

Inquiry into the implications
of the *Parliamentary
Electoralates and Elections
Amendment (Automatic
Enrolment) Act 2009* (NSW)
for the conduct of
Commonwealth elections

Joint Standing Committee on Electoral Matters

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Chair's Foreword

Declining electoral enrolment continues to present a significant challenge not only for Australia, but for many countries and jurisdictions. Existing paper-based enrolment requirements under Commonwealth legislation are a deterrent to the current generation of Australians who are accustomed to conducting business with government agencies through electronic transactions. The introduction of flexible approaches which modernise electoral enrolment processes is a vital component for addressing the challenge of declining enrolment.

The New South Wales Parliament has taken legislative action to address concerns over declining enrolment levels by introducing a new automatic enrolment system for state and local government elections. NSW will no longer rely on the Australian Electoral Commission to prepare and maintain rolls for NSW elections. Under the NSW legislation, the NSW Electoral Commissioner will assume responsibility for preparing and maintaining a roll for each NSW electoral district using enrolment data supplied by the Commonwealth and data held by various NSW government agencies.

The NSW legislation could have significant implications for the conduct of federal elections if Commonwealth legislation is not amended to allow for similar provisions. Having two different enrolment regimes operating at the Commonwealth and State level creates the potential for elector confusion. Of particular concern is the scenario whereby voters in NSW are enrolled automatically for that state's elections and mistakenly believe that they have also been enrolled for the purpose of federal elections.

If granted the power to implement similar automatic enrolment measures, the AEC has acknowledged that it would proceed with caution and conservatism, and would apply carefully designed business rules to ensure the integrity of the electoral roll is maintained. The committee supports Commonwealth legislation being amended to allow the AEC to automatically enrol electors on the basis of data provided by trusted agencies.

To ensure that automatic enrolment does not inadvertently limit the ability for eligible electors to exercise the franchise, election day enrolment is proposed as a safety net to capture those 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 enrolled at the wrong address.

I thank my committee colleagues for their contribution to the report, and those organisations and individuals who prepared submissions and appeared as witnesses before the committee. I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham
Chair



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Membership of the Committee

Chair Mr Daryl Melham MP

Deputy Chair Hon Andrew Robb AO MP (from 22/02/10)

Mr Scott Morrison MP (to 3/02/10)

Members Mr Michael Danby MP

Senator Simon Birmingham

Hon Andrew Robb AO MP (from 3/02/10)

Senator Bob Brown

Hon Bruce Scott MP

Senator Carol Brown

Mr Jon Sullivan MP

Senator David Feeney

Senator Scott Ryan

Committee Secretariat

Secretary Stephen Boyd

Inquiry Secretary Justin Baker

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Terms of reference

That the Joint Standing Committee on Electoral Matters inquire into the implications of the New South Wales Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009 for the conduct of Commonwealth elections, including any consequences for the enrolment of persons living in New South Wales for the purposes of Commonwealth elections.



List of abbreviations

AEC	Australian Electoral Commission
CRU	Continuous Roll Update
JRA	Joint Roll Arrangement
NSWEC	New South Wales Electoral Commission
RTA	Roads and Traffic Authority (of NSW)



List of recommendations

Recommendation 1 (para 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.

Recommendation 2 (para 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 (para 2.47)

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

Enrolment is not an end in itself; it is an instrument for ensuring, firstly, that eligible people are able to exercise their fundamental right to participate in the governance of the country, and, secondly, that those rights are not compromised by people who have no right to do so.¹

Introduction

- 1.1 On 1 December 2009 the Special Minister of State, Senator the Hon Joe Ludwig, referred the New South Wales Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill to the committee for inquiry and report by 25 February 2010. The Minister requested that the committee inquire into the implications of the Bill for the conduct of Commonwealth elections, including any consequences for the enrolment of persons living in NSW for the purposes of Commonwealth elections.²
- 1.2 The Bill was introduced into the NSW Parliament on 12 November 2009 by the Hon Penny Sharpe MLC, on behalf of the Hon John Hatzistergos MLC, Minister for Citizenship. The Bill was passed by the NSW Parliament on 1 December 2009 and assented to on 14 December 2009. The *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW)*³ is available online.⁴

1 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 1.

