



Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010

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Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010

Date introduced: 11 February 2010

House: House of Representatives (the Bill passed the House on 10 March 2010)

Portfolio: Special Minister of State

Commencement: Sections 1–3, Schedules 1–3, and Schedules 5–6 commence on the day the Act receives Royal Assent. Schedule 4 commences on a day to be fixed by Proclamation, or on the day after 6 months from Royal Assent, whichever occurs first.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The main purpose of the Bill is to amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* (Cth) so as to:

- fix the seventh day after the issue of federal election writs as the date for the close of rolls
- repeal the evidence of identity requirements for provisional electors and provide for a signature checking procedure
- make provision for electronic updating of electors' details
- enable the AEC to process enrolment transactions outside the electoral division for which a person is enrolling
- 'enable pre-poll votes cast in an elector's 'home' division to be cast and counted as ordinary votes, wherever practicable'
- 'restrict the number of candidates that can be endorsed by a political party in each Division',¹ and
- enable electronic voting for sight-impaired electors.²

1. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 1.

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Background

2006 Howard Government amendments to the *Commonwealth Electoral Act 1918*

In 2006 the Howard Government introduced a suite of significant changes to electoral and referendum administration with the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth). Changes included:

- the introduction of evidence of identity requirements for enrolments and provisional voting
- changing the date for the close of rolls from the seventh day after the issue of the federal election writs to the third working day after the issue of the writs for certain categories of enrolment (for updating details; for those turning 18 years of age between the issue of the writs and polling day; and for those gaining citizenship between the issue of the writs and polling day)
- changing the date for the close of rolls from the seventh day after the issue of the federal election writs to the date of the issue of the writs for other new enrolments and re-enrolments, and
- increasing political finance disclosure thresholds from \$1 500 to more than \$10 000 (CPI indexed).³

The measures in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) were controversial and were opposed by the Australian Labor Party (ALP) (then in Opposition) and by the minor parties.⁴

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2. Supplementary Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010*, p. 2.
 3. *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth). This Act is available online at:
<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/DB7BE4E22B6B49BFCA257497002DC413?OpenDocument>
 4. See 'Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2006: Second Reading', Senate, *Debates*, 16 June 2006, pp. 1–93, viewed 18 February 2010, http://parlinfo.parlInfo/download/chamber/hansards/2006-06-16/toc_pdf/4788-2.pdf;fileType=application%2Fpdf#search=%22electoral%20integrity%22

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Basis of policy commitment

The Second Reading speech states that the Bill fulfils two ALP election commitments.⁵ In its 2007 National Platform the ALP indicated that it would reverse a number of the 2006 Howard Government changes to electoral administration including the changes to the date for the close of rolls and evidence of identity requirements.⁶

The Second Reading speech also states that the Bill implements a number of recommendations arising from the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the conduct of the 2007 federal election and related matters (referred to the JSCEM by the Special Minister of State on 27 February 2008 and by the Senate on 12 March 2008).⁷ In its inquiry report (June 2009), a majority of the JSCEM made 53 recommendations relating to a range of electoral administration matters including the date for the close of rolls, evidence of identity, enrolment and participation, pre-poll voting, informal voting, electoral administration, penalties, prisoner voting rights, and overseas electors.⁸ Specific recommendations relevant to the Bill included:

- fixing the date for the close of rolls to seven days after the date of federal election writs (Recommendation 1)
- repeal of the evidence of identity requirements for provisional electors and the introduction of a signature checking process for declaration votes where necessary (Recommendation 2)
- provision for the establishment of an enrolment website for enrolled electors to facilitate timely updating of the electoral roll by the AEC (Recommendation 9)
- provision 'to allow pre-poll votes cast at a pre-poll voting centre in an elector's home division prior to polling day to be cast as ordinary votes, wherever practicable' (Recommendation 22)

5. A Byrne, 'Second reading speech: Electoral Referendum (Close of Rolls and Other Measures) Bill 2010', House of Representatives, *Debates*, 11 February 2010, p. 4, viewed 12 February 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-11%2F0020%22>

6. ALP, *National Platform and Constitution 2007*, ALP, Canberra, 2007, pp. 181, 189, viewed 12 February 2010,

http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/download/now/2007_national_platform.pdf

7. Terms of reference and other inquiry documentation, including the inquiry report, are available at the Committee website:

<http://www.aph.gov.au/house/committee/em/elect07/tor.htm>

8. Joint Standing Committee on Electoral Matters (JSCEM), *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. xxiii–1, viewed 11 February 2010, <http://www.aph.gov.au/house/committee/em/elect07/report2/Final.pdf>

