
The Parliament of the Commonwealth of Australia

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

Joint Standing Committee on Electoral Matters

August 2012
Canberra

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Chair's foreword

The Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 proposes: changing postal voting arrangements; increasing nomination deposits for Senate and House of Representatives candidates; increasing the nominators required for unendorsed candidates and Senate groups; changing the 'unsound mind' exemption from enrolment and voting; and other minor and technical amendments.

In referring the Bill, the Selection Committee noted that the Bill was ambiguous in relation to the specific changes being made to processing postal vote applications. During its inquiry, the Electoral Matters Committee found that a number of the changes proposed in the Bill in relation to postal voting largely reflect existing Australian Electoral Commission (AEC) practices. These changes will simply ensure that the *Commonwealth Electoral Act* correctly outlines the processes that have evolved to help ensure that efficient procession of postal vote applications (PVAs) and distribution of postal vote packages (PVPs).

Most PVAs are already processed centrally and PVPs distributed through the AEC's central print system. The divisional returning office is no longer the main conduit for postal voting activities as was the case in previous decades. However, the Electoral Commissioner will continue to delegate his powers in relation to postal votes to Divisional Returning Officers (DROs) and other AEC officers. This change will not affect the way in which individuals and political parties interact with their DROs on postal voting matters. As is the current practice, political parties will still be able to distribute PVAs with campaigning material, receive completed PVAs and forward them to the relevant DRO.

In the case of issuing postal vote packages to a 'person' rather than specifically to an 'elector', the AEC has indicated that it already issues PVPs to (unmatched) applicants that are not found on the electoral roll at the time of application. The

returned unmatched postal vote certificates will be subject to further scrutiny and admitted to the count only if the person is verified to be an elector. This is in keeping with the approach taken with declaration voters.

While having a variety of candidates is a feature of Australia's democracy, having a large number of candidates leads to an expanded ballot paper and increases the complexity of the voting task for electors. Setting appropriate nomination requirements is one way to help ensure that prospective candidates appreciate the seriousness of their participation in the electoral process, and that they can demonstrate some community support for their candidacies.

Increasing the nomination deposits from \$1 000 to \$2 000 for Senate candidates, and from \$500 to \$1 000 for House of Representatives candidates, is reasonable and appropriate. The increase from 50 to 100 nominators required for candidates not endorsed by a political party is a reasonable increase. It is important that unendorsed candidates be able to demonstrate community support for their candidacies.

Similarly, if unendorsed candidates wish to be grouped on the Senate ballot paper, it is appropriate that each member of a Senate group be able to demonstrate community support for the grouping. The Bill will increase the nominators from 50 for the whole group to 100 per candidate. As each unendorsed candidate will have to have 100 nominators, they should be able to draw on this support base to secure their Senate Group box.

Other significant changes in this Bill relate to the 'unsound mind' provision in subsection 93(8) of the Electoral Act which exempts a person who is 'incapable of understanding the nature and significance of enrolment and voting' from being added to, or retained on, the Commonwealth electoral roll and voting at elections. Thousands of people are using the provision each year. They may be facing temporary or ongoing mental challenges that compromise their capacity to cast a vote. Given Australia's system of compulsory enrolment and voting, it is useful to have a mechanism to address this, to protect the integrity of elections and assist those who might otherwise have to deal repeatedly with the AEC as to why they are not complying with their enrolment and voting obligations.

Based on the evidence received, the committee is not satisfied that there is any pressing need to remove or substitute the phrase 'unsound mind', or that professionals other than medical practitioners should be able to make determinations about a person's capacity to understand the nature and significance of enrolment and voting.

On behalf of the committee I thank the organisations and individuals who assisted the committee during the inquiry through submissions or participating in the roundtable discussion. 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	ix
Terms of reference	x
List of abbreviations	xi
Recommendation	xii

THE REPORT

1 Introduction	1
Referral of the Bill	1
Overview and purpose of the Bill	1
Postal voting	2
Nominations for elections	3
Grounds disqualifying a person from enrolment and voting	4
Registration of political parties	5
Contents and structure of the Bill	5
Schedule 1 – Postal voting	6
Schedule 2 – Nominations for elections	7
Schedule 3 – Other Amendments	8
Date of effect	10
Objective and conduct of the inquiry	10

2	Issues in the Bill	13
	Postal voting.....	13
	Background	13
	Analysis.....	14
	Conclusion	18
	Postal vote applications and political parties.....	18
	Background	18
	Analysis.....	20
	Conclusion	21
	Nomination requirements.....	22
	Background	22
	Analysis.....	25
	Conclusion	27
	Changes to the ‘unsound mind’ exemption.....	28
	Background	28
	Analysis.....	31
	Conclusion	35

APPENDICES

Appendix A – Submissions	39
Appendix B – Roundtable and witnesses.....	41

TABLE

Table 2.1	Electors removed from the Commonwealth electoral roll under s. 93(8)(a)	28
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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 Ms Samantha Mannette

Senior Research Officer Ms Zoë Smith

Research Officer Ms Siobhan Coughlan

Administrative Officer Ms Natasha Petrović



Terms of reference

On 28 June 2012 the Selection Committee requested the Joint Standing Committee on Electoral Matters to inquire into and report on the Electoral and Referendum Amendment (Improving Electoral Procedure) 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
APVIS	Automated Postal Vote Issuing System
CRPD	Convention on the Rights of Persons with Disabilities
DRO	Divisional Returning Officer
EMC	Electoral Matters Committee (Victoria)
GPV	General Postal Voter
PVA	postal vote application
PVC	postal vote certificate
PVP	postal vote package
PWD	People with Disability Australia
the Bill	Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012



Recommendation

2 Issues in the Bill

Recommendation 1 (paragraph 2.94)

The House of Representatives and the Senate pass the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, after deleting the changes proposed in Schedule 3 in relation to the ‘unsound mind’ provision and consequential amendments. The term ‘unsound mind’ and the current requirement for a certificate from a medical practitioner should be retained.

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.

Issues in the Bill

- 2.1 During the inquiry into the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (the Bill) the committee focused its attention on certain key issues in the Bill that it felt warranted closer attention: proposed changes to postal voting arrangements, nomination requirements, and provisions that prevent a person from being an elector if they are of ‘unsound mind’. These issues are discussed in this chapter.