2 See inquiry Terms of Reference.

3 Long title: *An Act to amend the Parliamentary Electorates and Elections Act 1912 in relation to the preparation of electoral rolls by the Electoral Commissioner; to make miscellaneous amendments to that Act; and for other purposes.*

4 <<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+102+2009+cd+0+N>>.

- 1.3 The *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009* (NSW) amends the *Parliamentary Elections and Elections Act 1912* (NSW) and, among other things, gives effect to a smart electoral enrolment ('Smart Roll') system concept that has been developed in the State to introduce a new automatic enrolment system for state and local government elections in NSW. The Smart Roll system operates around the notion that there are alternative ways for electors to be enrolled and to notify a change in their enrolment details, particularly where such information has already been provided to other government agencies.⁵ The Act also allows for enrolment for provisional voting on the day of polling, subject to adequate identification being produced.
- 1.4 The Australian Electoral Commission (AEC) has indicated that it is 'strongly supportive' of the changes which allow NSW to add to and update their roll based on Smart Roll processes.⁶

Rationale for the legislation

- 1.5 The Second Reading Speech describes the basis of the new NSW legislation as being 'to address the declining rate of electoral participation in Australia.'⁷ Introducing the legislation, the Hon Penny Sharpe MLC referred to NSW Electoral Commission estimates that only 90 per cent of the eligible voting population in the state are enrolled. She indicated that this represented a decline of about five per cent over the last two election cycles and identified one of the most significant reasons for this decline as being that 'enrolment procedures have not kept pace with developments in technology.'⁸ Ms Sharpe stated that:

Electoral authorities are becoming very efficient at taking people off the roll, but not at keeping them on.⁹

- 1.6 NSW estimates are consistent with AEC estimates of national electoral enrolment decline. At the end of December 2009 an estimated 1.39 million eligible Australians were not on the electoral roll and therefore effectively excluded from Australia's democratic processes. Enrolment participation

5 Joint Standing Committee on Electoral Matters, Parliament NSW Legislative Assembly, *Inquiry into voter enrolment, Report No. 3 - September 2006*, Sydney, NSW, p. 26.

6 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 3.

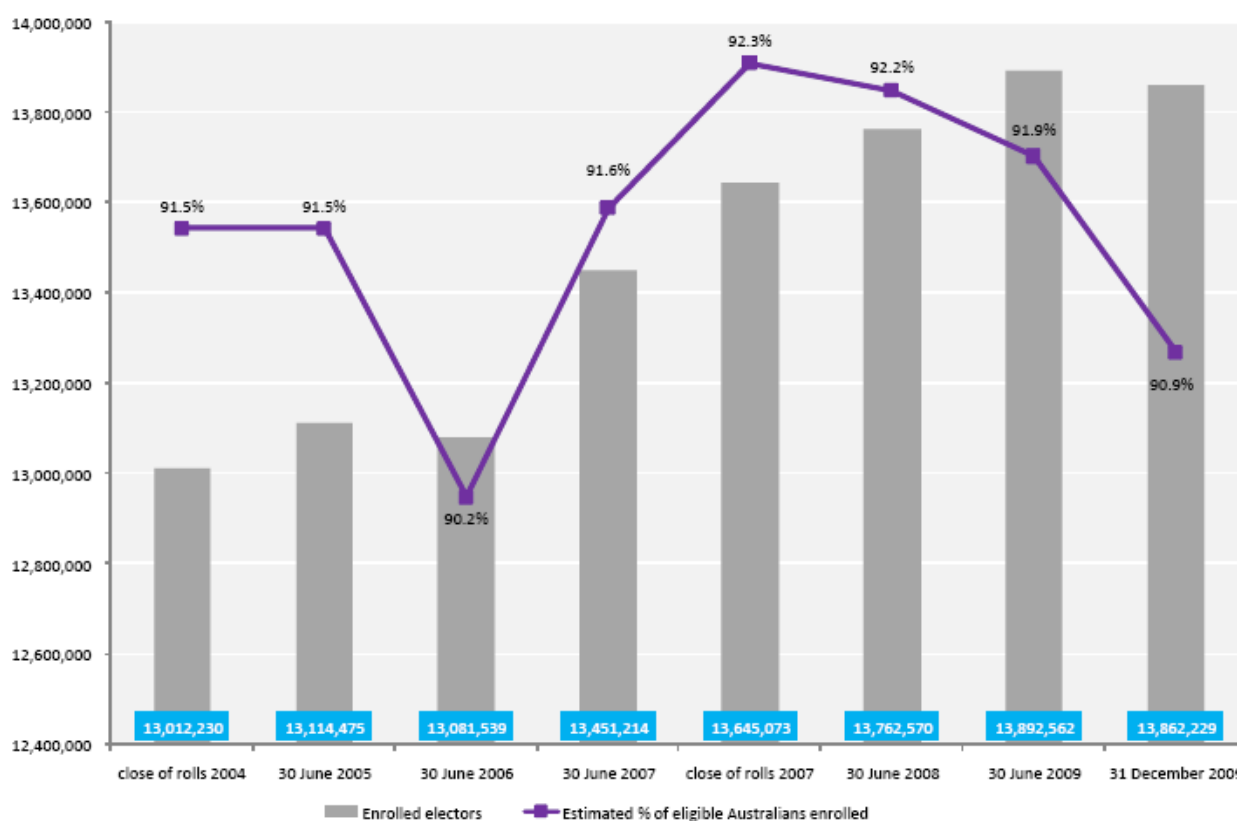
7 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

