

## The issues

### Overview

2.1 The Australian National Audit Office (ANAO), in its review of the Australian Electoral Commission's (AEC) conduct of the 2007 federal election, noted that the 'most significant long-term issue facing the AEC remains the state of the electoral roll'.<sup>1</sup> In the last decade it is estimated that the Commonwealth electoral roll has decreased from 95 per cent complete to around 90 per cent complete. In practical terms, that means 1.5 million eligible electors are unable to vote unless they take action to enrol.<sup>2</sup>

2.2 When enrolment issues were canvassed in the Australian Government's *Electoral Reform Green Paper – Strengthening Australia's Democracy*, it was stated that:

The primary purpose of an electoral roll is to enable eligible electors to exercise their franchise. This objective will be frustrated if enrolment processes and systems become a barrier to the exercise of the right to vote. Electoral processes and systems should facilitate a high level of participation in the electoral system by all eligible members of the Australian community, but some argue the existing enrolment processes are more efficient at

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1 Australian Electoral Commission, *Submission 4*, p. 2.

2 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 9.

removing qualified electors from the electoral roll than at putting them on the roll.<sup>3</sup>

- 2.3 The Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012 (the Bill) proposes that the AEC be able to directly enrol eligible electors. The AEC explained that direct enrolment would work in the following way:

Under a direct enrolment process, the AEC would receive data from a third party data source, conduct a data matching process including a check of the eligibility of individuals to enrol, notify eligible individuals and, after a period of 28 days, make additions to the electoral roll and inform electors of the AEC's action.<sup>4</sup>

- 2.4 Under the proposed changes the AEC has indicated that it will take approximately 60 days from when an eligible unenrolled person interacts with an external agency to them being placed on the roll.<sup>5</sup>

- 2.5 The Special Minister of State, the Hon Gary Gray AO MP, stated in his second reading speech on the Bill that:

The bill provides the Electoral Commissioner with the ability to use modern processes to protect the participation of eligible Australian citizens in the electoral process. This is fundamental to maintaining the strength and resilience of our democratic system of government.<sup>6</sup>

## Roll completeness

### Background

- 2.6 Roll completeness is one aspect of ensuring the integrity of the roll. As the AEC previously submitted, the elements necessary for roll integrity include:

- **Entitlement** – the individual meets all legislative qualifications for enrolment on the electoral roll, information provided by the individual is tested to detect and prevent enrolment fraud

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3 Commonwealth of Australia, *Electoral Reform Green Paper – Strengthening Australia's Democracy*, September 2009, p. 91.

4 Australian Electoral Commission, *Submission 4*, p. 5.

5 Australian Electoral Commission, *Submission 4*, Attachment B, Figure B1, p. 11.

6 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 10.

- **Accuracy** – the individual is enrolled for the address at which they are entitled
  - **Completeness** – all individuals who are entitled to enrolment are enrolled
  - **Processing Correctness** – information provided by individuals and organisations is entered correctly and completely on the roll, addresses are correctly and completely described, classified and aligned, and
  - **Security** – the electoral roll is protected from unauthorised access and tampering.<sup>7</sup>
- 2.7 While the number of electors on the roll has increased, population growth has outstripped enrolment participation. Since 2001 there has generally been a decline in the proportion of eligible people registered on the roll. The number of eligible Australians missing from the roll is estimated at 1.5 million. This number is calculated based on 'Australian Bureau of Statistics (ABS) population figures and adjusted for the estimated number of eligible electors, for example by excluding non-citizens and those under 18'.<sup>8</sup>
- 2.8 The AEC's enrolment target is 95 per cent of the eligible population.<sup>9</sup> However, AEC estimates put the rate at 90.2 per cent as at 31 December 2011. AEC figures indicate that enrolment rates can also vary considerably between different age groups. Eligible electors in their mid-fifties and older have the best participation rates, meeting and exceeding the AEC's 95 per cent target. However, for those under 50 years there are lower levels of enrolment participation.<sup>10</sup> Of particular note is the enrolment participation rate of 18 to 19 year olds, which is 53 per cent.<sup>11</sup>
- 2.9 In New South Wales and Victoria direct enrolment and update processes are being used. As the rolls of these states are increased and updated overtime, the proportion of people enrolled on them will be at variance to the Commonwealth roll.

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7 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 3.

8 Australian Electoral Commission, *Submission 169* to the JSCEM Inquiry into the conduct of the 2007 federal election and matters related thereto, p. 8.

9 Australian Electoral Commission, *Submission 4*, p. 3.

10 Australian Electoral Commission, *Submission 4*, Attachment A, Table A2, p. 10.

11 Australian Electoral Commission, *Submission 4*, Attachment A, Table A2, p. 10.

2.10 The AEC reiterated to the committee that the 'greatest risk to the integrity of the electoral roll relates to its completeness'.<sup>12</sup> The Special Minister of State stressed the gravity of the situation, stating:

That is 1½ million Australian citizens who cannot choose their representatives in parliament. That is 1½ million Australians who cannot have their say when proposals to change Australia's Constitution are put to the people. That is 1½ million Australians excluded from exercising one of the most important rights – and responsibilities – of their citizenship.<sup>13</sup>

2.11 The AEC asserted that:

A larger electoral Roll means that more electors will be able to vote thus making the outcome of the election more representative and the entire democratic process more robust, giving effect to the constitutional requirements that Members of Parliament are to be 'directly chosen by the people'.<sup>14</sup>

2.12 The AEC has in the past used a range of promotional strategies to facilitate enrolment. Prior to the 2007 election the AEC undertook a large-scale Targeted Enrolment Stimulation exercise (involving fieldwork visits, targeted mailing and telephone contacts) and an extensive national media advertising campaign. The Government provided the AEC with additional funding for the campaign. However, at a cost of \$36 million, the AEC argued that the approach was not financially sustainable. Despite increasing enrolment for that election it did not lead to a long-lasting improvement in enrolment participation.<sup>15</sup>

2.13 In its audit of the 2007 federal election, the ANAO found that the 'AEC's existing approaches to improving enrolment rates have become less effective (as well as becoming more costly)'.<sup>16</sup>

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12 Australian Electoral Commission, *Submission 4*, p. 4.

