;
  - cut and remove the plastic seal from the hinged flap to uncover the slot in the lid; and
  - retain the broken seal to return to the DRO.<sup>7</sup>
- 2.10 The AEC also stipulates in its procedures handbook for the Officer-In-Charge (OIC) that ‘a ballot box is not a secure container; it should not be left unattended in public view at any time, even when sealed.’<sup>8</sup> These procedures further stipulate that:
- If ballot boxes containing votes need to be kept overnight and there are inadequate secure storage facilities on-site, you may be able to obtain permission to use security facilities in establishments such as a bank, post office or police station.<sup>9</sup>
- 2.11 The AEC procedures further stipulate that the OIC of a voting centre that is also conducting the scrutiny after close of polling on election day, ie conducting the scrutiny of pre-poll ordinary votes, must:
- ensure that there are no voters in the polling centre when the ballot box is opened;

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6 AEC, *Submission 3*, p. 16.

7 AEC, *Election Procedures Handbook Pre-poll Officer-in-Charge*, p. 15.

8 AEC, *Election Procedures Handbook Pre-poll Officer-in-Charge*, p. 10.

9 AEC, *Election Procedures Handbook Pre-poll Officer-in-Charge*, p. 10.

- before opening the ballot box must check the seals in the presence of polling officials and scrutineers;
- the OIC and a witness must sign the 'record of ballot boxes' and 'security seals' in the pre-poll voting return; and
- note any discrepancies in the 'report on miscellaneous matters' in the pre-poll voting return.<sup>10</sup>

2.12 The AEC engaged a former Electoral Commissioner, Mr Bill Gray AM, to undertake an urgent examination of the facts surrounding the incidents in Boothby and Flynn and to report his findings and recommendations. The full text of this report is at Appendix C. The AEC advises that 'Mr Gray provided three recommendations, all of which have been implemented'.<sup>11</sup> The AEC stated:

Key elements of the AEC's actions to implement the recommendations are as follows:

- Training materials have been released for all AEC staff that explain the circumstances that led to the votes being excluded, and which detail the correct procedures to be followed when ballot boxes are used at polling.
- Training materials for pre-poll voting staff highlight the importance of ballot boxes remaining sealed until they are legally authorised to be open. To supplement this training, more robust ballot box seals have been bought and labels have been produced to go on pre-poll ballot boxes, to alert staff that the boxes cannot be opened early. Officer-In-Charge Returns have been modified to allow the Divisional Returning Officer (DRO) to more actively monitor how ballot box seals.<sup>12</sup>

2.13 The AEC further notes in relation to the incidents at Boothby and Flynn that 'following receipt of legal advice from the Australian Government Solicitor [included at Appendix D], the ballot papers contained in those ballot boxes were excluded from the count'.<sup>13</sup> The AEC stated:

In its subsequent consideration of the matter the three person Electoral Commission noted that whilst the AEC had external legal advice supporting the exclusion of the ballot papers, following the outcome of a report into the incidents by former Electoral

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10 AEC, *Election Procedures Handbook Pre-poll Officer-in-Charge*, p. 44.

11 AEC, *Submission 3.1*, p. [2].

12 AEC, *Submission 3.1*, pp. [2]-[3].

13 AEC, *Submission 3*, p. 15; a copy of this legal advice is provided as Attachment E to *Submission 3.2* from the AEC.

Commissioner, Mr Bill Gray AM, the legal basis for the exclusion was in need of further clarity.<sup>14</sup>

- 2.14 The AEC submitted previously to the 2010 federal election inquiry that the Electoral Act should be amended to provide that ballot boxes not be opened other than in accordance with the Act. The AEC asserted however that a savings provision should be included if ballot boxes were opened prematurely as a result of an official error, stating that:

...the Commonwealth Electoral Act and the *Referendum (Machinery Provisions) Act 1984* should be amended to specifically provide that a ballot box may not be opened before the close of polling other than in accordance with the provisions of the Commonwealth Electoral Act, and that a savings provision in the event of an official error be included.<sup>15</sup>

- 2.15 The committee recommended in its 2010 federal election report that the Electoral Act be amended, wherever appropriate, to provide that a ballot box may not be opened before the close of polling other than in accordance with the relevant provisions of the Act (Recommendation 9). The committee did not accept in its 2010 report however that a savings provision is necessary stating that '...the AEC must ensure that circumstances such as those that occurred in Boothby and Flynn do not reoccur.'<sup>16</sup> There is no savings provision in the Bill.

