

Analysis of the Bill

Overview

- 2.1 The Australian Electoral Commission (AEC) estimates that at the end of 2011, the federal enrolment participation rate was 90.2 per cent. This means that around 1.5 million people who are eligible to vote are not enrolled and consequently cannot vote. The AEC predicts that this will worsen if the pattern of the last decade is allowed to continue. The growth in enrolment participation has not matched the growth in eligible persons.
- 2.2 The AEC uses a number of strategies to encourage and facilitate enrolment to help ensure a current and accurate federal electoral roll. Since its introduction in 1999, the Continuous Roll Update (CRU) program has become central to the AEC's maintenance of the electoral roll.
- 2.3 In relation to changes of address, under the CRU process the AEC will receive data from other agencies that indicate that an enrolled elector has changed their address and so is no longer entitled to be enrolled at the previous address. The AEC communicates with an elector to advise them to update their enrolment details. However, the AEC cannot update an elector's address details without instruction from an elector. Instead, because of the objection process, the AEC is required to remove the elector from the roll.
- 2.4 A number of eligible electors fail to enrol. However, many others may have neglected to update their address details with the AEC and are consequently removed from the roll. The AEC estimated that of those 1.5 million missing from the federal electoral roll, 600 000 people have previously been on the roll and could have voted.

- 2.5 The Electoral and Referendum Amendment (Maintaining Address) Bill 2011 (the Bill) will enable the Electoral Commissioner to update an elector's address details rather than removing them under the objection process.
- 2.6 The Joint Standing Committee on Electoral Matters (the committee) focused its discussion on the requirements to enrol and update details, the sources of data to be used by the AEC to update address details, and privacy concerns. Other issues were also raised but were not of direct relevance to the Bill.

Requirement to enrol and update details

Background

- 2.7 For the purposes of federal elections in Australia, an eligible elector is a person who is:
- 18 years of age or over;
 - an Australian citizen, or was a British subject on a Commonwealth electoral roll as at 25 January 1984; and
 - has lived at their current address for at least one month.
- 2.8 The *Commonwealth Electoral Act 1918* (Electoral Act) requires eligible persons to enrol and to update their enrolment details when they change address. Section 101 provides that an eligible elector who does not fulfil these obligations is guilty of an offence and is punishable by a fine of one penalty point, which is currently \$110.
- 2.9 However, the AEC estimates that 1.5 million eligible electors are not on the federal electoral roll.¹
- 2.10 When questioned by the committee, the AEC advised that no prosecutions for non-enrolment (not enrolling or not updating address details) had been pursued in recent years.² Instead, the emphasis is on encouraging enrolment rather than punishing those who have not enrolled or failed to update their details. This is reflected in subsection 101(7) of the Electoral

1 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 1.

2 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 9.

Act which provides that once a person has enrolled or updated their details, proceedings cannot be brought against them for prior failures to do so.

Analysis

2.11 The AEC advised the committee that:

The evidence suggests that as each year passes by the number of unenrolled citizens will continue to increase. Significantly, many of these are people who were enrolled in the past; indeed, the AEC estimates that over 600,000 of the 1.5 million unenrolled have been enrolled before and could have voted.

In part, this reflects the imbalance of the existing provisions which allow the AEC to commence action to remove a person from the roll on the basis of reliable third-party data, which indicates they no longer reside at their enrolled address but does not allow the AEC to update the same person's details to an address for which we have information that they do reside at.³

2.12 The Democratic Audit of Australia observed that:

While it is true that enrolling to vote may not appear an onerous requirement, the sheer numbers of unenrolled Australians make it evident that the current system is evidently not working.⁴

2.13 This Bill still places the onus on eligible electors to meet their enrolment obligation, but the AEC would be able to update their address details rather than relying on a response from the elector to the CRU letter or removing them from the roll under the objection process.

2.14 The AEC commented that:

...direct update of elector addresses using reliable third-party information is not only a next logical step in the evolution of electoral roll administrative practices but also consistent with growing expectations of many in the community for seamless use of data across government agencies.⁵

3 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 1.

4 Democratic Audit of Australia, *Submission 1*, p. 2.

5 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 2.