13 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 9.

14 Australian Electoral Commission, *Submission 4.2, Attachment C*, p. 5.

15 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, pp. 22-23.

16 ANAO Audit Report no. 28 2009-10, *The Australian Electoral Commission's Preparation for and Conduct of the 2007 Federal General Election*, p. 16.

## Analysis

- 2.14 It is intended that direct enrolment will build on existing AEC programs to help stem the declining enrolment rate and to minimise divergence between state – New South Wales and Victoria – and Commonwealth rolls.
- 2.15 The Australian Privacy Foundation (AFP) submitted that it does not support the Bill and does not believe that the ‘desire to maximise the number of people on the rolls...is an appropriate objective’.<sup>17</sup>
- 2.16 The AEC submitted that direct enrolment ‘would be a comparatively sustainable approach to addressing the low level of enrolment amongst eligible persons’.<sup>18</sup> The Democratic Audit of Australia advocated that direct enrolment is the next step in the management of the roll, which has in the past relied on habitation reviews and more recently the CRU.<sup>19</sup>
- 2.17 The AEC has stated that direct enrolment is not a panacea to declining enrolment.<sup>20</sup> Rather it is a tool which will complement other mechanisms for roll stimulation, such as the CRU, fieldwork and education programs. The AEC told the committee:
- We will still continue a whole range of education programs, in particular in those areas that are more disadvantaged than others. The Northern Territory, for instance, with its large Indigenous population, is not likely to be an area where direct enrolment and direct update mechanisms will be terribly effective because we do not have the surety of the address and, sometimes, identity.<sup>21</sup>
- 2.18 Electoral demographers have observed that enrolment rates for younger voters are steadily decreasing from already low levels.<sup>22</sup> The AEC has been actively trying to engage this cohort, for example 16 year olds can provisionally enrol. The Bill will allow the AEC to enrol first-time electors without them having to make a claim. In its submission, the Australian

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17 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 29 February 2012, Canberra, p. 6.

18 Australian Electoral Commission, *Submission 4*, p. 4.

19 Professor Brian Costar, Coordinator, Democratic Audit of Australia, *Committee Hansard*, 29 February 2012, Canberra, p. 3.

20 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 15.

21 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 15.

22 NSW Electoral Commission, SmartRoll, <[http://www.elections.nsw.gov.au/enrol\\_to\\_vote/smartroll](http://www.elections.nsw.gov.au/enrol_to_vote/smartroll)>, accessed 29 February 2012.

Labor Party supported the direct enrolment of young people.<sup>23</sup> When questioned by the committee as to the anticipated effect of direct enrolment on young Australians, the AEC indicated that as drivers licence information would be a primary data source it was likely that the current proposal would increase enrolment.<sup>24</sup>

- 2.19 Without the implementation of direct enrolment at the Commonwealth level, it is likely the gap between the New South Wales and Victorian rolls and the Commonwealth roll will grow. According to the AEC this 'will become a source of disenfranchisement' and increase public confusion about electoral processes.<sup>25</sup> The Democratic Audit of Australia noted that this divergence undermines joint roll agreements between the states/territories and the Commonwealth.<sup>26</sup> The Special Minister of State commented that:

With the trend in declining enrolment participation, it is no longer possible to keep doing the same things in the same way, particularly as superior processes have been successfully implemented in New South Wales and Victoria.<sup>27</sup>

- 2.20 Direct updating is viewed as an administratively appropriate extension of current AEC practices to facilitate enrolment. According to the AEC it builds on the existing CRU process of data-matching and 'reflects the commonplace practice of using government and third party data sources to compile and maintain voter lists'.<sup>28</sup> The Democratic Audit of Australia told the committee that direct updating provided an effective and accurate solution to a technical problem.<sup>29</sup>
- 2.21 The proposal in Schedule 2 of the Bill also aims to enhance roll completeness by providing the AEC with the flexibility to reinstate a person to the roll if they have been removed as a result of the objection process. This is discussed in detail in the section on declaration votes and objections.

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23 Australian Labor Party, *Submission 2*, p. 2.

24 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 15.

25 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 2.

26 Professor Brian Costar, Coordinator, Democratic Audit of Australia, *Committee Hansard*, 29 February 2012, Canberra, p. 6.

27 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 10.

28 Australian Electoral Commission, *Submission 4*, p. 4.

29 Professor Brian Costar, Coordinator, Democratic Audit of Australia, *Committee Hansard*, 29 February 2012, Canberra, p. 5.

- 2.22 The Bill provides a 'safety net' for eligible individuals who fail to enrol. The Special Minister of State stressed in his second reading speech that:

It is not an automatic process. Every potential elector will be given an opportunity to dispute the information before any action occurs.<sup>30</sup>

## Conclusion

- 2.23 The Bill aims to assist eligible electors to meet their enrolment obligations and by extension to exercise their voting franchise. Direct enrolment extends the AEC's administrative practices to ensure roll completeness and accuracy. Direct enrolment is not the only approach the AEC should, or will, take to increase enrolment. It is a technical tool to facilitate enrolment.
- 2.24 The AEC currently has the power to amend the roll to remove people, this Bill will allow them to add eligible electors. The Bill will balance the effects of the objection process on enrolment and enable the data collection systems, which are deemed strong enough to object an elector, to be used to assist eligible electors to meet their electoral obligations.
- 2.25 The committee supports the AEC's objective of maximising roll completeness and believes there is no reason to assume that maximising electoral participation will be at the expense of the roll's integrity. The reports on the New South Wales and Victorian experiences with direct updating are promising.
- 2.26 This Bill will have a positive impact on young people who are often lumped disparagingly into the 'disengaged youth' category. It is anticipated that direct enrolment will assist this group to meet their enrolment obligations and to exercise their democratic franchise to vote.