8 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

9 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

levels dropped from an estimated 92.3 per cent at the 2007 election to 90.9 per cent at the end of 2009 despite routine enrolment stimulation and roll maintenance activities undertaken by the AEC during this period.¹⁰ The decline in the percentage of enrolled electors as a proportion of the eligible population is shown in Figure 1.1.

Table 1.1 Number of enrolled electors and estimated eligible enrolled population, close of rolls 2004 to 31 December 2009



Source: Australian Electoral Commission, *Submission no. 2*, p. 7.

1.7 In its submission to the Australian Government Electoral Reform Green Paper, the AEC stated that:

...declining participation rates, in part caused and perpetuated by enrolment processes resulting from overly prescriptive legislation, present the most serious threat to Australia's democratic model.¹¹

1.8 The AEC has previously indicated to the committee that it is eager to modernise the electoral enrolment process where it is possible to do so

¹⁰ Australian Electoral Commission, *Submission no. 2*, p. 6.

¹¹ Australian Electoral Commission, *Submission to Australian Government Electoral Reform Green Paper – Sept 2009: "Strengthening Australia's Democracy"*, p. 6.

without jeopardising the integrity of the electoral roll. While it has received some criticism in the past for focussing on 'short-term temporary fixes to roll stimulation', the AEC suggests that this is due to the limited tools at its disposal under existing provisions of the Commonwealth Electoral Act relating to enrolment processes. AEC Commissioner, Mr Ed Killesteyn, stated:

I can assure you the AEC is ready to innovate if it is given the tools to do so.¹²

- 1.9 NSW has been examining electoral reform relating to enrolment and electoral administration through its *Smart Electoral Enrolment Register Project* (the 'Smart Roll' Project). The NSW Parliament's Joint Standing Committee on Electoral Matters has recommended extensive reforms in these areas in a number of recent reports.¹³ The Smart Roll Project has been overseen by the NSW Electoral Commission and the AEC accepted an invitation to provide representation on the project's working party.¹⁴ While the NSW legislation represents 'a fundamental change in the manner in which electoral roll administration has been engineered in Australia', the AEC acknowledged that it is not unique and reflects existing practice in other countries.¹⁵
- 1.10 The NSW Government has indicated that the Smart Roll system is expected to be introduced prior to the 26 March 2011 NSW State General Election.¹⁶

Key features of the legislation

- 1.11 Explanatory notes relating to the NSW Automatic Enrolment Bill describe that the object of the legislation is to amend the *Parliamentary Electorates and Elections Act 1912 (NSW)* so as:

12 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2009, p. 2.

13 A full list of NSW JSCEM reports are available at: <<http://www.parliament.nsw.gov.au/electoralmatters>>.

14 Australian Electoral Commission, Submission no. 169.1 to the JSCEM inquiry into the conduct of the 2007 federal election.

15 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2009, p. 3.

16 NSW Electoral Commission, *Submission to Australian Government Electoral Reform Green Paper – Sept 2009: "Strengthening Australia's Democracy"*, 27 November 2009, p. ii.

