

Submission to the Inquiry by the Joint Standing Committee on Electoral Matters into the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012

21 December 2012



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Introduction

- 1.1 On 29 November 2012 the House of Representatives Selection Committee referred the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 (the Bill) to the Joint Standing Committee on Electoral Matters (JSCEM) for inquiry and report. The stated reasons for referral/principal issues for consideration were, 'to further scrutinise the bill to ensure consideration is given to any unintended consequences'.
- 1.2 In a letter dated 7 December 2012, the Chair of the JSCEM, Mr Daryl Melham MP, invited the Australian Electoral Commission (AEC) to make a submission to the inquiry. This submission is provided in response to that letter.
- 1.3 This submission discusses the changes proposed by the Bill in general terms, with particular attention paid to the impact of the proposed changes on administrative and electoral processes. For ease of reference, the submission has been structured under headings that align with the key aspects of the Bill:
 - Use of Data from the Australian Taxation Office for Enrolment Purposes
 - Pre-poll Voting Arrangements
 - Postal Voting Application Deadline
 - Redistribution Timelines
 - Ballot boxes opened without authorisation before close of poll
 - Other Amendments

Scope of the Bill and this submission

- 1.4 The Bill implements the Government response to recommendations 3, 9, 10, 11, 15, 29, and 30 made by the JSCEM in its report, *The 2010 Federal Election: Report on the conduct of the election and related matters* (the 2010 Federal Election Report). The specific recommendations are as follows:
 - Recommendation 3 – 'The Committee recommends that relevant legislation governing the protection of personal data collected by the Australian Taxation Office (ATO), which would prevent the ATO from providing enrolment relevant data to the Australian Electoral Commission (AEC), be amended to allow such data to be shared with the AEC for the purposes of facilitating enrolment.'
 - Recommendation 9 – 'The Committee recommends that the *Commonwealth Electoral Act 1918* be amended, wherever appropriate, to specifically provide that a ballot box containing votes cast by electors may not be opened before the close of polling other than in accordance with the relevant provisions of the Act.'

- Recommendation 10 – ‘The Committee recommends that the requirement at section 200DH of the *Commonwealth Electoral Act 1918* for an applicant for a pre-poll ordinary vote to complete and sign a certificate be repealed.’
 - Recommendation 11 – ‘The Committee recommends that section 200D of the *Commonwealth Electoral Act 1918* be amended to provide that an application for a pre-poll vote cannot be made before the Monday, 19 days before polling day.’
 - Recommendation 15 – ‘The Committee recommends that subsection 184(5), and any other relevant provisions, of the *Commonwealth Electoral Act 1918* be amended to provide that the deadline for the receipt of postal vote applications be 6 pm on the Wednesday, three days before polling day.’
 - Recommendation 29 – ‘The Committee recommends that section 72, and any other relevant sections, of the *Commonwealth Electoral Act 1918* be amended to provide that, where an augmented Electoral Commission has formed an opinion that its proposed redistribution is significantly different to the Redistribution Committee proposal, a further fixed period be provided during which the actions required by subsection 72(13) of the Act are to be undertaken.’
 - Recommendation 30 – ‘The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that, where a further fixed period is provided during which the actions required by subsection 72(13) of the Act are to be undertaken, the number of days specified in subsection 72(2) of the Act also be increased by the same number of days provided for in the further fixed period.’
- 1.5 The Bill also proposes a number of technical and minor amendments. These include changes that relate to the proposed amendments to the *Commonwealth Electoral Act 1918* (Electoral Act) contained in the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (Improving Electoral Procedure Bill), currently before the Senate.
- 1.6 The Bill proposes amendments to the Electoral Act and complementary amendments to the *Referendum (Machinery Provisions) Act 1984* (Referendum Act).

Use of Data from the Australian Taxation Office for Enrolment Purposes

Item 53 of Schedule 1

Relevant current arrangements

- 2.1 Generally speaking, all Australian citizens who are 18 years of age or over and certain 'British subjects' are entitled and obliged to enrol to vote. Section 101 of the Electoral Act requires that persons who are entitled to be enrolled for a Division, and who have lived at an address for one month, must enrol or update their enrolment details within 21 days of the expiry of that one month period.
- 2.2 Despite this, it is estimated that some 1.5 million, or nine per cent, of eligible electors are not enrolled to vote. Approximately one-third of these missing electors are 18 to 25 years of age.
- 2.3 As the AEC has noted to this Committee on previous occasions, the administrative practices used to maintain the roll have evolved over time, as permitted by technology and legislative change. Since 1999 the AEC has been using data from a range of third party data sources, including Commonwealth and State government departments and agencies, to identify 'unenrolled eligible persons' and 'electors not correctly enrolled' and to contact these persons through its Continuous Roll Update program with letters encouraging them to enrol or update their enrolment details. The measurable response rate to this program is in the order of 20%.
- 2.4 The mail based CRU program remains the main stimulus for enrolment and the second highest stimulus for re-enrolment. However, supporting this program is a range of diverse methods that assist people to enrol or update their enrolment.
 - In addition to being available from the AEC's network of offices and the AEC website, AEC enrolment forms are available through Australia Post, Centrelink, Australian Taxation Office (ATO) and Medicare shopfronts, they are also mailed by some state transport authorities with licence change of address labels.
 - Information from declaration vote envelopes completed at most recent federal, state and territory elections has been used to enrol, re-enrol or update enrolment address details of electors where sufficient information has been provided.
 - People who are updating their enrolment address details are able to complete the full transaction online. Most online enrolment transactions

