
The Parliament of the Commonwealth of Australia

The 2010 Federal Election

Report on the conduct of the election and related matters

Joint Standing Committee on Electoral Matters

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Chair's foreword

When considering electoral reforms, our priority must be: enfranchisement, not disenfranchisement. It is this philosophy that has guided this inquiry and is reflected in many of the Committee's recommendations.

This report continues the tradition of examining and reporting on the conduct of federal elections and relevant legislation which has been carried out by the Joint Standing Committee on Electoral Matters and its predecessor, the Joint Select Committee on Electoral Reform.

There is a special quality about elections that are conducted by independent, impartial and professional electoral bodies like the Australian Electoral Commission, in accordance with electoral legislation that is inclusive and continues to meet the needs of the community as those needs change.

The publication of this report into the conduct of the 2010 federal election comes at a time when the proportion of Australian citizens who actively take part in electoral matters is in decline. If electoral participation is considered a key indicator of a society's democratic health, there were trends evident in the 2010 federal election that give cause for concern. The Australian Electoral Commission (AEC) found that there were 3.1 million people who fell into one of the following categories: were eligible to enrol but were not on the Commonwealth electoral roll; were not marked off a certified list and presumably did not vote; and of those who did vote their vote was informal and could not be admitted to the count. This means that around 20 per cent of the population of Australia's eligible electors did not have their say in the election of their parliamentary representatives.

The 2010 federal election was notable for a number of reasons. The High Court's decisions in *Rowe v Electoral Commissioner* [2010] HCA 46 and the Federal Court's decision in *Getup Ltd v Electoral Commissioner* [2010] FCA 869 regarding the use of electronic signatures impacted in varying degrees on the election and its conduct by the AEC. It was also the first winter election since 1987, which created further challenges for the AEC.

In the AEC's administration of the 2010 federal election, there was a regrettable failure of process in pre-poll voting that saw thousands of votes excluded from the count in the divisions of Boothby in South Australia and Flynn in Queensland. These issues and the subsequent actions taken by the AEC are considered by the Committee. The Committee believes that the AEC dealt with the process failure promptly, transparently and to the satisfaction of all major players. We all agree that such a failure should never be repeated. Overall, the Committee considers that the AEC coped well with the variety of circumstances presented during the conduct of the election, and as usual, provided a highly professional service.

The Committee again looked into the decline in enrolment participation and the reasons for it. It is essential that the decline be reversed as there could be potential ramifications for the legitimacy and ready acceptance of election results for which Australia is so well regarded. The New South Wales and Victorian Parliaments have legislated to allow flexibility in the way their respective electoral commissions go about the business of enrolment. The Queensland Parliament is also considering enrolment options. The Commonwealth should act as necessary to arrest the decline in participation. The Committee makes recommendations for direct enrolment and update of enrolment in this report.

The trend toward declaration voting was evident again at the 2010 election. However, the number of provisional votes rejected in 2010 is cause for concern, with 166 148 provisional votes rejected and only 37 340 counted.

While the Government has now legislated to remove restrictive provisional vote disqualification provisions introduced by the former Government, and to reinstate the seven-day close of rolls, there is still unfinished business, particularly in respect of returning some safety net provisions.

Government members and Opposition members of the Committee disagree about the effects of electoral fraud. While Opposition members continue to rely on the spectre of electoral fraud to introduce and maintain restrictive enrolment and voting provisions, Government members value the traditionally inclusive nature of our electoral legislation. There should be no doubt that the AEC treats fraud and potential fraud cases with due and diligent attention.

In this report, the Committee notes, and gives a great deal of weight to the fact that the *Commonwealth Electoral Act 1918* has traditionally contained safety nets designed to ensure that the franchise can be exercised by those who are entitled to do so. The Committee has sought to ensure that this tradition continues, and the matter of reinstatements to the electoral roll, making recommendations to return to the previous reinstatement provisions.

