



INQUIRY INTO THE ELECTORAL AND REFERENDUM AMENDMENT (IMPROVING ELECTORAL PROCEDURE) BILL 2012

I refer to your email dated 18 July 2012 in which you provided a list of the questions on notice arising from the Joint Standing Committee on Electoral Matters' public hearings on 16 July 2012. I have been asked to reply to your email on behalf of the Australian Electoral Commission (AEC).

Responding to each question in the order that they appear in your email attachment, relating to the Hansard – JSCEM – Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, the following further information is provided.

Page 6 – How many postal vote applications are currently denied because they are not on the roll?

The AEC sends postal voting packages (PVPs) to all applicants who have submitted a correctly completed postal vote application (PVA).

For PVAs processed by the AEC, each applicant's enrolment status is reviewed prior to issuing a PVP. If the application can be matched to an enrolment record, the PVP is issued as 'matched'.

If the application cannot be matched to an enrolment record, which includes all PVAs processed outside Australia at overseas posts, the PVP is issued as 'unmatched'.

For the 2010 election 967,010 PVPs were issued, of which 30,534 were unmatched (including 9,252 PVPs issued from overseas posts).

During the preliminary scrutiny, 24,437 unmatched postal vote certificates (PVCs) were matched to an enrolment record and were admitted to the count (in other words, 80% of the unmatched PVP's were ultimately admitted to the count).

Page 9 – Is there data on the return rate of [postal] ballot papers mailed out? Does the AEC look at whether or not the return rate is declining and whether or not people are mistakenly turning up to a polling booth?

The following numbers of postal votes were issued and returned for the 2004, 2007 and 2010 elections:

Election	Postal vote packages issued	Postal vote certificates returned	% returned
2004	774,078	660,330	85.31%
2007	833,178	749,566	89.97%
2010	967,010	854,726	88.39%

28,093 registered general postal voters did not return PVCs issued for the 2010 election. Of that number 11,801 voted by other means.

Page 10 – Was there a table that identifies how many postal votes that had been processed by the Labor Party, by opponents or in general that went into the commission?

Daily tracking of the source of PVAs received is published on the AEC website during the election period. More detailed information of daily returns is on the AEC website at:

http://www.aec.gov.au/Elections/Federal_Elections/2010/files/e2010-pva-stats-19-08.csv.

Total numbers recorded for the 2010 election were:

Source	Number received
GPV	209,435
AEC	248,228
Labor	254,678
Liberal	231,101
National	10,365
Country Liberal	569
Greens	7
Other Party	2,957
Overseas	9,252
Unknown	418
Total	967,010

Page 17 – What is the problem we are trying to address [in relation to being of “unsound mind”], given that there is a risk, even if it is inadvertent, of somewhat expanding this exclusion?

The term “unsound mind” that is contained in section 93(8)(a) of the *Commonwealth Electoral Act 1918* (Electoral Act) has been an issue of concern from the Human Rights perspective for some period of time. The Human Rights Branch of the Attorney-General's Department has raised this on at least two occasions (April 2008 and February 2012) when assessing whether Australia complies with the *United Nations Convention on the Rights of Persons with Disabilities* (the Convention). The relevant provision in the Convention is Article 29 which requires States Parties to ensure that people with disability enjoy the right to vote, stand for election and hold office on an equal basis with others. Article 29 of the Convention provides that:

Article 29 - Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- a. Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, *inter alia*, by:
 - i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

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. Similarly, the AEC is not aware of any complaint, finding or even any allegation that section 93(8)(a) of the Electoral Act is in any way in breach of the requirements in the Declaration on the Rights of Mentally Retarded Persons or the Declaration on the Rights of Disabled Persons.

The AEC is aware of at least two recent complaints where family members have experienced difficulties in obtaining a medical certificate completed by a Medical Practitioner. One of the complainants also objected to the use of the phrase “unsound mind” in describing their loved-one.

It should also be noted that the primary policy aim of the proposed amendment contained in the Bill is to facilitate family members in seeking to have their loved-ones excused from the obligation of compulsory enrolment and compulsory voting. Subsection 114(3) of the Electoral Act makes it clear that delegates of the Electoral Commissioner “shall not object on the ground set out in paragraph 93(8)(a)”. This prohibition is not amended in the current Bill so that delegates of the Electoral Commissioner are not legally able to initiate objection action based on an elector being of “unsound mind” or the proposed new test of just the elector’s cognitive ability to “understand the nature and significance of enrolment and voting...”.