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30 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 9.

## Receipt and use of third party data

### Background

2.27 Third party data is currently received and used by the AEC for the CRU process:

Over the last decade the AEC's CRU program has come to rely on large and regular volumes of change of address information obtained from data provided by Centrelink, state and territory motor registry (more recently via the National Exchange of Vehicle and Driver Information System), and Australia Post.<sup>31</sup>

2.28 The AEC stated that the third party data sources would have the following characteristics:

- the third party requires a client to establish their unique identity;
- documentation establishing the unique identity of the individual is required to be an original document or a certified copy of the original;
- 'identity' documents include an Australian birth certificate, Australian passport or an Australian citizenship certificate, or a document which requires one or more of the latter to be provided prior to issue;
- multiple documents are usually required to establish the identity of the individual; and
- residential address must be shown on one of the 'identity' documents, otherwise an extra document must be provided showing current residential address.<sup>32</sup>

2.29 Most submissions to the inquiry supported the use of third party data for direct enrolment. However, the APF raised concerns that the AEC's processes can negate the information a person provides about themselves and it assumes that electors have one residential address.<sup>33</sup> Furthermore, as correspondence will only be sent to the updated address, should this be incorrect the elector will be unaware of proposed changes to their electoral franchise.<sup>34</sup>

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31 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 7.

32 Australian Electoral Commission, *Submission 4*, p. 5.

33 Australian Privacy Foundation, *Submission 3*, pp. 4-5.

34 Australian Privacy Foundation, *Submission 3*, p. 5.



## Analysis

- 2.30 The APF questioned the integrity of the data the AEC is receiving from third party sources:

Data matching relies heavily on names, addresses and date of birth. By definition, address is not a suitable basis for matching in this case, because address-differences are being sought. Names are highly variable, contain many ambiguities, and are the subject of 'data scrubbing' (i.e. organisationally imposed changes). This may assist operations within a single organisation, but adds to the sources of false positives when the data is expropriated for data matching purposes. Date of birth is in many data collections a miscellaneous data-item, not subject to quality assurance, and subject to misrepresentations motivated not only by dishonesty but also by reticence and embarrassment.<sup>35</sup>

- 2.31 In evidence to the committee, the APF expanded on the practice of 'data scrubbing':

Name is enormously variable in its recording and is routinely 'scrubbed' – that is the term used – in order to try to muck around with the data, modify the data, in order to make it seem right. It is differently scrubbed by every different agency, so we have differential collection for different purposes in different ways with different data-quality measures with different data-scrubbing measures, and then we bundle all this together and match it...It is extraordinarily error prone.<sup>36</sup>

- 2.32 While the AEC currently uses various third party data sources<sup>37</sup> in its CRU process, it acknowledged that not all third party data sources are suitable for direct enrolment purposes.<sup>38</sup> The AEC indicated that the data sources to be used for the direct enrolment of eligible electors are primarily Centrelink and road and traffic authorities. The AEC stated that:

Each of those agencies at the federal level and at the state level has processes in place that require an individual, prior to being registered for either a driver's licence or Centrelink, to provide

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35 Australian Privacy Foundation, *Submission 3.1* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 7.

36 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 15 February 2012, Canberra, p. 4.

37 For a list of current CRU data sources see Australian Electoral Commission, *Submission 4.2*, Attachment C, Appendix B, p. 24.

38 Australian Electoral Commission, *Submission 4.2*, Attachment C, p. 6.

documentary evidence – original documents – of their identity as well as their age and residence. Those documents include documents such as birth certificates, passports or other original documents. Those documents also provide that the person is to show their residential address – that is, their normal place of living. All of those requirements are exactly the same as...[those] that a person needs to provide to the Australian Electoral Commission to be enrolled.<sup>39</sup>

2.33 The AEC went on to clarify that the data used from roads and traffic authorities was drivers licence data not registration data.<sup>40</sup>

2.34 A two-step process for data use is proposed by the AEC.<sup>41</sup> Firstly, the data received by the AEC from a third party will be standardised, formatted and validated in isolation. The AEC indicated that Centrelink data would be collected monthly and drivers licence details collected daily.<sup>42</sup> Secondly, it will be matched with other sources, including the electoral roll, to establish its integrity and determine a proposed action.<sup>43</sup>

2.35 The AEC outlined the various checks to be undertaken in the direct enrolment process, including identity, address and citizenship verification, and stated:

Records that do not satisfy these checks [are] either diverted to the existing CRU program (which will involve sending the person a letter with an enrolment form to complete) or removed from the process.<sup>44</sup>

2.36 The Democratic Audit of Australia disputed the APF's claim that incorrect data was likely to be added to the roll as a result of direct updating. It drew on evidence from the New South Wales experience of direct enrolment and found that the error rate for direct enrolment communications in that state was low, arguing that:

...we do have two working examples now, functioning in two elections: New South Wales and Victoria's last two elections were

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39 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 5.

40 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 11.

41 Australian Electoral Commission, *Submission 4*, Attachment B, Figure B1, p. 11.

42 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 15.

43 Australian Electoral Commission, *Submission 4*, Attachment B, Figure B1, p. 11.

44 Australian Electoral Commission, *Submission 4.2*, Attachment C, p. 7.

operated in an environment in which there was a version – they varied it a bit – of what I will call direct enrolment. I went and looked at the data produced by the New South Wales Electoral Commission. I was looking for errors – that is, letters wrongly sent...I looked at the error factor in New South Wales. These are what they call 'people incorrectly contacted' – that is, they sent it to the wrong place. The error factor was 0.05 per cent. That is statistically random – anything could have that error factor.<sup>45</sup>

2.37 The AEC receives data from the NSW Electoral Commission on electors who have been directly enrolled or updated on the state roll by the SmartRoll process. The AEC contacts these people as part of its CRU process, advising them to complete and submit an enrolment or change of address form in order to be placed on the Commonwealth electoral roll. Eighty per cent of people contacted in September 2011 failed to respond to the AEC by the end of February 2012.<sup>46</sup>

2.38 The AEC stressed its commitment to best practice data collection and use.<sup>47</sup> For example, data intended for use will comply with the whole-of-government National Identity Security Strategy.<sup>48</sup> According to the AEC:

The level of information and documentation required by the third party will provide the AEC with confidence that the person is who the third party identifies the person as being. The AEC will use data from third party sources where processes are employed that are comparable to, if not stronger than, those contained in the evidence of identity provisions of the *Commonwealth Electoral Act 1918*.<sup>49</sup>

2.39 The proposed section 103B does not assume the data will automatically be used to enrol an elector. The direct enrolment process will involve the AEC communicating with electors to advise of its intention to add eligible electors to the roll and again once they have been added or if, for some reason, the decision was made not to add them. The elector will be contacted at the address at which the third party data sources indicate is the elector's current residential address.