## Analysis

- 2.16 The AEC submits that the Bill 'clarifies the legislative ambiguity identified in 2010 [relating to the Boothby and Flynn incidents] to ensure that there is certainty and consistency in the manner in which all votes are handled.'<sup>17</sup> The AEC commented that 'the proposed amendment also reinforces the existing principle that there is a general need to ensure that ballot boxes remain unopened until they are to be opened for a lawful purpose'.<sup>18</sup>
- 2.17 The Electoral Commissioner advised the committee that the external legal advice received in relation to the incidents at Boothby and Flynn was that '... it would be prudent – and that was the phrase that was used – to exclude the ballots'.<sup>19</sup> The Commissioner went on to state however that:

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14 AEC, *Submission 3*, p. 15.

15 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 47.

16 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 49.

17 AEC, *Submission 3*, p. 16.

18 AEC, *Submission 3*, p. 16.

19 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 4 February 2013, p. 2.

...it was not necessarily clear that that was the appropriate action...The commission thought it was important for the law to be clarified rather than simply relying on prudence. In this case the suggestion was that the discretion as to whether the ballots should be included or not should be taken away from the Electoral Commission and made clear in the Act.<sup>20</sup>

2.18 The Commissioner commented further on the issue of the unlawful opening of ballot boxes stating that the Bill 'makes it clear in the Act that the ballot[s] should be excluded'.<sup>21</sup>

2.19 Electoral Reform Australia expressed concerns about the exclusion of ballots under this provision of the Bill asserting that 'the first response to any inappropriate action during the conduct of any election should be to maintain, as far as possible, the fundamental right of the voter to have their vote counted'.<sup>22</sup> Electoral Reform Australia stated:

...a better response to this issue – and one that will have an outcome more consistent with the policy of electoral inclusion – is to grant a discretion to polling officials to accept or exclude ballots from incorrectly opened ballot-boxes.<sup>23</sup>

2.20 Electoral Reform Australia submitted in relation to handling prematurely opened ballot boxes:

The prematurely opened ballot box should be resealed, kept separate and not counted. A report outlining the details of the event should be submitted by the Booth Returning Officer to the District Returning Officer for his or her consideration. Party scrutineers should be asked if they wish to submit supplementary reports and if they do these should also be included with the report to the District Returning Officer. Having assessed the incident, the Returning Officer should make a decision but should start with the presumption that ballot papers should be included rather than excluded.<sup>24</sup>

2.21 During the hearing, Electoral Reform Australia reiterated this view, commenting that 'we believe that it is a fundamental right of citizens to

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20 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 2.

21 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 2.

22 Electoral Reform Australia, *Submission 2*, p. [2].

23 Electoral Reform Australia, *Submission 2*, p. [2].

24 Electoral Reform Australia, *Submission 2*, p. [2].

have their vote counted and we think that the measures proposed are excessive and heavy-handed'.<sup>25</sup> Electoral Reform Australia stated:

We would prefer to see discretion given to the district returning officers to assess the problem and to address it in a manner that enables as many votes as possible to be included in the ballot paper. We think that you should start with the provision that votes should remain included before you start excluding them.<sup>26</sup>

2.22 FamilyVoice Australia also expressed concerns that the automatic exclusion of ballots 'provides an opportunity for some miscreant to exploit that situation and deliberately tamper with a box of votes that the person considers might favour their objective'.<sup>27</sup> FamilyVoice Australia stated:

...certainty is bad because certainty opens an opportunity for fraud. If someone with malicious intent knows that the votes from a particular booth are likely to favour a candidate that they do not want, they can tamper with the box and have the votes in it excluded...If you leave it to the judgment of either the DRO or the Court of Disputed Returns then that does not open a sure-fire method of fraud.<sup>28</sup>

2.23 There was further discussion of this issue at the public hearing in support of this position:

**Mrs BRONWYN BISHOP:**...if you have someone who is unscrupulous and has access to boxes of votes, and they know where a box of votes is coming from and they know that a particular polling place could be advantageous to a particular candidate – and we are in a marginal seat – by opening that box they could knock out all of those votes and totally change the outcome of that particular seat and perhaps the entire election.

