
The Parliament of the Commonwealth of Australia

Advisory Report on the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012

Joint Standing Committee on Electoral Matters

February 2013
Canberra

© Commonwealth of Australia 2013

ISBN 978-0-642-79851-0 (Printed version)

ISBN 978-0-642-79852-7 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:
<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Chair's foreword

The Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 introduces a suite of measures in response to seven recommendations of the committee's report *The 2010 Federal Election: Report on the conduct of the election and related matters*.

The amendments in the Bill set out the procedures to be followed when a ballot-box is opened prematurely; remove the requirement for an applicant for a pre-poll ordinary vote to complete and sign a certificate; provide that pre-poll voting cannot commence earlier than four days after the date fixed for declaration of nominations; bring forward the deadline for applications for postal votes by one day; provide for further fixed periods of time to complete inquiries into objections against a proposed redistribution of electoral boundaries; and allow the Commissioner of Taxation and other taxation officers to provide some forms of taxpayer information to the Australian Electoral Commission to maintain the veracity of the roll of electors.

The Bill also makes a number of related minor and technical amendments

In referring the Bill, the Selection Committee wished the Electoral Matters Committee to further scrutinise its amendments and ensure consideration was given to any unintended consequences. During the committee's inquiry, issues arose regarding the exclusion of ballots, the new pre-poll voting arrangements, and the ability of the AEC to use taxpayer information to update the electoral roll.

The Bill provides that prematurely opened ballots must be excluded from the count. At the 2010 federal election, ballot boxes were opened prematurely due to an official error in two pre-poll voting centres. Due to the legislative ambiguity regarding the appropriate response to these breaches, the Australian Electoral Commission sought legal advice. The advice was that it would be prudent for these ballots to be excluded. The Commission subsequently recommended to the committee that the appropriate action be clarified in the Electoral Act and that votes should be reinstated if the incident proved to be an official error.

The Bill does not contain a vote savings provision and the committee did not support one in its 2010 federal election report. Having carefully considered the evidence in this inquiry however, the committee took the view that votes should be reinstated if a ballot box is handled unlawfully by any person but no tampering of ballot papers has occurred. The committee's view is that this balances voter enfranchisement and electoral integrity. The committee recommends that the vote savings procedures proposed by the Electoral Commission to this inquiry be incorporated in the Bill.

The committee heard also that the Electoral Act lacks clarity on whether the penalties faced by an electoral official who deliberately and unlawfully interferes with a ballot box or ballot papers are the same as the penalties facing a member of the public for this offence. The committee recommends that the Bill be amended to clarify this in the legislation.

The removal of the requirement for a pre-poll ordinary voter to complete a certificate will provide efficiencies in polling place management and align the Commonwealth with a number of state and territory jurisdictions. Moving the commencement of pre-poll voting back by one day will allow sufficient time to print the many millions of ballot papers required for a federal election. Moving the deadline for postal vote applications forward by one day will reduce the chance that postal ballots will be received too late. Increasing the fixed periods of time to inquire into further objections to a proposed electoral boundary redistribution will provide the Electoral Commission with valuable additional time to conduct these inquiries. Allowing the Electoral Commission to use certain taxpayer information to update the roll of electors is a logical extension of existing continuous roll update processes, and direct enrolment using third party information. The committee is satisfied that this will not undermine roll integrity.

These provisions of the Bill were recommended in the 2010 federal election report of the committee and continue to be supported by the committee.

On behalf of the committee I thank the organisations and individuals who assisted the committee during the inquiry through submissions and by participating in the public hearing. I also thank my colleagues on the committee for their work and contribution to this report, and the secretariat for their work on this inquiry.