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45 Professor Brian Costar, Coordinator, Democratic Audit of Australia, *Committee Hansard*, 29 February 2012, Canberra, p. 5.

46 Australian Electoral Commission, *Submission 4.1*, p. 7.

47 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 9

48 Australian Electoral Commission, *Submission 4*, p. 5.

49 Australian Electoral Commission, *Submission 4*, p. 5.

- 2.40 In the case of non-enrolled eligible electors, the AEC will receive third party data and contact the elector at their residential address.
- 2.41 The APF expressed concern about the suitability of address data that will be obtained from third party sources. It asserted that:
- ...the person's ability to prevent an inappropriate enrolment is undermined because the notice is sent to an address that, in a proportion of cases, is inappropriate, thereby denying the individual the opportunity to correct the error.<sup>50</sup>
- 2.42 As discussed earlier, the AEC will use the third party data sources it already uses for the CRU and objection processes. The AEC will also be conducting a series of checks before proceeding to direct enrolment. As a result, the AEC will be confident that the person is an eligible elector and has resided at the relevant address for at least one month.
- 2.43 The committee also discussed effective methods to communicate with already enrolled electors for the direct update process. While this is most relevant to the previous Bill<sup>51</sup> considered by the committee, it is worthwhile addressing the matter here.
- 2.44 The direct update process proposed in section 103A of the maintaining address Bill will generally involve the AEC (a) receiving third party data that indicates an elector has moved, (b) contacting the elector at their 'new' (current) residential address to advise of the intention to update their address on the roll, and (c) contacting the elector at the new address to advise that their enrolment details have been updated, or of the AEC's decision not to update. This second contact is not necessary if the elector responds to the AEC to confirm the new enrolment details. There is also the option of the elector to 'opt-out' if they can satisfy the AEC that the update is not appropriate, for example if it is only a temporary address change.
- 2.45 Similar to the case of direct enrolment, the AEC does not propose to take action to directly update an enrolled elector's address details unless it is satisfied of their identity, eligibility and current address.
- 2.46 When questioned by the committee as to why the AEC does not contact an elector's old address, the AEC stated that such an approach was not cost-effective:

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50 Australian Privacy Foundation, *Submission 3*, p. 5.

51 Electoral and Referendum Amendment (Maintaining Address) Bill 2011

If we wrote to the old address when we have credible, reliable information provided by Centrelink, or Australia Post or roads and traffic authorities that the person is now living at another address, it would be an absolute waste of taxpayer's money to write to the old address.<sup>52</sup>

2.47 The APF also expressed concern that the AEC be authorised to use an electronic address to contact electors without them having to consent to this method of contact.<sup>53</sup>

2.48 As specified in proposed subsection 103B(8), enabling the AEC to also issue electronic notifications 'does not limit the ways a notice may be given'.

2.49 The ANAO has previously suggested that, rather than compromising the integrity of the roll, the updating of an elector's details from third-party sources could potentially assist in roll accuracy. The ANAO stated:

Given concerns about potential enrolment frauds, there could be advantages in using third party data from sources where the individual's identity had been verified to update the roll.<sup>54</sup>

2.50 The Democratic Audit of Australia provided the committee with an article that concluded:

After all, if the data sources are trustworthy enough to get a person de-enrolled then they must be trustworthy enough to get them re-enrolled.<sup>55</sup>

## Conclusion

2.51 The AEC has extensive experience in using third party data for roll management. The AEC will use third party data sources that have been tried and tested in the existing CRU and objection processes. It has selected agencies that will provide reliable data. The AEC will then conduct further checks to ensure key elements of identity, eligibility and residency are met before an elector is enrolled. No evidence was provided to the committee which demonstrated poor data management or use by the AEC in the past. The committee also noted the evidence provided by the APF on 'data scrubbing' and will seek more information on this and

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52 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 16

53 Australian Privacy Foundation, *Submission 3*, p. 5.

54 ANAO Audit Report No. 42 2001-02, *Integrity of the Electoral Roll*, p. 53.

55 Democratic Audit of Australia, *Submission 1*, Attachment A, p. 2.

how it applies to the data being used by the AEC for roll administration purposes.

- 2.52 Many people understand that their information is shared between government agencies. It is reasonable for electors to expect some degree of data sharing for roll management purposes. The AEC noted that in a report on community attitudes to privacy, support for government agencies being able to cross reference or share information had increased from 71 per cent in 2004 to 80 per cent in 2007.<sup>56</sup>
- 2.53 In cases of direct roll update, it would be redundant to require the AEC to write to electors at both their 'new' and 'old' addresses to advise when address updates are proposed and then actioned. It would be neither a cost-effective nor time efficient activity for the AEC.
- 2.54 It is logical that the AEC should have the option to communicate with electors by electronic means. In particular, given that a significant number of eligible electors missing from the roll are under 30 years of age, utilising this widely used medium for these electors is appropriate.