That actually encourages someone, if they wish to act in a dishonest way, to tamper with the box and have those votes not counted, which can change the outcome of that seat and of an election. We are not clarifying the law; we are not making it better; we are making it worse.<sup>29</sup>

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25 Mr Stephen Lesslie, Vice President, Electoral Reform Australia, *Committee Hansard*, 4 February 2013, p. 20.

26 Mr Lesslie, Electoral Reform Australia, *Committee Hansard*, 4 February 2013, p. 20.

27 Dr David Phillips, National President, FamilyVoice Australia, *Committee Hansard*, 4 February 2013, p. 20.

28 Dr Phillips, FamilyVoice Australia, *Committee Hansard*, 4 February 2013, p. 22.

29 *Committee Hansard*, 4 February 2013, pp. 6, 8.

- 2.24 The AEC submitted in relation to affected ballot papers under this provision however that it may 'examine the ballot papers to determine whether to refer the matter to the Court of Disputed Returns if the affected votes could have changed the outcome of an election in any House of Representatives seat or a Senate result'.<sup>30</sup>
- 2.25 The Electoral Commissioner also informed the committee that 'even under this provision – if it went through – the votes might be excluded but that would not necessarily exclude further action in the Court of Disputed Returns'.<sup>31</sup>
- 2.26 The AEC notes that 'any savings provision will of necessity have the potential to delay the declaration of the poll in any Division and the associated State/Territory Senate election. The AEC stated:
- As the current practice is that all the State issued Senate writs must be returned prior to the writs to the Governor-General... such action will also delay the return of the writs for both the House of Representatives and the Senate.<sup>32</sup>
- 2.27 The AEC further stated:
- While noting the above potential delays, the AEC notes that the existing processes that are in place for dealing with reserved ballot papers after a recount (see sections 279B and 281 of the Electoral Act) may provide a useful precedent that could be adapted to provide for a savings clause. The reserved ballot papers process includes that decisions made about the formality of ballot papers are made by the relevant Australian Electoral Officer (AEO).<sup>33</sup>
- 2.28 The AEC further commented on processes for a possible savings provision, stating that:
- A possible vote savings measure could include the following elements:
- the polling official is to quarantine any prematurely opened ballot box and secure its contents;
  - the polling official is to provide a report to the DRO about what occurred including the details of any witnesses and any other relevant information;
  - the polling official is to provide the report and the prematurely opened ballot box including its contents to the DRO;

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30 AEC, *Submission 3.1*, p. [3].

31 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 22.

32 AEC, *Submission 3.1*, p. [3].

33 AEC, *Submission 3.1*, p. [3].



- the DRO will examine the ballot box and remove the contents which are to be placed in a parcel which is to be clearly marked so as to be quarantined from other ballot papers;
- the DRO will forward the ballot box and contents to the AEO together with the polling officials report and any other relevant information;
- the AEO will consider the material forwarded by the DRO and make a decision as to whether the ballot papers (or envelopes containing declaration votes as the case may be) can be included in the scrutiny;
- the AEO must include the ballot papers or envelopes containing declaration votes in further scrutiny unless there are facts that indicate that the ballot papers contained in the prematurely opened ballot box have been fraudulently altered or otherwise interfered with so as not to reflect the voters' intentions;
- the AEO will advise all relevant candidates of the outcome of the AEO's consideration of the material forwarded by the DRO prior to the expiration of the time period for the lodging of a petition of the Court of Disputed Returns; and
- the advice of the AEO will include a separate count of the ballot papers contained in the prematurely opened ballot box and the ballot papers will be parcelled and clearly marked to be separate from the other ballot papers that have been included in scrutiny and the count.<sup>34</sup>

2.29 The AEC noted in relation to the last of these measures mentioned above that it may be 'further refined to consist of a process for votes that the AEO determines are to be included in the scrutiny, and one for those votes that are determined to be excluded from the scrutiny'. The AEC also commented that 'a vote savings provision would have to account for the possibility that ballot boxes, in certain circumstances (for example, mobile polling), may contain votes from more than one division'.<sup>35</sup>

2.30 The AEC concluded that:

The above possible savings measure provides a framework which recognises the seriousness of what has taken place by assigning to the relevant AEO the assessment and decision of whether ballots should be included in the count based on a report from the DRO, and the importance of preserving the ballot papers in a manner that is transparent and which can be used by any affected person to lodge a potential petition with the Court of Disputed Returns.<sup>36</sup>

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34 AEC, *Submission 3.1*, pp. [3]-[4].