Postal voting

Background

- 2.2 The *Commonwealth Electoral Act 1918* (the Electoral Act) provides for various means by which Australians can vote for their federal representatives. In addition to attending a polling place on Election Day, electors can vote prior to Election Day in person at a pre-poll station or by post.
- 2.3 To vote by post, electors can register as General Postal Voters – if they meet certain criteria – and the Australian Electoral Commission (AEC) will automatically send them a postal vote package (PVP), which contains the relevant ballot papers.¹
- 2.4 Section 184 of the Electoral Act provides that an elector (a person who is on the Commonwealth Electoral Roll) can also apply for a postal vote for a specific election. The application is to be made to a Divisional Returning Officer (DRO). A DRO is an AEC officer who is responsible for maintaining the roll and conducting the election in a particular division.

1 *Commonwealth Electoral Act 1918*, ss. 184A and 184.

- 2.5 The majority of postal vote applications (PVAs) are processed through the Automated Postal Vote Issuing System (APVIS). The AEC uses three production and delivery methods for PVPs: central print, local print or hybrid print. The AEC advised that central print, involving the centralised automated production and dispatch of PVPs on behalf of the AEC by a contracted provider, is the most common method for producing and distributing PVPs. The AEC also noted that for the next federal election, the changes in the *Electoral and Referendum Amendment (Modernisation and Other Measures) Act 2010* provide for online PVAs, which will also feed into APVIS.²
- 2.6 The Bill proposes to make certain changes to postal voting procedures. In particular, proposed amendments in Schedule 1 will give the Electoral Commissioner primary responsibility for postal voting, and provide a legislative basis for the centralised processing of applications and distribution of PVPs. It will also enable a 'person' rather than an 'elector' to apply for a postal vote and to receive a PVP. The AEC will not have to establish that the applicant is on the electoral roll before the PVP can be issued.

Analysis

- 2.7 The AEC stressed that the changes proposed to postal voting are 'not about changing fundamentally any of the current processes for dealing with postal vote applications'.³ These changes are intended to have the current practices reflected in the Electoral Act. The AEC advised:

This is primarily an amendment that is designed to reflect the fact that the application for postal vote information system is now highly centralised while the act reflects a postal vote processing system which was designed 100 years ago. All we are trying to do here is get an act that reflects the practice.⁴

Replacing references to 'elector' with 'person'

- 2.8 At the roundtable discussion on 16 July 2012, the AEC explained that the intention behind allowing a 'person' rather than an 'elector' to apply and receive PVPs, is to 'to give maximum opportunity for a person who is

2 Australian Electoral Commission (AEC), *Submission 2*, pp. 5-6.

3 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 7.

4 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 2.

applying for a postal vote to get the postal vote certificate material as quickly as we possibly can'.⁵

- 2.9 The AEC advised the committee that in practice, it already sends PVPs to 'all applications who have submitted a correctly completed postal vote application'.⁶ Each applicant's enrolment status is reviewed prior to issuing the PVP. Applicants who are found on the electoral roll are classified as 'matched', and those who cannot be matched to an enrolment record or for PVAs outside Australia, are classified as 'unmatched'. For the 2010 federal election, of the 967 010 PVPs issued, 30 534 were unmatched. Following scrutiny of postal voter certificates (PVCs) returned, 24 437 were subsequently matched to an enrolment record and admitted to the count.⁷

- 2.10 Completed ballot papers received from postal voters will still be subject to further scrutiny. The AEC advised that the process is similar to that currently in place for other declaration votes:

If a person goes to a polling place and cannot be found on the electoral roll, then they are given an opportunity to put in a provisional vote. Subsequent checking as to whether they are on the roll occurs at scrutiny stage. ... The checking of the enrolment status is done as part of APVIS, up-front. For those that cannot be matched, we do not remove the opportunity for them to cast a ballot – in the same way that a person casting a provisional vote at a polling place is given an opportunity to cast a ballot. When the postal vote certificate comes back we then seek further information to determine whether the person is validly on the roll. If they are – for some reason they were not on the certified list – then the vote will be admitted. If they are not, then the vote is not counted.⁸

Replacing references to DROs

- 2.11 In response to questioning on the substitution of 'Divisional Returning Officer' with 'Australian Electoral Commissioner' for the purposes of receiving PVAs, the AEC explained that:

5 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 5.

6 AEC, *Submission 2.1*, p. 1.

7 AEC, *Submission 2.1*, pp. 1-2.

8 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 6.

Under the legislation as it stands at the moment, the primary responsibility for dealing with postal vote applications is with divisional returning officers. All the amendments that are included in schedule 1 of the bill replace the DRO with the Electoral Commissioner and a delegate of the Electoral Commissioner.⁹

- 2.12 Evidence from the AEC indicated that postal vote applications are already being processed through a central system. For the 2010 federal election, the AEC issued 957 322 PVPs, with 891 125 (93 per cent) of these issued through the central print system.¹⁰ The AEC advised:

Over the last decade, the system has been that the data is entered through data processing operators right across Australia in every divisional office and indeed some of our state offices because of the large volumes. That data is then transmitted to a central system, APVIS, and the APVIS collects all of that data and makes decisions about whether the postal vote certificate will be sent to a central printer for printing and dispatch or whether it will be sent back to a divisional returning officer to dispatch the postal vote certificate.¹¹

- 2.13 The AEC conceded that it had received advice in 1999 that the centralised processing of PVAs was acceptable under the Electoral Act. The AEC's current approach to the centralised processing of PVAs could continue if the amendments proposed in the Bill were not passed:

Mrs BRONWYN BISHOP: It goes to the divisional office now. What happens under this proposal?

Mr Killesteyn: Exactly the same; it will not change. ...

Mr Killesteyn: That allows for that, but it is primarily a centralised process where the data is collected from all of our data entry points across Australia. The data is then centralised into our APVIS and the APVIS processes the data and makes the decision about how the postal vote certificate should be issued, whether it is issued by a major despatching house or whether it is issued by our divisional returning officers.

Mrs BRONWYN BISHOP: Before I return to the second reading speech of the minister, which is now in some danger of being incorrect, is that process you have just described happening now?

9 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 3.

10 AEC, *Submission 2*, p. 6.

11 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 13.