## Extending AEC enrolment powers

### Background

- 2.55 The powers provided in the Bill to enrol eligible voters without claim and to reinstate voters to the roll in certain circumstances extends the AEC's current enrolment powers. The Electoral Commissioner will determine the third party sources to be used for direct enrolment of eligible electors.
- 2.56 When it previously considered direct enrolment and update options, committee recommendations proposed that approved agencies should be subject to Ministerial approval<sup>57</sup> or be made a disallowable instrument<sup>58</sup>.

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56 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill, p. 10; Wallis Consulting Group Pty Ltd, *Office of the Privacy Commissioner Australia: Community Attitudes to Privacy 2007*, August 2007, pp. ii and 40.

57 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, Commonwealth Parliament of Australia, Recommendation 10, p. 114.

58 Legislative instruments (legislation made by a delegated authority and not directly by an Act of Parliament) must be tabled in each House of Parliament and, in most cases, can be disallowed by either House. This provides a parliamentary check for decisions made by those to whom certain powers have been delegated. Joint Standing Committee on Electoral Matters,

## Analysis

- 2.57 The APF expressed concern about the Bill granting the Electoral Commissioner greater enrolment powers, arguing that it represented 'a move, from an obligation to enrol, to imposed enrolment, with very broad and uncontrolled powers granted to a public servant'.<sup>59</sup>
- 2.58 The Electoral Commissioner determining the agencies from which third party data will be received is in keeping with the current arrangements for the CRU process.
- 2.59 The AEC acknowledged that making the third party data sources subject to Ministerial approval or by regulation would 'clearly demonstrate the support of political stakeholders for the use of particular third party data sources'.<sup>60</sup>
- 2.60 The AEC is recognised as an independent body. Therefore, it is appropriate to delegate these powers to it. The AEC submitted that:
- ...the proposed process would reinforce the longstanding convention whereby the AEC is independent of the Executive arm of Government in exercising electoral powers. Electoral rolls compiled and maintained by an independent and impartial electoral authority such as the AEC, which has the legislated authority to use information gained through roll maintenance activities to initiate the addition or deletion of names from the roll, provides an objective means for enabling the impartial and non-partisan management of the electoral roll.<sup>61</sup>
- 2.61 Existing review mechanisms (parliamentary and committee scrutiny) and opportunities for internal review of direct enrolment decisions, as outlined in the Bill, will ensure that there are checks in place.

## Conclusion

- 2.62 In its report on the 2010 federal election the committee moved away from the idea of Ministerial approval of agencies, and recommended that the AEC was best placed to determine the agencies from which data would be sourced. At the time it also suggested that the list of agencies could be

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*The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, p. 36.

59 Australian Privacy Foundation, *Submission 3*, p. 3.

60 Australian Electoral Commission, *Submission 4*, p. 8.

61 Australian Electoral Commission, *Submission 4*, p. 8.

made a disallowable instrument to provide another check as to the suitability of sources.

- 2.63 The AEC is the appropriate body to determine which agencies can supply data that is best suited for roll administration – direct enrolment and update – purposes.
- 2.64 The committee is confident that the AEC has given appropriate consideration to the third party data sources, and is reassured that the AEC will be using data sources that have already been tried and tested in the existing CRU process.

## Signatures

### Background

- 2.65 Currently, enrolment is elector initiated and applications for enrolment must be signed. However, enrolled electors can update their enrolment details online. In the case *Getup Ltd v Electoral Commissioner* [2010] FCA 869, the Federal Court found that electronic signatures are acceptable for enrolment purposes.
- 2.66 Electors are required to sign a special declaration envelope when making a declaration vote in cases when they cannot be found on the roll or have been marked as having voted. The AEC will have the option to compare the signature on the envelope with that on the original enrolment application if there are concerns about the person's identity.

### Analysis

- 2.67 Under direct enrolment the AEC will be adding eligible electors to the roll without a claim from that person, and accordingly there will be no application or signature on record for directly enrolled electors. Discussion during the inquiry included whether no longer having a signature available for comparison, or as evidence of electoral fraud, would pose problems for the AEC.<sup>62</sup> The AEC advised the committee that handwritten signatures were no longer viewed as crucial to the enrolment process. It stated that:

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62 *Committee Hansard*, 29 February 2012, Canberra, pp. 8-9.



When we were doing the preparation for the GetUp! case in 2010...the evidence and the material that we looked at just made it very clear that we needed to move away from handwritten signatures, that they are not the best evidence in relation to the identity of a person and, particularly, in relation to court proceedings.<sup>63</sup>

2.68 More generally in relation to signatures, the AEC observed that:

By itself, a signature has no intrinsic value as far as establishing or confirming the identity of an individual is concerned. It has to be compared with something. Certainly, we are finding that signatures change over time. So if you have an enrolment form that was done 10 or 15 years ago, you will find that the signature is different. I would suspect that even your signature has changed in the last 10 years. So the comparison is not particularly reliable at this stage.<sup>64</sup>

2.69 For direct enrolment purposes, the AEC argued that:

The mechanisms that are being used by Centrelink and roads and traffic authorities are considerably more reliable because they are based on a gold standard, if you like, of proof of identity as agreed by both Commonwealth and states and that is the reliance on multiple original documents.<sup>65</sup>

## Conclusion

2.70 Modern data sharing and matching practices have meant that signatures are no longer the crucial verifying element they once were. There are various checks that will be employed firstly by the source agencies and secondly by the AEC before data is utilised for direct enrolment purposes. There will also be internal and external review mechanisms in place.

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63 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 9.

64 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 9.

65 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 9.

## Human rights and privacy

### Background

2.71 Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires that when a bill is introduced it should be accompanied by a statement of compatibility that includes an 'assessment of whether the Bill is compatible with human rights'.<sup>66</sup>

2.72 The Special Minister of State concluded that:

The Bill is compatible with human rights because it advances the realisation of Article 25 of the ICCPR [International Covenant on Civil and Political Rights] by ensuring that all Australian citizens can vote in elections.<sup>67</sup>

### Analysis

2.73 The APF asserted that the EM 'stretches ICCPR Article 25 beyond its actual intent, and it fails to consider the directly relevant Article 17',<sup>68</sup> which includes that '[n]o one shall be subjected to arbitrary or unlawful interference with his privacy'.<sup>69</sup>

2.74 Article 25 of the ICCPR provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

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66 *Human Rights (Parliamentary Scrutiny) Act 2011*, part 3, s 8.

