

Introduction

Referral of the Bill

- 1.1 On 24 November 2011 the House of Representatives Selection Committee referred the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 to the Joint Standing Committee on Electoral Matters (the committee) for inquiry and report.

Origins and purpose of the Bill

- 1.2 Currently, an eligible elector must initiate new enrolments or direct the Australian Electoral Commission (AEC) to make a change to their enrolment. The Electoral and Referendum Amendment (Maintaining Address) Bill 2011 (the Bill) amends the *Commonwealth Electoral Act 1918* (Electoral Act) to allow the AEC to directly update an elector's enrolled address details 'following the receipt and analysis of reliable and current data sources from outside the Australian Electoral Commission that indicate an elector has moved residential address'.¹
- 1.3 This Bill does not provide for the direct or automatic enrolment of eligible electors who are not already on the electoral roll.²

1 Explanatory Memorandum, Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 1.

2 Explanatory Memorandum, Electoral and Referendum Amendment (Maintaining Address) Bill 2011, p. 1.

- 1.4 The Bill is described in the Explanatory Memorandum (EM) as implementing recommendation 10 of the Joint Standing Committee on Electoral Matters' *Report on the conduct of the 2007 federal election and matters related thereto*. It was a unanimous recommendation. The members of the committee for that report were:

Mr Daryl Melham MP (Chair)	Senator Simon Birmingham
Mr Scott Morrison MP (Deputy Chair)	Senator Bob Brown
Mr Michael Danby MP	Senator Carol Brown
Hon Bruce Scott MP	Senator Steve Hutchins
Mr Jon Sullivan MP	Senator the Hon Michael Ronaldson

- 1.5 In the report on the 2007 election the committee considered strategies for maintaining an effective electoral roll. Recommendation 10 proposed that data received from approved agencies be used to update the electoral roll. It stated:

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow the Australian Electoral Commission to receive and use information for the purposes of directly updating the electoral roll, where that information has been:

- provided by an elector or electors to an agency approved by the Minister as an agency which performs adequate proof of identity checks; and
- the elector or electors have indicated their proactive and specific consent to opt in for the information to be used for the purposes of directly updating the electoral roll; and
- the data has been provided by that agency to the Australian Electoral Commission for the purposes of updating the electoral roll.³

- 1.6 The Government response to the report was provided in March 2010. In response to recommendation 10, the Australian Government indicated its in principle support for the recommendation, stating:

The Government agrees that efficiencies and benefits would be gained by allowing data provided by trusted agencies to be used for the purposes of directly updating the electoral roll. The Government considers that providing for the direct update of data in relation to individual electors is an important step towards improving the accuracy and comprehensiveness of the electoral roll. The implementation of this recommendation will require the AEC to develop bilateral agreements with relevant agencies, and work through a range of agency-specific issues related to the

3 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, June 2009, Commonwealth Parliament of Australia, p. 114.

collection, use and storage of personal information. Noting that the *Commonwealth Electoral Act 1918* requires all Australian citizens to be enrolled, the Government will ensure that appropriate privacy protections, including provisions for opt-out where appropriate, are incorporated into the arrangements to be developed. The AEC will consult with the Office of the Privacy Commissioner and conduct detailed Privacy Impact Assessments in the course of developing agreements with trusted agencies.⁴

1.7 The Special Minister of State, the Hon Gary Gray AO MP, in his second reading speech indicated that the aims of this Bill are to improve electoral roll accuracy and to 'assist in meeting the urgent need to arrest the decline in enrolment rates across Australia'.⁵

1.8 The AEC currently uses Continuous Roll Update (CRU) to assist with maintaining the currency and accuracy of the electoral roll. The AEC described this method as:

The most significant method now used by the AEC to actively review the roll and encourage enrolment...introduced in 1999. The core of the program is regular mail reviews, in which the AEC conducts large mail-outs to specific electors and to specific addresses where it believes eligible persons who are not on the electoral roll or not correctly enrolled reside. The mail reviews are, in some cases, supplemented by targeted field work. Follow-up activity aimed at people who have not responded to an initial mail-out, is also conducted.⁶

1.9 The targeted mail-outs are often based on data received from third party sources that indicate address details of enrolled persons may have changed. CRU places the onus on the elector to confirm the address details at which they are eligible to be enrolled. The AEC advised that response rates were generally between 15 and 20 per cent for the monthly mail-outs during periods when there are not major electoral events.⁷

1.10 While electors' address information cannot currently be updated based on third party data, electors can be removed from the roll as part of the objection process in Part IX of the Electoral Act. If the AEC has reasonable

4 Commonwealth of Australia, *Government Response to the Joint Standing Committee on Electoral Matters 'Report on the conduct of the 2007 federal election and matters related thereto'*, March 2010, p. 5.