Mr Killesteyn: Yes.

Mrs BRONWYN BISHOP: Right. So you did not need any change to the legislation for that to occur?

Mr Killesteyn: We had some advice back in 1999 that the centralised processing was acceptable under the act.¹²

- 2.14 However, the AEC argued that it sees the changes proposed in Schedule 1 as an opportunity to reflect the current practice.¹³ The AEC commented:

We wanted to make sure all the processes were being correctly reflected in the act so that we had no issue with our administrative practices being at all argued to be different to what was in the act.¹⁴

- 2.15 The AEC contended that this change reflects 'the modern drafting approach where ultimate responsibility rests with the Chief Executive Officer and functions and powers are delegated as appropriate'.¹⁵ The EM stated:

The effect of these amendments is to enhance the flexibility to delegate processing tasks to a greater range of officers.¹⁶

- 2.16 The Electoral Commissioner confirmed that he would delegate powers in relation to postal voting to DROs and other AEC officers:

Mrs BRONWYN BISHOP: So you are giving me an undertaking today that you will in fact delegate to DROs?

Mr Killesteyn: Indeed.

Mrs BRONWYN BISHOP: Good. So there will be no attempt to not delegate to them? I accept your word that you will delegate to DROs.

Mr Killesteyn: The process that you see as a member of parliament or, rather, will see as a candidate, where you would take your postal vote applications to your local office, will still be there.

12 *Committee Hansard*, 16 July 2012, Canberra, pp. 13-14.

13 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 14.

14 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 24.

15 AEC, *Submission 2*, p. 9.

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

Mrs BRONWYN BISHOP: Good. As the chair has pointed out, this is evidence under oath, so I accept that that will continue to occur.¹⁷

Conclusion

- 2.17 The changes proposed in the Bill in relation to postal voting seem to largely reflect existing AEC practices.
- 2.18 In the case of issuing postal vote packages to a 'person' rather than specifically to an 'elector', the AEC has indicated that it already issues PVPs to (unmatched) applicants that are not found on the electoral roll at the time of application. The unmatched postal vote certificates returned are then subjected to further scrutiny and admitted to the count only if the person's electoral record can be matched. The committee agrees that this is in keeping with the approach taken with declaration voters who can make a declaration vote which is then subject to further scrutiny before their vote is admitted or rejected.
- 2.19 The other key change in Schedule 1 of the Bill is to provide that PVAs be returned to the 'Electoral Commissioner' rather than the 'Divisional Returning Officer'. The committee accepts the Electoral Commissioner's assurance that he will delegate his powers in relation to postal votes to DROs and other AEC officers. This change will not affect the way in which individuals and political parties interact with their DROs on postal voting matters.

Postal vote applications and political parties

Background

- 2.20 One of the issues not covered in the Bill, but raised in evidence to the committee, is the practice of political parties distributing postal vote applications.¹⁸ It involves PVAs being mailed out with accompanying material about the party's candidates. The completed applications are returned to the political party, which make a record of the applicant's details in the party database before forwarding the application to the AEC.

17 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 7.

18 *Committee Hansard*, 16 July 2012, Canberra, pp. 1-3; Democratic Audit of Australia, *Submission 1*, p. 1.

- 2.21 In previous inquiries, submitters have expressed concern about this practice. In particular, that it is misleading as recipients may assume it is from the AEC, and that returning the application to the political party rather than directly to the AEC delays the issuing of the PVP to the applicant. Proponents of the practice argue that it provides a service to electors.¹⁹ The matter was also discussed in the second Electoral Reform Green Paper.²⁰
- 2.22 For many years this was accepted as standard practice by the political parties. Of the 967 010 PVAs received by the AEC, a significant number were forwarded by political parties, including the Australian Labor Party (254 678), Liberal Party (231 101), the Nationals (10 365) and other parties.²¹
- 2.23 However, during the committee's inquiry into the conduct of the 2010 federal election, the ALP and the Australian Greens expressed support for a change. In its report on that inquiry, the committee recommended legislative change 'to provide specifically that completed postal vote application forms must be returned directly to the Australian Electoral Commission for processing' (recommendation 13).²²
- 2.24 The committee acknowledged the importance of candidates and political parties being able to communicate with electors, and supported candidates and political parties being able to distribute postal vote applications and campaign material to electors. To address the fact that if applications are returned directly to the AEC, the parties would no longer receive data on electors, the committee recommended enabling the AEC to provide prescribed information to the candidates and political parties for elections in the elector's division (recommendation 14).²³ The Liberal Party and the Nationals objected to changing the current practice.

19 For example, JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, pp. 55-62.

20 Commonwealth of Australia, *Electoral Reform Green Paper – Strengthening Australia's Democracy*, December 2008, p. 167.

21 AEC, *Submission 2.1*, p. 2.

22 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, Recommendation 13, p. 60.

23 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, Recommendation 14, p. 61.

Analysis

2.25 The Government has not addressed recommendations 13 and 14 in the Bill. As noted in the EM and the Special Minister of State's second reading speech, the proposed changes implement recommendation 12 for the automated distribution of PVAs.

2.26 At the roundtable on 16 July 2012, the committee discussed whether the changes to postal voting procedure proposed in the Bill could affect the practice of political parties issuing and receiving completed PVAs. The AEC clarified that this was not the intent of the changes in the Bill, stating 'this bill will not have any impact on the way in which political parties currently issue postal vote applications'.²⁴ The AEC confirmed that:

It does not contemplate and nor does it seek to change the way in which political parties send out postal vote applications to whoever they see fit, along with whatever political advertising they wish. There is no attempt in this bill to change that at all.²⁵

2.27 The AEC explained that a proposal to provide that postal vote applications be returned directly to the AEC was contained in the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010. However, that amendment was withdrawn by the Government prior to that Bill's passage through the Senate.²⁶ The AEC stated:

So as the act currently stands, with the amendments that are proposed here, it is not possible for the Electoral Commissioner to prevent the political parties sending out the PVAs, receiving them back and then forwarding them on to the AEC. There is no change.²⁷

2.28 If the Bill is passed, the AEC anticipates that political parties will be able to provide PVAs to their DROs, as is currently the practice. The AEC stated:

Political parties will be able to take those postal vote applications to the divisional office and it has already been arranged that the divisional office – in fact it happens every election and we are already planning for it to happen at the next election – will data enter all of those postal vote application details, both those that are

24 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 2.

