

## The issues

- 2.1 On examination of the NSW legislation and consideration of evidence presented during the inquiry, there are three key issues arising from the NSW Automatic Enrolment legislation with respect to its implications for the conduct of Commonwealth elections.
- 2.2 Firstly, having two different enrolment regimes operating at the Commonwealth and State level creates the potential for significant elector confusion.
- 2.3 Secondly, if, as recommended by the AEC, the Commonwealth were to include similar provisions in the *Commonwealth Electoral Act 1918* to allow for automatic enrolment of electors, 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.
- 2.4 Thirdly, the NSW legislation includes provisions which enable electors to enrol and cast a provisional vote up to and on Election Day. If automatic enrolment were to be introduced at the Commonwealth level, the AEC supports the inclusion of similar Election Day enrolment measures to provide a safety net to ensure that automatic enrolment does not unintentionally limit the ability of electors to exercise the franchise.
- 2.5 These issues are examined further in this chapter.
- 2.6 The committee notes that in addition to the enrolment provisions contained within the NSW Automatic Enrolment Act, the legislation also contains a number of provisions which seek to modernise and enhance the processing of postal vote applications and the operation of pre-poll voting places and mobile polling booths, as well as various miscellaneous amendments to improve the conduct of NSW elections. Some of these

provisions seek to bring the NSW legislation into line with existing Commonwealth legislative provisions, while some address recommendations, supported by the AEC, which the committee made in chapters six and seven of its report on the conduct of the 2007 federal election. The committee does not propose to comment further on these provisions.

## **The potential for elector confusion**

- 2.7 One of the major concerns arising from the NSW legislation is the prospect of having different enrolment regimes operating at the Commonwealth and State level, and the potential for such an arrangement to create elector confusion to the extent that it may impact on electors' ability to exercise the franchise.
- 2.8 The AEC stated that it is 'deeply concerned' that in the absence of timely amendments to the Commonwealth Electoral Act, the NSW legislation will impact negatively on the Commonwealth electoral roll; with the problem being magnified should the NSW initiative result in other states and territories adopting like arrangements.<sup>1</sup>
- 2.9 Currently, Commonwealth legislation only permits the AEC to use third party data to actively encourage eligible persons to enrol or update their enrolment details. The United Nations Youth Association of Australia, which supports automatic enrolment being introduced at the Commonwealth level, argued that current enrolment processes particularly impact on young people. The Association stated:
- While it is important to maintain a flexible and equitable enrolment process, the need to re-gather information already received from a trusted and appropriate source adds an unnecessary barrier to franchise. This requirement has a significant and disproportionate impact on young people, many of whom change addresses often because of living in rental accommodation, or moving back into the family home for periods of time.<sup>2</sup>
- 2.10 Although the NSW Government has indicated that it will provide the AEC with details of any persons in NSW who have been automatically enrolled or had their enrolment details updated, unless Commonwealth legislation
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1 Australian Electoral Commission, *Submission no. 2*, p. 16.

2 United Nations Youth Association of Australia, *Submission no. 1*, p. 4.

is amended, the AEC will still be required to make direct contact with those electors to encourage them to enrol for the purposes of Commonwealth elections. The AEC explained:

It is likely that some electors will believe, or expect, that by being enrolled on the NSW roll they will be enrolled for federal elections. The fact that they are not may only become apparent when they are refused a vote at a federal election. The potential for elector confusion is therefore increased, as electors added to the NSW roll, or those who have their electoral details updated by the New South Wales Electoral Commission (NSWEC) using the processes specified in the NSW legislation, will not be similarly added to or updated on the Commonwealth roll, unless they complete and submit to the AEC an enrolment form that is compliant with the Commonwealth legislation. Further, electors who have complied with the NSW legislation or had their enrolment details updated, but have not done so for federal elections, may still be removed by objection from the Commonwealth roll because of their (possibly) unintentional non-compliance with the Commonwealth regime.<sup>3</sup>