35 AEC, *Submission 3.1*, p. [4].

36 AEC, *Submission 3.1*, p. [4].

2.31 The penalties for ballot tampering were discussed at the public hearing. The AEC informed the committee regarding the penalties in the Electoral Act for deliberate ballot box tampering that 'if it is an AEC officer, it would be a \$1,000 fine'.<sup>37</sup> The AEC further noted that 'the normal offences for AEC officers are in section 324. There are ones for tampering with votes, that is a separate penalty.'<sup>38</sup>

2.32 The AEC advised the committee that for a citizen tampering with a ballot box:

That is imprisonment for six months. That is section 339. It says:

A person shall not:

(d) fraudulently put any ballot paper or other paper in the ballot-box; or

(e) fraudulently take any ballot paper out of any polling booth or counting centre; or

(g) supply ballot papers without authority; or

(h) do an act that results in the unlawful destruction of, taking of, opening of, or interference with, ballot-boxes or ballot papers.

Penalty: Imprisonment for 6 months.<sup>39</sup>

2.33 The issue of whether the penalties for ballot box tampering by an AEC official differ from the penalties that a person outside of the AEC would face for this offence was also discussed:

**ACTING CHAIR:** The point I was trying to make was: is it a bigger offence for somebody outside of the commission to tamper with a ballot box compared with if it is by someone in the commission? What would you say – is it more serious?

**Mr Pirani:** That is a question of judgement that I will leave.

**ACTING CHAIR:** Do you have further questions on that, Mrs Bishop?

**Mrs BRONWYN BISHOP:** I do not know – I was just wondering whether you could read section 324:

A person who, being an officer, contravenes:

(a) a provision of this Act for which no other penalties is provided ...

Well, there is another penalty provided: it is six months in jail.

37 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 4 February 2013, p. 13.

38 Mr Pirani, AEC, *Committee Hansard*, 4 February 2013, p. 13.

39 Mr Pirani, AEC, *Committee Hansard*, 4 February 2013, p. 13.

**Mr Pirani:** That is an argument, Mrs Bishop. I certainly would not rule that out. If I was doing this referral to the AFP or to the DPP I would be pleading both. You are right.

**Mrs BRONWYN BISHOP:** So maybe it would be a good idea to amend the act to make it quite clear, wouldn't it?

**Mr Pirani:** To make them both the same?

**Mrs BRONWYN BISHOP:** Yes.

**Mr Pirani:** I will take that on board.<sup>40</sup>

## Conclusion

- 2.34 The Bill will remove discretion from the AEC in relation to the exclusion of ballots from scrutiny if ballot boxes are prematurely opened.
- 2.35 The committee asserted in its 2010 federal election report that there should be no savings provision if ballot boxes are opened unlawfully, whilst recognizing the seriousness of the consequences for voters who would otherwise have had their votes counted. It was the committee's opinion at that time that the focus in future elections must be to prevent such breaches from reoccurring.
- 2.36 Having carefully considered the evidence in this inquiry, the committee is now of the view that the Bill should incorporate a vote savings provision if a ballot box is opened prematurely by an official or otherwise handled unlawfully and there is no evidence of tampering with ballot papers.
- 2.37 The AEC recommended to the 2010 federal election inquiry in relation to prematurely opened ballot boxes that there be a savings provision in the event of an official error.<sup>41</sup> However, this may not prevent tampering with a ballot box in an attempt to exclude votes that may favour a particular candidate.
- 2.38 The vote savings provision in the Bill should therefore apply to the unlawful handling of a ballot box by any person. Votes should only be excluded from scrutiny if there is evidence of tampering such as the altering or removal of genuine ballots, or the addition of fraudulent ballots to a ballot box. The AEC must however reinstate ballots to the count if there is no indication that the ballot papers have been tampered with in any way.
- 2.39 The committee agrees with Electoral Reform Australia that decisions regarding a prematurely opened ballot box should start with the

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40 *Committee Hansard*, 4 February 2013, pp. 13-14.

