

Introduction

Referral of the Bill

- 1.1 On 28 June 2012 the House of Representatives Selection Committee referred the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (the Bill) to the Joint Standing Committee on Electoral Matters (the committee) for inquiry and report.
- 1.2 The Bill was introduced into the House of Representatives the previous day by the Special Minister of State, the Hon Gary Gray AO MP.
- 1.3 The Selection Committee outlined the following reasons for referral:

REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR CONSIDERATION: the bill and explanatory memorandum are particularly ambiguous when it comes to what specific changes are being made to the process about postal vote applications and it is necessary for the committee to investigate the full extent that these changes will have on the current practice.¹

Overview and purpose of the Bill

- 1.4 The Bill is described in the Explanatory Memorandum (EM) as implementing the Government's response to recommendations 12, 31 and 32 of the committee's report entitled *The 2010 Federal Election: Report on the conduct of the election and related matters*. Recommendation 12 relates to

¹ House of Representatives Selection Committee, *Report No. 59*, 28 June 2012, p. 3.

automating the issuing of postal votes, and recommendations 31 and 32 called for increasing the nomination deposits for candidates for the Senate and House of Representatives.²

- 1.5 The Bill proposes amending the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act), to change postal voting processes and nominations depositions. It also proposes to make a ‘number of technical and minor amendments’ to these acts.³
- 1.6 In his second reading speech, the Special Minister of State commented that the changes contained in the Bill ‘will substantially improve the interactions that Australians have with elections and referendums’.⁴
- 1.7 The EM notes that ‘costs associated with implementation of the measures contained in the Bill will be absorbed by the Australian Electoral Commission from existing resourcing’.⁵
- 1.8 The EM also incorporates a statement of compatibility with human rights. It concludes that ‘this Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*’.⁶

Postal voting

- 1.9 Schedule 1 of the Bill seeks to improve efficiencies in the Australian Electoral Commission’s (AEC) processing of postal vote applications and the distribution of postal voting packages.
- 1.10 Postal voting has increased at every election. At the 2010 federal election, the AEC received 821 836 postal vote applications, in addition to the 209 426 General Postal Voters (GPVs) registered; totalling 1 031 262 applications.⁷

2 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 2.

3 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 1.

4 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 27 June 2012, p. 11.

5 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 1.

6 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 2

7 Joint Standing Committee on Electoral Matters (JSCEM), *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, p. 54.

- 1.11 In its report on the 2010 federal election, the committee recommended that ‘the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to specifically allow for the automated issuing of postal votes by the Australian Electoral Commission’.⁸ Recommendations 13 to 17 of the report – also related to postal voting – are not addressed in the Bill.
- 1.12 The Bill provides for centralising the receipt of the majority of postal vote applications by directing all applications to the Electoral Commissioner or an Assistant Returning Officer. This is intended to simplify the postal vote arrangements by enabling the centralised processing by computers and the centralised dispatch of postal vote packages. The proposed changes also intend to provide the Electoral Commissioner with flexibility to delegate processing tasks to a greater range of officers.
- 1.13 One of the key changes of the Bill is that a ‘person’ rather than an ‘elector’ may apply for a postal vote. This is to allow the increasing number of postal vote applications to be processed and the postal vote packages dispatched in a timelier manner, as the applicant’s entitlement will be assessed upon return of the ballot paper rather than at the issuing stage.
- 1.14 The Bill allows that the list of applications for postal vote may be kept in electronic form and is intended to facilitate the application of future changes in technology.
- 1.15 The Bill also updates the criteria for eligibility for general postal vote applications. This amendment removes the requirement that to qualify, an elector’s place of residence must be more than 20 kilometres from a place where mobile polling will be conducted. This is to ensure that previous changes to the mobile polling provisions, which have made their locations more flexible, do not disadvantage voters who may be unable to determine their distance from a mobile polling station until after the writs are issued. General postal voters will still be required to be located more than 20 kilometres from a standard polling place.