occur through the AEC's website. Online update of enrolment address is also possible through the Australia Post's online version of its mail redirection and change of address notification (COAN) service. The Australia Post COAN form is treated just like the AEC online enrolment service for enrolment address updates.

Under the proposed amendments the AEC would use ATO tax file number applications in a similar manner – this is discussed further at paragraph 2.9.

- 2.5 Most recently, new laws passed by the Australian Parliament allow the Australian Electoral Commission (AEC) to directly enrol or update an elector's details on the electoral roll based on information from other government agencies. These measures have been enacted by the *Electoral and Referendum Amendment (Protecting Elector Participation) Act 2012* and the *Electoral and Referendum Amendment (Maintaining Address) Act 2012*. In June 2011, in its 2010 Federal Election Report, the JSCEM recommended that the AEC be provided with the authority to directly enrol or update an elector's enrolment based on third party sources of data, where it is satisfied as to the validity of this data. The JSCEM has previously summarised these measures in the following terms.

The Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012 (the Bill) will provide the AEC with greater flexibility to improve roll completeness. Schedule 1 of the Bill will enable the AEC to directly enrol eligible people who are not currently enrolled, based on data received from trusted third party sources.

[...]

The direct enrolment and reinstatement measures complement those in the Electoral and Referendum Amendment (Maintaining Address) Bill 2011. That Bill provided for direct update of address details of already enrolled electors and changes to the objection process to reduce the number of eligible electors removed from the roll.

Direct enrolment is an administrat[ive] tool to enhance the completeness, accuracy and currency of the roll. It will augment other mechanisms for roll stimulation, such as targeted mail-outs, fieldwork and education programs. Direct enrolment is a logical extension of the existing Continuous Roll Update (CRU) process. The Bill also makes provision for the AEC to communicate with affected individuals about their direct enrolment.¹

¹ JSCEM, *Advisory Report on the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012*, March 2012, pp. iii-iv.

- 2.6 As noted above, AEC enrolment forms are currently available through ATO shopfronts. From 1 July 2011 users of the ATO's e-tax application that advise of a change of address, are provided with a message that reminds them to update their enrolment and includes a link to the AEC website. At present, taxation legislation does not permit the disclosure of any information collected by the Australian Taxation Office (ATO) to the AEC for use in its roll maintenance activities. In its 2010 Federal Election Report the JSCEM recommended that relevant taxation legislation be amended to allow the ATO to provide the AEC with enrolment-related personal information for the purposes of facilitating enrolment. The report of the JSCEM noted its belief that 'if the ATO were permitted to share enrolment relevant data with the AEC it would provide a genuine and lasting improvement to roll maintenance processes and roll integrity'.²

Changes proposed by the Bill

- 2.7 Currently, section 355-25 of Schedule 1 of the *Taxation Administration Act 1953* (Taxation Administration Act) makes it an offence for taxation officers to record or disclose protected information, subject to a list of specific exceptions. Those exceptions facilitate efficient and effective government administration and law enforcement in relation to important statutory regimes, for example, personal information may be supplied to the Australian Statistician, the Chief Executive Officer of Customs, the Immigration Secretary, the Fair Work Ombudsman and the Attorney-General of a State or Territory.³
- 2.8 The proposed changes to the Taxation Administration Act identified in this Bill at item 53 will simply add the Electoral Commissioner to the list of Commonwealth and State agency heads who are able to receive what would otherwise be protected information, such as the names and addresses of taxpayers, for the purpose of administering the Electoral Act and Referendum Act. The form of the amendment was discussed in detail and agreed with the ATO and the Treasury.
- 2.9 Implementation of this measure will be focussed on disclosure of information collected by the ATO from Tax File Number applications and inquiry forms which will enable a completed Tax File Number Application to also be used as an application for enrolment by eligible Australian citizens. With some exceptions,⁴ individuals applying for a tax file number are required to obtain the application,

² JSCEM, *The 2010 Federal Election Report: Report on the conduct of the election and related matters*, June 2011, p.36, 3.59.