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- provision for the AEC to manage its workload between elections by ‘allowing enrolment transactions to be processed outside the division for which the person is enrolling, provided that those transactions are processed by a division that is within the same state or territory’ (Recommendation 42), and
- incorporation of recommended amendments to the *Commonwealth Electoral Act 1918* into the *Referendum (Machinery Provisions) Act 1984* (Cth) where appropriate ‘to ensure consistency between the provisions applying to elections and referenda’ (Recommendation 45).⁹

Opposition members of the JSCEM dissented from a number of the Committee majority’s recommendations including Recommendations 1 and 2 concerning the close of rolls date and evidence of identity for provisional electors.¹⁰

The Second Reading speech further indicates that the amendments in the Bill restricting the number of candidates that can be endorsed by a political party in a single electoral division arise from the 2009 Bradfield by-election. At the Bradfield by-election there were 22 candidates, nine of whom were endorsed by one political party; the informal vote was nine per cent.¹¹ The Second Reading speech states that:

The practice of multiple candidates for a single Division being endorsed by the registered officer of a political party has not emerged on this scale prior to the 2009 Bradfield by-election. Legislative amendment is required to prevent a similar rise in the informality rate in multiple Divisions at the next federal election.¹²

Government amendments to the Bill to enable electronic voting for sight-impaired electors give effect to recommendation 49 of the JSCEM report on the 2007 election and recommendation one of the JSCEM report on the electronic voting trials at that election.¹³

9. Ibid., pp. 51, 63, 113, 196, 277, 283.

10. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 323–33.

11. Australian Electoral Commission (AEC), ‘Virtual Tally Room: NSW Division—Bradfield’, AEC website, viewed 19 February 2010, <http://vtr.aec.gov.au/HouseDivisionFirstPrefs-14357-108.htm>

12. A Byrne, ‘Second reading speech: Electoral Referendum (Close of Rolls and Other Measures) Bill 2010’, op. cit., p. 6.

13. Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 2; JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 307; JSCEM, *Report on the 2007 federal election voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto*, JSCEM, Canberra, March 2009, p. 36, viewed 10 March 2010, http://www.aph.gov.au/house/committee/em/elect07/report1/Full_Report.pdf

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The Bill's proposed amendments to the *Referendum (Machinery Provisions) Act 1984* (Cth) do not implement the recommendations made by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its recent report on the effectiveness of that Act as a framework for conducting referendums.¹⁴

Broader electoral reform agenda

The Bill is part of the Government's broader electoral reform agenda. In December 2008 the Government issued a green paper examining electoral finance reform issues, and in September 2009 a second green paper was issued examining broader electoral reform issues.¹⁵ Both green papers identified reform possibilities and invited comment.

In 2008 and 2009 the Government introduced Bills making significant changes to the law relating to electoral funding, political donations, disclosure and reporting, and certain offences and penalties.¹⁶ The 2008 Bill was defeated in the Senate in March 2009 and the 2009 Bill, which is a revised version of the 2008 Bill, was introduced and passed in March 2009 in the House of Representatives and is currently before the Senate.¹⁷

In addition to the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, the Government is currently proposing to introduce two further items of electoral legislation in the 2010 Autumn sittings:

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14. Terms of reference and other documentation for this inquiry, including the inquiry report, are available at the Committee website:
<http://www.aph.gov.au/house/committee/laca/referendums/>
 15. Australian Government, *Electoral Reform Green Paper—Donations, Funding and Expenditure*, Australian Government, Canberra, December 2008, viewed 18 February 2010, http://www.dpmc.gov.au/consultation/elect_reform/docs/electoral_reform_green_paper.pdf; Australian Government, *Electoral Reform Green Paper—Strengthening Australia's Democracy*, Australian Government, Canberra, September 2009, viewed 18 February 2010, http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy.pdf
 16. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009. These Bills and associated documentation, including Bills Digests, can be accessed at:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs627%22> (2008 Bill),
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4073%22> (2009 Bill).
 17. Senate, *Bills List—As at cob 10 March 2010*, Senate, Canberra, 2010, p. 10, viewed 11 March 2010,
http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillslst%2Fbillslst_c5cb7dfd-6ea5-42d2-bea7-a4c40e628ce8%22

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- a second electoral and referendum amendment Bill to ‘correct technical errors and make amendments of a minor nature in the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*’ in order to ‘enable the Australian Electoral Commission to administer electoral laws more effectively’, and
- an electoral amendment Bill to ‘implement further reforms to the campaign funding and financial disclosure laws’ in order to ‘implement the Government’s legislative response to the issues raised in the *Electoral Reform Green Paper “Donations, Funding and Expenditure”*’ (released in December 2008) and related submissions’.¹⁸

Opposition and minor party positions

The Opposition has indicated that it will oppose the measures in Schedules 1 and 2 of the Bill relating to the close of rolls and evidence of identity for provisional electors, but will support the other measures in Schedules 3–6 of the Bill.¹⁹ The Opposition’s stance on Schedules 1 and 2 is consistent with the JSCEM Opposition members’ dissent, in the Committee’s report on the 2007 election, from the majority recommendations concerning the close of rolls and evidence of identity for provisional electors.²⁰

The Australian Greens have endorsed the Bill but have also signalled their intention to move an amendment in the Senate requiring truth in political advertising.²¹

Family First Senator Steve Fielding and Independent Senator Nick Xenophon have not yet indicated their positions on the Bill.