Over 11 million ordinary votes were counted by the AEC on polling night, nearly one million more than in 2007. The 2010 federal election saw informal votes for the House of Representatives at 5.55 per cent (729 304 votes), an increase of 1.6 per cent (218 482 votes) on the 2007 federal election. Senate informality was 3.75 per cent (495 160 votes), an increase of 1.2 per cent (164 151) on the previous election. The level of informality for voters genuinely trying to cast a formal vote is of concern. The AEC figures on assumed unintentional voting suggest that upwards of 370 000 voters attempted to vote for a Member of Parliament, but for various reasons failed. The Committee examined the differences in formality requirements between House of Representatives and Senate ballot papers with a view to addressing the high levels of informality in the House, especially in areas where its effects are greatest.

The Committee has considered the options presented by participants to reduce the impact of informality, including optional preferential voting, progressive informality and the South Australian House of Assembly ticket voting provisions. After careful consideration, the Committee has recommended adoption of a savings provision based on that used in South Australia. The Committee notes that the system has been used in House of Assembly elections since 1985 and has saved many votes which would otherwise have been informal. The Committee is particularly attracted to the system because it reinforces compulsory preferential voting, prohibits advocating other than full preferential voting, is transparent in that tickets must be lodged with the Electoral Commission and that it was designed by electoral administrators, not politicians.

Australians expect that participation in the electoral process is accessible, convenient and does not impede their ability to go about their business. At the same time, it is fundamental to ensure accuracy, secrecy and integrity in enrolment, voting and counting processes. These competing demands must be satisfied in such a way that the electoral process remains inclusive while preserving the high levels of integrity necessary to ensure continued trust and acceptance of election results. The Committee has sought to achieve such an outcome with the recommendations made in this report.

The Committee received 119 submissions and supplementary submissions, and took evidence from witnesses at nine public hearings. This provided the Committee with a substantial body of evidence, which the Committee has considered. The Committee remains appreciative of the time and effort that participants gave to assist it in its deliberations.

I express my thanks to Mr Ed Killesteyn, the Australian Electoral Commissioner, for the frankness of his evidence, and the assistance provided by staff of the Australian Electoral Commission in meeting requests for information from the Committee in a professional and timely manner.

I thank the Members and Senators of the Committee for their work and contribution to this report.

Finally, I would also like to thank the Committee secretariat for their work in preparing this report.

Daryl Melham MP
Chair



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Membership of the Committee

Chair Mr Daryl Melham MP

Deputy Chair The Hon Alexander Somlyay MP

Members The Hon Bronwyn Bishop MP

The Hon Alan Griffin MP

Ms Amanda Rishworth MP

Senator Simon Birmingham

Senator Bob Brown

Senator Carol Brown

Senator Helen Polley

Senator Scott Ryan

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Terms of reference

On 23 November 2010, the Special Minister of State requested the Committee to conduct an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2010 federal election and matters related thereto.



List of abbreviations

ADF	Australian Defence Force
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ANAO	Australian National Audit Office
APVIS	Automated Postal Vote Issuing System
ARO	Assistant Returning Officer
ATL	Above-the-line
ATO	Australian Tax Office
BTL	Below-the-line
CALD	Culturally and linguistically diverse
CEA	Commonwealth Electoral Act
CORE	Computing Research and Education Association of Australasia
CPSU	Community and Public Sector Union
CRU	Continuous roll update
CSS	Central Senate Scrutiny
DFAT	Department of Foreign Affairs and Trade

DRO	Divisional Returning Officer
ECSA	Electoral Commission of South Australia
GPV	General postal voter
GVT	Group voting ticket
HCA	High Court of Australia
HTV	How-to-Vote
IEPP	Indigenous Electoral Participation Program
JSCER	Joint Select Committee on Electoral Reform
NESB	Non-English speaking background
NSWEC	New South Wales Electoral Commission
OIC	Officer in Charge
ORS	Online Recruitment System
POI	Proof of identity
PPVC	Pre-poll voting centre
PVA	Postal vote application
PVC	Postal vote certificate
PVP	Postal vote pack
RMANS	Roll Management System
TES	Targeted Enrolment Stimulation
VEC	Victorian Electoral Commission