Nominations for elections

- 1.16 The amendments in Schedule 2 seek to address concerns arising from the increasingly large number of Senate groups contesting elections.
- 1.17 In its report on the 2010 federal election, the committee concluded that in some states, in particular New South Wales, ballot papers have become

8 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Recommendation 12, p. 59.

‘increasingly complex’. The committee were particularly concerned that the size and complexity of the ballot paper may result in ‘voters unintentionally voting informally’.⁹

- 1.18 Accordingly, the committee recommended that the Electoral Act be amended to ‘increase the sum to be deposited by or on behalf of a person nominated as a Senator to \$2 000’ (recommendation 31) and to ‘increase the sum to be deposited by or on behalf of a person nominated as a Member of the House of Representatives to \$1 000’ (recommendation 32).¹⁰
- 1.19 The Bill proposes to implement these recommendations. It also goes beyond the recommendation and seeks to increase the number of electors required to nominate an unendorsed candidate from 50 to 100 electors.
- 1.20 Further, in the case of unendorsed Senate candidates who wish to make a request to be grouped, each candidate must be supported by 100 separate electors, rather than the 50 electors that are currently required to nominate all candidates in the group.
- 1.21 The Special Minister of State, in his second reading speech, stated that these measures are ‘proposed as a means of discouraging candidates who are not seriously in contention for election and thereby would reduce the number of candidates on ballot papers’.¹¹

Grounds disqualifying a person from enrolment and voting

- 1.22 Subsection 93(8) of the Electoral Act currently disqualifies a person who is ‘of unsound mind, is incapable of understanding the nature and significance of enrolment and voting’ from being on any electoral roll and from voting at any Senate and House of Representatives election.
- 1.23 The Special Minister of State maintained that ‘the inclusion of the words “unsound mind” in the Commonwealth Electoral Act generates considerable concern in the community’ because it is considered outdated and pejorative.¹² Furthermore, general practitioners have advised that

9 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, p. 165.

10 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, pp. 165-166.

11 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 27 June 2012, p. 12.

12 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 27 June 2012, p. 12.

they are ‘not qualified to say whether somebody is or is not of “unsound mind”’.¹³

- 1.24 The Bill replaces the reference to ‘unsound mind’ with a requirement to obtain a letter or certificate from a ‘qualified person’. The amendment adopts the definition of ‘qualified person’ from the *Freedom of Information Act 1982*, which includes medical practitioners, psychiatrists, psychologists and social workers.

Registration of political parties

- 1.25 Part XI of the Electoral Act covers the registration of political parties. To register a political party, an application must include a list of 500 members of the party. Subsection 123(3) provides:

- (3) *A reference in this Part to a member of a political party is a reference to a person who is both:*
- (a) *a member of the political party or a related political party; and*
 - (b) *entitled to enrolment under this Act.*

- 1.26 The proposed amendment in the Bill would require that these 500 members – rather than simply being ‘entitled to enrolment’ – must be ‘an elector’, i.e. appear on the electoral roll. This change is intended to allow the AEC to process applications for the registration of political parties more efficiently, as it is more straightforward to confirm that an individual is on the electoral roll than to verify their entitlement to enrol.¹⁴

Contents and structure of the Bill

- 1.27 Schedule 1 proposes improvements to the methods for processing postal vote applications and issuing postal voting packages. The amendments are also intended to facilitate the application of future changes in technology.
- 1.28 Schedule 2 is intended to address concerns that having a large number of Senate candidates not seriously in contention for the election makes ballot papers unwieldy and increasing complex to complete.

13 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 15.

14 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 16.

- 1.29 The amendments in Schedule 3 are predominantly administrative or technical amendments.