³ 355-65(8) of Schedule 1, Taxation Administration Act.

⁴ If you are an Australian citizen 16 years old or older who lives in the greater Melbourne region, Albury or Wagga Wagga, you can apply for your TFN online. Source: ATO, 'Getting a tax file number', available at: <http://www.ato.gov.au/individuals/content.aspx?doc=/content/40962.htm>.

complete it (including providing proscribed proof of identity information), sign it, and then either post the paper application and proof of identity documentation to the ATO, or present the application and proof of identity documentation in person at an ATO shopfront. With one exception⁵, this process is much the same as that required of an eligible person who applies for enrolment.

- 2.10 The AEC considers that this amendment will provide clear benefits to citizens by assisting them to comply with their statutory obligations in respect to two Government agencies through one transaction. This approach is also consistent with elements of Government service delivery reform initiatives, such as the Reliance Framework,⁶ which seek to improve and simplify Government services to citizens by improving the use and transmission of personal information between agencies.
- 2.11 As has been noted at paragraph 2.1, the AEC estimates that around one-third of the 1.5 million eligible Australians missing from the roll are aged 18 to 25. The AEC understands that of those individuals who registered tax file numbers during 2010-11, a majority were aged between 16 to 25 years. The AEC anticipates that applicant information will be of value in identifying and assisting young Australians who are eligible, either to enrol, or to maintain enrolment at a correct address. In its 2011-12 Annual Report the ATO notes that 709 672 individual tax file number registrations were processed for the financial year.⁷
- 2.12 The AEC anticipates that using information collected by the ATO for the purposes of maintaining the roll will improve two key integrity elements of the electoral roll, accuracy and completeness, by:
- assisting eligible electors to be on the roll;
 - assisting electors to maintain enrolment at a correct address;
 - updating enrolment details in a more timely manner; and
 - reducing objection action to remove electors from the roll when a new address is known for them.⁸

⁵ That being the requirement to provide original proof of identity documentation.

⁶ Further information on the Reliance Framework is available at:
<http://www.finance.gov.au/publications/reliance-framework/>.

⁷ The ATO annual report notes that 59.2% were applications from permanent migrants and non-residents with working visas. See Commissioner of Taxation, *Annual Report 2011-12*, p. 39. Available at: http://annualreport.ato.gov.au/uploadedFiles/Content/Downloads/n0995-10-2012_js23899_w.pdf.

⁸ Objections are removals of individuals from the electoral roll on the basis that they do not live at their enrolled address or no longer have an entitlement to be enrolled. These individuals subsequently need to re-enrol to be placed on the electoral roll again.

- 2.13 The AEC will continue to work with the ATO with a view to being ready to implement the measures proposed in the Bill, and develop further agreements covering the proposed arrangements for agency-specific issues including the collection, use, transfer and storage of personal information.
- 2.14 The Explanatory Memorandum clearly notes at Example 1.1 at item 53, that should the Bill pass into law, the proposed amendment will only authorise the ATO to disclose *information that has been obtained since Royal Assent*. The ATO will not be authorised to disclose information it collects prior to this point in time.

Pre-poll Voting Arrangements

Removal of the requirement for an applicant for a pre-poll ordinary vote to complete and sign a certificate

Items 8 - 23 and 27 - 28 of Schedule 1

Relevant current arrangements

- 3.1 Pre-poll voting is one type of 'early voting' option. Pre-poll voting methods available for electors include both pre-poll ordinary voting and pre-poll declaration voting. Pre-poll ordinary voting occurs where a vote is cast by an elector prior to polling day, in an elector's home division or at a pre-poll voting centre (PPVC) belonging to that elector's home division and where there is a certified list available to check the elector's eligibility.
- 3.2 This can be distinguished from pre-poll declaration voting, which exists for example, for electors who attempt to cast a pre-poll vote prior to polling day, but whose name cannot be checked against a certified list.⁹
- 3.3 Under current provisions a voter who wishes to cast a pre-poll ordinary vote is required to complete a pre-poll vote certificate for ordinary voting. The process requires that an elector sign the certificate containing a declaration that they are eligible, by virtue of meeting one of the conditions in Schedule 2 of the Electoral Act, to cast a pre-poll vote. Once completed by the elector, the ballot papers are placed directly into a ballot box, rather than in a declaration vote envelope. An image of the pre-poll certificate is at **Attachment A**.

⁹ Other cases where a pre-poll declaration vote will be issued include: where the Electoral Commissioner has determined pre-poll ordinary voting will not be available; where the certified list is not available; where an elector is a silent elector; and where a mark already exists against a person's name.