List of recommendations

3 Maintaining the electoral roll

Recommendation 1

The Committee recommends that, wherever appropriate, the *Commonwealth Electoral Act 1918* should be amended to allow the Australian Electoral Commission (AEC) to directly enrol eligible electors on the basis of data or information provided by an elector or electors to an agency approved by the AEC, as an agency which performs adequate proof of identity checks, where that information is subsequently provided by that agency to the AEC for the purposes of updating the electoral roll. Approval of such agencies by the AEC should be made by disallowable instrument.

Recommendation 2

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission (AEC) to directly update the enrolment details of electors on the basis of data or information provided by an elector or electors to an agency approved by the AEC, as an agency which performs adequate proof of identity checks, where that information is subsequently provided by that agency to the AEC for the purposes of updating the electoral roll. Approval of such agencies by the AEC should be made by disallowable instrument.

Recommendation 3

The Committee recommends that relevant legislation governing the protection of personal data collected by the Australian Taxation Office (ATO), which would prevent the ATO from providing enrolment relevant data to the Australian Electoral Commission (AEC), be amended to allow such data to be shared with the AEC for the purposes of facilitating enrolment.

Recommendation 4

The Committee recommends that, wherever appropriate, the *Commonwealth Electoral Act 1918* be amended to enable electors who provide satisfactory evidence of identity and address to a pre-poll issuing officer at a pre-poll voting centre or a declaration vote issuing officer at a polling place, to enrol for that address at the time of voting, by completing and signing an enrolment compliant declaration vote certificate into which their ballot papers are to be inserted.

Recommendation 5

The Committee recommends that, should the Government accept Recommendation 4 above, the *Commonwealth Electoral Act 1918* be amended, wherever appropriate, to enable electors who enrol at the time of voting to be added to the electoral roll used for the election and to enable votes cast by those electors to be admitted to the scrutiny for that election.

Recommendation 6

The Committee recommends that, wherever appropriate, the *Commonwealth Electoral Act 1918* be amended to specifically permit the use of electronic or digitally formed signatures for enrolment purposes.

Recommendation 7

The Committee recommends that Part IX of the *Commonwealth Electoral Act 1918* be amended to provide that an elector should not be removed from the electoral roll by objection on the grounds that they do not live at a particular address, and have not lived at the address for a period of at least one month, in situations where the Australian Electoral Commission is aware from information or data sources in its possession that the elector lives at a different address in the same electoral division.

Recommendation 8

The Committee recommends that paragraphs 114 (4), 118 (4A), and any other relevant provisions of the *Commonwealth Electoral Act 1918*, be amended to provide the Australian Electoral Commissioner with a discretion not to object to the enrolment of an elector where the Electoral Commissioner is aware that the elector resides at a different address in the same electoral division.

4 Polling and voting

Recommendation 9

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended, wherever appropriate, to specifically provide that a ballot box containing votes cast by electors may not be opened before the close of polling other than in accordance with the relevant provisions of the Act.

Recommendation 10

The Committee recommends that the requirement at section 200DH of the *Commonwealth Electoral Act 1918* for an applicant for a pre-poll ordinary vote to complete and sign a certificate be repealed.

Recommendation 11

The Committee recommends that section 200D of the *Commonwealth Electoral Act 1918* be amended to provide that an application for a pre-poll vote cannot be made before the Monday, 19 days before polling day.

Recommendation 12

The Committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to specifically allow for the automated issuing of postal votes by the Australian Electoral Commission.

Recommendation 13

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide specifically that completed postal vote application forms must be returned directly to the Australian Electoral Commission for processing.

Recommendation 14

The Committee recommends that, should the Government accept Recommendation 13 above, that the *Commonwealth Electoral Act 1918* be amended to require the Australian Electoral Commission (AEC) to provide particular information contained on postal vote applications processed by the AEC:

- political parties who have endorsed candidates for the Senate for the state or territory, or candidates for the House of Representatives division in which the applicant for a postal vote claims to be enrolled; and
- candidates for election to the Senate for the state or territory, or candidates for the House of Representatives division in which the applicant for a postal vote claims to be enrolled.