Accordingly, the only persons who are able to initiate objection action in this circumstance are persons with access to the elector and the elector’s carers. These people will have access to the trained health professionals who are assisting in making decisions about the elector’s medical conditions, treatment and life-style arrangements. The aim of the amendment is to both deal with the Human Rights issue and to increase the range of health professionals who can be called on by family members and carers to provide evidence to a delegate of the Electoral Commissioner as to the elector’s cognitive capacity in dealing with electoral matters.

The AEC is conscious that there are many conditions which can impair a person’s cognitive capacity. In some cases (e.g. head trauma), the cognitive capacity of a person can improve over time. In other cases (e.g. Alzheimer’s disease), a diagnosis may be accompanied by a gradual deterioration of a person’s cognitive capacity over many years.

The following table sets out the numbers of electors who have been removed from the Commonwealth electoral Roll due to the operation of section 93(8)(a) over the past four financial years and an age breakdown:

	2008–09	2009–10	2010–11	2011–12
Total	5,735	4,341	13,082	5,445

Age	2008–09		2009–10		2010–11		2011–12	
	No.	% total	No.	% total	No.	% total	No.	% total
18–39	121	2%	83	2%	251	2%	112	2%
40–59	173	3%	139	3%	347	3%	180	3%
60–64	105	2%	84	2%	225	2%	98	2%
65–69	215	4%	141	3%	359	3%	172	3%
70–74	319	6%	273	6%	783	6%	332	6%
75–79	732	13%	531	12%	1,581	12%	649	12%
80–84	1,264	22%	967	22%	2,902	22%	1,171	22%
85–89	1,500	26%	1,128	26%	3,554	27%	1,410	26%
90–94	901	16%	744	17%	2,188	17%	972	18%
95–114	405	7%	251	6%	892	7%	349	6%
Total	5,735	100%	4,341	100%	13,082	100%	5,445	100%

Page 23 – Discussion of court cases in relation to postal voting

The relevant cases dealing with postal vote applications at the 2010 general election were the cases of *Peebles v Tony Burke and Others* [2010] FCA 838, *Green v Bradbury and Others* 2011 FCA 71 and *Freemantle v O'Neill and Others* [2011] FCA 72. One of the issues raised in all of these cases was that the ALP issued PVAs did not include the declaration that the person was an elector. The particulars in the Freemantle case include the following:

18. Further, none of the applications for a postal vote made by the applicants on the adapted ALP form or the altered ALP form contained a declaration duly attested that each applicant was an elector, whether in the division of Robertson or for the Senate of New South Wales or at all, as required by the Act section 184(1)(a).

19. Each application in the adapted ALP form or in the altered ALP form not containing such declaration was invalid and each vote cast by each applicant as a consequence of the application was invalid.

Accordingly, the status of the person claiming a PVA was directly challenged.

In the matter of *Rowe and Thompson v the Electoral Commissioner and Others* [2010] HCA 46 the affidavit of Mr Paul Dacey did indicate the key dates for PVAs in the schedule to that affidavit. The Court commented on the scope of an "elector" and the right to apply for a postal vote at paragraphs 82 and 87 of the joint judgement of Justice Gummow and Bell where they stated:

"The term "Elector" is defined in s 4(1) as a person whose name appears as an elector on an Electoral Roll. Part VI (ss 81-92) of the Electoral Act provides that there be a Roll of electors for each State and for each of the Territories (s 81), with a Roll for each Electoral Division for the election of a member of the House of Representatives, and for each Subdivision of an Electoral Division (s 82). A central feature of the system for the polling established by Pt XVI (ss 202A-245) of the Electoral Act is the receipt by the elector of a ballot paper and the marking of the vote in private (ss 231-233). The secrecy which attends this system makes the description "compulsory attendance" more appropriate than "compulsory voting", though the latter often is used. Part XVI also provides for provisional votes (s 235) and Pt XV (ss 182-200) provides for postal voting."

"The evidence on behalf of the Electoral Commissioner, and submissions by counsel, indicated that if the declaration were made by the Court on 6 August the expectation would be that the electronic roll referred to in s 111 of the Electoral Act would be completed by 18 August and the postal and provisional voting systems utilised as the need arose for the conduct of the polling on 21 August. Accordingly, and the contrary was not suggested, there was utility in the Court making the declaration on 6 August."

Accordingly there was evidence placed before the Court as to the postal voting processes.

The AEC trusts that the above information is of assistance to the Committee.

Yours sincerely

Paul Pirani
Chief Legal Officer

23 July 2012