- to facilitate automatic enrolment of electors on the rolls for NSW state elections and NSW local government elections;
- to allow eligible NSW electors to enrol and cast a provisional vote on polling day, subject to being able to produce a valid NSW driver licence or Photo Card issued by the NSW Roads and Traffic Authority;
- to centralise the processing of postal vote applications and to allow such applications to be made on-line;
- to allow for pre-poll voting places to be operated outside of NSW (for example, in interstate capital cities and overseas); and
- to make miscellaneous amendments to improve the conduct of NSW elections.¹⁷

1.12 In evidence to the committee, NSW Electoral Commissioner, Mr Colin Barry, stated that there were four aims of the Smart Roll process:

- to reduce the number of eligible NSW electors missing from the electoral roll;
- to improve the time in which electors' address details are changed when they move address;
- to improve the quality of the enrolment register in NSW; and
- to provide electors and citizens with a simpler system to enrol and have their addresses updated.¹⁸

Impact of the NSW legislation on existing electoral roll arrangements

1.13 The NSW automatic enrolment legislation has implications for existing electoral roll arrangements between the Commonwealth and NSW. Implementation of automatic enrolment for NSW electors will involve a departure from current processes whereby the AEC maintains electoral rolls for state, territory and local government elections through joint roll agreements with the states and territories. Under the joint roll agreements, electors only need to complete one form to enrol for Federal, State and local government elections.

1.14 The Joint Roll Arrangements (JRAs) are bilateral agreements between the Commonwealth and each state/territory to provide a single point of

17 Explanatory notes to the Bill are available online at:
<http://www.austlii.edu.au/au/legis/nsw/bill_en/peaeaeb2009673/>.

18 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 5.

electoral enrolment. Most JRAs also provide for the maintenance of a joint electoral roll, for Commonwealth, state/territory and local government.

- 1.15 Under the authority of the *Commonwealth Electoral Act 1918*, the AEC obtains information for updating the Commonwealth Electoral Roll from other agencies, who supply the AEC with change of address data and new clients' details.
- 1.16 If the AEC receives information that a person is no longer living at their enrolled address, a notice is sent to the elector's enrolled address advising that their name will be removed if a satisfactory reply is not received. When the elector completes an electoral enrolment form for their new address, the elector is then placed back onto the electoral roll.
- 1.17 Under the new NSW legislation (Part 4, Section 26), the NSW Electoral Commissioner will assume responsibility for preparing and maintaining a roll for each NSW electoral district using enrolment data supplied by the Commonwealth and data held by various NSW government agencies.
- 1.18 It was acknowledged by the NSW Government that a new arrangement concerning the exchange of enrolment information would need to be negotiated between the Commonwealth and NSW before automatic enrolment can be implemented. During debate on the legislation, Mr Robert Furolo MP stated:

...the bill contains new joint roll arrangement provisions to enable the Governor and the Governor-General to make arrangements for the exchange of enrolment information, rather than joint electoral rolls. A new arrangement based on the exchange of enrolment information must be negotiated before automatic enrolment can be implemented in New South Wales. It is anticipated that the new arrangements will be modelled on those entered into by the Commonwealth and Victoria in 2004.¹⁹

- 1.19 The AEC advised during the public hearing on 2 February 2010 that it had not yet started negotiating with the NSW Electoral Commission about a new joint roll agreement.²⁰

Automatic enrolment provisions

- 1.20 Provisions of the new legislation which allow the automatic enrolment of persons in certain circumstances are included at Section 29 of the
-

19 NSW Parliamentary Debates, Legislative Assembly, 1 December 2009, p. 20335.

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

Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW). Under this section, if the NSW Electoral Commissioner, at any time, believes that a person who is not enrolled is entitled to be enrolled for a district, the Commissioner may enrol the person. However, the Act provides that the Commissioner must not do so without first contacting the person concerned in writing (including by email or SMS text message) and allow them at least seven days to provide the Commissioner with reasons as to why they should not be enrolled in a district.

- 1.21 If no response is provided within the specified time period, or if a response is provided but the Electoral Commissioner still believes that the person is entitled to be enrolled for the district, the Commissioner is to enrol the person for the district, and notify the person in writing that he or she has been enrolled for that district.
- 1.22 Section 47 imposes an obligation on certain persons and bodies to provide information to the NSW Electoral Commissioner on request, which in the opinion of the Electoral Commissioner is required in connection with the preparation, maintenance or revision of rolls. These persons and bodies include:
- a) a person employed in a public sector service (within the meaning of the Public Sector Employment and Management Act 2002),
 - b) a police officer,
 - c) a member of staff of a council within the meaning of the Local Government Act 1993,
 - d) Sydney Water Corporation,
 - e) a distribution network service provider within the meaning of the Electricity Supply Act 1995,
 - f) a university established or constituted by an Act of New South Wales,
 - g) an elector or person entitled to be enrolled.