67 Explanatory Memorandum, Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012, p. 3.

68 Australian Privacy Foundation, *Submission 3*, p. 3.

69 UNHCHR website, ICCPR, Article 17, <<http://www2.ohchr.org/english/law/ccpr.htm>>, accessed 2 March 2012.

- (c) To have access, on general terms of equality, to public service in his country.<sup>70</sup>

2.75 The EM outlined that:

In effect, Article 25 guarantees the right of all Australian citizens to take part in the conduct of public affairs, and to vote and to be elected at genuine periodic elections. The Bill contributes to the realisation of Article 25 of the ICCPR by facilitating enrolment for eligible Australians and protecting the right to vote for people who have been removed from the electoral Roll by error or mistake of fact.<sup>71</sup>

2.76 It is both a right and an obligation for eligible people to enrol and vote in Australia. The AEC observed that:

It is an entitlement, yes, but it is also an obligation. And as an administrator responsible for implementing that legislation, I need to find ways to implement that particular part of the act.<sup>72</sup>

2.77 The changes to the CRU and objection processes will assist eligible electors to be placed on and remain on the electoral roll and exercise their right (and meet their obligation) to select their representatives.

2.78 The AEC maintained that the changes proposed are in accordance with Article 17 of the ICCPR, stating that as enrolment is 'compulsory under the CEA [the Electoral Act], the collection and use of personal information does not intrude to an unreasonable extent on the personal affairs of the individual'.<sup>73</sup>

2.79 The AEC advised the committee that appropriate privacy principles will be observed, including complying with the Privacy Commissioner's data matching guidelines, *The use of data matching in Commonwealth administration – Guidelines*. The AEC outlined that:

As the decision making process involves 'personal information', the AEC will comply with the various relevant requirements contained in the *Privacy Act 1988* which include, that a record

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70 UNHCHR website, ICCPR, Article 25, <<http://www2.ohchr.org/english/law/ccpr.htm>>, accessed 2 March 2012.

71 Explanatory Memorandum, Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012, p. 2.

72 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 6.

73 Australian Electoral Commission, *Submission 4.2*, Attachment C, pp. 11-12.

keeper must take reasonable steps to ensure that before 'personal information' is used it is accurate, up to date and complete.

...Each element of the test in item 4 of Schedule 1 to the Bill (that is, that the person is entitled to enrolment, has lived at an address for at least one month, and that the person is not enrolled) will need to be examined against the requirement contained in the *Privacy Act 1988*. In addition, the AEC intends that the data matching undertaken with the data from third party sources will comply with the Privacy Commissioner's data matching guidelines, *The use of data matching in Commonwealth administration – Guidelines*.<sup>74</sup>

- 2.80 At the committee's request, the AEC provided a draft copy of the Privacy Impact Assessment (PIA) for the proposed 'Direct Enrolment and Update' activities.<sup>75</sup> The AEC engaged to 'work with third party suppliers of data to ensure the privacy notice issued by the third party agency provides sufficient disclosure to the individual of how the AEC will use the information in relation to Direct Enrolment and Update'.<sup>76</sup> The AEC suggested that the third party's privacy notice could include a statement as follows:

The Australian Electoral Commission ('AEC') is authorised to collect from us information about you, such as name, date and place of birth and address and contact details for the purposes of maintaining the electoral Roll. This information will be used to ascertain your eligibility for enrolment as an elector and to contact you about proposed action to be taken by the AEC to appropriately update the electoral Roll. For further information call 13 23 26 or visit [www.aec.gov.au/privacy](http://www.aec.gov.au/privacy).<sup>77</sup>

- 2.81 At the roundtable discussion, the APF asserted that it was not aware of the AEC having consulted with any civil liberties organisations on the changes proposed in the Bill.<sup>78</sup> In response, the AEC submitted:

In relation to privacy issues that arose during the drafting of the Bill, the AEC consulted with the staff of the Australian Information Commissioner (OAIC) and the privacy policy areas of the Attorney-General's Department (AGD). The AEC did not consult the Australian Privacy Foundation or other non-

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74 Australian Electoral Commission, *Submission 4*, pp. 7-8.

75 Australian Electoral Commission, *Submission 4.2*, Attachment C.

76 Australian Electoral Commission, *Submission 4.2*, Attachment C, p. 11.

77 Australian Electoral Commission, *Submission 4.2*, Attachment C, p. 12.

78 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 29 February 2012, Canberra, p. 2.

government civil liberties organisations. As non-government organisations, it is not appropriate that these organisations be involved in confidential consultations regarding proposed legislation. However, the AEC's Chief Legal Officer, Mr Paul Pirani, contacted Mr Nigel Waters of the APF late last year to provide a high level outline of the implications of the relevant Committee recommendations.<sup>79</sup>

- 2.82 In drafting the PIA, the AEC consulted with the Office of the Australian Information Commissioner, the privacy policy area of the Attorney-General's Department, the Department of Finance and Regulation, and the Department of the Prime Minister and Cabinet.<sup>80</sup>
- 2.83 In Victoria and New South Wales, jurisdictions which both have privacy regimes, direct enrolment mechanisms are already in operation.
- 2.84 In terms of privacy concerns, the special category of silent electors is an important consideration. The APF raised the potential for direct enrolment to negatively affect people with privacy or safety concerns 'who are going to be seeking to not have that address publicised'.<sup>81</sup>
- 2.85 The AEC advised the committee that silent electors will be excluded from the direct enrolment and update processes, and explained that:

...the processes that have been designed for both direct update and direct enrolment take into account the silent elector status in two ways. Firstly, if a person already has silent elector status, they would be excluded from any direct action by the commission. If we were aware of a change of address, we would treat them normally – as we currently do with the CRU process – and simply write to them and ask them to update their details.