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18. Department of the Prime Minister and Cabinet (DPMC), *Legislation Proposed for Introduction in the 2010 Autumn Sittings*, DPMC, Canberra, 2010, p. 8, viewed 19 February 2010, http://www.dPMC.gov.au/parliamentary/docs/proposed_legislation.pdf
 19. J Hockey, ‘Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010: Second Reading’, House of Representatives, *Debates*, 25 February 2010, pp. 7–9, viewed 26 February 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-25%2F0021%22>; M Ronaldson, ‘Ministerial statements: Electoral and Referendum Amendment (Close of rolls and other measures) Legislation’, Senate, *Debates*, 10 March 2010, p. 40, viewed 10 March 2010, http://parlinfo/parlInfo/genpdf/chamber/hansards/2010-03-09/0083/hansard_frag.pdf;fileType=application%2Fpdf
 20. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 323–33.
 21. B Brown, *Guarantee truth in advertising and electoral reform for 2010 election*, media release, 11 February 2010, viewed 12 February 2010, <http://greensmps.org.au/content/media-release/guarantee-truth-advertising-and-electoral-reform-2010-election>

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Financial implications

The Government estimates that the cost of implementing the measures in schedules 1–5 of the Bill will be just over \$1 million. The estimated cost of implementing the measures in schedule 6 of the Bill (electronic voting for sight-impaired people) is \$370,000. However, the Government expects that the measures in the Bill will also result in net savings of \$5.7 million over the forward period due mainly to ‘efficiencies in pre-poll voting at the next and subsequent federal elections’.²²

Summary of key measures in the Bill

Schedule 1—close of rolls

Currently under the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Cth) (the Referendum Act) the electoral and referendum rolls close on the third working day after the issue of the federal election/referendum writs for those updating their details and for those turning 18 years of age or gaining citizenship between the issue of the writs and polling day. For other new enrolments and for re-enrolments the electoral rolls close on the date of the issue of the writs. The rolls close at 8:00 pm on the relevant day as this is the deadline by which claims or applications for enrolment must be made.

The Bill proposes to amend the Electoral Act and Referendum Act so as to fix the seventh day after the issue of the federal election/referendum writs as the date for the close of the rolls. This closure date would apply for all categories of enrolment including new enrolments, updating details, those applying for enrolment at 17 years of age, and applications for enrolment from eligible overseas electors, itinerant electors, and those set to gain citizenship between the issue of the writs and polling day. The deadline for the making of claims or applications for enrolment (and therefore the point at which the rolls would close) would be 8:00 pm on the seventh day after the issue of the writs.

The new date for the close of the rolls would also apply to the removal of electors from the rolls resulting from an objection to their enrolment, so that removal could not occur between 8:00 pm on the day of the close of rolls and the close of polling on polling day.

The Second Reading speech states that the new measures in Schedule 1 will ‘provide sufficient time for new voters to enrol to vote for a federal election or existing electors to update their address details with the AEC’.²³ Reversal of the reduction in the close of rolls

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22. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 4; Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 1.
 23. A Byrne, ‘Second reading speech: Electoral Referendum (Close of Rolls and Other Measures) Bill 2010’, op. cit., p. 4.

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changes introduced by the Howard Government in 2006 has been ALP policy since before the 2007 election (see above). The main issues in contention in relation to roll closure have been electoral roll integrity and voting fraud and restriction of the vote/disenfranchisement.²⁴

Whereas currently the Electoral Act and Referendum Act both specify that the close of rolls is to take place on the third working day after the issue of the writs (defined as any day except a Saturday, Sunday or a public holiday in any state or territory), the proposed amendments fixing the seventh day after the issue of the writs as the date for the close of rolls does not specify that the seventh day must be a working day. The Bill proposes to repeal the current definition of ‘working day’ from the Electoral Act and the Referendum Act. In relation to the latter Act, the Explanatory Memorandum states this is because it is ‘now otiose’.²⁵

Schedule 2—evidence of identity for provisional electors

Currently under the Electoral Act and the Referendum Act electors casting provisional votes at elections and referendums are required to provide evidence of identity either at the time of voting or by the first Friday following the polling day.²⁶ If provided at the time of voting, the evidence of identity must be the original of either the elector’s driver’s licence or one of a prescribed set of documents (e.g. a birth certificate, a certificate of Australian citizenship, a current Australian passport, or a current credit or bank account card). If provided by the first Friday after the polling day, the evidence of identity must be the original or an attested copy of the elector’s driver’s licence or prescribed document. If the prescribed evidence of identity is not provided within the timeframe the provisional vote is not counted.

