



Electoral Commissioner

SUBMISSION 169.20

Our Ref: RIU995

Mr Daryl Melham MP
Chair
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Melham

I refer to your letter of 30 October 2008 requesting a further submission from the Australian Electoral Commission (AEC) concerning the amendments to the *Commonwealth Electoral Act 1918* (the CEA) requiring evidence of identity for enrolment and provisional voting.

In particular you asked the AEC to outline:

- 1) how the relevant legislative provisions operated prior to and following the amendments to the CEA, and
- 2) how the various amendments collectively affected
 - a) enrolment and objection processes,
 - b) preliminary scrutiny of declaration votes at an election (including reinstatements), and
 - c) enrolment maintenance activities following an election.

You also asked that the AEC provide the following:

- 3) for each year since 2001 (inclusive) – the number of changes made to the electoral roll as a result of written advice provided by electors (not including enrolment forms),
- 4) for each year since 2001 (inclusive) – the number of letters sent to potential electors and the number of enrolment forms received as a result of those letters (similar to the statistics provided in the AEC submission No.2, Annexe 8, p.146, paragraph 3, for 2007-08),

5) any further information or views that the AEC wishes to bring to the attention of the Committee about the effects of:

- a) the 2004 amendment to s.105(1)(b) of the CEA
- b) the 2006 repeal of s.105(1)(b) and (ba) of the CEA on AEC resources or operations; and

6) any further information or views that the AEC wishes to bring to the attention of the Committee about the desirability of reinstating a similar provision to the now repealed s.105(1)(b) into the CEA.

Detailed responses to the questions are set out in Attachment A. The statistics requested in points 3 and 4 above are set out in Attachment B. However, the AEC believes there are significant opportunities to improve the integrity of the electoral roll by adopting some fundamental change to enrolment procedures where electors are changing address. It is worth noting that, of the roughly 1.3 million enrolment transactions processed in 2008, approximately 68% were as a consequence of a change of address, with approximately 47% of these being a change of address within the same division.

This analysis leads to the conclusion that an amendment to s105 to enable the roll to be updated through written advice (not requiring POI), automatically updated through a trusted 3rd party source, or electronically across the web, would provide significant advantages to roll integrity. These advantages include:

- speed
- accuracy
- minimising disenfranchisement
- efficiency
- freeing up resources to focus on roll quality assurance processes.

Please note that this response deals only with matters raised in your letter of 30 October 2008 – any inter-relation between these matters and those raised by Mr Rushton in his email of 3 February 2009 concerning reinstatement of declaration voters will be addressed in the response to that email.

I also wish to advise a correction to the information provided in AEC Submission No 169.1, Annex 8, p.146, paragraph 3 – the sentence should read as follows:

“In 2007-08, the AEC wrote to 3,077,008 people as part of our roll review and roll stimulation activities and only received 703,818 completed enrolment application forms back.”

Yours sincerely



Ed Killesteyn
Electoral Commissioner

1 May 2009

Operation and effect of legislative provisions, AEC views

The main amending Acts relevant to the discussion below are the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* and the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.

Enrolment Provisions:

Background Information

Section 101 of the *Commonwealth Electoral Act 1918* (the CEA) makes it compulsory for electors to enrol or update their enrolment within 21 days of having lived at their address for one month. Section 102 of the CEA requires the AEC to update the electoral roll by actioning claims for enrolment or change of enrolment lodged under s.101. Section 105 of the CEA allows the AEC to, in addition, update the electoral for other reasons, not involving s.101 claims for enrolment, such as correcting errors and removing deceased electors and duplications.

2004 amendments to s.105(1)(b) and s.101(5)

1. Prior to a 2004 amendment, which split the paragraph, s.105(1)(b) of the CEA provided that either an elector's name or address could be altered on the Roll upon written application from the elector, where the elector remained in the same (sub)division. After the 2004 amendment, written notice from an elector was needed to change address within the same division, but a change of name required written application from the elector.
2. A 2004 amendment to s.101(5) brought it into line with other subsections of s.101 by requiring that a person had to have lived at an address for at least one month before notifying a change of address.