25 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 3.

26 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 4.

27 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 4.

submitted directly by the public to the divisional office and those by political parties.²⁸

- 2.29 At the roundtable discussion the committee asked the Electoral Commissioner to put on record that the Bill would not affect political party processes in relation to PVAs:

CHAIR: Let us just get it from Mr Killesteyn, who is the relevant officer. Might I say that it is relevant if he gives evidence on oath before a committee as to what his interpretation is if he subsequently does something different.

Mr Killesteyn: You can see from attachment 3 to our submission, which details the postal vote application process that will be in place for the next election and certainly was in place for the elections prior to that, that there is no intention —

Mrs BRONWYN BISHOP: I do not want an intention. You will not do it?

Mr GRIFFIN: No, there is no legal capacity, is there? That is the point.

CHAIR: Is it your view that there is no legal capacity at the moment?

Mr Killesteyn: That is my view, but nor is there an intention. This is not an attempt to deal with this particular issue. This is simply an attempt to clarify the existing legislation to reflect current practice.

Mrs BRONWYN BISHOP: So there would be no attempt to find anything under this current bill, and you would in no way attempt to prevent political parties having the postal vote applications come back to them and then go in to be processed by you.

Mr Killesteyn: There will be no attempt to do that — absolutely.²⁹

Conclusion

- 2.30 The committee notes the AEC's assurance that these changes will not impact on political parties' ability to: distribute postal vote applications with accompanying campaign material, receive completed applications,

28 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 7.

29 *Committee Hansard*, 16 July 2012, Canberra, p. 5.

and collect elector data from applications. Changes to this practice would require explicit legislative change.

Nomination requirements

Background

- 2.31 Part XIV of the Electoral Act sets out certain requirements for those seeking to nominate as a candidate for Senate and House of Representatives elections.
- 2.32 Schedule 2 of the Bill proposes to make changes to increase the amount of the nomination deposits required, the number of nominators needed by prospective candidates who are not endorsed by a political party, and the number of electors needed to support each unendorsed Senate candidate who request to be part of a Senate group.
- 2.33 Proponents of these changes argue that they will assist with addressing concerns about the growing size and complexity of ballot papers, by acting as a disincentive to potential candidates without serious electoral prospects. The Democratic Audit of Australia commented:
- Some Senate ballot papers are now so large that they cannot be laid flat in the polling booth and the necessary folding risks the casting of an accidental informal vote.³⁰
- 2.34 The Electoral Act prescribes the layout for House of Representatives and Senate ballot papers. As the number of candidates, in the Senate in particular, have increased it has led to expanding ballot papers. In the 2010 federal election, the NSW Senate ballot paper contained 84 candidates distributed across 33 columns. It was 1020 millimetres wide, which is the widest ballot paper that can be printed as a single sheet. This involved reducing the font size on the ballot paper to 8.5 point.
- 2.35 Any increases in candidates and columns on future ballot papers would see the AEC further reducing font sizes and hyphenating names, and voters casting their vote over more than a metre of paper.
- 2.36 During its inquiry into the 2010 federal election, the committee also noted concerns about the increasing number of House of Representatives candidates, and the potential for large numbers of candidates to impact on

30 Democratic Audit of Australia, *Submission 1*, p. 3.

electors being able to cast a valid vote as they must keep track of and correctly mark their preferences.³¹

Nomination deposits

- 2.37 Under the current arrangements, a candidate for the Senate and House of Representatives must pay the AEC a deposit sum of \$1 000 and \$500, respectively. The nomination deposits are returned to the candidate or their agent in certain circumstances, for example, if their nomination is rejected, the candidate dies before polling day, or if they receive at least four per cent of first preference votes.³²
- 2.38 In its report on the conduct of the 2010 federal election, the committee considered the matter of nomination deposits. It noted that there have only been moderate rises in nomination deposits since 1918. The last change was in 2006, raising the Senate and House of Representatives nominated from \$700 and \$350, respectively.
- 2.39 During that inquiry, the committee considered whether nomination deposits could be used to address concerns about the challenges associated with increasing numbers of candidates and the resulting more complex ballot papers. The committee concluded that nomination deposits 'should be an amount that does not unduly hamper participation, but acts as a deterrent to frivolous candidacies'.³³ The committee recommended increasing the nomination deposits to \$2 000 for the Senate and \$1 000 for the House of Representatives.³⁴ Opposition members of the committee did not oppose the increase to nomination deposits in the report.³⁵
- 2.40 The Special Minister of State indicated that the Bill seeks to implement the committee's recommendations 31 and 32 to increase the nomination deposits.³⁶

31 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, p. 163.

32 *Commonwealth Electoral Act 1918*, ss. 167 and 170(3); and AEC, *Candidates Handbook federal election*, p. 31.

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

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

35 JSCEM, *The 2010 Federal Election: Report on the conduct of the election and related matters*, June 2011, Commonwealth Parliament of Australia, Dissenting report, p. 179.

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

Nominators for unendorsed candidates

- 2.41 Candidates endorsed by political parties are only required to be nominated by the registered officer of the political party.³⁷ To be registered as a political party, the party must have at least 500 members or have at least one member in Commonwealth Parliament.³⁸ Incumbent Independents seeking to run again in the new election only require the nomination of one elector.³⁹
- 2.42 A candidate who is not endorsed by a political party (an unendorsed candidate) must be nominated by at least 50 electors.⁴⁰ Schedule 2 of the Bill proposes to amend subsection 166(1) to require a minimum of 100 electors to nominate an unendorsed candidate.⁴¹

Nominators for Senate groups

- 2.43 The Senate voting system provides voters with two options for casting a vote: above the line (group ticket voting) and below the line (indicating all preferences). If voting above the line, the elector must mark only one box of their preferred political party or group. The political party or group lodges up to three voting tickets with the AEC, which indicate the order in which preferences will be allocated.
- 2.44 Electors who choose to vote below the line must indicate all their preferences. In some cases, there may be a large number of candidates. If an elector's preferred candidate is not a part of a political party or Senate group, then they will have to vote below the line if they wish to give a first or particular preference to that candidate.
- 2.45 The AEC tally room figures for the 2010 Senate federal election indicate that a significant majority of electors cast their vote above the line, particularly in states with a large number of Senate candidates. For example, in NSW (84 candidates) and Victoria (60 candidates), 97.76 per cent and 97.01 per cent, respectively, voted above the line. Even in the ACT, with only nine candidates, 75.93 per cent of electors voted above the line.⁴²

37 *Commonwealth Electoral Act 1918*, s. 166(1).