41 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 47.

presumption that ballot papers be included rather than excluded. Electoral Reform Australia also state that a prematurely opened ballot box should be resealed, kept separate and not counted. However, the committee prefers the possible vote savings measure submitted to this inquiry by the AEC (paragraph 2.28) which provides that the votes will be counted in a separate process by the AEO. This measure will also apply to the unlawful handling of a ballot box by any person and not just an election official.

- 2.40 The elements of the possible vote savings measure proposed by the AEC should be incorporated in the Bill. This will provide an appropriate balance between the need to protect both the enfranchisement of voters and the integrity of the electoral process. The advice of the AEO that forms part of this possible vote savings measure should be provided in a timely manner.
- 2.41 The Electoral Act lacks clarity on whether the penalties faced by an electoral official who deliberately and unlawfully interferes with a ballot box or ballot papers are the same as the penalties that would be imposed on a member of the public for this offence. The Electoral Act should be amended to explicitly state that an electoral official is subject to the same penalty as any member of the public who is found guilty of tampering with a ballot box or ballot papers.

### **Recommendation 1**

- 2.42 **That the House of Representatives and the Senate pass the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 after introducing:**
- **a vote savings measure to the procedures to be followed if ballot boxes are opened prematurely. This vote savings measure should incorporate the elements proposed by the AEC to this inquiry and provide that ballot papers that have not been tampered with in any way must be reinstated to the count but otherwise excluded. This savings measure should apply at any stage of the scrutiny to a ballot box that has been unlawfully handled by any person; and**
  - **an amendment to the *Commonwealth Electoral Act 1918* explicitly stipulating that any electoral official who deliberately and unlawfully interferes with a ballot box or ballot papers be subject to the same penalty as any other person who commits this offence.**

## Pre-poll voting arrangements

### Background

- 2.43 The bill provides that applicants for a pre-poll ordinary vote will no longer need to complete and sign a certificate. The bill also provides that pre-poll voting cannot commence earlier than four days after the declaration of nominations for an election or by-election.<sup>42</sup> This will prevent any pre-poll voting from taking place before the Monday, 19 days before polling day.
- 2.44 These provisions implement Recommendations 10 and 11, respectively, of the committee's report on the 2010 federal election.<sup>43</sup>
- 2.45 The AEC submitted to the 2010 federal election inquiry that the practice of requiring electors to complete and sign a declaration when casting ordinary votes was an unnecessary step. The AEC suggested that removing this requirement could potentially speed up the issuing process, noting that written declarations are no longer required in a number of state and territory jurisdictions, with no issues of integrity having been reported.<sup>44</sup>
- 2.46 The AEC also recommended changing the timetable for the commencement of pre-poll voting in its submission to the 2010 federal election inquiry, citing logistical difficulties in distributing more than 43 million ballot papers along with Senate group voting ticket booklets under current arrangements.<sup>45</sup>

### Analysis

- 2.47 The 2010 federal election was the first to have pre-poll ordinary voting. The committee notes in its report on the 2010 election that despite the mishandling of pre-poll votes in Boothby and Flynn, pre-poll ordinary voting proceeded without incident in all other locations.<sup>46</sup>
- 2.48 The AEC continues to support the removal of the requirement for a pre-poll ordinary voter to complete and sign a certificate noting that:

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42 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012, pp. [8]-[9].

43 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 50.

44 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 48.

45 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 48.

46 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 48.