- 2.11 In its submission, the AEC drew on data from recent continuous roll update (CRU) activity in NSW to demonstrate the likely potential for roll divergence between the Commonwealth and NSW rolls.
- 2.12 Recent CRU data shows that in the case of initial letters being sent to NSW residents encouraging enrolment, the AEC can expect a response rate of 27 per cent. The AEC would then send pre-objection letters to the remaining electors (those identified as requiring objection action and those who did not respond to initial CRU letters), again encouraging them to enrol or update their enrolment. Based on recent pre-objection letter mailings to NSW electors, the AEC advised that it could expect an active response rate of 34 per cent.<sup>4</sup>
- 2.13 Under this scenario, if the NSWEC provided the AEC with data for 200,000 electors enrolled under the new legislation, the AEC would anticipate around 30,000 electors responding to initial CRU letter encouraging them to enrol on the Commonwealth roll. A further 52,500 enrolment transactions would be processed from responses to pre-objection letter mailings, leaving over 100,000 electors not on the

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3 Australian Electoral Commission, *Submission no. 2*, pp. 2-3.

4 Australian Electoral Commission, *Submission no. 2*, p. 18.

Commonwealth roll, or requiring objection action to remove them from the roll.<sup>5</sup>

## Impact of the timing of the next Commonwealth election

2.14 Both the AEC and the NSW Electoral Commission acknowledged that the potential for elector confusion arising from the new legislation is likely to be influenced by the timing of the next Commonwealth election.

2.15 In order to avoid confusion among people in NSW, the Democratic Audit of Australia stated that it hoped the NSW Electoral Commission postpones public implementation of automatic enrolment (i.e. advertising and sending out letters) until after the Commonwealth election. The NSW Electoral Commission responded that it had been involved in ongoing discussions with the AEC about the strategy. NSW Electoral Commissioner, Mr Colin Barry, stated:

If the writs for the federal election are issued sometime between July and August, we certainly will not be doing any advertising in New South Wales between now and July-August. So the best case scenario is: the writs are issued sometime in July-August, the federal election is held, and that creates a clear run-up for us to do our advertising with smart roll processes. In the event that the writs are not issued for the federal election by August, then that is where we are having a lot of discussions with the AEC at the moment about what messages – because we would have to do some of our smart roll processes – we would give people about their federal entitlement.<sup>6</sup>

2.16 The AEC added:

...the later the federal election is held, the more pressure there is on the New South Wales Electoral Commission to get on with the job, the more potential there is for confusion, and the more then that we in the AEC have to be careful about our messaging to electors about the enrolment process at the next federal election. How we do that, I guess, will be an art form, and we will be relying on people in the media who know better about messaging, but it will clearly require us to have different messages for New South Wales electors than for the rest of Australia.<sup>7</sup>

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5 Australian Electoral Commission, *Submission no. 2*, p. 18.

6 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 8.

7 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 8.

2.17 The AEC recommended that the committee give consideration to recommending the Commonwealth include similar provisions (to those in the NSW Automatic Enrolment legislation) in the Commonwealth Electoral Act, to provide a capacity for the AEC to continue to maintain electoral rolls using modern methods and processes.

2.18 The AEC believes that automatic enrolment would be particularly valuable in assisting to increase the proportion of voters in the 17 to 39 cohort on the electoral roll. The 17 to 39 cohort is the least represented group on the roll and the United Nations Youth Association of Australia argued that the current electoral system in Australia is failing young people.<sup>8</sup> The AEC stated:

It is expected that a significant percentage of those who the AEC seeks to enrol automatically, especially those in the 17 to 39 years of age cohort, presently believe that their electoral enrolment has already been effected or would be effected automatically by the AEC, on the basis of their interactions with other Government agencies. Automatic enrolment would serve to make this belief a reality.<sup>9</sup>

2.19 The committee asked the AEC whether it would have the administrative capacity to implement such provisions if the Commonwealth Electoral Act were amended accordingly prior to the next Commonwealth election. The AEC responded:

I think you will find that for the next election in 2010 that would be a tall order because of the same sorts of issues that we have been discussing here in the committee: the need to go through proper process, the need to understand the data that is being offered by various agencies, the need to carefully design systems rules about when you do and when you do not, and all those sorts of things. I would be very cautious about offering automatic enrolment before the next election.<sup>10</sup>

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8 United Nations Youth Association of Australia, *Submission no. 1*, p. 9.

9 Australian Electoral Commission, *Submission no. 2.1*, p. 4.

10 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 21.