2.15 The Australia Privacy Foundation (APF) opposed the passage of the Bill. However the APF conceded that 'the community does indeed expect that government agencies will move with the times and take advantage of and make available improved electronic mechanisms'.⁶ As an alternative, the APF argued for a consent-based cross-notification arrangement, in which individuals could request that their information be passed on to the AEC for the purposes of updating the roll.⁷

2.16 The APF argued that removing the onus from the elector could compromise the accuracy of the roll. The APF submitted that:

...there is a risk that allowing enrolment changes from secondary sources without positive confirmation from the electors concerned will in many cases lead to a reduction in quality, with electors incorrectly enrolled, or erroneously removed from the database. By definition, use of incorrect information will mean that the notices supposedly offered as a safeguard will not reach the elector who will therefore have no way of objecting. It seems inevitable that in some cases electors who want to vote will be disenfranchised – surely a worse outcome than rolls missing a few electors who have failed to positively confirm change of address?⁸

2.17 The Electoral Commissioner outlined the process to the committee, indicating that:

...the activity for direct address update is very similar indeed to the current activity that we have been undertaking for the last decade on the Continuous Roll Update program. The processes are much the same. We take data from third-party agencies. We take that data and match it against our existing electoral roll using computer systems. We make a determination based on that third-party data in comparison with the electoral roll as to whether a person is at their latest known address. We then take action; we test it. In this case or in the current CRU activity, the letter goes out to the individual. In a direct address update, we would still send a letter to the person but, where there is no response, we would take action to update the address.⁹

6 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 15 February 2012, p. 5.

7 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 15 February 2012, pp. 11-12.

8 Australian Privacy Foundation, *Submission 3*, p. 2.

9 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 2.

Conclusion

- 2.18 All Australians should take responsibility to meet their enrolment obligations in order to ensure they can participate in selecting their representatives. The processes to enrol and update enrolment details are not onerous, with the latter made easier with the means to update online.
- 2.19 However, it is also reasonable that electors expect some degree of data sharing between government agencies. It is appropriate for the Electoral Commissioner to be provided with the flexibility to further simplify the process for eligible electors, help combat the decline in the enrolment rate, and improve the currency and accuracy of the roll.
- 2.20 The emphasis that the AEC places on encouraging and facilitating enrolment of eligible electors rather than pursuing punishment for non-enrolment is appropriate.
- 2.21 Enabling the AEC to update address details will make inroads into saving the franchise of some of the 600 000 eligible electors who the AEC estimates have previously been enrolled but are no longer on the roll. This is particularly important for those who still believe themselves to be on the electoral roll – as they expected that an update of address details to another government agency or at the state electoral roll level would translate to the federal roll – and in cases where they were unaware of their removal under the objection process.

Data from other agencies

Background

- 2.22 The AEC outlined the current CRU data matching process, stating that:

Over the last decade the AEC's CRU program has come to rely on large and regular volumes of change of address information obtained from data provided by Centrelink, state and territory motor registry (more recently via the National Exchange of Vehicle and Driver Information System), and Australia Post. The process of CRU data matching operates as follows:

- data is matched against AEC enrolment records to establish whether or not a person is enrolled;
 - ⇒ data relating to specific categories of electors is excluded, e.g. silent electors, Members of Parliament, eligible overseas

electors (and their kin), Antarctic electors, itinerant electors, and prisoners;

- date of enrolment is compared against the currency of the data record supplied by the third party to determine further action;
 - address data is matched against the AEC address register to establish whether or not an address is valid for enrolment purposes; and
- ⇒ addresses with no mail service are excluded where no postal address is provided.¹⁰

2.23 The Electoral Commissioner will be responsible for the selection of organisations from which the data will be obtained. Mr Killesteyn advised that the agencies to be used for the update of address details will be Centrelink, Australia Post and the data from roads and traffic authorities, which is collected into a single database nationally, NEVDIS.¹¹ These are the sources currently used by the AEC.

Analysis

2.24 The APF expressed concern about what it described as the AEC's practice of 're-purposing' information from other government agencies to use it for electoral administration purposes.¹²

2.25 Concerns were also raised about who should be responsible for determining which organisations are appropriate sources of information.

2.26 In previous parliaments, the committee has expressed similar reservations. In the context of recommending the AEC have the powers to update electors' details, the committee in its report into the 2007 federal election, concluded that source agencies should require Ministerial approval.¹³ In its report on the 2010 federal election, in the context of adding electors to the federal roll, the committee recommended that the 'approval of such agencies by the AEC should be made by disallowable instrument'.¹⁴

10 Australian Electoral Commission, *Submission 2*, pp. 7-8.

11 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commissioner, *Committee Hansard*, 8 February 2012, Canberra, p. 7.