Provisions enabling eligible persons to enrol and cast a provisional vote on polling day

- 1.23 Schedule 1[14] of the *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009* (NSW) facilitates the ability for eligible persons to enrol in a NSW district and cast a provisional vote in an election for that district on election day – subject to the person concerned

being able to produce as proof of identity a driver licence or a NSW Photo Card.

- 1.24 During the committee's hearing, NSW Electoral Commissioner, Mr Colin Barry, elaborated on the Commission's preliminary thinking about how election day enrolment may proceed, while acknowledging that the legislation had only recently been passed and that there was still work to be done on various aspects. Mr Barry stated:

Certainly all our advertising would be directed strongly to people to enrol or update their enrolment before the issue of the writ. Once the writ is issued, our advertising strategy would change along the lines that, if you have not enrolled in time, all is not lost. There is a savings provision: you can turn up on election day and enrol. If you turn up on election day, you will only be able to enrol and vote if you have a New South Wales drivers licence or a proof of identity card issued by the New South Wales RTA for the address that is on that identification. You will fill out a declaration in much the same way as the declaration is currently on the purple form. That ballot paper will go into a declaration envelope – in a sense it is a declaration vote.²¹

Conduct of the inquiry

- 1.25 The committee advertised the inquiry on its website and in *The Australian* on 14 December 2009. Relevant stakeholders were invited to make submissions to the inquiry by 22 January 2010.
- 1.26 The committee received 5 submissions, which are listed at Appendix A. A public hearing was held in Canberra on 2 February 2010. A list of witnesses who appeared before the committee is included in Appendix B. Copies of the submissions and the public hearing transcript are available from the committee's website at: <<http://www.aph.gov.au/em>>.

Structure of the report

- 1.27 The report consists of two chapters including this introduction. Chapter two examines the main issues arising from the enactment of the NSW

21 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 7.

Automatic Enrolment legislation with respect to its implications for the conduct of Commonwealth elections and is followed by the committee's conclusions and recommendations.

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.¹

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.²

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

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.³

- 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.⁴
- 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

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.⁵

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.⁶

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.⁷

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.⁸ 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.⁹

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.¹⁰

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.¹¹
- 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.¹²
- 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.¹³
- 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

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.¹⁴ 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.¹⁵ 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.¹⁶ 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.'¹⁷ 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.¹⁸

- 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?

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?¹⁹
- 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.’²⁰

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.²¹

- 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.²²

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.²³
- 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.²⁴
- 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.²⁵
- 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.²⁶

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.’²⁷
- 2.34 AEC Commissioner, Mr Ed Killesteyn, conceived the phrase ‘one roll, many elections’ to describe this objective.²⁸ 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.²⁹

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

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



Dissenting Report—Hon Andrew Robb MP (Deputy Chair), Senator Simon Birmingham, Senator Scott Ryan, Liberal Party of Australia; Hon Bruce Scott MP, The Nationals

Opposition Members and Senators agree with the objective of increasing the number of eligible Australians enrolled and eligible to exercise the franchise. However, maintenance of the integrity of the roll is critical to ensuring both the value of the franchise as well as public faith in our electoral processes.

The proposal to enact a radical and untested provision to automatically enrol voters to the Commonwealth electoral roll endangers the integrity of the electoral roll and potentially the degree of public faith in it.

Opposition Members and Senators oppose the recommendations of the Government majority regarding the application of automatic enrolment procedures to the Commonwealth electoral roll.

Exclusion or non-compliance?

The Government majority base their case for automatic enrolment on an alleged decline in participation. However, no evidence is provided to illustrate that Australia is undergoing a dramatic decline in enrolment or voting due to the current processes, procedures and requirements.

Indeed, improved management of the rolls may lead to a temporary decline in numbers due to the more effective management of the rolls and removal of those not entitled to be enrolled.

Furthermore, the responsibility to enrol to vote lies with the individual. The Commonwealth Electoral Act requires those eligible to enrol to vote. Any implication that this is an onerous requirement should be rejected. To exercise the

right to vote, the law requires an enrolment form or change of enrolment details form be completed. Complying with this requirement is not especially difficult.