## **Electoral roll integrity: the accuracy of data received from trusted agencies**

- 2.20 As discussed in chapter one, the NSW Automatic Enrolment legislation empowers the NSW Electoral Commissioner to enrol a person from any trusted agency where the Commissioner is satisfied that the person has an entitlement. NSW Electoral Commissioner, Mr Colin Barry, advised the committee that he would not be exercising this provision for the forthcoming NSW election outside of information provided from the NSW Board of Studies and possibly TAFE, and confirmed that the Commission would not be using information from the Roads and Traffic Authority, for example, for the next election.<sup>11</sup>
- 2.21 One of the concerns about receiving data from trusted agencies for the purpose of automatic enrolment or automatic update of electors is that any address data sourced from these agencies was not gathered for the purpose of collecting electorate information. The information provided by individuals to government agencies may be based on an address to be used as a point of contact rather than an individual's place of residence. The NSW Electoral Commission acknowledged that the use of such data would therefore need to be tempered with this view in mind. The Commission stated:
- ...we are looking at this information to see how we can turn what they have in their databases into electorate information, and that is a process of analysis. And we are in the middle of that as we speak.<sup>12</sup>
- 2.22 The NSW Electoral Commission also advised that the legislation provided for some checks and balances in that, prior to changing an elector's address based on information received from a trusted agency, the Commission is required to advise the elector of its intention to update their details.<sup>13</sup>
- 2.23 In its June 2009 report on the conduct of the 2007 federal election, the committee recommended that Commonwealth legislation be amended to permit the AEC to use data gathered from trusted agencies for the purposes of directly updating the electoral roll, on the condition that there must be surety that the proof of identity processes used by the agencies

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11 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 10.

12 Mr P. Beeren (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 17.

13 See *Transcript of Evidence*, 2 February 2010, p. 18.

have sufficient integrity to maintain the confidence of stakeholders.<sup>14</sup> The committee therefore recommended that the Minister give approval for agencies from which the AEC receive data for updating the roll.

- 2.24 The AEC cautioned that any move to implement automatic enrolment at the Commonwealth level must be progressed carefully to ensure high levels of electoral roll integrity are maintained.<sup>15</sup> The AEC advised that if the Commonwealth Electoral Act were amended to allow the roll to be updated on the basis of third party information, the AEC would regard the NSW Electoral Commission as a trusted agency.<sup>16</sup> The AEC pointed out that, regardless of the form in which enrolment data was received by the AEC, the 'handling, verification, authentication and storage of the data would be the same.'<sup>17</sup> In other words, data would only be used to form an enrolment record after all checks carried out by the AEC concluded that the data was correct and accurate. The AEC stated:

An automatic enrolment model would allow elector records to be updated based on external data sources. The AEC would receive various sources of external data, and based on matching across data sets and against the existing electoral roll would determine which elector records should be enrolled or updated. Depending on the nature and reliability of the source data sets, specific rules would be applied against each data set to ensure that an appropriate level of confidence existed to update an enrolment record. If that level of confidence was achieved the elector would be enrolled, or an existing elector record would be updated and the elector notified.<sup>18</sup>

- 2.25 In its submission, the Proportional Representation Society of Australia suggested that before accepting decisions made at state or territory level, the Commonwealth should establish standards to provide assurances regarding questions of accuracy and integrity, namely:

- is the evidence on which decisions are made of sufficient quality?
- would most reasonable people come to the same conclusions based on that evidence?

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14 See Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, pp. 113-114.

15 Australian Electoral Commission, *Submission no. 2*, p. 12.

16 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 12.

17 Australian Electoral Commission, *Submission no. 2*, p. 12.

18 Australian Electoral Commission, *Submission no. 2*, p. 13.

- where a change is made, has there been compelling evidence that the elector no longer lives at the previous address?
  - are there adequate protections against the possibility of organised external fraud or internal malfeasance?
  - are there adequate privacy protections in dealing with data provided for other administrative purposes?<sup>19</sup>
- 2.26 The AEC advised that it has conducted a risk assessment of the handling of electronically received enrolment data which demonstrated that ‘the receipt of data in an electronic format does not, in itself, reduce the integrity of the individual enrolment, and therefore of the electoral roll as a whole.’<sup>20</sup>

## Election Day enrolment

- 2.27 The NSW Automatic Enrolment legislation facilitates the opportunity for electors to enrol, re-enrol or update their enrolment details on polling day and still cast a provisional vote, subject to being able to produce appropriate identification. The NSW Electoral Commission sought to address concerns that this provision in the legislation would see a considerable influx of additional electors, not currently enrolled, presenting at the polling booth on Election Day. NSW Electoral Commissioner, Mr Colin Barry, stated:

I want to say something about this election day enrolment. These people already turn up to the polling place. Many of these people are already turning up now, thinking they are enrolled. What we are doing is turning them away. There is this idea that there are going to be thousands of people turning up, but these people already turn up to the polling place. They are either incorrectly enrolled or they are not enrolled.<sup>21</sup>

- 2.28 Nevertheless, Mr Barry conceded that the change in enrolment procedures did present some degree of risk:

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, and we have to manage that.<sup>22</sup>

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19 Proportional Representation Society of Australia, *Submission no. 5*, p. 5.

20 Australian Electoral Commission, *Submission no. 2*, p. 13.

21 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 19.

22 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 18.



- 2.29 The Democratic Audit of Australia suggested that there were likely to be some teething problems with the new procedures being implemented by NSW. The Audit stated that it hoped these were 'relatively few and minor for the sake of NSW voters' and encouraged the option of similar procedures at the Commonwealth level.<sup>23</sup>
- 2.30 Following its recommendation that Commonwealth legislation be amended to allow the automatic enrolment of electors, the AEC has further recommended that electors be allowed to enrol on Election Day and cast a provisional declaration vote. The rationale for this recommendation is to provide a safety net for those who may be unintentionally affected by automatic enrolment processes. The AEC stated:
- ...until such times as we can be confident that every person who is entitled to be enrolled is enrolled, and that all additions, deletions and amendments to the electoral roll can be made in real time in every circumstance, in advance of election day, the necessity to provide adequate safety nets will remain.<sup>24</sup>
- 2.31 Under the model proposed by the AEC, an elector would be able to be enrolled on Election Day in accordance with existing provisions and submit a provisional vote on production of satisfactory identification. The AEC does not consider that proof of address should be required as it is not required of electors enrolling at any other time. After Election Day, the AEC would then do necessary checks to ensure that the enrolment is for a valid address and that the elector had a legitimate entitlement to vote.<sup>25</sup>
- 2.32 The AEC acknowledged that the introduction of Election Day enrolment raised questions over the relevance of the formal 'close of rolls' point. However, the AEC stated:
- If electors are able to enrol on election day, then they should be able to enrol up until election day. Effectively, the 'close of rolls' becomes the date on which the AEC ceases processing to enable preparation of the lists of voters, whether in hard-copy or electronic form, in time for commencement of voting. Electors enrolling after the cut-off date but before election day would cast a provisional vote which would be verified post election day.<sup>26</sup>

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23 Democratic Audit of Australia, *Submission no. 4*, p. 2.

24 Australian Electoral Commission, *Submission no. 2.1*, p. 5.

25 Australian Electoral Commission, *Submission no. 2.1*, p. 5.

26 Australian Electoral Commission, *Submission no. 2.1*, p. 6.

## ‘One roll, many elections’

- 2.33 The AEC advised that the Electoral Council of Australia – a consultative council of electoral commissioners from Commonwealth and state/territory jurisdictions – has been examining whether there is a way in which Australia can move unilaterally to one set of joint roll arrangements, with the view to there being a single electoral roll for the whole of Australia. The Proportional Representation Society of Australia stated that ‘the primary goal should unambiguously be to have uniform state/territory and federal rolls of the highest quality.’<sup>27</sup>
- 2.34 AEC Commissioner, Mr Ed Killesteyn, conceived the phrase ‘one roll, many elections’ to describe this objective.<sup>28</sup> Mr Killesteyn stated:

The danger with the sorts of initiatives that New South Wales is pursuing, notwithstanding that I am a strong supporter of them, is that there is potential for the joint roll arrangements to start to be separate, for individual joint roll arrangements to be negotiated, each with its separate provisions. I think if that path continues then that sort of ideal of ‘one roll, many elections’ starts to be in jeopardy. At the moment we are pretty good, but I think that if there is not action to promote harmonisation of the way in which people get on the roll then that is a potential outcome.<sup>29</sup>

## Committee conclusions

- 2.35 Declining electoral enrolment continues to present a considerable challenge not only for Australia, but for many countries and jurisdictions, and decisive action is necessary to arrest the trend. The task of increasing enrolment participation will require a more flexible approach to facilitating interactions between electors and electoral commissions which draws on modern processes and removes the current paper-based enrolment requirements which are considered to represent a barrier to participation. The NSW Parliament has taken legislative action to implement such an approach by introducing a new automatic enrolment system for state and local government elections in NSW. As a result of this

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27 Proportional Representation Society of Australia, *Submission no. 5*, p. 1.