Daryl Melham MP
Chair



Contents

Chair's foreword	iii
Membership of the Committee	viii
Terms of reference	ix
List of abbreviations	x
Recommendation	xi

REPORT

1 Introduction	1
Referral of the Bill	1
Overview and purpose of the Bill	1
Premature opening of a ballot box	4
Pre-poll voting arrangements	6
Postal voting deadline	10
Electoral boundary redistributions	12
Use of taxpayer information	14
Other amendments	16
Date of effect	17
Objective and conduct of the inquiry	17
2 Issues in the Bill	19
Overview	19
Premature opening of a ballot box	20

Background 20

Analysis..... 23

Conclusion 29

Pre-poll voting arrangements 31

Background..... 31

Analysis..... 31

Conclusion 33

Use of taxpayer information 33

Background..... 33

Analysis..... 34

Conclusion 38

DISSENTING REPORT

**Dissenting report – The Hon Bronwyn Bishop MP, The Hon Alex Somlyay MP,
Senator Scott Ryan and Senator Simon Birmingham41**

Introduction 42

Schedule 1, Part 1, Taxation Administration Act 1953 42

Schedule 1, Part 1, Amendments – Negate requirement to have a signed certificate for a pre-poll ordinary vote..... 45

Schedule 1, Part 1, Amendments – Opening of pre-polling before election day 46

Schedule 1, Part 1, Amendments - excluding of votes contained within a prematurely opened ballot box..... 46

APPENDICES

Appendix A – Submissions51

Appendix B – Hearing and Witnesses53

Appendix C – Report on irregularities relating to the opening of ballot boxes at certain Pre-poll Voting Offices in the Divisions of Boothby and Flynn.....55

Background..... 55

Methodology..... 55

Legislative Changes..... 56

Ballot Boxes containing Ordinary votes.....	56
Oaklands Park PPVO.....	57
Contributing factors	59
Conclusion	60
Blackwater PPVO.....	60
Contributing factors	62
Conclusion	63
Emerald PPVO.....	63
Contributing factors	65
Conclusion	65
Recommended changes to minimise future mistakes at a PPVO	66
Conclusion	67
Appendix D – Legal advice from the Australian Government Solicitor.....	69
Issues with Ballot-Boxes Containing Pre-Poll Ordinary Ballot Papers.....	70
Summary of Advice	70
Background.....	70
Advice	72



Membership of the Committee

Chair Mr Daryl Melham MP

Deputy Chair The Hon Alexander Somlyay MP

Members The Hon Bronwyn Bishop MP Senator Simon Birmingham
The Hon Alan Griffin MP Senator Carol Brown
Ms Amanda Rishworth MP Senator Helen Polley
Senator Lee Rhiannon
Senator Scott Ryan

Committee Secretariat

Secretary Mr Stephen Boyd

Inquiry Secretary Dr Kilian Perrem

Administrative Officers Ms Natasha Petrović
Ms Carissa Skinner



Terms of reference

On 29 November 2012 the Selection Committee requested the Committee to inquire into and report on the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012.

Under Standing Order 222(e), reports of the Selection Committee are treated as having been adopted by the House when they are presented.



List of abbreviations

AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ATO	Australian Taxation Office
ICCPR	International Covenant on Civil and Political Rights
DRO	Divisional Returning Officer
GPV	General Postal Voter
OIC	Officer-In-Charge
PPVC	Pre-poll voting centre
PVA	Postal vote application
PVP	Postal vote pack
the Bill	Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012



Recommendation

2 Issues in the Bill

Recommendation 1 (paragraph 2.42)

That the House of Representatives and the Senate pass the Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012 after introducing:

- a vote savings measure to the procedures to be followed if ballot boxes are opened prematurely. This vote savings measure should incorporate the elements proposed by the AEC to this inquiry and provide that ballot papers that have not been tampered with in any way must be reinstated to the count but otherwise excluded. This savings measure should apply at any stage of the scrutiny to a ballot box that has been unlawfully handled by any person; and
- an amendment to the *Commonwealth Electoral Act 1918* explicitly stipulating that any electoral official who deliberately and unlawfully interferes with a ballot box or ballot papers be subject to the same penalty as any other person who commits this offence.