38 *Commonwealth Electoral Act 1918*, s. 123(1).

39 *Commonwealth Electoral Act 1918*, ss. 166(IC) and (ID).

40 *Commonwealth Electoral Act 1918*, s. 166(1).

41 Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, Schedule 2, Part 1, clause 1.

42 AEC, *Submission 2*, p. 17, Table 3.3.

- 2.46 Given the high percentage of electors voting above the line in Senate elections, it can be seen as desirable for candidates to have a group box. The AEC noted that a 'significant dimension of Senate candidature has been the increase in the number of groups (endorsed and unendorsed) contesting Senate elections, which has risen from a total of 82 groups in 1993 to 136 in 2010'.⁴³
- 2.47 In addition to political parties having group tickets, two or more unendorsed Senate candidates may apply to have their names grouped and appear above the line on the ballot paper. Currently at least 50 electors are needed to nominate the group.⁴⁴ Schedule 2 of the Bill proposes changing this requirement to at least 100 electors for each candidate in the group.⁴⁵
- 2.48 The AEC advised that these changes would not affect endorsed candidates.⁴⁶

Analysis

Concerns about the size of ballot papers

- 2.49 In evidence to the committee, the AEC confirmed that the expansion and complexity of ballot papers is a problem, stating that 'we are reaching a point where, if the candidates increase in New South Wales with the restrictions that we have on the size of the ballot paper, the type size will become so small that it will cause considerable difficulty'.⁴⁷ The size of the ballot papers also increases the complexity of the task of voting.
- 2.50 The Explanatory Memorandum stated:
- The Bill does impose deposit and nominator thresholds that must be met by candidates, but these are reasonable and are balanced against the need to provide a ballot paper that is easy to use and readable.⁴⁸

43 AEC, *Submission 2*, p. 15.

44 *Commonwealth Electoral Act 1918*, Schedule 1, Form CB.

45 Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, Schedule 2, Part 1, clause 1.

46 AEC, *Submission 2*, p. 14.

47 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 21.

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

Nomination deposits

- 2.51 The AEC noted that when introduced in 1905, the original nomination fee of £25 was a ‘fairly significant amount of money’, which reflected that nominating as a candidate represented a serious commitment.⁴⁹
- 2.52 Electoral Reform Australia supported increasing nomination deposits and felt that the increases proposed in the Bill did not go far enough, and called for each candidate to deposit \$10 000, with no distinction made between the Senate and House of Representatives.⁵⁰ FamilyVoice also supported the proposed increase, arguing that:
- ... the current amount of the deposit has proved ineffective in dissuading candidates with little prospect of electoral support, especially candidates for the Senate, from nominating.⁵¹
- 2.53 Some submitters opposed increasing nomination deposits, suggesting that it is ‘exorbitant and unjust’,⁵² and that the increase discriminates against those with limited resources.⁵³ The Australian Democrats argued that the current arrangements ‘appear to be realistic and workable’, and expressed concern about the impact that the increase would have on minor parties. The cumulative deposit amount when nominating many candidates could be significant.⁵⁴

Nominators for unendorsed candidates

- 2.54 The Democratic Audit of Australia supported the increase in nominators required for unendorsed candidates and suggested an increase to 200 nominators rather than to 100 as proposed in the Bill. The Democratic Audit of Australia stated:

I think people who are going to run for parliament – whether it is the Senate or the House of Representatives or state parliament or whatever – should be able to show – and this is pretty commonplace around the world – that they have a degree of nominated support.⁵⁵

49 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 20.

50 Electoral Reform Australia, *Submission 3*, p. 1.

51 FamilyVoice, *Submission 6*, p. 3.

52 Democratic Labor Party, *Submission 7*, p. 1.

53 Proportional Representation Society of Australia, *Submission 8*, p. 3.

54 Australian Democrats, *Submission 4*, p. 3.

55 Professor Brian Costar, Democratic Audit of Australia, *Committee Hansard*, 16 July 2012, Canberra, p. 19.

- 2.55 Similarly, FamilyVoice agreed that an increase in the number of nominators for unendorsed candidates is justified, stating:

The proposed changes would be useful in deterring candidates for election who do not have any significant measure of support in the community. If a candidate cannot find 100 electors to nominate him or her then there is little prospect of the candidate being elected.⁵⁶

- 2.56 Other submitters opposed the doubling of the number of nominators required for unendorsed candidates, arguing that the increase is excessive and posed an unfair barrier to entry.⁵⁷ Further, Electoral Reform Australia stated that the increase ‘would not achieve a reduction in the number of candidates standing for election’.⁵⁸

Nominators for grouping unendorsed Senate candidates

- 2.57 In the case of six unendorsed candidates seeking to form a Senate Group the required nominators would be 600, which is more the 500 required for a registered political party. Some submitters argued that it was disproportionate to require a Senate Group to produce more supporters than a group of party endorsed candidates. FamilyVoice proposed that the nominators required for a Senate Group should be at least 500 electors.⁵⁹

Conclusion

- 2.58 While having a variety of candidates is a feature of Australia’s democracy, having a large number of candidates leads to an expanded ballot paper and increases the complexity of the voting task for electors. Setting appropriate nomination requirements is one way to help ensure that prospective candidates appreciate the seriousness of their participation in the electoral process, and that they can demonstrate community support for their candidacies.
- 2.59 At the core of discussions on changes to nomination arrangements must be the objective of striking the right balance between providing the opportunity for Australians to take part in elections and having reasonable requirements to reflect that political candidacy is a serious matter.