Schedule 1 – Postal voting

- 1.30 Item 2 amends section 28 and provides that the Electoral Commissioner may delegate all or any of his or her powers under the Electoral Act, other than powers or functions in relation to redistribution. This power is necessary to support the amendments within this Bill, which gives the Electoral Commissioner primary responsibility for the receipt and processing of postal vote applications.¹⁵ Item 1 changes the definition of an ‘officer’ in subsection 4(1) to reflect this change.
- 1.31 Item 3 repeals the definition of ‘appropriate DRO’ (Divisional Returning Officer), making the Electoral Commissioner rather than a DRO responsible for the receipt and processing of postal vote applications. Related item 4 broadens the meaning of ‘division’ to ensure that the amendments in the Bill, in relation to postal voting, apply to all possible postal vote applicants. A reference to a division will include that to which a person would be enrolled if they were an elector.¹⁶
- 1.32 Items 5 and 6 provide for one of the key changes in Schedule 1. It proposes that a ‘person’ rather than an ‘elector’ may apply for a postal vote.¹⁷
- 1.33 Item 10 would require the Electoral Commissioner to allocate a number to each application for a postal vote, which would subsequently be matched to the returned postal vote certificates that contain the ballot papers.¹⁸ Item 16 inserts a new subsection requiring the numbering of certificates and ballot papers before they are dispatched to a postal vote applicant.
- 1.34 Item 19 allows for public inspection of applications for a postal vote and for the list of applications to be kept in electronic form. In order to ensure the privacy of applicants, proposed subsection 189(2) specifies that the only information on the list to be inspected is an applicant’s full name and

15 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 4.

16 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 4.

17 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 5.

18 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 5.

address. Provision is made to exclude the address of silent electors from this list.¹⁹

- 1.35 A large proportion of the items within this schedule not covered here are substitutions of references to 'Electoral Commission' and 'DRO' with 'Electoral Commissioner'. This is to provide consistency for the intention that the Electoral Commissioner will have primarily responsibility for the majority of matters related to postal voting. A number of other items are consequential to item 5 and substitute 'the person' for 'the elector'. The remainder of the items in Schedule 1 are minor administrative amendments consequential to the substantive changes or drafting improvements.
- 1.36 Item 52 to 102 relate to the *Referendum (Machinery Provisions) Act 1984* and mirror the changes made to the Electoral Act, where required.
- 1.37 Part 2 of Schedule 1 make provision for the application of Part 1 amendments to have effect for elections and referendums occurring after the commencement of this schedule. It also deems that delegations in force under section 28 of the Electoral Act and section 138 of the Referendum Act prior to these changes to delegation provisions will continue to have effect as if it were a delegation under the amended provision.²⁰

Schedule 2 – Nominations for elections

- 1.38 Item 1 increases the number of people who are required to nominate an unendorsed candidate for the Senate or the House of Representatives from 50 electors to not less than 100 electors. This item also requires that in the case of unendorsed Senate candidates who wish to make a request to be grouped, each nomination must be supported by 100 separate electors, rather than the current requirement of 50 electors for all candidates.²¹
- 1.39 Item 4 increases the nomination deposit that a Senate candidate must provide from \$1 000 to \$2 000.²²
- 1.40 Item 5 increases the nomination deposit that a candidate for the House of Representatives must provide from \$500 to \$1 000.²³

19 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, pp. 6-7.

20 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 13.

21 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 14.

22 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 14.

- 1.41 Item 7 notes that these changes will apply to elections and referendums for which writs are issued following the commencement of this schedule. Other items in this schedule reflect the changes to nomination requirements outlined above.

Schedule 3 – Other Amendments

- 1.42 Item 3 proposes to replace the words in paragraph 93(8)(a) ‘by reason of being of unsound mind’ with ‘in the opinion of a qualified person’. The change involves having a ‘qualified person’ give an opinion on whether a person is ‘incapable of understanding the nature and significance of enrolment and voting’. If so found, then that person will not have his or her name placed on, or retained on, any electoral roll.²⁴
- 1.43 Item 4 inserts a definition of ‘qualified person’ for the purposes of making the determination, as outlined at item 3. The definition is taken from the *Freedom of Information Act 1982*.²⁵
- 1.44 Items 8 and 9 provide that where a person has requested that their enrolled address be suppressed because the personal safety of the person or their family would be placed at risk if disclosed on the electoral roll, they are no longer required to repeat the request if they change their enrolment address.²⁶
- 1.45 Item 10 and 11 are consequential to item 3 and 4 and allow a ‘qualified person’ to provide a statement in relation to subsection 93(8).²⁷
- 1.46 Items 12 and 13 allows for decisions by DROs in relation to applications for enrolment from outside Australia and for itinerant electors to be reviewed internally.²⁸
- 1.47 Item 14 requires that, for the purposes of registration, a member of a political party must be ‘an elector’, i.e. someone who is on the electoral

23 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 14.

