



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

Joint Standing Committee on Electoral Matters

Dissenting Report -

Electoral and Referendum Amendment (Maintaining Address) Bill 2011

Introduction

Coalition Members and Senators strongly disagree with the Committee's recommendation that the *Electoral and Referendum Amendment (Maintaining Address) Bill 2011* be passed by the Parliament and recognises that this legislation has been designed by Labor and the Greens solely for their own electoral advantage. The Coalition believes that the Bill will lead to a weakening of the integrity of the Electoral Roll, a significant decrease in privacy for individual electors and will remove virtually all responsibility for individual electors to take care of their own enrolment. As predicted by Coalition Members upon its introduction, this Bill is nothing but a precursor to automatic enrolment which the Government first denied it would be but then introduced the *Bill Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012*. The Coalition has consistently stated that it is important to ensure that Australian citizens maintain responsibility for their own enrolment, and not permit the Government change personal address details on their behalf without their consent and often without their knowledge leading to corruption of the integrity of the Roll.

Integrity of the Electoral Roll

The greatest concern about the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 is the impact on the integrity of the Electoral Roll. When the responsibility for maintaining correct address details for an elector is taken from the individual person and given to the Australian Electoral Commission, the potential for errors on the Electoral Roll increases significantly. The 2010 Federal Election demonstrated that the outcome of elections can come down to a small number of votes, this legislation gives the potential for individual seats and, as a result, which party forms Government to be determined by an unreliable Electoral Roll which is open to fraud.

If the address of an elector is changed without their knowledge, there is obviously a significant chance for an error to occur. This could particularly impact electors who maintain more than one residence with a high chance that these electors may be incorrectly re-enrolled under this legislation. Mr Ed Killesteyn, the Electoral Commissioner, admitted in the JSCEM public hearing on 8 February 2012 that it will only write to what they consider to be the elector's new address when they propose to change an elector's address details and if there is no response within 28 days they will change the address automatically, without the elector's consent:

Mrs BRONWYN BISHOP: *I want to go back to the process. Supposing you have decided, because of your checking with your material, that Mrs Bloggs has actually moved from her previous address. Under this legislation, you would write to the new address and say, 'We have changed you', because you are satisfied that she has moved.*

Mr Killesteyn: *We would not say that we have changed it; we would write to the individual and say, 'We have information which leads us to believe that you are at this address. You have 28 days to advise us whether that is not the case.' If there were no response, then we would change the address at that point.*

Mrs BRONWYN BISHOP: *But you have got to write to the old address?*

Mr Killesteyn: *No – as we do not do under the current CRU process.¹*

The Coalition notes the impact this will have on people who move temporarily, those who have more than one place of residence, individuals whose place of employment is a residential address or who receive mail at different addresses for a whole host of reasons. It should not be up to the AEC to determine when a person has moved, but up to the individual to notify the AEC, as is their duty as an Australian citizen.

Mr Killesteyn further noted on 8 February 2012 that only 20 per cent of electors respond to letters from the AEC under their current arrangements. The Coalition is concerned that because such a large number of electors are not responding to AEC requests, taking a non-response from an elector as confirmation that they have changed address, as is proposed under this legislation, will mean a large number of electors will become incorrectly enrolled.

The only way to make sure that the integrity of the Electoral Roll is maintained is to ensure that individuals are responsible for updating their details when they change address, the Coalition does not believe this responsibility is too onerous for individual electors.

Data Sources

The Coalition has great concern that this legislation will allow the AEC to determine what are “current and reliable data sources” from which they can change elector address details. This is an extraordinary amount of power to give to a Government agency without any checks or balances.

¹ JSCM Public Hearing, 8 February 2012, Hansard, p. 14.

In their dissenting report in July 2011 to the Joint Standing Committee on Electoral Matters' investigation into the 2010 Federal Election, Coalition members of JSC EM noted the risks of using external data sources such as the ATO, Medicare or other Government agencies to update elector details:

"The reliance on external data sources that have been collated and that are utilised for other purposes does not make them fit for use in forming the electoral roll. As outlined in the previous report into these proposals, a 1999 report by the House of Representatives Standing Committee on Economics, Finance and Public Administration: Numbers on the Run – Review of the ANAO Report No.37 1998-99 on the Management of Tax File Numbers, found that:

There were 3.2 million more Tax File Numbers than people in Australia at the last census; There were 185,000 potential duplicate tax records for individuals; 62 per cent of deceased clients were not recorded as deceased in a sample match.