Similarly, any implication that effective management of the electoral roll by virtue of regular cleansing processes excludes people otherwise eligible to vote is flawed. The only circumstance in which a person is removed from the roll is when the Divisional Returning Officer is satisfied that the person concerned is not or no longer eligible to vote in the manner recorded on the roll. Such processes are critical to maintenance of public faith in our electoral processes and, as such, the results should be commended.

Opposition members and Senators reject the assertion of the Government majority in paragraph 1.6 of the report that *“At the end of December 2009 an estimated 1.39 million eligible Australians were not on the electoral roll and therefore effectively excluded from Australia's democratic processes.”*

At any time, every single one of these eligible people may exercise the franchise simply by completing a valid enrolment form, a form that is widely available and a requirement with which the overwhelming majority of Australians comply.

Automatic enrolment—untested, unsafe, unnecessary

Recommendation 1

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.

Opposition Members and Senators oppose this recommendation.

The provisions of the NSW amendments have not yet been tested either in practice between elections or at an election, and there remain substantial questions about its effectiveness and its impact upon the integrity of the roll. This experiment in moving away from the traditional and well-regarded enrolment procedure should not be replicated in Commonwealth legislation as the risks have not been assessed.

This is not to suggest that current processes cannot be refined, potentially even including online changes of enrolment details, but a move away from an individual enrolling on his or her own initiative in compliance with electoral legislation to a situation where the state can enrol a person of its own accord represents a drastic and dramatic change in our enrolment processes. Such a change should not be enacted without due consideration and deliberation.

The AEC submits that the declining enrolment rate is *“in part caused and perpetuated by enrolment processes based on antediluvian mechanisms and overly*

prescriptive legislation".¹ If this statement is to be taken at face value, then this is a reason to reconsider some of these practices – it does not justify a movement away from individual registration to automatic enrolment.

Firstly, the reliance on external data sources that have been collated and that are utilised for other purposes does not make them fit for use in forming the electoral roll. Even the Government majority concedes this in paragraph 2.3 of the majority report:

...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.

The current 'paper trail' that sees electors initiate enrolment with a signed form provides a unique security feature to address any questions regarding roll integrity. The placement of people on the roll automatically will undermine this important element of roll integrity.

Given that there is neither consent nor a signature required for automatic enrolment, it remains doubtful that someone could be pursued for false enrolment or other aspects of electoral fraud. Given the relatively light identification requirements present in the Australian electoral system, removing this security feature only weakens an important aspect of protecting the integrity of the roll and its policing.

Furthermore, while the NSW procedures allow the Commissioner to determine 'trusted' data, Opposition Members and Senators remain to be convinced that Government-held data sources are appropriate for such a necessarily rigorous process and compiling the electoral roll.

Recent reports undertaken illustrate some of the problems with existing government data:

A 1999 report by the House of Representatives Standing Committee on Economics, Finance and Public Administration: *Numbers on the Run – Review of the ANAO Report No.37 1998-99 on the Management of Tax File Numbers*, found that:

- There were 3.2 million more Tax File Numbers than people in Australia at the last census;
- There were 185,000 potential duplicate tax records for individuals;
- 62 per cent of deceased clients were not recorded as deceased in a sample match.

1 Australian Electoral Commission, *Submission 2*, p. 7-8.

Similarly, an ANAO Audit Report (No.24 2004–05 Integrity of Medicare Enrolment Data) stated that “ANAO found that up to half a million active Medicare enrolment records were probably for people who are deceased.”²

In simple terms, where there are such examples of inconsistency in Commonwealth data, there cannot be sufficient faith in this data being used to automatically add people to the electoral roll.

Given that there are a number of Federal Electorates that have margins under 100 votes such as McEwen, Bowman and Robertson even a 1% error in the information sourced from the various agencies would have significant ramifications for the outcome of a seat, or even an election.

Despite the fact that Government majority recommends the power to declare data sources as trusted be given to the AEC, Opposition Members and Senators do not believe this addresses this problem in its entirety.

We are also concerned at the power given to the Electoral Commissioner to deem data sources ‘trusted’ in determining the use of such data in compiling the roll as a potential risk to the office.

The inclusion of such data, if erroneous, would be extremely damaging to public faith in our electoral process. Furthermore, the inclusion of such data may well be controversial due to lack of faith in its inclusion or utilisation.