We also have in place that, if an address is one in which a silent elector is recorded as living, we would be conscious of that and exclude any person who is now moving to or registered at that address. We would accept that there is a potential for that address to include others. For instance, you might have a family member who is of a different surname using that same address. That would also be excluded from any direct action.<sup>82</sup>

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79 Australian Electoral Commission, *Submission 4.2*, p. 2.

80 Australian Electoral Commission, *Submission 4.2*, p. 2.

81 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 29 February 2012, Canberra, p. 6.

82 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, pp. 12-13.

2.86 The AEC indicated that currently around 85 000 people are silent electors.<sup>83</sup> It further advised that:

In the data that the AEC receives from other agencies, if people are in some way flagged on those systems as what we would describe as silent, we do not actually receive that data. Those agencies have their own screening processes to ensure that that status is protected and never flows to us in the first place.<sup>84</sup>

2.87 In responding to the APF's assertion that silent elector status could be difficult to obtain, the AEC observed that:

Basically they simply need to provide a statutory declaration about the circumstances they are suggesting require silent elector status. My evidence earlier was that we are very conscious of the potential for the disclosure of address of silent electors and in this direct update and direct enrolment process we will exclude anybody where there is any potential for us to be disclosing inappropriately. That includes people who are already silent electors and people who are living at or going to an address which was otherwise a silent elector address. It is a very protected system to avoid the sorts of concerns that you have raised.<sup>85</sup>

2.88 The AEC noted that few applications for silent elector status are refused. In the last 12 months, of the 5 016 applications considered by the AEC, 140 were rejected. The AEC indicated that applications that are refused fall broadly into two categories: (a) applications failing to satisfy technical requirements by supplying the relevant forms, or (b) not meeting the section 104(2)(b) test of their personal or family's safety being at risk. Unsuccessful applications may request a review of the decision.<sup>86</sup>

## Conclusion

2.89 Providing the AEC with the ability to directly enrol and accept provisional votes into the count under certain circumstances, is in keeping with article 25 of the ICCPR that people have the right to participate in selecting their representatives.

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83 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 13.

84 Mr Pablo Carpay, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 13.

85 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 13.

86 Australian Electoral Commission, *Submission 4.2*, p. 3.

- 2.90 In Australia, facilitating eligible electors to be placed on and remain on the roll is particularly important as it also assists these electors to meet their enrolment and voting obligations.
- 2.91 In consultation with the Australian Privacy Commission, the AEC is taking into account privacy considerations arising from the Bill's implementation. The AEC has provided the committee with a draft copy of the Privacy Impact Assessment on direct enrolment and update, and has committed to observing appropriate Information Privacy Principles and data matching guidelines when directly enrolling eligible electors.

## Declaration votes and objections

### Background

- 2.92 Declaration votes include absent, pre-poll (early) votes made outside the elector's division, and provisional and postal votes. At a polling place a person may be required to cast a declaration vote if their name and/or address details cannot be found on the electoral roll, or if they have already been marked off the roll as having voted. The person can complete a ballot paper, but instead of going into the ballot box, the vote goes into a sealed envelope that the person signs to 'declare' that they are entitled to vote. Declaration votes are considered separately and subjected to a number of checks before they can be admitted to further scrutiny and potentially be counted.
- 2.93 At the 2010 federal election over 280 000 pre-poll, absent and provisional votes were fully or partially rejected because the people casting the vote were not enrolled or not enrolled correctly.<sup>87</sup>
- 2.94 The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* changed the Electoral Act so that 'provisional votes cast by people who had been removed from the roll by objection on the basis of non-residence [are] inadmissible to the election count'.<sup>88</sup> Previously, the AEC had some discretion in admitting certain provisional votes and reinstating these people on the roll.

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87 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 9.

88 Australian Electoral Commission, *Submission 87* to the JSCEM inquiry into the conduct of the 2010 federal election and matters related thereto, p. 85.

2.95 Legislative changes in 2006 also introduced the requirement that provisions voters had to provide proof of identity either on the day or within seven days. This requirement also contributed to the reduction in the number of provisional votes accepted at the 2007 and 2010 federal elections. The proof of identity restriction was removed by the *Electoral and Referendum Amendment (Provisional Voting) Act 2011*.

2.96 The Special Minister of State stated in his second reading speech on the Bill that:

The second way in which the bill will protect elector participation is by ensuring that certain people who have been removed from the electoral roll by objection action will have their votes admitted to further scrutiny.<sup>89</sup>

2.97 Schedule 2 of the Bill proposes to amend how these declaration votes will be treated. The EM stated:

The Bill removes this limitation to ensure that an administrative error or mistake of fact does not hinder an otherwise eligible elector from exercising the right to vote at an election.<sup>90</sup>

## Analysis

2.98 The AEC noted that many electors do not understand that their declaration vote may not be accepted. It commented that:

People objected off the roll, or people attempting to vote for an address they are not enrolled for will not necessarily understand the impact that this may have on their ability to cast a vote that is counted.<sup>91</sup>

2.99 In its submission to inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, the AEC addressed the likely link between removal by objection and the full or partial rejection of certain declaration votes at the last federal election due to non-enrolments and incorrect enrolments, stating:

It is not unreasonable to suggest that a proportion of these individuals were otherwise qualified persons who were effectively

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89 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 9.

90 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 15 February 2012, p. 10.