28 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 11.

29 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 11.

legislation, NSW will no longer rely on the AEC to prepare and maintain rolls for NSW elections. The legislation is strongly supported by the AEC, which itself is eager to modernise enrolment processes and considers automatic enrolment as just one of a range of tools necessary to assist in addressing declining participation.

- 2.36 The NSW Automatic Enrolment legislation could, however, have serious implications for the conduct of Commonwealth elections if similar provisions are not incorporated in amendments to the *Commonwealth Electoral Act 1918*. Of greatest concern is a scenario whereby a proportion of NSW voters who have been automatically enrolled – or had their enrolment details updated – for the purposes of NSW elections, mistakenly believe that they have also been enrolled for the purposes of Commonwealth elections. Under the Commonwealth Electoral Act, automatically enrolled NSW electors will still be required to complete and submit a Commonwealth compliant enrolment form to the AEC before they are eligible to vote in Commonwealth elections.
- 2.37 While both the AEC and the NSW Electoral Commission are well aware of these concerns, the committee is advised that these issues are still being worked through between the electoral commissions, given that the NSW legislation has only recently been enacted.
- 2.38 The committee believes that legislative change is required at the Commonwealth level to complement the new NSW legislation and to facilitate opportunities for the AEC to more effectively address declining enrolment participation across Australia by allowing the automatic enrolment of electors.
- 2.39 The committee remains concerned to ensure that any new methods for maintaining and updating elector information do not compromise the integrity of the electoral roll. It is imperative that appropriate measures are put in place to verify information received from trusted agencies before this information is used to update the electoral roll. The AEC has acknowledged that its approach to implementing any automatic enrolment measures would be a very cautious and conservative one, and would involve the application of carefully designed business rules to ensure roll growth with integrity.
- 2.40 Prior to amending the electoral roll through automatic enrolment processes, the AEC would need to establish that the address details of an elector which have been provided by a trusted agency reflect the elector's place of residence so that the elector is correctly enrolled in the electoral division in which they are entitled to vote. Prior to adding individuals to

the electoral roll through automatic enrolment processes, the AEC would also need to ensure that the individual meets citizenship requirements.

- 2.41 While accuracy and entitlement are critical to the integrity of the electoral roll, it is important not to overlook that roll completeness is also a fundamental element of roll integrity. Implementation of the committee's recommendations will reduce the potential for elector confusion which would likely prevail where two different enrolment systems are operating at the Commonwealth and state level. Moreover, the recommendations include the provision of further measures to progress reforms which will assist the AEC in its ongoing challenge to address the declining rate of electoral participation in Australia.
- 2.42 The committee notes that changes to enrolment provisions in Commonwealth electoral legislation would automatically be picked up by Queensland, the Northern Territory and the Australian Capital Territory. However, the states of Victoria, South Australia, Western Australia and Tasmania would require amendments to their respective legislation.

### Recommendation 1

- 2.43 **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.**
- 2.44 The committee shares the AEC's concern to ensure that automatic enrolment does not, in the short term, inadvertently limit the ability for eligible electors to exercise the franchise. The committee therefore supports the AEC's recommendation that Election Day enrolment be introduced to provide a safety net for eligible electors who have not been picked up through automatic enrolment processes, as well as those who have been removed from the electoral roll in error, or have been enrolled at the incorrect address. Commonwealth legislation should be amended to allow the AEC to enrol an elector on Election Day in accordance with existing enrolment provisions, and to allow the elector to issue a provisional declaration vote under the model discussed earlier in this chapter.
- 2.45 If this recommendation is not supported the committee is concerned about the potential for confusion if NSW electors think that they can enrol and

cast a provisional vote on Election Day for Commonwealth elections, in the same way that they are able to for NSW elections under the new legislation.

### **Recommendation 2**

- 2.46 **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.**

### **Recommendation 3**

- 2.47 **The committee recommends that complementary amendments be made to the *Referendum (Machinery Provisions) Act 1984* as appropriate.**

Daryl Melham MP  
Chair  
22 February 2010