Placing the Electoral Commissioner at the heart of such a potentially charged dispute can only damage the standing of the office and the AEC.

There also remains the issue of public, Parliamentary and media scrutiny of such decisions. In questioning before the Committee, the New South Wales Electoral Commissioner, Mr Colin Barry, confirmed that there is no requirement under the NSW Act to make decisions regarding the use of data sources public:

Senator RYAN – One of the issues I would flag would be: are those decisions, about what agencies are deemed to be trusted, public decisions? Or are they decisions that remain within the New South Wales Electoral Commission? Is it required that you notify the public?

Mr Barry – The legislation empowers the electoral commissioner in New South Wales to make that decision as to who are the trusted –

Senator RYAN – And there is no requirement to make it public?

Mr Barry – No. There is no legal requirement.³

2 Australian National Audit Office, *Integrity of Medicare Enrolment Data No. 24 2004-05*, p. 12.

3 Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p.17-18.

Furthermore, there was no information available to the Committee regarding protocols, standards or guidelines in the Electoral Commissioner making decisions about whether data is to be 'trusted' and therefore used in compiling the electoral roll.

Senator RYAN – ...I am imagining that, given that it has only been three months, you do not have published criteria yet around what you are going to deem to be a trusted agency.

Mr Barry – You are correct – we do not have any published criteria...⁴

The combination of decisions about data sources being utilised to automatically enrol people with the fact that there are no published guidelines or protocols around determining their use or otherwise is a matter of grave concern.

The enactment of automatic enrolment provisions in the Commonwealth Electoral Act also poses problems relating to the incorporation of similar actions by state electoral commissions.

The AEC indicated that if such provisions were enacted it may rely on a state electoral commission as a 'trusted agency' for the purposes of updating the roll:

Mr Killesteyn – To a certain extent there is movement already in that direction, on the basis of your recommendation. If the Commonwealth Electoral Act were amended to allow updates of the roll based on third party information, the AEC would regard the New South Wales Electoral Commission as a trusted agency...⁵

This would allow data that is not currently accessible or verifiable by the Commonwealth to be utilised to update the Commonwealth electoral roll. It would effectively mean that data outside the control of the Commonwealth Parliament or Executive would be used to determine the Commonwealth electoral roll. Such an eventuality should be opposed. While currently data from state agencies (such as registries of births & deaths) are used to update the electoral roll, these are used in a markedly different fashion than are proposed for the purposes of automatic enrolment.

The current enrolment process is transparent to all – completion of a form by an eligible individual. To institute a process whereby data is gathered from around government, no public statement is made regarding its use and there being no protocols or standards available to inspect to determine their suitability is to invite public questioning over the validity of the roll – and the lack of third party or media scrutiny of such decisions represent the introduction of a substantial barrier to transparency.

4 Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p. 17.

5 Mr Ed Killesteyn, *Proof Committee Hansard*, 2 February 2010, p.12.

Election day enrolment

Recommendation 2

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.

This recommendation poses a number of problems as it will expose the roll to fraudulent enrolments and potentially cause significant delays on Election Day. The uncertainty of this provision was illustrated by Mr Barry:

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...⁶

In order to prevent fraudulent enrolment there may need to be something akin to a point system whereby a person's address is verified against, for example, a utilities, bill but this again would pose additional problems.

In addition it cannot be expected of the election officials, given the pressures and time constraints placed upon them on polling day to closely cross-check every enrolment form accurately. In some cases the election official is also open to the possibility of people claiming to be the person on the driver's license when indeed they are not.

Secondly, the recommendation will cause lengthy queues on Election Day. It will also provide delays in finalising the count while awaiting verification of the enrolments received that day. It is a significant administrative burden for the AEC. This at a time when measures, such as processing pre-poll votes as 'ordinary votes' are being taken to quicken the vote counting process on Election Day.

Thirdly, election day enrolment will inadvertently provide an incentive to people to not comply with the existing law and initially enrol or update their election details when they move residence. The knowledge that one can simply turn up on election day and enrol to vote after turning eighteen, taking out citizenship or moving residence will only weaken the effectiveness of the AEC enrolment and education campaigns. This will reduce the accuracy and integrity of the roll between elections.

Finally, election day enrolment breaches an important principle – that candidates should know their electors.

⁶ Mr Colin Barry, *Proof Committee Hansard*, 2 February 2010, p. 18.