Similarly, an ANAO Audit Report (No.24 2004–05 Integrity of Medicare Enrolment Data) stated that 'ANAO found that up to half a million active Medicare enrolment records were probably for people who are deceased'"²

It is clear that where there are such examples of inconsistency in Commonwealth data, there cannot be sufficient faith in this data being used to automatically update individuals on the Electoral Roll. The potential for error is even greater when using data from state or territory governments, as the Commonwealth cannot determine its accuracy. The only way to ensure that the integrity of the Electoral Roll is maintained is to ensure electors continue to be responsible for changing their individual details.

What is considered a "reliable and current data source" is open to interpretation and the Coalition believes this power should not be within the purview of the Australian Electoral Commission. Coalition Members of JSC EM noted this in July 2011 in their dissenting report:

"We are concerned that the power to deem data sources 'trusted' in determining the use of such data in compiling the roll as a potential risk to the office. The inclusion of such data, if erroneous, would be extremely damaging to public faith in our electoral process. Furthermore, the inclusion of such data may well be controversial due to lack of faith in its inclusion or utilisation. Placing the Electoral Commissioner at the heart of such a potentially politically charged dispute can only damage the standing of the office and the AEC."³

Mr Ed Killesteyn, the Electoral Commissioner, noted on 8 February 2012 at the JSC EM hearing that the only records the AEC proposed to use were Centrelink, Australia Post and state motor registry records. The decision about which records to use, however, are

² <http://www.aph.gov.au/house/committee/em/elect10/report/Dissenting.pdf>, p. 183

³ <http://www.aph.gov.au/house/committee/em/elect10/report/Dissenting.pdf>, p. 184

entirely at the discretion of the Electoral Commissioner and could be changed at any time. Whilst Mr Killesteyn specifically ruled out using records from the Australian Tax Office on 8 February 2012, there is nothing in the legislation which would stop the Commissioner from changing his mind:

***Mrs BRONWYN BISHOP:** I am glad you raised the tax office. To try and make the entitlement to vote equal with obligations that we might have under different legislation is to me appalling. That is why your and my philosophy will be different. I would just, on that question of tax, note that it was found in 1998-99 that there were 3.2 million more tax file numbers than people in Australia in the last census, 185,000 potential duplicate tax records for individuals and, in a sample batch, 62 per cent of deceased clients of the tax office were not recorded as deceased. That is how accurate the material that you are proposing to use can be.*

***Mr Killesteyn:** I am not proposing to use tax records.*

***Mrs BRONWYN BISHOP:** At the moment, but you can change your mind under this bill. ⁴*

Dr Roger Clarke from the Australian Privacy Foundation, told JSCem on 15 February 2012 that there were a large number of concerns about the accuracy of Centrelink data and he further noted that nothing stops the AEC from using other sources:

There are declarations by the AEC about three key things. We draw to attention that those three key organisations that are used as sources. The first is a Commonwealth agency, Centrelink. Centrelink is merely a funnel for the 100 welfare programs that are run in Australia, which are formally administered by in the order of twenty different agencies. So, when we say that there is one Commonwealth agency involved, there are twenty, and there are 100 programs that are being sucked in through those Centrelink accesses. The second set is state and territory government agencies. The mechanics are that the data is acquired from NEVDIS but that data is sourced and is acquired in the first instance from citizens by motor registries. The third is a completely different category again, which is a government business enterprise. We have crossed out to the grey zone of government in the form of Australia Post.