The Bill proposes to repeal the evidence of identity requirements for provisional electors from both the Electoral Act and the Referendum Act. In place of these requirements, Divisional Returning Officers (DROs) would be required to check the signature of an elector on the envelope containing the provisional vote against the most recent record of that elector’s signature (if any) where the DRO had reason to doubt that the signature on the envelope was genuine. If the signature on the envelope was not that of the elector, the

24. See JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 43–51.

25. Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010*, p. 4.

26. Provisional votes can be cast in a range of circumstances including where an elector’s name cannot be found on the certified list of electors for the relevant Division; where the elector’s name appears on the certified list for the Division but not his/her address; or where a mark on the certified list indicates that the elector has already voted. Electors casting provisional votes must sign a declaration in an approved form on an envelope into which the ballot-paper is placed. Provisional votes are subject to specified scrutiny processes.

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provisional vote would not be counted. The Explanatory Memorandum states that in most cases the most recent record ‘will be the signature on the claim for enrolment form’;²⁷ the Bill is silent however regarding arrangements where no recent record of an elector’s signature was available.

The Second Reading speech states that, along with Schedule 1, the new measures in Schedule 2 will ‘implement recommendations of the JSCEM supported by the Government as necessary to provide eligible electors with the greatest opportunity to enrol and vote in an election.’²⁸ Reversal of the evidence of identity requirements introduced by the Howard Government in 2006 has been ALP policy since before the 2007 election (see above). The main issues in contention in relation to evidence of identity for provisional electors have been enrolment integrity and integrity of the provisional voting system, and restriction of the vote/disenfranchisement.²⁹

Schedule 3—pre-poll votes

Under current legislation, pre-poll votes are not counted on election night as each declaration accompanying each vote is required to be scrutinised to determine that the elector has a valid entitlement to vote.³⁰ The Bill proposes to amend the Electoral Act and the Referendum Act to provide a new category of pre-poll vote, ‘pre-poll ordinary votes’, as distinct from the renamed category of ‘pre-poll declaration votes’. The inclusion of pre-poll ordinary votes would enable pre-poll votes cast in an elector’s ‘home’ division to be treated as ordinary votes and counted on election night. ‘Home’ division refers to the division in which the elector is enrolled.

Under the measures in the Bill pre-poll ordinary voting would take place in a pre-poll voting office or the office of the DRO within an elector’s division in separate voting compartments where voting can be undertaken in private. The AEC could also determine, in writing, the availability of pre-poll ordinary voting at specified places. Those provisionally enrolled and those applying at the office of an Assistant Returning Officer

27. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 5.

28. A Byrne, ‘Second reading speech: Electoral Referendum (Close of Rolls and Other Measures) Bill 2010’, op. cit., p. 5.

29. See JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 53–63.

30. Pre-poll voting is a type of voting that can be undertaken prior to the day of the election at an AEC Divisional office or a pre-poll voting centre. Electors may cast a pre-poll vote if they are unable to attend a polling booth on polling day for reasons such as an absence from their home state or territory, serious illness or religious beliefs. See: Schedule 2 of the *Commonwealth Electoral Act 1918* and Schedule 3 of the *Referendum (Machinery Provisions) Act 1984*. A pre-poll vote must be accompanied by a signed declaration that the elector fulfils one of the approved criteria for not casting their vote at a polling booth.

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(ARO), including an ARO outside of Australia, would not be entitled to cast a pre-poll ordinary vote.³¹ The Bill also proposes to introduce new procedures for the handling and transportation of boxes housing pre-poll ordinary votes.