Inconsistencies should not be addressed with a flawed approach

The AEC and the Government majority assert that the introduction of automatic enrolment in NSW poses problems for federal elections, arising from voter confusion regarding eligibility to vote as the result of two different rolls.

This may well be the case, but on its own does nothing to support the case for adoption of automatic enrolment.

Primacy of the Australian Electoral Commission

While the objective of 'one roll, many elections' is a commendable one, it cannot become an approach driven by the lowest common denominator.

Simply because one jurisdiction adopts a particular measure does not necessitate that it should be adopted by all, or that it should be adopted at the federal level simply to avoid 'confusion'. Integrity of the roll is of much greater import than confusion.

Any elector can simply determine their eligibility and enrolment status for federal elections with the AEC. While the confusion that may result from the NSW provisions is regrettable, that does not on its own justify replication of these, with all the associated flaws, in Commonwealth law.

The integrity and primacy of the Commonwealth electoral roll is paramount. Any threat to that integrity and primacy must be resisted.

What the Committee is proposing is, effectively, 'the tail wagging the dog.' Because a single state is moving to radically change the enrolment procedures, the AEC is now being forced lockstep into adopting them.

Perhaps we should consider a more radical example: if a state were to change the voting age from eighteen (either higher or lower), would the threat of a split roll force the Commonwealth and all other jurisdiction to follow suit? It should not – while a joint role is desirable, it should not be at the expense of an accurate Commonwealth roll.

Inconsistency between the proposals of this report and the Electoral and Referendum (Close of Rolls and Other Measures) Bill

One of the notable inconsistencies between the report's recommendations and the current Bill before the Parliament is the handling of provisional votes.

Under the proposed legislation, a provisional voter would not have to produce evidence of their claimed identity before their vote is validly included in the count. Instead, the new Bill proposes "where there is any doubt as to the bona fides of the elector, the signature on the envelope containing the provisional vote be compared with the signature of the elector on the previously lodged enrolment records".⁷

However, if the elector has been automatically enrolled then the Divisional Returning Officer would have no specimen signature for cross-checking purposes. Thus the recommendation, as it is proposed in this report, allows for unverifiable abuses of provisional voting.

Conclusion

Such changes to the Commonwealth Electoral Act 1918 as recommended in this inquiry could exacerbate perceptions in the community of the electoral system being flawed. It is more important to have a system that takes every step to maintain the integrity of the processes involved than to undertake untested measures to increase enrolment numbers.

If the electoral system is seen to be lacking in transparency or integrity there is every chance that Australians will become less likely to participate in the voting process to the detriment of our democratic system.

Opposition Members and Senators oppose the recommendations 1 – 3 of the Government majority of the Committee.

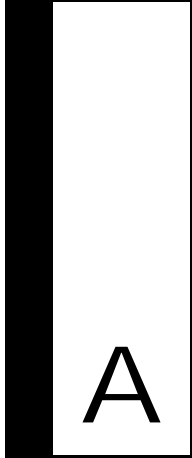
Hon Andrew Robb MP
Deputy Chair

Senator Scott Ryan

Hon Bruce Scott

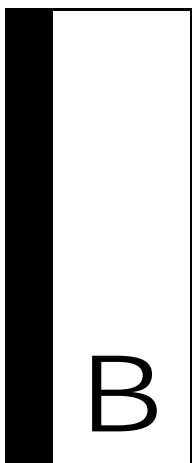
Senator Simon Birmingham

⁷ Hon Anthony Byrne MP, *House of Representatives Hansard*, 11 February 2010, p. 4.



Appendix A – List of submissions

1. United Nations Youth Association of Australia
2. Australian Electoral Commission
- 2.1 Australian Electoral Commission (Supplementary)
3. Electoral Reform Society of South Australia
4. Democratic Audit of Australia
5. Proportional Representation Society of Australia



Appendix B – List of witnesses

Tuesday, 2 February 2010 – Canberra

Australian Electoral Commission

Mr Ed Killesteyn, Electoral Commissioner

Mr Paul Dacey, Deputy Electoral Commissioner

New South Wales Electoral Commission

Mr Colin Barry, Electoral Commissioner

Mr Paul Beeren, Director, Enrolment

Democratic Audit of Australia

Dr Peter Brent, Researcher

Proportional Representation Society of Australia

Mr Boguslaw (Bogey) Musidlak, President