- 3.4 In its *Report on the conduct of the 2007 federal election and matters related thereto*, the JSCEM recommended that the Electoral Act be amended to allow pre-poll votes cast at a PPVC in an elector's 'home' division prior to polling day to be cast as ordinary votes. The JSCEM also recommended in that Report that electors who cast such votes 'should still be required to sign a declaration at the time of voting, indicating that they are entitled to a pre-poll vote'.¹⁰
- 3.5 In 2010, the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010* amended the Electoral Act to enable pre-poll votes cast in an elector's home division to be cast and counted as ordinary votes, rather than declaration votes.
- 3.6 Consequently, the 2010 federal election became the first election at which pre-poll ordinary voting was available for electors. At this election, there were 996 875 pre-poll ordinary votes cast. In practice, home division ordinary pre-poll votes are issued in a similar way to ordinary votes on polling day.

Changes proposed by the Bill

- 3.7 Item 12 of Schedule 1 and associated items contained in this Bill propose to remove the requirement at section 200DH for a signed pre-poll vote certificate for electors casting a home division pre-poll ordinary vote.
- 3.8 The AEC anticipates that the removal of the requirement at section 200DH will speed up the vote issuing process and provide efficiencies in polling place management.
- 3.9 The AEC is of the view that electoral integrity is not impacted by removing the requirement to sign a pre-poll certificate.
- 3.10 In its 2010 Federal Election Report, the JSCEM noted 'the obvious success of the move to issuing pre-poll ordinary votes, and [the Committee] is confident that there is no justifiable reason for retaining the written declaration for pre-poll votes issued as ordinary votes'.¹¹
- 3.11 It is also worth noting that implementation of this proposed amendment would align the Commonwealth with a number of state and territory jurisdictions which require only a verbal declaration of entitlement rather than a signed certificate.

¹⁰ JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, p.196, 7.75

¹¹ JSCEM, *The 2010 Federal Election Report: Report on the conduct of the election and related matters*, June 2011, p.49, 4.32.

Alteration of the commencement date of pre-polling

Items 6 and 7 of Schedule 1

Relevant current arrangements

- 3.12 Section 200D of the Electoral Act determines the point of time at which an elector may make an application to cast a pre-poll vote.
- 3.13 Currently, the date that pre-poll voting can commence depends on the date that nominations close, as ballot papers can only be finalised and printed after nominations are declared and, in the case of the Senate, after group voting tickets have been lodged, 24 hours after the declaration of nominations. Section 200D of the Electoral Act currently provides for two dates from which an application may be made:
- where there is a Senate election, or where a Senate election and a House of Representatives election fall on the same day, subsection 200D(4) enables a person to apply for a pre-poll vote no earlier than the second day after the declaration of Senate nominations;
 - where a House of Representatives election is not held on the same day as a Senate election, subsection 200D(5) allows a person to apply for a pre-poll vote on the day after the day on which nominations for that election are declared.
- 3.14 In its 2007 Federal Election Report, the JSCEM acknowledged that the increasing trend towards early voting has inevitably changed the way that elections must be managed. By way of example, at the 2010 federal election, just over 1.5 million pre-poll votes were cast by electors, up from 1.1 million in 2007.
- 3.15 The AEC asked the JSCEM in its *Inquiry into the conduct of the 2010 federal election and matters related thereto* to consider an alteration of the timetable for the commencement of pre-poll voting so that an application could not be made before the Monday 19 days before the polling day. The intent of this recommendation was to accommodate for the increasing logistical challenges encountered in preparing, proofing, printing and distributing ballot papers along with Senate group voting ticket booklets. Whilst the timeframe under current provisions has always been challenging logistically for the AEC and its suppliers, there has been a steady increase in the number of early voting ballot papers being issued at each election since 2001, of between 27 and 30 per cent from one

federal election to the next.¹² This has necessarily increased the volume of pre-poll and postal voting ballot papers requiring printing and distribution initially at each event, a process which is placing additional strain on suppliers, and consequently, requiring adjustment of the period of time necessary to complete this work.

- 3.16 The JSCEM has noted the administrative difficulties created by the short time period provided for in the Electoral Act between the close of nominations and the commencement of pre-poll voting, in particular the time available to ensure that ballot papers can be produced and distributed to PPVCs across Australia and at overseas posts.