The information provided must:

- be made securely available to eligible parties and candidates;
- be protected by appropriate safeguards;
- contain only the surname, given names, date of birth, claimed enrolled address and claimed enrolled division of the applicant, and, if provided by the applicant, the address to which the postal vote is to be delivered; and
- must not include any information that is subject to broader restrictions on release of information currently provided for in the *Commonwealth Electoral Act 1918*.

Recommendation 15

The Committee recommends that subsection 184(5), and any other relevant provisions, of the *Commonwealth Electoral Act 1918* be amended to provide that the deadline for the receipt of postal vote applications be 6 pm on the Wednesday, three days before polling day.

Recommendation 16

The Committee recommends that section 184, and any other relevant provisions, of the *Commonwealth Electoral Act 1918* be amended to provide that the cut-off for postal vote applications received in Australia for addresses outside Australia be 6 pm on the Monday, five days before polling day.

Recommendation 17

The Committee recommends that the Australian Electoral Commission send postal vote applications received in Australia after the cut-off, for addresses outside Australia, by facsimile, email or by other electronic means, to the most appropriate overseas post for processing, in order that, wherever possible, a postal voting pack may be sent to the applicant in sufficient time for the elector to cast a vote prior to polling day.

Recommendation 18

The Committee recommends that section 222 of the *Commonwealth Electoral Act 1918*, and any other relevant provisions, be amended to enable the Australian Electoral Commission (AEC) to undertake a trial at the next election during which absent votes may be issued as ordinary votes in selected polling places where electronic certified lists containing state or territory certified list data are deployed.

- Votes issued in this manner must be placed in envelopes designed for the purpose of the trial and are to be forwarded to the Divisional Returning Officers for the divisions for which the vote is issued as soon as practicable following the close of polling.
- When received by the Divisional Returning Officer for the enrolled division, the votes must be removed from the envelopes in accordance with the processes established for the trial and treated and counted as ordinary votes.
- The AEC must keep adequate records of the trial for the purposes of evaluation by the Joint Standing Committee on Electoral Matters following the next federal election.

Recommendation 19

The Committee recommends that Part XVA of the *Commonwealth Electoral Act 1918* be amended to specifically allow electronic certified lists to be used as a basis for issuing pre-poll votes as ordinary votes.

Recommendation 20

The Committee recommends that the Australian Electoral Commission continue to work with organisations representing electors who are blind or who have low vision to develop sustainable voting arrangements which will provide secure, secret and independent voting for electors who are blind or who have low vision.

Recommendation 21

The Committee recommends that Part XVII of the *Commonwealth Electoral Act 1918* be amended so that provisions similar to those which allow blind and low vision voters to cast a secret ballot by telephone or any other suitable electronic means be applied to Antarctic electors.

Recommendation 22

The Committee recommends that Part XVII of the *Commonwealth Electoral Act 1918* be amended to enable the production of a list of all Antarctic electors to be used at all Antarctic Polling Stations.

Recommendation 23

The Committee recommends that the Government review the minimum font sizes specified in section 328B of the *Commonwealth Electoral Act 1918* as being required for the authorisation on How-to-Vote cards.

6 Reinstatement to the roll

Recommendation 24

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who had lodged a declaration vote at an election has been removed from the electoral roll by objection action on the ground of non residence; and

- the removal from the roll occurred after the election prior to the election to which the scrutiny relates, or
- where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the removal from the roll was made after the last such redistribution, then:

⇒ if the address at which the elector claims to be enrolled at the time of voting is within the electoral division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but

⇒ if the address at which the elector claims to be enrolled at the time of voting is in a different electoral division in the same state or territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

7 Formality issues

Recommendation 25

The Committee recommends that Parts XVI, XVIII, and any other relevant provisions of the *Commonwealth Electoral Act 1918* be amended to include a savings provision for House of Representatives ballot papers, based on the South Australian House of Assembly ticket voting provisions. Such a provision should serve to save ballot papers marked by the use of a tick, a cross, or the number 1, and which do not express preferences for all candidates, in cases where the first and subsequent preferences (if any) match an order of preferences lodged with the Australian Electoral Commission by a political party or candidate in the election. This will serve to reduce the impact of unintentional informal voting resulting from incomplete preferences being indicated by electors on House of Representatives ballot papers.