91 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 9.



disenfranchised by prescriptive legislative requirements that they did not clearly understand.<sup>92</sup>

- 2.100 The AEC confirmed that the acceptance of provisional votes dropped significantly at the last two federal elections:

If you look at the number of reinstatements in 2001 and 2004, prior to the legislation, there were 59,802 in 2001 and 61,451 in 2004. That dropped to 3,052 in 2007 and 1,460 in 2010.<sup>93</sup>

- 2.101 The Democratic Audit of Australia argued that:

Under the current legislation, the Australian Electoral Commission is very good at taking people off the roll; it is not very good at putting them back on.' That is not their fault, that is a problem of the legislation, which I believe, what I will call the address bill and the participation bill, the current bill that you are considering, sets out to address.<sup>94</sup>

- 2.102 When it considered the issue of reinstating eligible electors to the roll in its inquiry into the conduct of the 2010 federal election, the committee concluded that the reinstatement provisions would provide relief to affected electors to 'ameliorate the objection processes mandated by the legislation'.<sup>95</sup>

- 2.103 Schedule 2 of the Bill proposes changes to how declaration votes will be treated:

The proposed amendments provide that where a declaration voter who is entitled to vote has been omitted from the electoral roll and the omission was due to an error or mistake of fact, then his or her votes may progress to further scrutiny in certain circumstances:

- if his or her address at the time of voting is in the same division for which he or she was enrolled immediately prior to the omission, his or her House of Representatives, Senate and/or referendum votes will progress to further scrutiny;
- if his or her address at the time of voting is in the same State or Territory for which he or she was enrolled immediately prior to

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92 Australian Electoral Commission, *Submission 2* to the JSCEM inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 9.

93 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 15.

94 Professor Brian Costar, Coordinator, Democratic Audit of Australia, *Committee Hansard*, 29 February 2012, Canberra, p. 4.

95 Joint Standing Committee on Electoral Matters, *The 2010 Federal Election: Report on the conduction of the election and related matters*, June 2011, Commonwealth Parliament of Australia, p. 94.

the omission from the electoral roll but in a different division, his or her House of Representatives vote will be excluded, but the Senate and/or referendum votes will progress to further scrutiny; and

- if his or her address at the time of voting is in a different State or Territory for which he or she was enrolled immediately prior to the omission from the electoral roll, all votes will be excluded.<sup>96</sup>

2.104 The AEC will be able to admit votes and add eligible electors to the roll in cases where:

- the person has made a declaration vote;
- the declaration vote satisfies the requirements of Schedule 3 of the Electoral Act or Schedule 4 of the Referendum (Machinery Provisions) Act;
- the person is entitled to be enrolled for the division; and
- the person was omitted from the electoral roll for the division due to an error by an officer or to a mistake of fact.<sup>97</sup>

2.105 The proposed amendments will also remove the restriction on people objected from the roll being reinstated to the roll and their votes admitted to scrutiny. The change will mean that removal under the objection process will not preclude eligible electors being placed on the roll without having to reapply. Objections off the roll can now be regarded as an 'error or mistake of fact'.<sup>98</sup>

## Conclusion

2.106 Direct enrolment will help to reduce the number of eligible electors missing from the roll. The complementary power for the AEC to stop objection actions and update enrolment details, as outlined in the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, will also help to reduce the number of eligible electors removed from the roll under the objection process.

2.107 The possibility of reinstatement will provide eligible electors – who have neglected their enrolment – a safety net. The process will not be automatic, as Schedule 3 of the Electoral Act will still set out requirements that must be met before they can be reinstated to the roll and their vote fully, or partially, admitted to the count. It is an appropriate safety net for those

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96 Australian Electoral Commission, *Submission 4*, p. 9.

97 Australian Electoral Commission, *Submission 4*, p. 9.

98 Australian Electoral Commission, *Submission 4*, p. 12.

electors who have clearly demonstrated their intention to vote by attending a polling place and making a declaration vote.

## Overall conclusion

- 2.108 Getting eligible electors onto the roll is only part of the picture when ensuring an elector's franchise. Declining elector turnout and vote formality are also areas of concern. What the Bill provides are mechanisms to help assist eligible people to be placed on and remain on the roll.
- 2.109 There is a duality that exists in Australia's electoral system in that enrolling and voting are both rights and obligations. Enrolling and updating address details are not difficult and it is reasonable that Australians take responsibility for enrolling and voting.
- 2.110 The process outlined in the Bill will not be automatic. There are checks in place to verify a person's identity, eligibility and residential details. The AEC will also be communicating with prospective electors before they are enrolled.
- 2.111 The AEC has acknowledged that direct enrolment is not a panacea to achieving roll completeness. The committee agrees that direct enrolment will 'add to the tools that have been available to the Electoral Commission in a way which reflects modern expectations, modern technology and modern demographics'.<sup>99</sup>
- 2.112 Third party data is currently being used by the AEC in the CRU and objection processes to remove people from the roll. This Bill provides a positive extension to existing arrangements in that it will allow the AEC to include eligible unenrolled voters on the roll. Direct enrolment is a tool to enhance the completeness, accuracy and currency of the roll. It will provide a service to eligible electors and provide the AEC with greater flexibility in its administration of the roll.
- 2.113 The third party data sources that the AEC will rely on have been tried and tested in the existing CRU and objection processes.
- 2.114 The committee also considered the question of who should be vested with the power to determine the third party data sources appropriate for electoral purposes. Previous suggestions included making the third party sources subject to Ministerial approval, or to be determined by the AEC

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<sup>99</sup> Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 29 February 2012, Canberra, p. 16.

and made a disallowable instrument. However, the option that has been pursued of vesting power with the Electoral Commissioner allows the process to be flexible and responsive, and maintain a distance from questions of political bias or interference.

- 2.115 Direct enrolment will help reduce the number of eligible electors missing from the roll. Once direct enrolment and address update is operating the number of people removed by the objection process will also decrease. This will go some way to addressing the number of declaration votes that were fully or partially rejected at the last election due to non-enrolment or incorrect enrolment. The changes to the treatment of declaration votes – and the ability for the AEC to reinstate electors to the roll who were objected off the roll – will also provide an important safety net. There will be additional protection for people who turn up to vote believing they are enrolled but find they are no longer on the roll.
- 2.116 It is appropriate that the AEC should have the tools and flexibility to maintain a complete and accurate roll. Accordingly, the committee supports the passage of the Bill.

### **Recommendation 1**

- 2.117 **That the House of Representatives pass the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012 as proposed.**

Daryl Melham MP  
Chair  
14 March 2012