Changes proposed by the Bill

- 3.17 Items 6 and 7 of Schedule 1 to this Bill propose to amend the Electoral Act to ensure that an application for a pre-poll vote cannot be made (and therefore pre-poll voting cannot commence) earlier than four days after the declaration of nominations for any type of election or by-election. The AEC notes that these amendments implement the intent of recommendation 11 of the JSCEM's 2010 Federal Election Report, in terms consistent with the existing legislative provisions for a minimum election timetable. Implementation of the JSCEM's recommendation 'as written' would, in the event of an extended election timetable, limit the period in which a person could apply for a pre-poll vote even though ballot papers would be available – such an intent was not reflected in the majority's reasoning.¹³
- 3.18 The practical effect of these changes to section 200D of the Electoral Act will ensure that the AEC has two extra days to produce and distribute ballot papers for the commencement of early voting. For the usual minimum election timetable, this change would mean that pre-poll voting would commence on the Tuesday after nominations are declared.
- 3.19 The proposed change provides an appropriate balance between ensuring reasonable timeframes for the logistics of ballot paper production, and providing timely and convenient early voting facilities for qualified electors. The AEC is of the view that these amendments provide for processes that are both administratively sound and elector-centric in nature, and appropriately

¹² From 1.178 million early votes issued in 2001, to 1.528 million in 2004, to 1.944 million in 2007, to 2.498 million in 2010.

¹³ Opposition members of the JSCEM expressed concern regarding the 19 day time period proposed in the JSCEM's 2010 Federal Election Report. In dissent, Opposition members argued that pre-poll voting should not open until the Monday 12 days before polling day.

accommodate the potential for increasing elector reliance on pre-polling arrangements.

Postal Voting Application Deadline

Items 1 - 3 of Schedule 2

Relevant current arrangements

- 4.1 Under section 184 of the Electoral Act, an application for a postal vote can be made up until 6 pm on the Thursday before polling day. Section 184 also provides that if an application fails to meet the deadline of 6 pm on the Thursday before polling day, reasonable efforts must be made to advise the applicant that his or her application has failed to meet the deadline, and that the applicant must vote by other means.
- 4.2 As the AEC has previously identified in a submission to the JSCEM,¹⁴ statistics from the 2010 federal election showed that Postal Vote Packages (PVPs) sent in response to PVAs received on the Thursday before polling have a limited chance of being received by the voter in time for them to be completed before the close of polling and returned to the AEC within the legislated timeframe. Comparatively, a far higher percentage of those issued from applications received by the Wednesday prior to polling day are received back in time to be admitted to the count.
- 4.3 Under the current arrangements, electors may be misled into thinking that they will receive their ballot papers in time to complete and return them before the close of polling, when the reality is that many will not.

Changes proposed by the Bill

- 4.4 Items 1 – 3 of Schedule 2 of this Bill seek to amend the Electoral Act to bring forward the deadline by which a PVA may be received by the AEC, by one day.
- 4.5 The items propose that the Electoral Act provide that the deadline for the receipt of an application for a postal vote be 6 pm on the Wednesday, three days before polling day, rather than the current deadline, the Thursday, two days before polling day.

¹⁴ AEC, Submission no. 87; *Submission to the Joint Standing Committee on Electoral Matters on the Conduct of the 2010 Federal Election*, February 2011, p.80.

- 4.6 In its 2010 Federal Election Report, the JSCEM took the view that a deadline of the Thursday prior to polling day does not provide sufficient assurance that PVAs can be processed, and resulting PVPs received, in time for electors to cast and return their vote prior to polling day.

Redistribution Timelines

Items 1 - 4 of Schedule 1

Relevant current arrangements

- 5.1 Under Part IV of the Electoral Act the AEC is responsible for managing redistribution of electoral boundaries. Redistributions require inquiries and public notification with an opportunity for public comment before conclusion. There are time limits set out for certain key stages of a redistribution exercise.
- 5.2 The redistribution process is commenced by a body comprising the Electoral Commissioner, the Australian Electoral Officer for the State and the Surveyor-General and Auditor-General for the State; which under subsection 60(2) is described as the 'Redistribution Committee'. Under section 70 the redistribution process is concluded by a body comprising the Redistribution Committee with the addition of the Chairperson of the Electoral Commission and another member of the Electoral Commission. This is the 'augmented Electoral Commission'.
- 5.3 After the initial examination a Redistribution Committee shall cause maps setting out names and boundaries of each proposed electoral division to be exhibited as set out in paragraph 68(1)(a). The Redistribution Committee shall by notice in the Gazette on a Friday invite public attention to the proposed maps. Paragraph 68(2)(a) sets out a requirement that written objections must be lodged before 6 pm on the 4th Friday after the Gazettal date. Written comments on those objections must be lodged before 6 pm on the 6th Friday after the Gazettal date of the notice inviting public attention to the proposed maps.
- 5.4 The role of an augmented Electoral Commission is to consider all initial objections, initial comments and further objections. Subsection 72(2) allows the augmented Electoral Commission to complete its considerations of the initial objection and 'any further objections' no later than 60 days after the expiry of the period described in subsection 69(3), that is, 60 days after 6 pm on the 6th Friday after the Gazettal date.