Over successive elections, the long-held assumption that electors will vote in person at their local polling booth on election day is becoming less realistic. Changes to demographic and work patterns over recent decades have driven an increase in demand for early voting, particularly in pre-poll and postal voting. At the 1993 federal election, the number of pre-poll votes cast was just under 400 000. By 2007 the number of pre-poll votes cast had more than doubled to about 1.1 million votes.³² Pre-poll votes comprised about 38 per cent of all declaration votes cast at the 2007 election. The number of pre-poll votes cast from within electors' home divisions amounted to 667 625 votes or 60 per cent of all pre-poll votes. In total, home pre-poll votes account for 5 per cent of all votes cast at the election.³³

The growth in early voting at elections has a number of implications. Early voting adds to the administrative cost of elections as each declaration vote must be individually assessed to confirm their validity in accordance with electoral law. Given that early votes are not counted on election night, a growth in their proportion of the total vote would decrease the probability of reaching a definitive result on election night. At the 2007 election, ordinary votes made up around 80 per cent of the total vote. If home division pre-poll votes were treated as ordinary votes at that election, 85 per cent of all votes cast would have been counted on election night.³⁴

In its submission to the JSCEM, the AEC noted some advantages of the proposed reform including:

- reducing the likelihood of delaying the election result until after election night when the pre-poll votes are counted; and
- decreasing the work required to scrutinise declaration votes as electors using pre-poll votes would be marked off the certified vote list within their home divisions.

31. Other qualifications for casting a pre-poll ordinary vote are outlined in the Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010*, p. 9.

32. Australian Government, *Electoral Reform Green Paper: Strengthening Australia's Democracy*, op. cit., p. 163.

33. AEC, Submission to the JSCEM, *Inquiry into the 2007 election*, June 2008, p. 43, viewed 16 February 2010, <http://www.aph.gov.au/house/committee/em/elect07/subs/sub169.pdf>

34. *Ibid.*, p. 44.

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The AEC has also noted that the procedure is in operation at the federal level for mobile polling and has been adopted and used in Victoria, Queensland, Tasmania and the territories.³⁵

Since 1993 the AEC has advocated for home division pre-poll votes be counted as ordinary votes on polling night. However, the reform has been resisted by the JSCEM in the past, primarily because the Committee wanted to encourage electors to vote in person on polling day.³⁶

Schedule 4—management of AEC workload and electronic updates

Efficient management of AEC workload

Currently under the Electoral Act and the Referendum Act the AEC processes enrolment applications and enrolment changes during the non-election period in the home divisions of electors. After an election is called the Electoral Act enables the AEC to process enrolment transactions across its divisional office network. The Bill proposes to enable the AEC to share its enrolment workload across its divisional offices during non-election periods so that it can manage its work with greater flexibility, as it currently does during the election period. The aim of the proposal is to enable the AEC to more efficiently manage its workload regardless of the stage of the election cycle. In its submission to the JSCEM 2007 election inquiry the AEC noted that the measure would provide more effective handling of roll close processing arrangements and broader work scheduling concerning staff availability and training requirements.³⁷

The proposal departs from JSCEM's recommendation in one respect. The Committee recommended that the AEC be enabled to process enrolment transactions outside the home division of electors, but within the same state or territory. The proposed measure in the

35. AEC, Submission to the JSCEM, op. cit., p. 44.

36. In its report on the 2001 election JSCEM found that it lacked sufficient evidence to support the proposal. See JSCEM, *Report of the Inquiry into the 2001 Federal Election and matters related thereto*, Canberra, June 2003, p. 159, viewed 19 February 2010, <http://www.aph.gov.au/house/committee/em/elect01/report/fullreport.pdf>. In its report on the 1998 election, the Committee concluded that such a proposal would be 'contradictory to its overall strategy of discouraging the increasing use of declaration voting'. JSCEM, *Inquiry into all aspects of the conduct of the 1998 federal election and matters related thereto*, JSCEM, Canberra, June 2000, p. 49, viewed 19 February 2010, <http://www.aph.gov.au/house/committee/em/elect98/wholereport.pdf>. In relation to the 1996 election, the Committee decided to uphold the principle that voting should be done in person on polling day. See JSCEM, *Inquiry into all aspects of the conduct of the 1996 federal election and matters related thereto*, JSCEM, Canberra, June 1997, p. 54, viewed 19 February 2010, <http://www.aph.gov.au/house/committee/em/elec/elec.pdf>

37. AEC, Submission to the JSCEM, *Inquiry into the 2007 election*, April 2009, p. 4, viewed 16 February 2010, http://www.aph.gov.au/house/committee/em/elect07/subs/Sub169_18.pdf

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Bill does not stipulate that transactions be processed within the home state or territory of electors. The Bill proposes to provide greater flexibility than the JSCEM recommendation ‘so that all staff and geographical locations can be utilised to derive maximum efficiency in enrolment processing’.³⁸ In making its recommendation, the JSCEM expressed concern that the AEC does not alter the current divisional office structure and its physical presence in almost all divisions across the country.³⁹ The Bill does not propose to do so.