Contrary to the sentence I have said here, 'It is unclear whether this list is complete': I am sorry, the evidence – which I read subsequently to finalising this submission, at 6:30 – last week said that that list is currently complete but totally extensible. That means that at this stage private sector sources are not used but there is absolutely nothing stopping the Electoral Commissioner from deciding that he will become a subscriber to Veda Advantage, the credit bureau, and that he will become a subscriber to AXIOM, the consumer profile

⁴ JSCem Public Hearing, 8 February 2012, Hansard, p. 9

aggregator in Australia and elsewhere, and absorb that data into the electoral roll as well.”⁵

Dr Clarke, who is also a consultant focussing on strategic and policy aspects of eBusiness, information infrastructure, data surveillance and privacy, further noted that there are large number of concerns about the data matching processes currently used by the AEC and the agencies which the AEC proposes to use for automatic updates of the Electoral Roll. This further backs up the Coalition’s view that the best way to ensure that accurate details are kept is for individuals to maintain responsibility for their own address details:

“This data is matched. I could have written, and have written in the past, lengthy treatises on data matching—how it works, what its deficiencies are and what controls ought to be imposed upon it. I have kept it mercifully brief here, I think you will agree; it is only three short paragraphs. The point about data matching is that it is extraordinarily error-prone. It is based on, firstly, name; secondly, usually, elements of address and, thirdly, date of birth. Date of birth is commonly unreliable. People fib about their ages. Many people are not very pleased about having to disclose their ages, and that includes males as well as females. Address in this context cannot be used because the whole purpose of the study is to come up with different addresses and therefore you cannot match on it. So you have you got to reduce quality of data matching in this data-matching program compared to all the other data-matching programs that go on in government.

Name is enormously variable in its recording and is routinely 'scrubbed'—that is the term used—in order to try to muck around with the data, modify the data, in order to make it seem right. It is differently scrubbed by every different agency, so we have differential collection for different purposes in different ways with different data-quality measures with different data-scrubbing measures, and then we bundle all this together and match it. The false positives that arise from this are enormous, as indeed are the false negatives, because there are enormous numbers of occasions where matches could in principle be discovered which in fact are not discovered by the algorithms that are used. It is extraordinarily error prone. In circumstances like these you would think enormous care would be taken, enormous justification would have to be provided, proportionality would be taken account of and it would only be done when there are very serious benefits to be gained. Unfortunately that is far from the case.”⁶

⁵ Dr Roger Clarke, JSCem Public Hearing, 15 February 2012, Hansard, p. 4

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Privacy Concerns

The Inquiry into the Maintaining Address Bill heard some evidence from Dr Roger Clarke from the Australian Privacy Foundation regarding the extensive concerns about individual privacy which accompany this legislation. There are a number of risks for people who do not want their details published on the Electoral Roll because of domestic violence disputes, stalking fears or who may be in police protection, with the very real possibility these details could be placed on the Electoral Roll without the elector's knowledge because of this legislation. Dr Clarke outlined a number of these concerns, which could be exacerbated by this legislation, to the JSCem hearing on 15 February 2012:

*"Stalking and, in recent times, cyberstalking, is quite common. Stalking is not only of celebrities. Victims of domestic violence are of course the extreme end of that problem. We are not suggesting that these are things that the AEC is unaware of and does not deal with, but there are a great many of these circumstances and very few of them are directly supported by government. Protected witnesses and undercover operatives, which is a subset of the very last category, are the only forms which are directly supported by governments in Australia. The rest of those people have to fend as they can, and in this case the point that we make in this section is that, where people suffer from these difficulties, they have to fight with the electoral commissioner, they have to apply, they have to disclose a considerable amount of distressing information—which is a further source or vulnerability for them—and they then have to fit into the very narrow constraint of 'because it places the personal safety of the elector or members of their immediate family at risk'. That is the only head that they are allowed to argue from. Then they depend on the grant of the discretion by the Electoral Commissioner. This is not something that represents care being taken by the federal parliament or by the Electoral Commissioner of the many people in Australia who are at risk."*⁷

Conclusion

The Coalition believes that this legislation should be rejected by the Parliament and notes that it is merely a ploy by the Australian Labor Party and the Greens to improve their electoral chances at the expense of the integrity of the Electoral Roll. Coalition Members and Senators note the very real risks this legislation poses to the privacy of individual electors and the power it gives the Australian Electoral Commission to access lists from other Government agencies and determine their validity, far beyond what the purview of the AEC should be. The Coalition notes the negative precedent this legislation will set when it comes to individual responsibility and again reaffirms its strong belief that the responsibility of an individual to enrol, update their address and vote at elections are not

⁷ Dr Roger Clarke, JSCem Public Hearing, 15 February 2012, Hansard, p. 3

responsibilities that should be considered too onerous for Australian citizens, as the Labor Party, Greens and AEC seem to believe.

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Senator Scott Ryan

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