5 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 23 November 2011, p. 13568.

6 Australian Electoral Commission, *Submission 2*, p. 7.

7 Australian Electoral Commission, *Submission 2*, p. 7.

grounds for believing that a person does not live at their enrolled address, the AEC will contact the elector and indicate that they will be removed from the roll. If no response is received within 21 days of the notice, the elector is removed from the roll. Consequently, the person in question will not be able to vote in a federal election unless they re-enrol.

- 1.11 The amendments in the Bill also enable the Electoral Commissioner to discontinue the objection process and update an elector's address details rather than remove an elector from the roll.
- 1.12 The Special Minister of State asserted that the Bill will also serve to reduce removal of eligible electors from the roll by the objection process, stating in his second reading speech that:

The Electoral Commission currently uses this information as the basis to remove someone from the electoral roll. The result is that eligible electors are being removed from the roll despite the fact that the Electoral Commission has accurate information on the elector's current address. This restriction is having a detrimental effect on enrolment.⁸

Requirement to enrol and update details

- 1.13 Under the Electoral Act, it is compulsory for eligible electors to enrol to vote in federal elections, and to update their residential address details within 21 days after having lived at the new address for one month. Section 101 provides that an eligible elector who does not fulfil these obligations is guilty of an offence and is punishable by a fine of \$110.
- 1.14 However, the AEC estimates that around 1.5 million Australians who are eligible are not on the roll. When questioned by the committee, the AEC advised that no prosecutions for non-enrolment had been pursued in recent years.⁹

8 The Hon Gary Gray AO MP, Special Minister of State, *House of Representatives Hansard*, 23 November 2011, p. 13568.

9 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 9.

Objection process

- 1.15 Part IX of the Electoral Act sets out the objection process under which electors can be removed from the electoral roll.
- 1.16 A person enrolled in a particular electoral division may object to the enrolment of another elector if they believe the person is not entitled to be enrolled in that division or is enrolled at an address at which they do not currently live and have not lived for at least one month.¹⁰
- 1.17 Section 114 also requires the Electoral Commissioner to object to the enrolment of an elector in these circumstances. The AEC indicated that objection action initiated by the Electoral Commissioner 'are most commonly triggered by CRU mailing based on third party data'.¹¹ The Electoral Commissioner writes to the elector notifying of the AEC's intention to remove them from the electoral roll. If the elector does not respond to this notice within 21 days of the notice being issued, they will be removed from the roll. The AEC will then send a second notice to the same address advising the elector that they have been removed from the electoral roll.

Contents of the Bill

- 1.18 Schedule 1 of the Bill seeks to standardise references to the Electoral Commissioner by substituting a number of occurrences of the 'Electoral Commission' with the 'Electoral Commissioner'. The EM indicated that the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010* made a number of amendments to the Electoral Act that specified the Electoral Commissioner as the person responsible for enrolment related and pre-poll tasks and functions rather than the AEC.
- 1.19 Item 1 of Schedule 1 also extends the Electoral Commissioner's power in section 28 to delegate the roll review functions under section 92.
- 1.20 Schedule 2 contains the significant amendments of the Bill to enable the Electoral Commissioner (or a delegate) to change the address at which an elector is enrolled. It includes the insertion of new section 103A 'Updating or transferring a person's enrolment without claim or notice from the person'.

¹⁰ Commonwealth Electoral Act 1918, s 114.

¹¹ Australian Electoral Commission, *Submission 2*, p. 8.