2006 repeal of s.105(1)(b) & (ba)

3. Prior to the repeal of s.105(1)(b) and (ba) of the CEA in 2006, the AEC could use written advice from electors as an additional means to update name and address details, when the elector was moving to another address within the same division. Written advice could be received in a variety of forms such as a letter, email, declaration, vote envelopes, or elector information reports from a federal, state/territory or local government election.
4. These provisions were deleted from the CEA at the same time amendments were inserted requiring electors to provide evidence of identity. The repeal of s.105(1)(b) & (ba) of the CEA resulted in a requirement for electors, who were moving within the same division and seeking to inform the AEC of a change to their name to complete an enrolment form and provide POI.

Effects of the removal of s.105(1)(b) & (ba)

5. The clear intention of the Government at the time of the 2006 amendments to the CEA was that a complete "claim for enrolment" which included POI was required by the AEC for any changes to the electoral roll. The AEC administered the change of enrolment provisions in accordance with the then Government policy. However, recent legal advice has pointed out that when paragraphs 105(1)(b) and (ba) were

repealed in 2006, the Parliament did not remove subsection 101(5) of the CEA which still enables an elector to change their address within a Division by providing the AEC with “written notice”. Such a “written notice” is not the same as a “claim for enrolment” in subsections 101(3) and (4). Up until the recent legal advice, the AEC understood the effect of the removal of s.105(1)(b) and (ba) to mean that electors moving within a division had to complete a new enrolment form in order to change either their name or address on the electoral roll.

6. The AEC had issued instructions to its staff advising that they could not action written requests for a change of enrolment within a division. As this meant that the AEC required electors to complete an enrolment form to effect such changes, the result was a delay in updating the roll, or the roll was not updated at all as electors failed to return an enrolment form. For example, it meant that the AEC was not acting upon one of its key sources of the written advice, that is declaration vote envelopes from polling places (where the format of the envelope allows an elector to state both their enrolled address and, where different, their current residential address).

7. Subsection 101(5) of the CEA specifically requires an elector moving from one address in a division to another in the same division to give written notice of the new address to the relevant Divisional Returning Officer (DRO), who must then action it as required by s.102. Since the 2006 repeal of s.105(1)(b) and (ba) failed to also repeal s.101(5) of the CEA, the AEC now understands that it can, in fact, action written requests from electors to update their address on the electoral roll when they are moving within the same division. The AEC is currently considering the effects of the legal advice and reviewing associated policy and procedures in light of that advice

Reintroducing s.105(1)(b) & (ba)

8. It should be noted that under both s.105(1)(b) and (ba) of the CEA the elector had to initiate the contact. Notification coming from any other source (such as data matching) could not be used to alter the Roll under these provisions. It may be beneficial to consider broadening the scope of these provisions (if reintroduced) to include trusted authorities, which could enable the AEC to move towards direct address updating. For further information, please see the AEC’s separate submission concerning electronic enrolment.

s.105(1)(b)

9. The AEC has some reservations about reinstating s.105(1)(b) in its original form. The name of an elector is integral to their identity. In order to maintain the integrity of the Roll it is vital to be able to verify the identity of electors. Requiring evidence of identity for a name change ensures that supporting evidence is provided by the elector and the AEC can undertake necessary checks to ensure that the person is able to be enrolled using that name.

10. However, when an elector changes their name through a process that involves evidence of identity through a trusted agency, a tick box arrangement whereby the elector agrees to the receiving agency notifying the AEC of a change of name for the purpose of updating the Roll might be acceptable and worthy of further consideration. Please see further discussion of this issue in relation to new citizens in the AEC’s separate submission concerning electronic enrolment.

11. The AEC believes that if s.105(1)(b) was to be reintroduced a sufficiently stringent requirement of evidence of identity would need to be included.

s.105(1)(ba)

12. Given the recent legal advice concerning s.101(5) of the CEA, the reintroduction of s.105(1)(ba) is not necessary for people changing address within the same division but is required if written notification or data from trusted sources, rather than a full application for enrolment, is to be used to update enrolment when a person is changing to an address in a different division.

Additional comments

13. The use of the term “subdivision” in the previous wording of s.105(1)(b) & (ba) is out dated, given that there is no longer an administrative need for divisions to be divided into subdivisions. It would be clearer to use the term “division”. It should be noted that there are numerous sections in the CEA where the use of the term subdivision could be replaced with division.