56 FamilyVoice, *Submission 6*, p. 3.

57 Democratic Labor Party of Australia, *Submission 7*, p. 2; and Australian Democrats, *Submission 4*, p. 4.

58 Electoral Reform Australia, *Submission 3*, p. 2.

59 FamilyVoice, *Submission 6*, p. 4.

- 2.60 Increasing the nomination deposits from \$1 000 to \$2 000 for Senate candidates, and from \$500 to \$1 000 for House of Representatives candidates is reasonable and appropriate.
- 2.61 It is important that an unendorsed candidate be able to demonstrate community support for their candidacy. Endorsed candidates are able to establish this indirectly by the fact that they have been endorsed by a political party that has met the registration requirement of having at least 500 members. The committee supports increasing the nominators required for new unendorsed candidates from 50 to 100 electors. If these candidates wish to put themselves forward as prospective representatives, then it is reasonable that they should demonstrate some engagement with their electors and support for their candidacies.
- 2.62 The growing complexity of the Senate ballot paper in some states merits looking at ways to help ensure it is as user friendly as possible for electors. One important aspect of this is to keep above the line voting as a relatively straight forward option. It is therefore appropriate that each member of a Senate group be able to demonstrate community support for the grouping.

Changes to the ‘unsound mind’ exemption

Background

- 2.63 The phrase ‘unsound mind’ was included in the *Commonwealth Franchise Act 1902* and has survived in the current Electoral Act.⁶⁰ Subsection 93(8) of the Electoral Act provides:
- (8) *A person who:*
- (a) *by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting; or*
 - (b) *has been convicted of treason or treachery and has not been pardoned;*
- is not entitled to have his or her name placed or retained on any Roll or to vote at any Senate election or House of Representatives election.*
- 2.64 The AEC may not object to a person’s enrolment on the grounds of subsection 93(8)(a).⁶¹ It is usually someone close to the individual who will raise an objection and seek to have that person recognised under

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

61 *Commonwealth Electoral Act 1918*, s. 114(3).

subsection 93(8)(a), and be 'excused from the obligation of compulsory enrolment and compulsory voting'.⁶² A certificate from a medical practitioner is required before an elector can be removed from the roll.⁶³

2.65 Sections 115-118 of the Electoral Act require that the following steps be taken before a person can be removed from the electoral roll based on 98(3)(a):

- a written objection must be lodged by an enrolled elector (often a family member, friend or medical practitioner);
- the objection must be accompanied by a medical certificate 'stating that in the opinion of the medical practitioner, the elector, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting'; and
- the DRO must give notice of the objection to the person whose enrolment has been challenged, and provide them with a chance to respond.⁶⁴

2.66 The AEC provided the committee with statistics on the number of electors removed from the electoral roll under subsection 93(8)(a) over the last four financial years. Totals of electors removed are outlined in Table 2.1.⁶⁵ A significant spike in removals is evident in the 2010-2011 financial year during which the 2010 federal election was held.

Table 2.1 Electors removed from the Commonwealth electoral roll under s. 93(8)(a)

Financial year	2008-2009	2009-2010	2010-2011	2011-2012
Electors removed	5 735	4 341	13 082	5 445

Source AEC, *Submission 2.1*, p. 5.

2.67 In recent years certain groups and individuals have criticised the use of the phrase 'unsound mind'.⁶⁶ This issue was considered in the Government's *Electoral Reform Green Paper: Strengthening Australia's Democracy*. It was stated in the paper:

On its face, the exclusion from the franchise for persons of 'unsound mind' could be viewed as the removal of those persons' right to vote. Others might view this exclusion as a necessary way

⁶² AEC, *Submission 2.1*, p. 4.

⁶³ *Commonwealth Electoral Act 1918*, s. 118(4).

⁶⁴ Commonwealth of Australia, *Electoral Reform Green Paper – Strengthening Australia's Democracy*, December 2008, p. 43.

⁶⁵ A further breakdown by age group is available in the AEC's *Submission 2.1*, p. 5.

⁶⁶ Commonwealth of Australia, *Electoral Reform Green Paper – Strengthening Australia's Democracy*, December 2008, p. 43; AEC, *Submission 2.1*, p. 4.

to protect the integrity of the electoral system from the harm that may be caused by votes cast by persons who are not able to understand the nature and significance of voting. In practice, however, no test for 'soundness of mind' is conducted when a person seeks to enrol or approaches a polling booth on election day. In practice the provision is 'used' when a person raises a concern with the AEC about another person, initiating a formal process which may result in the removal of the second person from the electoral roll. These concerns are generally raised by persons close to the elector in question, and motivated by what they see as the best interests of the person concerned, for example protecting them from having to respond to repeated penalty notices for failure to vote at successive elections.⁶⁷

- 2.68 The *Roach v Electoral Commissioner* [2007] HCA 43, which focused on the restrictions on prisoners from casting a vote, also considered the issue of disqualification from enrolment and voting on the basis of an 'unsound mind'. Chief Justice Gleeson stated:

The rationale for excluding persons of unsound mind is obvious, although the application of the criterion of exclusion may be imprecise, and could be contentious in some cases. The rationale is related to the capacity to exercise choice.⁶⁸

- 2.69 Justices Gummow, Kirby and Crennan also commented on the appropriateness of disqualification on the grounds of an elector being of 'unsound mind':

Paragraph (a) of s 93(8) of the Electoral Act disentitles those who are incapable of understanding the nature and significance of enrolment and voting because they are of unsound mind. That provision plainly is valid. It limits the exercise of the franchise, but does so for an end apt to protect the integrity of the electoral process. That end, plainly enough, is consistent and compatible with the maintenance of the system of representative government.⁶⁹

- 2.70 Schedule 3 (items 3, 4, 10 and 11) propose changes to the 'unsound mind' provision, which will provide for:

- removal of the term, 'unsound mind'; and

67 Commonwealth of Australia, *Electoral Reform Green Paper – Strengthening Australia's Democracy*, December 2008, p. 42.

68 *Roach v Electoral Commissioner* [2007] HCA 43.

69 *Roach v Electoral Commissioner* [2007] HCA 43.