... [this] will speed up the vote issuing process and provide efficiencies in polling place management. The AEC is of the view that electoral integrity is not impacted by removing the requirement to sign a pre-poll certificate.<sup>47</sup>

2.49 The AEC further states that 'this proposed amendment would align the Commonwealth with a number of state and territory jurisdictions which require only a verbal declaration of entitlement rather than a signed certificate.'<sup>48</sup>

2.50 FamilyVoice Australia expresses concerns with the provision to remove pre-poll certificates asserting that 'pre-poll ordinary voting has so far only been used at one federal election so it is premature to vary the procedures without good reason.'<sup>49</sup> FamilyVoice Australia stated:

The Australian Electoral Commission's view that requiring a voter to sign a declaration that they are entitled to a pre-poll vote is "unnecessary" is not persuasive. Dispensing with the requirement for pre-poll voters to sign a certificate confirming their entitlement to a pre-poll vote, could encourage other voters to misuse this option for trivial reasons, such as avoiding queues on polling day.<sup>50</sup>

2.51 On the provision of the Bill that moves the commencement date for pre-poll voting back by one day, the AEC comments that this 'provides an appropriate balance between ensuring reasonable timeframes for the logistics of ballot paper production, and providing timely and convenient early voting facilities for qualified electors'.<sup>51</sup> The AEC stated:

...these amendments provide for processes that are both administratively sound and elector-centric in nature, and appropriately accommodate the potential for increasing elector reliance on pre-polling arrangements.<sup>52</sup>

2.52 The Electoral Commissioner informed the committee in relation to this amendment that:

This is simply adding a day before the commencement of the polling period to reflect the fact that we are now in a position where, from the close of nominations on Thursday through to the

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47 AEC, *Submission 3*, p. 9.

48 AEC, *Submission 3*, p. 9.

49 FamilyVoice Australia, *Submission 1*, p. 2.

50 FamilyVoice Australia, *Submission 1*, p. 2.

51 AEC, *Submission 3*, p. 11.

52 AEC, *Submission 3*, pp. 11-12.

first opening of polling, we have to print millions of ballot papers and get them distributed to pre-poll centres. This is simply about giving us that extra day. The number of ballot papers being printed is increasing every election.<sup>53</sup>

- 2.53 FamilyVoice Australia argues however that ‘this timetable is impractical as it does not allow sufficient time for the printing of ballot papers’.<sup>54</sup> FamilyVoice Australia asserts that:

Election timetables can vary such that the period between the declaration of nominations and polling day can be as short as 22 days or as long as 30 days.<sup>55</sup>

The Opposition recommendation that applications for a pre-poll vote open no sooner than 12 days prior to polling day is appropriate.<sup>56</sup>

## Conclusion

- 2.54 The removal of the requirement for a pre-poll ordinary voter to complete and sign a certificate was recommended by the committee in its 2010 federal election report and continues to be supported by the committee. The committee agrees with the AEC that this amendment will improve efficiencies in polling place management and not impact on electoral integrity.
- 2.55 The requirement in the Bill that the earliest time at which pre-poll voting can commence be the Monday, 19 days before polling day, is also an appropriate provision that the AEC supports and was recommended by the committee in its 2010 federal election report.

## Use of taxpayer information

### Background

- 2.56 The Bill amends the Taxation Administration Act to allow the Commissioner of Taxation and other taxation officers to provide some forms of taxpayer information to the Australian Electoral Commission for the purposes of administering the Electoral Act and Referendum Act.

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53 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 14.

54 FamilyVoice Australia, *Submission 1*, p. 2.

55 FamilyVoice Australia, *Submission 1*, p. 2.

56 FamilyVoice Australia, *Submission 1*, p. 3.

- 2.57 Subject to a range of specific exceptions to facilitate efficient and effective government administration and law enforcement, it is an offence for taxation officers to record or disclose protected information.
- 2.58 Item 53 of the Bill introduces an exception that will allow the ATO to provide otherwise protected information (such as the names and addresses of taxpayers) to the AEC to maintain the veracity of the electoral roll. However, this exception will not apply to information collected by the ATO before this provision comes into effect.
- 2.59 The EM states that:
- Item 53 gives effect to recent amendments to the Electoral Act that enable the Electoral Commissioner to directly update or transfer a person's enrolment without claim or notice from the person and to enrol an unenrolled person without claim or notice from the person (sections 103A and 103B).<sup>57</sup>
- 2.60 The committee states in its 2010 federal election report that 'if the ATO were permitted to share enrolment relevant data with the AEC it would provide a genuine and lasting improvement to roll maintenance processes and roll integrity.'<sup>58</sup>