The proposed measure specifies the Electoral Commissioner as responsible for receiving and processing enrolment transactions rather than the DRO or the Australian Electoral Officer. New provisions would then enable the Electoral Commissioner to delegate his or her enrolment powers to any office or staff member within the AEC. Enrolment transactions covered under the proposal include ‘entering a person’s details on the electoral roll or annotating an enrolment record to identify a special category of elector, such as an eligible overseas elector’.⁴⁰

Electronic enrolment updates

Currently electors are required to complete and sign a hard copy form in order to enrol or update their enrolment details.⁴¹ Provisions under Schedule 4 of the Bill propose to enable electors who are already on the roll to update their details electronically. The Bill also provides for the making of regulations to prescribe minimum verification information, such as date of birth and drivers licence details, to confirm the authenticity of online transactions.

At June 2009 it was estimated that 1 232 935 eligible people were not on the electoral roll, equating to 8.2 per cent of the eligible population. Over the past ten years, the estimated proportion of eligible people enrolled has fluctuated between a high of 93.2 per cent at the 2001 election and just over 90 per cent in June 2006.⁴² The AEC conducts enrolment campaigns and writes to electors as part of its roll review and stimulation activities, although ultimately it is an elector’s responsibility to enrol and maintain their own

38. Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010*, p. 17.

39. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 276.

40. Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010*, p. 17.

41. The four page enrolment forms are available through the AEC and a number of other government agencies. The forms can also be printed from the AEC website but must be signed by hand. The completed forms must be posted to the AEC where they are used to amend the enrolment database.

42. Australian Government, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, op. cit., p. 93.

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enrolment. Currently practices to update the roll have not been particularly effective. Of the letters sent by the AEC to over three million people in 2007-08, only 700 000 completed application forms were returned.⁴³

The proposed measures to enable electronic enrolment updates are part of a broader government plan to reform and modernise electoral administration to increase enrolment and the integrity of the roll. In 2009 the Special Minister of State asked the JSCEM to inquire into the New South Wales Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill and its consequences for the purposes of Commonwealth elections.⁴⁴ That Bill, which gained royal assent on 14 December 2009, amended the *Parliamentary Elections and Elections Act 1912* (NSW) to, *inter alia*, implement the 'Smart roll' system of automatic enrolment for state and local government elections and to enable electors to enrol and cast a provisional vote on polling day.⁴⁵

In its February 2010 inquiry report the JSCEM noted that the AEC supported the NSW amendments. A majority of the Committee recommended that the Electoral Act be amended to harmonise with NSW by enabling the automatic enrolment of electors on the basis of data provided by trusted agencies, and providing enrolment on polling day for provisional voting.⁴⁶ Opposition members of the JSCEM dissented from the majority recommendations.⁴⁷ The report now awaits a government response.

Schedule 5—limitation on the number of endorsed candidates per division

Currently under the Electoral Act there is no limitation on the number of candidates that can be endorsed by a single party in one division. The Bill proposes to limit the number of candidates that can be endorsed by a registered political party in a single division to one. As noted above, this measure arises from the circumstances at the 2009 Bradfield by-

43. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 103.

44. JSCEM, *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections*, JSCEM, Canberra, February 2010, viewed 18 February 2010, <http://www.aph.gov.au/house/committee/em/autobill2009/report/fullreport.pdf>

45. Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009, Explanatory notes, viewed 18 February 2010, http://www.austlii.edu.au/au/legis/nsw/bill_en/peaeab2009673/peaeab2009673.html

46. The report also recommended similar changes to the *Referendum (Machinery Provisions) Act 1984* as appropriate. See JSCEM, *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections*, op. cit.

47. JSCEM, *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections*, op. cit., p. 25.

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election where nine of the 22 candidates were endorsed by a single party, the Christian Democratic Party (Fred Nile Group). Given the large number of candidates standing for that division, the possibility of electors making inadvertent errors increased, and there was an unusually high rate of informal votes at 9 per cent.⁴⁸ The rate of informal votes at the by-election were the highest recorded for the division and more than double the nation average of informal votes of 3.95 per cent at the 2007 election. The aim of the proposal is to prevent such a high informal vote from reoccurring as a result of the endorsement of multiple candidates by one party in a single division.⁴⁹

In order to be registered in accordance with the Electoral Act, a political party must have at least 500 members and meet other conditions.⁵⁰ Candidates of registered parties only require the endorsement of a single registered officer of their party to stand for election. They also benefit having their party name listed alongside their own name on the ballot paper. Independent candidates, and candidates who do not obtain the official endorsement of a registered political party, are required to demonstrate, among other things, the support of 50 electors in the division in which they are seeking to nominate in order to be listed on the ballot. Under the proposal, if a registered party wished to nominate more than one candidate in a division, the nomination for all of those candidates in that division would be rejected.