- 5.5 However, when resolving these matters the augmented Electoral Commission may reach the opinion that its proposal is ‘significantly different’ (paragraph 72(12)(c)) from the Redistribution Committee proposal and if it does it is obliged to offer an opportunity for persons to lodge a ‘written further objection’ (paragraph 72(12)(d)). Subsection 72(2) is the only provision which covers the time period in which the work of the augmented Electoral Commission should be concluded. Therefore, in the event of the augmented Electoral Commission determining that their redistribution proposal is ‘significantly different’ there is no extra time allowed to resolve a ‘significantly different’ recommendation. Recommendation 29 of the JSCEM’s 2010 Federal Election Report acknowledges that in such a case an additional time period is warranted.

Changes proposed by the Bill

- 5.6 As noted above, the Electoral Act currently requires that the augmented Electoral Commission complete its consideration of initial objections and initial comments, publish its proposed redistribution and consider further objections to that proposal, within a period of 60 days after the initial closing date for comments on objections. The Electoral Act does not afford the augmented Electoral Commission the same length of time for its consultations and deliberations in law, as is provided to the Redistribution Committee.
- 5.7 Items 1 - 4 of Schedule 1 of the Bill seek to clarify this further redistribution inquiry process in law, to provide a further fixed period of time for the augmented Electoral Commission to complete its deliberations into objections against its proposed redistributions of electoral boundaries.
- 5.8 The relevant items contained in this Bill provide that a person or organisation has a period of up to seven days beginning on the day on which the augmented Electoral Commission makes a public announcement under subsection 72(10) of the Electoral Act, in which to lodge a written further objection. The augmented Electoral Commission is then provided, by the items contained in this Bill, with up to 14 days, beginning at the end of the seven day period for further written objections, to inquire into the person or organisation’s further objection.
- 5.9 The AEC is of the view that an appropriate timeframe for proceedings should be specified in legislation to provide certainty on the rare occasion that an augmented Electoral Commission makes a ‘significantly different’ proposal to that of the Redistribution Committee and, following the objection and consultation process, a further objection is made. The additional days proposed by the Bill will ensure certainty and allow sufficient opportunity for public input, keeping the process

accessible for members of the public and other stakeholders in the manner afforded for first round consultations.

Ballot boxes opened without authorisation before close of poll

Item 24 of Schedule 1

Relevant current arrangements

- 6.1 Under the Electoral Act, it is lawful to open a ballot box containing declaration votes before the close of polling in certain circumstances. For example, the Electoral Act provides that where an elector makes a pre-poll declaration vote, that vote shall be kept in a ballot box.¹⁵ However, subsection 266(1) of the Electoral Act currently allows a Divisional Returning Officer (DRO) to conduct a preliminary scrutiny of declaration votes in envelopes from the last Monday before the close of poll. It follows that, in order for a DRO to conduct a preliminary scrutiny, the ballot-box must be opened.
- 6.2 Because pre-poll ordinary votes do not need to go through preliminary scrutiny processes, there is no requirement for these ballot boxes to be opened until after the close of polling, when the counting (further scrutiny) can commence. At the 2010 election an issue arose in which ballot boxes containing pre-poll ordinary votes in two electoral divisions were opened before the close of polls. This action appeared to contravene the requirements of sections 200DP and subsections 273(2) and 274(2) of the Electoral Act, and following receipt of legal advice from the Australian Government Solicitor, the ballot papers contained in those ballot boxes were excluded from the count. In its subsequent consideration of the matter the three person Electoral Commission noted that whilst the AEC had external legal advice supporting the exclusion of the ballot papers, following the outcome of a report into the incidents by former Electoral Commissioner, Mr Bill Gray AM, the legal basis for the exclusion was in need of further clarity.
- 6.3 Following this, the AEC recommended to the JSCEM that the Electoral Act and Referendum Act be amended to specifically provide that a ballot box may not be opened before the close of polling other than in accordance with the provisions of the Electoral Act, and that a savings provision in the event of official error be

¹⁵ 200E(6), Electoral Act.

included. Recommendation 9 of the JSCEM's 2010 Federal Election Report subsequently recommended that the Electoral Act be amended 'to specifically provide that a ballot box containing votes cast by electors may not be opened before the close of polling other than in accordance with the relevant provisions of the Electoral Act'.

