



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Electoral and Referendum Amendment (Maintaining Address) Bill 2011

Submission to the Joint Standing Committee on Electoral Matters

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The Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. Since 1987, the Foundation has led the defence of the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For further information about the Foundation and the Charter, see www.privacy.org.au

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Publication of submissions

We note that we have no objection to the publication of this submission in full. To further the public interest in transparency of public policy processes, APF strongly supports the position that all submissions to public Inquiries and reviews should be publicly available, except to the extent that a submitter has reasonable grounds for confidentiality for all, or preferably part of, a submission.

Introduction

The changes proposed appear superficially as minor and incremental, continuing a process of facilitating updating of electoral enrolment information, so as to better serve the purpose of maintaining accurate electoral rolls. However, we submit that the changes need to be assessed in the wider context of a steady and insidious process of function creep, whereby the Australian Electoral Commission (AEC) has taken on a much wider identity management role on behalf of a wide range of other government agencies.

In 2006, the Victorian Electoral Commission (VEC) published a booklet comparing the collection use and disclosure practices of the VEC and the AEC – see

<http://www.vec.vic.gov.au/files/ElectoralEnrolmentInformationCollectionandDisclosurePractices.pdf>

We urge the Committee to review this booklet which clearly demonstrates the extent to which the AEC now plays a much wider role in relation to federal government information systems than does the Victorian Commission in relation to Victorian state systems.

This is important context for the current proposals, as we believe that the pressure for increased accuracy comes more from the secondary users than from the requirements of electoral administration.

The Minister's second reading speech asserts that:

"The bill will assist in meeting the urgent need to arrest the decline in enrolment rates across Australia by ensuring the federal electoral roll is as current and accurate as possible."

However, neither the Speech nor the Explanatory Memorandum provide any evidence of the scale of the alleged inaccuracy. We question whether electoral administration objectives alone, in the absence of other secondary uses, would justify what is a major change in the basis of enrolment, from 'opt-in' to 'opt-out'.

We submit that the existing basis of enrolment, only on the basis of a positive action by an eligible voter, should not be abandoned lightly. It is consistent with fundamental privacy principles, which favour use of personal information only for the purpose for which it is collected, with exceptions being strictly limited, and a preference for consent for any secondary use.

We also submit that there is a risk that allowing enrolment changes from secondary sources without positive confirmation from the electors concerned will in many cases lead to a reduction in quality, with electors incorrectly enrolled, or erroneously removed from the database. By definition, use of incorrect information will mean that the notices supposedly offered as a safeguard will not reach the elector who will therefore have no way of objecting. It seems inevitable that in some cases electors who want to vote will be disenfranchised – surely a worse outcome than rolls missing a few electors who have failed to positively confirm change of address?

Secondary sources from which the AEC obtains information, and which will use to make changes, are of very variable quality (this is acknowledged by the AEC). They are comprised of information collected for very different purposes, and in different contexts, all of which will have a bearing on how accurate, and current, that information is. For example, DIAC/DFAT data may be accurate at the time of the grant of a visa or citizenship but cannot presumably be relied on for any length of time – depending on whether there is any requirement to register changes of address to DIAC/DFAT, and whether any such requirements are enforced. Similar issues would arise with any database, such as Births, Deaths and Marriages, where there is no ongoing relationship between the host agency and the individual. Even those sources where there might be expected to be more regular contact will not be uniformly current.

We urge the Committee to recommend that the government withdraw the Bill on the basis that any marginal benefit for electoral administration does not outweigh the significant risk of disenfranchisement, and the significant adverse effect on individuals' privacy of moving from an opt-in to an opt out system.

Should the Bill proceed, we submit that the 'test' in proposed s 103A is not sufficient. It merely requires that the Electoral Commissioner is satisfied, "for reasons other than a claim under section 98 [ie a claim to be enrolled] and a notice under subsection 101(5) [i.e. a notice by an enrolled person of a change of address], that the person lives at another address." It does not say *how* the Commissioner is to be satisfied, *what* other sources he is entitled to use, and *how* to test their reliability.

These matters are too important to leave to Regulations, the Minister's discretion, or the Electoral Commissioner's discretion, or to the general requirement on AEC to comply with the data quality principles IPPs 8&9. An increased power to change without consent deserves an increased onus to ensure reliability, with criteria specified in the legislation.

We also submit that any enrolment details changed without consent should be quarantined from the secondary uses which are permitted under the Act. Even if secondary uses are allowed of information that has been positively verified by an individual, it is unacceptable to allow such uses of unverified changes – this would potentially compound and pass on any errors in the source data. If in due course an elector

confirms their enrolment details (most likely by voting) then that record could be released from the quarantine.

For further information please contact:

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