24 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 15.

25 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 15.

26 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 16.

27 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 16.

28 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 16.

roll. Currently the Electoral Act only provides that a member of a political party must be 'entitled to enrolment'.²⁹

- 1.48 Items 15 to 26 amend the method by which the AEC advertises an application for the registration of a political party. Currently notices are published in the Commonwealth *Gazette*. It is proposed that this be replaced with a requirement to publish this information on the AEC's website and in a newspaper circulating generally in each state and territory. It will also allow for publication of the notice in any other way that the Electoral Commissioner considers appropriate.³⁰
- 1.49 Item 36 repeals subparagraph 184A(2)(a)(ii) which provides that a person may register as a General Postal Voter if the applicant's real place of living is more than 20 kilometres from a place where mobile polling will be conducted. Since 2010, amendments to the mobile polling provisions have become more flexible, and so the places where mobile polling teams will visit are not determined until the writs for an election are issued. Accordingly there is a greater chance that someone who might be a registered General Postal Voter on the basis of this provision will actually live within 20 kilometres of a place where mobile polling will be conducted. This amendment removes the reference to mobile polling.³¹
- 1.50 Item 37 changes paragraph 235(1)(d) to require an elector to vote provisionally in cases where they are marked on the electoral roll as having voted, replacing the current phrase that 'the person has already voted at that polling place'. This anticipates the future application of electronic certified lists that can be shared across polling places.
- 1.51 Item 38 proposes the insertion of a new section 238A to provide for the handling of discarded ballot papers. In cases where a person discards their ballot paper rather than placing it in a ballot box, an AEC officer will collect the ballot, write discarded on the back of the ballot, and place it in an envelope.³²
- 1.52 Item 40 introduces a provision to Schedule 3 of the Electoral Act which will qualify the rules which operate to exclude votes from being counted if the date of the signature of the authorised witness or applicant on the

29 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 16.

30 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 17.

31 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 18.

32 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 19.

certificate is after polling day. Under the new provision, votes will be admitted to the scrutiny if the envelope containing the ballot is received before the close of polling and that receipt is verified by an AEC officer noting, 'received by me' and dating it. This measure seeks to save votes where it seems obvious the future date was written in error.³³

- 1.53 Item 41 to 46 relate to the *Referendum (Machinery Provisions) Act 1984* and mirror the changes in items 38 and 40.
- 1.54 Item 47 in Part 2 outline the commencement of the various items in Schedule 3.
- 1.55 Other items in this schedule not specifically mentioned are drafting improvements or minor consequential amendments.

Date of effect

- 1.56 The measures will commence on the day the Act receives Royal Assent. Amendments will apply to elections and referendums for which writs are issued after the commencement of the Bill. Items 12 and 13 of Schedule 3, which relate to internal review of decisions, apply to applications made before commencement.³⁴

Objective and conduct of the inquiry

- 1.57 The objective of the inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.
- 1.58 Details of the inquiry were placed on the committee's website. On 29 June 2012 the Committee Chair, Daryl Melham MP, issued a media release announcing the inquiry and seeking submissions. The committee received ten submissions. These are listed at Appendix A.

33 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 20.

34 Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, p. 20.

- 1.59 A public roundtable was held in Canberra on 16 July 2012. A list of the witnesses who appeared at the hearing are available at Appendix B. Submissions and the transcript of evidence are available on the committee's website at: www.aph.gov.au/em.