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

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

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

- 2.27 The APF argued that data contained in other agency systems may be unsuitable for AEC purposes and commented that:

The way in which systems are designed, the way in which data definitions are made of data items like address, like spouse, like child, in each government agency for each program reflect the needs of that agency and that program, and they are different in every circumstance.¹⁵

- 2.28 In particular, the APF questioned the quality of the sources used by the AEC, stating that:

Centrelink is merely a funnel for the 100 welfare programs that are run in Australia, which are formally administered by in the order of twenty different agencies. So, when we say that there is one Commonwealth agency involved, there are twenty, and there are 100 programs that are being sucked in through those Centrelink accesses. The second set is state and territory government agencies. The mechanics are that the data is acquired from NEVDIS but that data is sourced and is acquired in the first instance from citizens by motor registries. The third is a completely different category again, which is a government business enterprise. We have crossed out to the grey zone of government in the form of Australia Post.¹⁶

- 2.29 The APF also expressed concern about the type of sources that the Electoral Commissioner may seek to use in the future. The APF commented that:

...at this stage private sector sources are not used but there is absolutely nothing stopping the Electoral Commissioner from deciding that he will become a subscriber to Veda Advantage, the credit bureau, and that he will become a subscriber to AXIOM, the consumer profile aggregator in Australia and elsewhere, and absorb that data into the electoral roll as well.¹⁷

- 2.30 The AEC advised the committee that:

I think the point that underlines the CRU activity and that will also underline the proposed activity under a direct address update

15 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 15 February 2012, p. 2.

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

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

model is that the third-party data is not accepted at face value. We take the information, we confirm firstly that the identity of the elector is the same. We examine the address against our address register, to ensure that it is a properly enrollable address. Only when we are satisfied as to the veracity of the information do we then, according to the model in the proposed legislation, issue a letter to the elector advising of the intention to update the address. The third-party data – I am happy to indicate to you now – is data we get from Centrelink, from Australia Post or roads and transport authorities, will be subjected to veracity checks prior to the AEC taking any further action.¹⁸

- 2.31 While the Electoral Commissioner acknowledged that the legislation does not prescribe the sources to be used, he indicated that:

...at this point it would be our intention, given the experience and the knowledge that we have with those databases as well as the comprehensiveness of those databases, to continue to use those that are available to us.¹⁹

Conclusion

- 2.32 A healthy democracy must aim for an electoral roll that is accurate and maximises the potential for all eligible electors to vote. This Bill provides the AEC with another mechanism, which will operate alongside its other activities, to monitor the accuracy of the federal electoral roll.
- 2.33 The sources proposed to be used as the basis for updating elector's address details are already being used by the AEC, and have been tried and tested in the CRU and objection processes.
- 2.34 The committee is confident that the Electoral Commissioner will exercise appropriate discretion in the selection of sources and in setting in place suitable checks to verify the accuracy of the data received.

18 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commissioner, *Committee Hansard*, 8 February 2012, Canberra, p. 3.

19 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commissioner, *Committee Hansard*, 8 February 2012, Canberra, p. 7.

Privacy concerns

Background

- 2.35 In the Government response to the recommendation that this Bill is implementing, the Australian Government made specific reference to certain privacy considerations:

Noting that the *Commonwealth Electoral Act 1918* requires all Australian citizens to be enrolled, the Government will ensure that appropriate privacy protections, including provisions for opt-out where appropriate, are incorporated into the arrangements to be developed. The AEC will consult with the Office of the Privacy Commissioner and conduct detailed Privacy Impact Assessments in the course of developing agreements with trusted agencies.²⁰

Analysis

- 2.36 While other submitters were supportive of the Bill, the APF opposed the Bill and raised certain privacy concerns. The APF supported the current requirement for elector initiated changes and argued that:

...the basis of a positive action by an eligible voter, should not be abandoned lightly. It is consistent with fundamental privacy principles, which favour use of personal information only for the purpose for which it is collected, with exceptions being strictly limited, and a preference for consent for any secondary use.²¹

- 2.37 The APF also expressed concern that special categories of people, such as silent electors, need to be protected, highlighting:

...silent electors or, perhaps more broadly, the needs of many people to suppress data. I think it is clear from the discussions previously in the last hearing that the committee is well aware that lots of people in society have something to hide. In general, everybody has at least something to hide – some people more than others. For some people it is for nefarious reasons; for many

20 Commonwealth of Australia, *Government Response to the Joint Standing Committee on Electoral Matters 'Report on the conduct of the 2007 federal election and matters related thereto'*, March 2010, p. 5.