Provisional Voting Provisions:

2006 amendments

14. Voters cast a provisional vote in a polling place if:

- their name cannot be found on the certified list of voters,
- their name has already been marked off the certified list of voters,
- they could/did not answer correctly or refused to fully answer the questions asked by polling officials attempting to confirm the voter is who they claim to be,
- they are silent electors,
- they are provisionally enrolled.

15. Prior to the 2006 amendments to s.235 and Schedule 3 of the CEA, voters casting a provisional vote did not have to provide evidence of their identity. Subsequent to these amendments, voters casting a provisional vote had to provide evidence of their identity either to a polling official at the time of voting or to the divisional returning officer by the Friday after polling day.

16. Prior to the 2006 amendments, s.105(4) of the CEA provided that a divisional returning officer must reinstate an elector’s name to the Roll if, after reviewing the elector’s entitlement to enrolment, the divisional returning officer was satisfied that the elector had been omitted from the Roll in error. Subsequent to these amendments, a divisional returning officer must reinstate an elector to the Roll if, during preliminary scrutiny of declaration votes, it becomes apparent that the elector was omitted from the Roll due to officer error or a mistake of fact. However, the 2006 amendment to Schedule 3 of the CEA specifically excluded any electors who were removed from the Roll by objection on the grounds of non-residence.

Effects of the amendments

17. Unless electors casting provisional votes provide evidence of their identity as required, the AEC cannot admit their votes to the declaration vote scrutiny and the electors’ votes cannot be counted – this includes situations where the elector has had to cast a provisional vote because of polling official error, or because they are

enrolled provisionally as a new citizen. The AEC cannot count these votes even where investigations in the divisional office during preliminary scrutiny satisfy the divisional returning officer of the elector's bona fides. Detailed discussion of the impact of these amendments is set out at paragraphs 4.6.2-4.6.11 of the AEC's (1st) 20 June 2008 submission to this inquiry.

18. Electors who are removed from the Roll by objection must be sent a notice advising of the AEC's intention to remove them from the roll, given at least 20 days to respond, and then be sent a notice advising whether they have been removed or retained on the Roll. Prior to the 2006 amendments, Schedule 3 of the CEA had been applied to the effect that, if electors stated on a declaration vote envelope that their permanent address was the address for which they had been removed by objection, then the objection process had been flawed. However, this set up a situation where some electors would be removed from the Roll by objection, reinstated because they cast a declaration vote for their previously enrolled address, and then removed again from the Roll by objection as AEC roll review activity garnered information that the elector was not resident at the address. The 2004 amendment to s.105(4) of the CEA, which added the requirement for divisional returning officers to review an elector's entitlement before reinstating them to the roll, was an attempt to strike an appropriate balance between enfranchising electors (especially those who did not understand the need to update their enrolment each time they moved) and the processes the AEC must follow to cleanse the Roll. Further discussion on the impact of these amendments is set out in paragraphs 4.6.12-4.6.21 of the AEC's (1st) 20 June 2008 submission to this inquiry.

ATTACHMENT B

Statistics Requested

Changes to the Roll made as a result of written advice from electors

Year	2002	2003	2004	2005	2006	2007	2008
Change	14,375	37,115	44,261	44,916	17,088	706	1,044

Note: 2002 data is for the period 04/06/02-31/12/02 and 2008 data is for the period 01/01/08-31/10/08

The AEC began tracking changes to enrolment by written advice in June 2002, and therefore cannot provide data back to 2001. In February 2005 the method by which written advice changes were reported was changed. The information in this table is compiled by the older method of reporting for 2002-2005 inclusive, and by the current method from 2006-2008 inclusive.

Enrolments resulting from mail sent to electors using information obtained from external data

Year	2005	2006	2007	2008
Total Mail Sent	2,470,977	2,510,990	1,150,934	1,689,767
Total Enrolments	507,743	549,081	357,940	309,285
Enrolments as a % of mail sent	21%	22%	31%	18%

Note: 2005 data is for the period 10/02/05-31/12/05 and 2008 data is for the period 01/01/08-31/10/08

On 10 February 2005, the AEC began specifically tracking mail sent to electors from external data. Therefore, data for this table is only available from that point onwards.