Recommendation 26

The Committee recommends that Part XXI of the *Commonwealth Electoral Act 1918* be amended to specifically prohibit advocating the completion of House of Representatives ballot papers other than by full preferential numbering. The offence should attract a penalty sufficient to deter such actions.

8 Redistribution of electoral boundaries

Recommendation 27

The Committee recommends that Part IV of the *Commonwealth Electoral Act 1918* be amended to provide that, where a redistribution has commenced, because of the operation of subsections 59(2)(b) or 59(2)(c), and a Senate election, or an election of members of the House of Representatives, or a Senate election and an election of members of the House of Representatives conducted concurrently, is announced before that redistribution is completed, proceedings in the redistribution are to be suspended until the date specified in the writ or writs as the date for the return of the writ.

Recommendation 28

The Committee recommends that should the Government agree to recommendation 27 above, that Part IV of the *Commonwealth Electoral Act 1918* also be amended to allow the Redistribution Committee or the augmented Electoral Commission (as the case may be) to recommence the redistribution at the step which would, if the redistribution had not been suspended, follow the step last completed in that redistribution. The redistribution timetable, and, if necessary, the projection time for the redistribution should be adjusted accordingly.

Recommendation 29

The Committee recommends that section 72, and any other relevant sections, of the *Commonwealth Electoral Act 1918* be amended to provide that, where an augmented Electoral Commission has formed an opinion that its proposed redistribution is significantly different to the Redistribution Committee proposal, a further fixed period be provided during which the actions required by subsection 72(13) of the Act are to be undertaken.

Recommendation 30

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that, where a further fixed period is provided during which the actions required by subsection 72(13) of the Act are to be undertaken, the number of days specified in subsection 72(2) of the Act also be increased by the same number of days provided for in the further fixed period.

9 Other issues

Recommendation 31

The Committee recommends that subsection 170(3) of the *Commonwealth Electoral Act 1918* be amended to increase the sum to be deposited by or on behalf of a person nominated as a Senator to \$2,000.

Recommendation 32

The Committee recommends that subsection 170(3) the *Commonwealth Electoral Act 1918* be amended to increase the sum to be deposited by or on behalf of a person nominated as a Member of the House of Representatives to \$1,000.

Recommendation 33

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to reduce the nominations period for an election by one day so that nominations close not less than nine or more than 26 days after the issue of the writ, rather than ten and 27 days, respectively.

Recommendation 34

The Committee recommends that, should the Government accept recommendation 33 above, the *Commonwealth Electoral Act 1918* be amended to require the date fixed for polling is not less than 24, or more than 32 days, after the date of nomination.

Recommendation 35

The Committee recommends that Part XVIII of the *Commonwealth Electoral Act 1918* be amended to require that once the first preference count in polling places or counting centres on polling night, or in scrutines conducted after polling day, has been completed and appropriate records made, all Senate ballot papers indicating a first preference for individual candidates below the line may be parcelled together for return to the Divisional Returning Officer.

Recommendation 36

The Committee recommends that section 202A of the *Commonwealth Electoral Act 1918* be amended to remove the requirement that the officer and employee undertaking be signed. Instead, the officer and employee undertaking should be made and accepted as part of the offer of employment.

Recommendation 37

The Committee recommends that any recommendations in this report that propose amending the *Commonwealth Electoral Act 1918* should, where also appropriate, be incorporated into the *Referendum (Machinery Provisions) Act 1984*, to ensure consistency between the provisions applying to elections and referenda.