21 Australian Privacy Foundation, *Submission 3*, p. 2.

people it is for reasons not of their own fault and reasons which the public respects.²²

- 2.38 The Electoral Commissioner confirmed that consultation had been undertaken with the Australian Privacy Commissioner:

We have been in consultation with the Privacy Commissioner over this particular bill. The Privacy Commissioner has examined all of the processes that we are currently proposing to use for the direct address update. The Privacy Commissioner has not raised any particular issues that should be of concern, primarily because processes that we are suggesting be adopted for direct address update are exactly the same as those processes that we currently use for the continuous roll update program.²³

- 2.39 The AEC advised that data relating to specific categories of electors, such as silent electors, Members of Parliament, eligible overseas electors, Antarctic electors, itinerant electors, and prisoners, would be excluded from the address update process.²⁴

- 2.40 The AEC also responded to privacy concerns raised, noting that Information Privacy Principles 8 and 9 criteria include that the information to be used is 'accurate, up to date and complete' and that information can only be used where it is 'relevant'.²⁵

- 2.41 In a supplementary submission, the AEC noted that:

...legislation dealing with the update of enrolment details from third party sources are already in place in both NSW and Victoria. Both of these jurisdictions also have privacy regimes. Given the similarity of the measure contained in this Bill with that which already exists in NSW and Victoria, the privacy concerns set out in [the APF's] submission appear to be overstated.²⁶

22 Dr Roger Clarke, Chair, Australian Privacy Foundation, *Committee Hansard*, 15 February 2012, p. 3.

23 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 9.

24 Australian Electoral Commission, *Submission 2*, p. 15.

25 Australian Electoral Commission, *Submission 2.1*, p. 3.

26 Australian Electoral Commission, *Submission 2.1*, p. 4.

Conclusion

- 2.42 Protecting an individual's privacy is an important consideration when accessing information from one agency and seeking to use it for another agency's purposes.
- 2.43 The Australian Privacy Commissioner has already examined the methods that the AEC proposes to use for the direct address update, which are in keeping with existing AEC roll management processes. The committee also notes the AEC's advice that privacy concerns have to some degree already been tested in the Victorian and New South Wales contexts.
- 2.44 The state of the roll necessitates the address update measure as a matter of urgency. It will provide the AEC with greater flexibility to help abate declining enrolment.

Overall conclusion

- 2.45 The current state of the federal electoral roll is cause for concern. One and a half million eligible Australians are missing from the roll, including 600 000 who had previously been on the roll. Many of these electors are unaware they are no longer on the roll. This was evident at the 2010 federal election when more than 280 000 people attended polling places and cast pre-poll, absent and provisional votes which were subsequently rejected because they were either incorrectly enrolled or not enrolled. This means hundreds of thousands of wasted votes.
- 2.46 In Australia's system of compulsory voting, eligible Australians have an obligation to enrol and update their address details. Some absences from the roll are deliberate, for a variety of reasons. Others will be inadvertent; due to lack of understanding about current arrangements, the expectation that information will be shared between government agencies or a lack of motivation to update details when there is no imminent election event.
- 2.47 Eligible electors must take some responsibility to perform the small tasks of enrolment and update to help ensure they are able to participate in selecting their federal representatives. It is also logical and appropriate for the Australian Government to provide the AEC with the flexibility and legislative framework to achieve a complete and accurate electoral roll.
- 2.48 Allowing the AEC to update the address details of already enrolled electors extends the CRU process by removing the limitation of requiring an elector to submit the change of address form. It also provides the AEC

with increased flexibility in the objection process, allowing address updates rather than removing electors from the roll.

- 2.49 If the AEC had been able to update the address details of enrolled electors prior to the 2010 federal election, this could have saved many of the 280 000 votes rejected at that election.
- 2.50 Enabling address updates provides a valuable service to eligible electors in assisting them to maintain their voting franchise. The AEC will communicate with the elector to notify them of both the proposed update and its outcome. These electors will be able to contact the AEC and advise if the change is incorrect. In most cases, electors can be confident that when advising Centrelink, road and traffic authorities and Australia Post that their new address will be available to the AEC and the appropriate changes will be made to the roll.
- 2.51 The AEC is already using data from these agencies to encourage new enrolments and update of enrolment details, and to remove electors from the roll. The provisions in the Bill provide the AEC with the legislative basis to act to maintain the accuracy of the roll and preserve an elector's voting franchise.

Recommendation 1

- 2.52 **That the House of Representatives pass the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 as proposed.**

Daryl Melham MP
Chair
29 February 2012