Changes proposed by the Bill

- 6.4 Item 24 of Schedule 1 implements this recommendation and also sets out the process for the handling and treatment of ballot papers in the event that a ballot box is prematurely opened. The effect of the amendment is to:
- preclude the opening of ballot boxes except in accordance with the Electoral Act;
 - set out the procedures to be followed when ballot-boxes are opened before the close of the poll, other than in accordance with the Electoral Act ; and
 - exclude votes contained in prematurely opened ballot-boxes from scrutiny.
- 6.5 This amendment makes it clear that ballots in prematurely opened ballot boxes cannot be counted, but that the ballots contained in those boxes are instead to be parcelled, and at that point removed from further scrutiny. For this purpose, the term 'premature' means:
- for ballot boxes containing any ordinary votes – opened before 6 pm on polling day; and
 - for ballot boxes containing only declaration votes – opened other than in accordance with the DRO's direction in relation to scrutiny under subsection 266(2) of the Electoral Act, before the Monday prior to polling day.
- 6.6 Item 24 clarifies the legislative ambiguity identified in 2010, to ensure that there is certainty and consistency in the manner in which all votes are handled.¹⁶ The proposed amendment also reinforces the existing principle that there is a general need to ensure that ballot boxes remain unopened until they are to be opened for a lawful purpose.
- 6.7 Item 25 of Schedule 1 of the Bill makes clear that the proposed section relating to ballot boxes opened other than in accordance with the Electoral Act (section 238B) applies to the conduct of polling in Antarctica.

¹⁶ Providing certainty and consistency in the manner in which ballot papers are dealt with is also reflected in item 38 of the Improving Electoral Procedure Bill (currently before the Senate). Item 38 proposes the insertion of a new section 238A to clarify how ballot papers discarded by a voter before they are placed in a ballot box will be dealt with by AEC officers.

Other Amendments

- 7.1 The Improving Electoral Administration Bill also proposes minor changes to make the Bill consistent with proposed amendments in the Improving Electoral Procedure Bill, which is currently before the Senate.

Continued registration as a general postal voter for silent electors who transfer enrolment

Item 5 of Schedule 1

- 7.2 One of the grounds for registration as a general postal voter (GPV) is that a person is a 'silent elector'.¹⁷
- 7.3 Subsection 185(3) of the Electoral Act requires that when an elector who is registered as a GPV transfers their enrolment to a new division, the AEC must, except where a person is a 'silent elector', register the elector as a GPV for the new division unless it is satisfied that the elector is no longer entitled to registration as a GPV.
- 7.4 Silent elector arrangements are set out at section 104 of the Electoral Act. These provisions provide options for electors with certain personal circumstances to apply to register as a silent elector in order to have their address suppressed on the electoral roll. Subsection 104(1) provides that each time a silent elector moves, that person must provide a transfer of enrolment form, and also submit a new request for registration as a silent elector.
- 7.5 Items 8 and 9 of Schedule 3 to the Improving Electoral Procedure Bill propose to amend the Electoral Act so that silent electors who transfer their enrolment to another physical address would not be required to submit a new request for registration as a silent elector in order to maintain their silent elector status.
- 7.6 Item 5 of Schedule 1 of this Bill seeks to complement items 8 and 9 of Schedule 3 of the Improving Electoral Procedure Bill, by amending the Electoral Act to provide that silent electors who transfer their enrolment and who are also registered as GPVs would not be required to lodge a new application to register as a GPV for the new address in order to maintain registration as a GPV.
- 7.7 A person's continuing entitlement to be registered as a general postal voter or as a silent elector is managed through periodic review under provisions of the Electoral Act.

¹⁷ Refer paragraph 184A(2)(g), Electoral Act.

Return of specified ballot materials from Antarctica

Item 26 of Schedule 1

- 7.8 Item 26 of Schedule 1 of the Bill qualifies that the requirement specified in proposed section 238A relating to treatment of discarded ballot papers (proposed to be introduced in the Improving Electoral Procedure Bill), and proposed section 238B relating to ballot boxes opened other than in accordance with the Electoral Act (introduced by this Bill), that specified materials be returned to the 'Divisional Returning Officer for the Division' is to be taken as a reference to the Electoral Commission.
- 7.9 The proposed amendments will enable discarded ballot papers in envelopes, or parcelled ballot papers from a ballot box opened other than in accordance with the Electoral Act from Antarctica to be returned to the AEC in the same manner as Antarctic ballot papers are currently returned under subsection 261(1) of the Electoral Act.

Substitution of the term 'issuing officer' with 'voting officer'

Items 8, 10-16, 21-23 and 27 of Schedule 1

- 7.10 A number of minor technical amendments are made to substitute the term 'issuing officer' with 'voting officer', thereby standardising the use of the term 'voting officer' in Division 3 of Part XVA of the Electoral Act.

Attachment A

Pre-poll ordinary voting certificate



Pre-poll vote declaration

Surname

Given name(s)

Date of birth (DAY/MONTH/YEAR)

Declaration

Note: Giving false or misleading information is a serious offence.