## Analysis

- 2.61 The AEC reiterated in its submission to this inquiry that 'some 1.5 million, or nine per cent, of eligible electors are not enrolled to vote. Approximately one-third of these missing electors are 18 to 25 years of age.'<sup>59</sup> The AEC states that:
- ...the administrative practices used to maintain the roll have evolved over time, as permitted by technology and legislative change.<sup>60</sup>
- The proposed changes to the Taxation Administration Act identified in this Bill at item 53 will simply add the Electoral Commissioner to the list of Commonwealth and State agency heads who are able to receive what would otherwise be protected

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57 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012, p. [4].

58 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, 2011, p. 36.

59 AEC, *Submission 3*, p. 4.

60 AEC, *Submission 3*, p. 4.



- information, such as the names and addresses of taxpayers, for the purpose of administering the Electoral Act and Referendum Act.<sup>61</sup>
- 2.62 The Electoral Commissioner commented to the committee that the 'AEC is very sensitive to the fact that the tax information and the secrecy provisions have been in place for a significant amount of time, but when you look at the history of the secrecy provisions, you see that over time a number of other agencies have been provided with access to that data.'<sup>62</sup>
- 2.63 The Commissioner further noted that this measure '...is not a novel proposition'<sup>63</sup>, commenting that:
- ... the privacy statement on the tax file number application already lists Centrelink, the Australian Federal Police, the Child Support Agency, the Department of Veterans' Affairs, the Department of Immigration and Citizenship, the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Education, Employment and Workplace Relations as agencies that are already in receipt of information from the Australian Taxation Office.<sup>64</sup>
- 2.64 The Electoral Commissioner further commented that the taxpayer information that will be utilised by the AEC under this arrangement 'would be limited to information dealing with the identity of the individual, their citizenship, their age and their residential address for the purposes of enrolment'.<sup>65</sup>
- 2.65 The AEC also states in relation to this provision that 'the form of the amendment was discussed in detail and agreed with the ATO and the Treasury'.<sup>66</sup> The AEC asserts that it:
- ...will continue to work with the ATO with a view to being ready to implement the measures proposed in the Bill, and develop further agreements covering the proposed arrangements for agency-specific issues including the collection, use, transfer and storage of personal information.<sup>67</sup>
- 2.66 The Electoral Commissioner noted that 'the arrangements that we are currently discussing with the Tax Office are about...merging the process

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61 AEC, *Submission 3*, p. 6.

62 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 4.

63 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 4.

64 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 18.

65 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 18.

66 AEC, *Submission 3*, p. 6.

67 AEC, *Submission 3*, p. 7.

for tax file applications with the process for applying for enrolment'.<sup>68</sup> The Commissioner stated:

This seems to us to make incredible sense in that you bring together two government processes into a single process and thereby minimise the inconvenience for citizens in the way in which they transact business with government.<sup>69</sup>

2.67 The AEC further submits that:

...using information collected by the ATO for the purposes of maintaining the roll will improve two key integrity elements of the electoral roll, accuracy and completeness, by:

- assisting eligible electors to be on the roll;
- assisting electors to maintain enrolment at a correct address;
- updating enrolment details in a more timely manner; and
- reducing objection action to remove electors from the roll when a new address is known for them.<sup>70</sup>

2.68 FamilyVoice Australia opposes the use of taxpayer information by the AEC stating:

Opposition members in their dissenting report on the 2010 federal election raised several valid concerns about automatic enrolment using data collected by other government agencies for unrelated purposes, including:

- The findings of 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, 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; and 62 per cent of deceased clients were not recorded as deceased in a sample match.
- 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 the relatively light identification requirements present in the Australian electoral system, removing this security feature

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68 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 4.

69 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 4.

70 AEC, *Submission 3*, p. 7.

only weakens one of the few critical protections for the integrity of the roll and its policing.<sup>71</sup>

2.69 Concerns with this provision were also expressed at the public hearing:

**Mrs BRONWYN BISHOP:**...we in the opposition made clear all the way through that we are absolutely opposed to [access to Australian Tax Office information] which the government has always favoured along with automatic enrolment... we know how wrong the data from the Tax Office can be.