- 1.21 Item 3 sets out proposed section 103A, which covers:
- the circumstances in which this direct update of address mechanism will apply – s 103A(1);
 - the action the Electoral Commissioner may take to update an elector's address – ss 103A(3)-(5);
 - that the Electoral Commissioner may notify the relevant elector when a change of address is proposed (s 103A(2)) and must notify when the address is updated or of the decision not to update – ss 103A(6)-(7); and
 - to allow the Electoral Commissioner to provide the required notices by electronic means, whether or not the recipient has consented to receiving information by electronic communication – s 103A(8).
- 1.22 Item 2 amends section 101 (that requires eligible electors to enrol and update their address details) by providing that if an elector's address details are updated under section 103A then proceedings must not be brought against that elector for their prior failure to update their details.
- 1.23 The Bill also proposes to change the operation of the objection process, by requiring that the Electoral Commissioner must not complete the removal of challenged electors from the electoral roll in certain prescribed circumstances.
- 1.24 Item 4 provides that objection action must not be taken against electors who have been issued with a notice under subsection 103A(2) of the Electoral Commissioner's intention to update their address.
- 1.25 The Electoral Commissioner must also dismiss an objection in the following circumstances (Item 5):
- if a notice under subsection 103A(2) has already been issued prior to a person challenging the elector, and the person does not provide information inconsistent with data that formed the basis of the notice; or
 - if a notice under subsection 103A(2) is issued to the elector after the objection was made but before notice is given of the objection.
- 1.26 In cases where an objection notice has already been issued, the Electoral Commissioner 'must not determine an objection' if a subsection 103A(2) notice is issued, and must advise the person who initiated the objection and the challenged elector accordingly (Items 7 and 8).
- 1.27 Item 9 provides that a person who raised the objection can, within 28 days of the notice of the decision, request an internal review of the Electoral

Commissioner's decision, under section 118, to dismiss or not determine an objection.

- 1.28 An elector who has had their address updated may also seek an internal review of the decision to change their enrolled address.
- 1.29 Items not explicitly mentioned above are smaller amendments consequential to the more substantial changes.

Policy background

- 1.30 The increasing numbers of eligible Australians missing from the electoral roll has motivated the examination by the AEC of strategies to combat this trend. Currently, the AEC estimates that around 1.5 million Australians who are eligible to vote are not on the electoral roll and so cannot exercise their voting rights.¹²
- 1.31 The AEC advised the committee during the inquiry into the 2010 federal election that over 200 000 people cast pre-poll, absent and provisional votes at the election that were rejected, due to these individuals being incorrectly enrolled or not enrolled. The Electoral Commissioner suggested that 'they are clearly potentially part of the group that have fallen off the roll because, at some stage, they did not respond to an AEC letter', and were removed under the objection process.¹³
- 1.32 One key strategy that the Australian Government is pursuing to arrest this trend in non-enrolment – not applying to be on the roll or failing to update their address details and potentially being removed from the roll – is by providing the AEC with greater powers to make changes to eligible electors' enrolment. In general terms, this involves removing the onus from eligible Australians to initiate enrolment and update their information, and enabling the AEC to perform these actions in certain circumstances based on data obtained from third party sources.
- 1.33 Systems of direct enrolment currently operate at the state level in New South Wales and Victoria.

12 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 1.

13 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 February 2012, Canberra, p. 7.

- 1.34 This Bill focuses on updating the information for enrolled electors, who have already established their identity and eligibility. However, direct enrolment and the reinstatement of eligible electors who have been removed in the objection process are the subjects of another bill.¹⁴

Date of effect

- 1.35 The amendments in the Bill will take effect from the day following Royal Assent.

Objectives and conduct of the inquiry

- 1.36 The objective of this inquiry is to investigate the adequacy of the Bill in achieving its policy objectives and, where possible, identify any unintended consequences.
- 1.37 On 13 December 2011, the committee Chair, Mr Daryl Melham MP, issued a media release announcing the inquiry and called for submissions to the inquiry.
- 1.38 The committee received five submissions for this inquiry, which are listed in Appendix A. Public hearings were held in Canberra on 8 and 15 February 2012, during which the committee heard from the Australian Electoral Commission and the Australian Privacy Foundation (see Appendix B). The submissions and transcripts of evidence are available on the committee's website at: www.aph.gov.au/em.

14 The Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012 was introduced in the House of Representatives on 15 February 2012 and was referred to the committee on 16 February 2012.