- a broader range of appropriate qualified persons (including a medical practitioner, a psychiatrist, a psychologist and a social worker) to provide a statement (instead of a medical certificate) concerning an elector's capacity to understand the nature and significance of voting.⁷⁰

Analysis

- 2.71 The AEC observed that in its dealings with disability groups, there has been 'very strong feeling about the use of the term' within that community.⁷¹
- 2.72 People with Disability Australia (PWD) agreed in general terms that the phrase is problematic and supports its removal from the Electoral Act. It submitted:
- In law, the term "unsound mind" is a label used to describe a person who has been judged to lack the functional capacity to make rational choices. In terms of the practical application of the legislation under review, this label is usually applied to people with an intellectual and/or psychosocial disability and/or a degenerative brain condition, and it is that specific group of people that the legislation is intended to target.⁷²
- 2.73 While acknowledging that the proposed changes are intended to address concerns in the community about the term 'unsound mind', PWD suggested that the whole provision needed review.⁷³ PWD did not support the changes proposed in Schedule 3 of the Bill, and instead advocated repealing paragraph (a) in its entirety, on the basis that:
- ... it permits a restriction to the right of people with disability to political participation. This is direct discrimination and a human rights violation (Disability Discrimination Act 1992 (DDA), Convention on the Rights of Persons with Disabilities, International Covenant on Civil and Political Rights).⁷⁴
- 2.74 The PWD argued that even if the phrase 'unsound mind' was removed and replaced with more neutral wording, as proposed, it would still

70 AEC, *Submission 2*, p. 19.

71 Mr Thomas Rogers, Deputy Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 18. See also AEC, *Submission 2*, p. 19.

72 People with Disability Australia, *Submission 5.1*, p. 2.

73 Ms Ngila Bevan, People with Disability Inc, *Committee Hansard*, 16 July 2012, Canberra, p. 17.

74 People with Disability Australia, *Submission 5.1*, p. 2.

indirectly discriminate against people with intellectual and/or psychosocial disabilities, and potentially older people.⁷⁵

- 2.75 In its submission, PWD referred to the *United Nations Thematic Study on Participation in Political and Public Life by Persons with Disabilities*, which found that:

Article 29 of the CRPD [Convention of the Rights of Persons with Disabilities] “does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute “discrimination on the basis of disability” within the meaning of Article 2 of the Convention [CRPD]”.⁷⁶

- 2.76 Australia has ratified the Convention of the Rights of Persons with Disabilities. Article 29 seeks to ensure that people with a disability ‘enjoy the right to vote, stand for election and hold office on an equal basis with others’.⁷⁷ The AEC noted that the Human Rights Branch of the Attorney-General’s Department has raised the issue of the inclusion of the term ‘unsound mind’ in subsection 93(8)(a) when considering Australia’s compliance with the CRPD.⁷⁸

- 2.77 In relation to Australia’s other international commitments, the AEC commented:

As far as the AEC is aware there has not been any complaint or finding by the Australian Human Rights Commission or its predecessor that section 93(8)(a) of the Electoral Act is in any way in breach of the requirements of articles 25 and 2 of the International Covenant on Civil and Political Rights. ... [or] of the requirements in the Declaration on the Rights of Mentally Retarded Persons or the Declaration on the Rights of Disabled Persons.⁷⁹

- 2.78 If paragraph (a) from subsection 93(8) was removed, there would still need to be some mechanism for dealing with someone who may be, in some way, mentally incapable of casting a vote, whether it is a temporary or ongoing issue for that individual.

75 PWD Australia, *Submission 5.1*, p. 2.

76 PWD Australia, *Submission 5*, p. 3.

77 AEC, *Submission 2.1*, p. 3.

78 AEC, *Submission 2.1*, p. 3.

79 AEC, *Submission 2.1*, p. 4.

- 2.79 PWD expressed a preference for utilising subsection 245(4)(d) to deal with people who may not be in a position to cast a vote. It provides that a DRO is not required to send or deliver a penalty notice if he or she is satisfied that the elector ‘had a valid and sufficient reason for failing to vote’. The PWD submitted:

... removing a person from the electoral roll is a disproportionate response to concerns that a person with a disability, their family or carer, may be inconvenienced by a failure to comply with compulsory voting requirements.⁸⁰

- 2.80 The Democratic Audit of Australia expressed concern that the removal of the phrase ‘unsound mind’ could actually broaden the disqualification.⁸¹

- 2.81 At the state level, the Victorian Electoral Matters Committee (EMC), during its reviews of the 2006 and 2011 state elections, considered changing the reference to ‘unsound mind’ in its electoral legislation. In both reports, the EMC noted that the phrases caused distress to some electors, but decided not to recommend changes to the terminology.⁸²

- 2.82 The EMC was guided by advice from the Victorian Chief Parliamentary Counsel, which cautioned that changes to the term could have unintended consequences:

... while the term “unsound mind” may not reflect contemporary views about disability, changing the term to “mental or cognitive impairment” may result in Victorians being disenfranchised as a result of another term replacing “unsound mind”.⁸³

Determinations by a ‘qualified person’

- 2.83 PWD also expressed concerned about the introduction of the category of ‘qualified person’, who would be responsible for making a judgement as to whether a person is ‘incapable of understanding the nature and significance of enrolment’.⁸⁴ PWD questioned whether there would be any

80 PWD, *Submission 5.1*, p. 2.

81 Professor Brian Costar, Democratic Audit of Australia, *Committee Hansard*, 16 July 2012, Canberra, p. 16.

82 Electoral Matters Committee, *Inquiry into the conduct of the 2006 Victorian state election and matters related thereto: Report to Parliament*, June 2008, Parliament of Victoria, pp. 81-82; and *Inquiry into the conduct of the 2010 Victorian state election and matters related thereto: Report to Parliament*, May 2012, Parliament of Victoria, pp. 124-125.

83 Electoral Matters Committee, *Inquiry into the conduct of the 2010 Victorian state election and matters related thereto: Report to Parliament*, Parliament of Victoria, May 2012, pp. 124-125.

84 Ms Ngila Bevan, People with Disability Inc, *Committee Hansard*, 16 July 2012, Canberra, p. 16.

standards in place to guide the relevant professionals when making their determinations. PWD commented:

Universal suffrage is an integral part of democracy and the power to remove the right of a person to participate in the political process is a significant one. Would the “opinion of a qualified person” simply be a conclusion they make based on their own degree of experience and professional judgement? Alternatively, what mechanisms would exist to ensure that any assessment tool was used consistently across jurisdictions and across the professions of the “qualified persons”, especially as they represent different knowledge and skill sets? Which body would provide guidelines and/or training to the professions on how to use the assessment tool and monitor standards, compliance and complaints or appeals? What would be the financial implications of running this system? Would these costs be proportionate to the policy goal of disenfranchising people deemed “incapable”, especially in light of the fact that the policy goal in itself is discriminatory?⁸⁵

- 2.84 The Democratic Labor Party saw removing the reference to unsound mind as a ‘timely change’, but cautioned in relation to the person making a determination under subsection 93(8) that:

... the withdrawal of a citizen’s right to vote ought be a last resort, with the greatest care taken in any assessment that results in the loss of so basic a right.