At the most recent federal election there were no divisions in which more than one candidate was endorsed by one party. The practice of registered parties endorsing more than one candidate in a single division appears to be rare in federal electoral history. This suggests that such a practice may not be in the electoral interests of political parties.⁵¹ While there may not be a clear electoral advantage for a registered party to endorse more than one candidate in a division, the need to set the limit per division at one, in electoral law, could be questioned. For example, is it worth limiting democratic choice for a possible reduction in the rate of informal voting? Some relevant election statistics in relation to the endorsement of candidates by registered parties include:

- at the 2007 federal election, a total of 1 054 candidates stood for election in the 150 House of Representatives seats across Australia, with an average of about seven per division. In each of those divisions, there was a maximum of one candidate endorsed

48. In order to cast a formal vote, electors must rank each of the 22 candidates in order of preference.

49. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, pp. 31–32.

50. Once registered, parties are required to comply with the funding and disclosure provisions of the Act.

51. In theory, a party with more than one endorsed candidate in a division could attract broader support from the community however, the party may be disadvantaged where preferences are not effectively shared between the same-party candidates.

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by each registered political party. The division with the highest number of candidates in 2007 was Bennelong with 13 candidates.⁵²

- by-elections have tended to attract a greater number of candidates per division compared with general elections, with an average of about 10.4 candidates per by-election since 2000.⁵³
- the 2009 by-election in the division of Bradfield equalled the record for the highest number of candidates for a division (at 22 candidates). Until 2009, the election or by-election with the highest number of candidates was the 1992 by-election in the Victorian division of Wills, vacated by the former Prime Minister Bob Hawke. In that by-election, 22 candidates competed for the seat, four of which were endorsed by political parties. The informal vote recorded at that by-election was 6.4 per cent.⁵⁴
- the rate of informal voting at the Bradfield by-election was 9 per cent. The highest rate of informal voting at the 2007 general election was 9.5 per cent in the NSW division of Blaxland. The highest rate of informal voting over the previous four general elections was in 2001 in the NSW division of Fowler.⁵⁵
- the rate of informal voting at the Higgins by-election which was contested by 10 candidates (and held on the same day as the Bradfield by-election) was 4.2 per cent. The Australian Labor Party did not endorse a candidate in each of those by-elections, continuing the historically recent trend of governments not nominating candidates for by-elections in their opponents' safe seats.⁵⁶

Schedule 6—electronically assisted voting for sight-impaired electors

The AEC conducted a trial of electronic voting for sight-impaired electors and defence personnel serving outside Australia as part of the 2007 federal election. The provision for electronic voting was a one-off trial for the 2007 election only, enabled by the *Electoral and Referendum Amendment Act 2007*. The Bill proposes to amend the Electoral Act and Referendum Act to establish a framework for providing electronically assisted voting for

52. AEC, *Electoral pocketbook: Revised edition (April 09)*, AEC, Canberra, April 2009, p. 52, viewed 11 March 2010, <http://www.aec.gov.au/pdf/pocketbook/electoral-pocketbook-2007-revised-april2009.pdf>

53. Excluding the 2009 by-elections in the Divisions of Bradfield and Higgins. S Bennett and G Newman, 'House of Representatives by-elections 1901–2008', *Research Paper no. 7, 2008–09*, Parliamentary Library, 22 September 2008, p. 4, viewed 2 March 2010, <http://www.aph.gov.au/Library/pubs/rp/2008-09/09rp07.pdf>

54. The result of the 1992 Wills by-election was voided following a challenge based on s. 44 of the Constitution. S Bennett and G Newman, 'House of Representatives by-elections 1901–2008', *op. cit.*, p. 36.

55. AEC, *Electoral pocketbook: Revised edition (April 09)*, *op. cit.*, p. 52.

56. S Bennett and G Newman, 'House of Representatives by-elections 1901–2008', *op. cit.*, p. 5.

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sight impaired electors at future referenda and at general, Senate and by- elections. The Bill would also enable the further development of electronically assisted voting methods in the future. Finally, the Bill provides for the making of regulations to address procedural matters regarding the process of casting electronically assisted votes, dealing with privacy and secrecy issues, the availability of electronically assisted voting and the retention and treatment of records of such votes.⁵⁷ The amendments would not reinstate the conduct of electronic voting for defence personnel serving outside Australia.

Under the proposed measure, electors who met the conditions for casting electronically assisted votes would be able to do so at an AEC Divisional Office. The conditions for casting electronically assisted votes will be set out in regulations. The previous practice of applying to use an electronic assisted facility would no longer be required. Regulations will also provide that a record of the vote can be printed, handwritten or provided in electronic form.⁵⁸ As an interim measure (for the next federal election), the AEC intends to implement assisted voting by providing a private area within its Divisional Offices where eligible electors can cast a secret vote by speaking with call centre operators who will then complete the ballots according to their instructions.⁵⁹ One possible area of contention concerning the planned implementation is that, without detail on how secrecy and the independence of voters are to be protected, the method may not facilitate a fully secret and independent vote.⁶⁰ Another possible area of contention is that the trial of electronic voting for defence personnel serving outside Australia will not be continued.