I declare that:

- I am entitled to a pre-poll vote, and
- the information I have given on this form is complete and correct.

Signature

Date

Privacy

Your personal information on this form may be viewed by authorised staff and scrutineers, and may be provided to Commonwealth agencies and other bodies in accordance with Commonwealth law.



Pre-poll vote declaration

Surname

Given name(s)

Date of birth (DAY/MONTH/YEAR)

Declaration

Note: Giving false or misleading information is a serious offence.

I declare that:

- I am entitled to a pre-poll vote, and
- the information I have given on this form is complete and correct.

Signature

Date

Privacy

Your personal information on this form may be viewed by authorised staff and scrutineers, and may be provided to Commonwealth agencies and other bodies in accordance with Commonwealth law.

Qualifications for a pre-poll vote

The *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* provides that an elector is entitled to apply for a pre-poll vote if:

- Throughout the hours of polling on polling day, the elector will be absent from the state or territory for which the elector is enrolled.
- The elector will not, at any time during the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth in the state or territory for which the elector is enrolled.
- Throughout the hours of polling on polling day, the elector will be travelling under conditions that will prevent the elector attending a polling booth in the state or territory for which the elector is enrolled.
- Throughout the hours of polling on polling day, the elector will be absent from the Division for which the elector is enrolled.
- The elector will be unable to attend a polling booth on polling day because of:
 - (a) serious illness;
 - (b) infirmity; or
 - (c) approaching childbirth.
- On polling day, the elector will be unable to attend a polling booth because the elector will be at a place (other than hospital) caring for a person who is seriously ill or infirm or who is expected shortly to give birth.
- Throughout the hours of polling on polling day, the elector will be a patient at a hospital (other than a special hospital) and unable to vote at the hospital.
- Throughout the hours of polling on polling day, the elector will be a patient at a special hospital but will be unable to have his or her vote taken by a mobile polling team.
- The elector will be unable to attend a polling booth on polling day because of reasonable fear of, or a reasonable apprehension about, his or her personal wellbeing or safety.
- Because of the elector's religious beliefs or membership of a religious order, the elector:
 - (a) is precluded from attending a polling booth; or
 - (b) for the greater part of the hours of polling on polling day, is precluded from attending a polling booth.
- On polling day, the elector will be serving a sentence of imprisonment of less than 3 years or otherwise under detention.
- The elector's address has been excluded from the roll as a silent elector.
- Throughout the hours of polling on polling day, the elector will be engaged in his or her employment or occupation and:
 - (a) if the elector is an employee, the elector is not entitled to leave of absence (as set out in the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*); and
 - (b) in any other case, the absence of the elector for the purpose of attending at a polling booth to vote would be likely to cause loss to the person in his or her occupation.

Qualifications for a pre-poll vote **SUBMISSION 3**

The *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* provides that an elector is entitled to apply for a pre-poll vote if:

- Throughout the hours of polling on polling day, the elector will be absent from the state or territory for which the elector is enrolled.
- The elector will not, at any time during the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth in the state or territory for which the elector is enrolled.
- Throughout the hours of polling on polling day, the elector will be travelling under conditions that will prevent the elector attending a polling booth in the state or territory for which the elector is enrolled.
- Throughout the hours of polling on polling day, the elector will be absent from the Division for which the elector is enrolled.
- The elector will be unable to attend a polling booth on polling day because of:
 - (a) serious illness;
 - (b) infirmity; or
 - (c) approaching childbirth.
- On polling day, the elector will be unable to attend a polling booth because the elector will be at a place (other than hospital) caring for a person who is seriously ill or infirm or who is expected shortly to give birth.
- Throughout the hours of polling on polling day, the elector will be a patient at a hospital (other than a special hospital) and unable to vote at the hospital.
- Throughout the hours of polling on polling day, the elector will be a patient at a special hospital but will be unable to have his or her vote taken by a mobile polling team.
- The elector will be unable to attend a polling booth on polling day because of reasonable fear of, or a reasonable apprehension about, his or her personal wellbeing or safety.
- Because of the elector's religious beliefs or membership of a religious order, the elector:
 - (a) is precluded from attending a polling booth; or
 - (b) for the greater part of the hours of polling on polling day, is precluded from attending a polling booth.
- On polling day, the elector will be serving a sentence of imprisonment of less than 3 years or otherwise under detention.
- The elector's address has been excluded from the roll as a silent elector.
- Throughout the hours of polling on polling day, the elector will be engaged in his or her employment or occupation and:
 - (a) if the elector is an employee, the elector is not entitled to leave of absence (as set out in the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*); and
 - (b) in any other case, the absence of the elector for the purpose of attending at a polling booth to vote would be likely to cause loss to the person in his or her occupation.