Medical practitioners, psychiatrists and psychologists have detailed means and instruments with which to measure disability. It would be a tragedy if less rigorous means and instruments were invoked to deny someone the vote on the basis of their physical appearance or interaction with their assessor.⁸⁶

- 2.85 The AEC observed that the list of qualified people:

... are selected based on the Freedom of Information Act but, as I understand the genesis of that, it is about nominating a group of individuals who have a particular relationship with the individual and can make that sort of judgment.⁸⁷

85 People with Disability, *Submission 5.1*, p. 3.

86 Democratic Labor Party, *Submission 7*, p. 2.

87 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 17.

- 2.86 The AEC conceded that the submitters and committee had raised valid concerns about the proposed process for determining disqualification from enrolment, and explained:

The reason we were looking at other health professionals was that we did not want to put an impost on individuals or their families by requiring them to go to a medical practitioner, particularly if they had already a relationship with a psychologist, a psychiatrist or a social worker. We are talking about cognitive capacity, not necessarily diagnosis. So we are talking about something that can change over time ...

We recognise that a person's cognitive capacity can change over time and therefore we wanted a process that was going to be relatively inexpensive, that was still going to have some security about it and in which the opinion was still going to be given by either a health professional or a paraprofessional who the person had a relationship with.⁸⁸

- 2.87 When considering the issue of who may raise an objection in relation to the unsound mind provision, as part of the 1996 federal election review, the committee concluded that:

The Committee believes that unsound mind objections are best left to relatives and medical practitioners, and agrees with the AEC that the previous committee's recommendations aside, the existing provisions should not be amended.⁸⁹

Conclusion

- 2.88 The committee is sensitive to the concerns of those in the community who find the term 'unsound mind' outdated and offensive. In proposing the amendments in Schedule 3 – to remove the references to 'unsound mind' and make provision for other professionals to be recognised as qualified people – the Government is attempting to address these concerns and to provide a means by which people who fall under the subsection 98(3)(a) disqualification can be determined.
- 2.89 However, rather than achieving these goals, the proposed amendments, in their current form, could serve to broaden the disqualification and potentially disenfranchise some electors.

88 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 18.

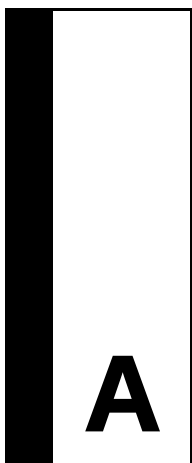
89 Joint Standing Committee on Electoral Matters, *The report of the inquiry into all aspects of the conduct of the 1996 federal elections and matters related thereto*, June 1997, Commonwealth Parliament of Australia, p. 21.

- 2.90 To support the changes proposed in Schedule 3 in relation to ‘unsound mind’ and the list of qualified people, the committee would need to be satisfied as to the extent of the problem necessitating change, and that the approach was not likely to have unintended consequences that may be detrimental to people with cognitive or mental health issues. Restraint should be exercised before making changes to this provision that could serve to disenfranchise potential electors.
- 2.91 Based on the evidence received, the committee is not satisfied that there is any pressing need to remove or substitute the phrase ‘unsound mind’, or that professions other than medical practitioners should be able to make determinations about a person’s capacity to understand the nature and significance of enrolment and voting.
- 2.92 People with Disability Australia called for the removal of paragraph (a) of subsection 93(8) from the Electoral Act in its entirety, on the grounds that it discriminates against people with disabilities. It is important for Australia to ensure that it is meeting all its international obligations to ensure that people with disabilities have the opportunity to participate fully in political and civil life. The committee is not satisfied that subsection 93(8)(a) breaches any international obligations in relation to rights to electoral participation.
- 2.93 As outlined in Table 2.1, thousands of people are using the provision each year. There are some individuals who are ‘incapable of understanding the nature and significance of enrolment and voting’, whether it is due to temporary or ongoing challenges. Given Australia’s system of compulsory enrolment and voting, it is useful to have a mechanism to address this, to protect the integrity of elections and assist those who might otherwise have to deal repeatedly with the AEC as to why they are not complying with their enrolment and voting obligations.

Recommendation 1

- 2.94 **The House of Representatives and the Senate pass the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, after deleting the changes proposed in Schedule 3 in relation to the ‘unsound mind’ provision and consequential amendments. The term ‘unsound mind’ and the current requirement for a certificate from a medical practitioner should be retained.**

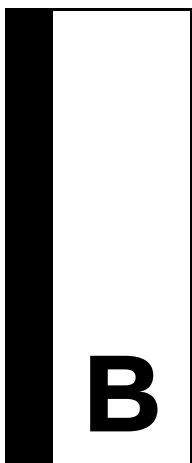
Daryl Melham MP
Chair
15 August 2012



Appendix A – Submissions

No.

- 1 Democratic Audit of Australia
- 2 Australian Electoral Commission
- 2.1 Australian Electoral Commission
- 3 Electoral Reform Australia
- 4 Australian Democrats
- 5 People with Disability Australia Inc.
- 5.1 People with Disability Australia Inc.
- 6 FamilyVoice Australia
- 7 Democratic Labor Party of Australia
- 8 Proportional Representation Society of Australia



Appendix B – Roundtable and witnesses

Monday, 16 July 2012—Canberra

Australian Electoral Commission

Mr Ed Killesteyn, Electoral Commissioner

Mr Thomas Rogers, Deputy Commissioner

Mr Paul Pirani, Chief Legal Officer

Ms Marie Neilson, Assistant Commissioner, Elections Branch

Democratic Audit of Australia

Professor Brian Costar, Coordinator

People with Disability Australia Inc

Ms Ngila Bevan, Advocacy Projects Manager