The fact of the matter is that tax records are not accurate, and you are proposing to use material that will come to you to put people onto the roll. I simply reiterate the argument we have used all along: that you are in fact putting the integrity of the roll at risk. If you can't trust the roll, you can't have a properly acting democracy.<sup>72</sup>

2.70 The Electoral Commissioner expressed confidence in the integrity of the taxpayer information that would be used for the purposes of enrolment asserting that:

If you look at the tax file number application, and I will quote here, you need 'three documents, one of which must be a primary document' and then the description of 'primary documents' says that this includes an Australian full birth certificate – a birth certificate extract is not acceptable – or an Australian passport, or an Australian citizenship certificate or extract from the register of citizen by descent – and they are original documents. So the level of identity proof that is being used to establish the identity is higher, as I said, than what we use. It is on that basis that all of the boxes are ticked in terms of a person's entitlement to enrolment.<sup>73</sup>

2.71 The AEC further advised the committee that any direct enrolment involves a 'matching and integrity checking' process:

Data from other government sources with strict evidence of identity requirements [are] matched against the electoral roll to identify potential electors who are not on the roll or whose enrolled address is not accurate. Matching is done using a specialist information technology system, in the main, and in cases where a precise match cannot be made there is intervention by a trained AEC staff member. Under direct enrolment and update, all

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71 FamilyVoice Australia, *Submission 1*, pp. 3-4.

72 *Committee Hansard*, 4 February 2013, pp. 3-4.

73 Mr Killesteyn, AEC, *Committee Hansard*, 4 February 2013, p. 5.

of the standard matching and integrity business rules as used in the AEC's CRU mail review program are applied.<sup>74</sup>

2.72 In addition, the AEC advises in relation to direct enrolment:

In deciding whether an individual should be enrolled there are three overriding principles:

- certainty about the identity of the individual - ensuring that information supplied can be associated with a unique individual;
- determination that an individual is an Australian citizen - and therefore eligible to be enrolled; and
- certainty about the address - enrolment and voting are address-based, therefore it is important to establish the appropriate address at which an elector should be enrolled.

The checks undertaken at this stage are numerous, and include but are not limited to:

- ensuring that the address provided is one contained on the AEC's Address Register, or can be verified and therefore added to the Address Register;
- ensuring that the address for mailing has reliable mail delivery; and
- removing individuals who have features which are incompatible with direct enrolment and address update.<sup>75</sup>

## Conclusion

2.73 The committee maintains the view it expressed in its 2010 federal election report that the ATO should be permitted to provide relevant data to the AEC for the purposes of facilitating enrolment. This is a logical extension of existing continuous roll update processes and direct enrolment using third party information which the committee has supported in previous bill inquiries. In addition, these proposed amendments have been discussed and agreed with the ATO and the Treasury.

2.74 The Electoral Commissioner outlined to the committee that a number of government agencies have access to data from the ATO and provided examples. The list of government entities that can receive protected information from taxation officers for specific purposes (defined in Section 355 of the Taxation Administration Act) includes, but is not limited to:

- the Health Secretary
  - the Education Secretary
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74 AEC, *Submission 3.2, Answer to Question on Notice*, p. 6.

75 AEC, *Submission 3.2, Answer to Question on Notice*, p. 7.

- the Repatriation Commission
- the Child Support Registrar
- the Superannuation Complaints Tribunal
- the Australian Prudential Regulation Authority
- the Australian Securities and Investments Commission
- the Secretary of the Department of the Treasury
- a State taxation officer, or a Territory taxation officer
- the Development Allowance Authority
- the Defence Secretary
- an authority of a State or Territory that administers a workers' compensation law
- the Environment Secretary
- the Clean Energy Regulator
- the Australian Statistician
- the Chief Executive Officer of Customs
- the Immigration Secretary
- the Fair Work Ombudsman
- the Attorney-General of a State or Territory.<sup>76</sup>

2.75 The addition of the AEC to this list for the specific purpose of maintaining the veracity of the electoral roll is appropriate and will not undermine roll integrity.

**Daryl Melham MP**  
**Chair**  
**26 February 2013**

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<sup>76</sup> *Taxation Administration Act 1953*, s. 355.