The method of electronic voting used in the trial at the 2007 election was via a machine, with a 21-inch flat screen monitor for those with some vision or with pre-recorded voice or Braille instructions for blind electors. The preferences of voters were recorded on a two-dimensional barcode to protect the secrecy of the vote. The trial was implemented in 29

57. Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 2.

58. Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 7.

59. A Byrne, 'Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010: Second reading', House of Representatives, *Debates*, 10 March 2010, p. 16, viewed 11 March 2010, http://parlinfo/parlInfo/genpdf/chamber/hansardr/2010-03-10/0029/hansard_frag.pdf;fileType=application%2Fpdf The Bill enables arrangements to be made for electronic voting for sight-impaired people. The particular method of implementing those arrangements, such as the planned use of a call centre, is not subject to legislation.

60. For example see: M Fifield, 'Ministerial statements: Electoral and Referendum Amendment (Close of rolls and other measures) Legislation', Senate, *Debates*, 10 March 2010, p. 41, viewed 10 March 2010, http://parlinfo/parlInfo/genpdf/chamber/hansards/2010-03-09/0084/hansard_frag.pdf;fileType=application%2Fpdf

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sites across Australia (compared with over 8 000 polling places).⁶¹ The cost of implementing the trial of electronic voting for sight impaired electors was \$2.2 million.⁶² By contrast, the intended implementation of the proposed measure, via a call centre, is estimated to cost \$370 000.⁶³ It was estimated that 910–1 550 voters would use the facility in 2007. The actual number of voters who used the facility was 881. Estimates of the number of Australians who are blind or have low vision varies from about 160 000 to up to 300 000.⁶⁴

Prior to the trial of electronic voting, electors with impaired vision required the assistance of another person to complete their ballot papers. As a result, the votes of vision impaired electors were not secret and, potentially, not independent. Previously concerns were also raised about the application of traditional voting methods for Australian defence personnel in conflict zones overseas. In response to these issues, in its report on the 2004 federal election the JSCEM recommended a trial of electronically assisted voting.⁶⁵ The 2007 trial of electronic voting for sight impaired and overseas defence personnel was reviewed in a separate inquiry of the JSCEM. In that inquiry, the Committee noted that the combined cost of both trials at over \$4 million equated to an average cost of \$2 597 per vote for sight impaired electors and \$1 159 per vote for defence force personnel serving overseas, compared with the average cost per elector at the 2007 election of \$8.36.⁶⁶ In view of these costs, the Committee recommended, among other things, that the trials be discontinued.⁶⁷ In its report on the 2007 election, the committee further examined the issue and recommended continued investigation into the ‘viability and sustainability of assisted

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61. AEC, ‘Electronic Voting Trials for Electors who are Blind or have Low Vision’, AEC website, viewed 10 March 2010, http://www.aec.gov.au/Voting/e_voting/low_vision.htm
 62. JSCEM, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto*, op. cit., p. 50.
 63. Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 1.
 64. JSCEM, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto*, op. cit., p. 50; Australian Human Rights Commission, *300,000 Australians to get secret ballot*, media release, 9 March 2010, viewed 10 March 2010, http://www.humanrights.gov.au/about/media/media_releases/2010/15_10.html
 65. JSCEM, *The 2004 election: Report of the Inquiry into the conduct of the 2004 federal election and matters related thereto*, JSCEM, Canberra, 2005, pp. 258, 272, viewed 10 March 2010, <http://www.aph.gov.au/house/committee/em/elect04/report/fullreport.pdf>
 66. JSCEM, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto*, op. cit., pp. 36, 63.
 67. JSCEM, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto*, op. cit., p. 36. The Australian Greens member of the Committee dissented from the recommendation on the discontinuation of electronic assisted voting trials (p. 65).

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voting arrangements aimed at providing secret and independent voting for electors who are blind or have low vision'.⁶⁸ The proposed new measures to enable electronic voting for sight-impaired electors are a response to that recommendation.

Main provisions

Only significant amendments are dealt with in this part of the Digest. In most instances amendments to the Electoral Act are mentioned as most amendments to the Referendum Act are in similar terms.

Schedule 1—amendments relating to close of rolls

Item 6 repeals **subsections 102(4), (4AA) and (4AB)** and substitutes **new section 102(4)** of the Electoral Act to ensure that a claim by a person, made after the close of polls and before the election, to have his or her name put on the roll cannot be considered until after the close of polling (that is, until after the election).

The major amendment in this Schedule is made by **item 12** which repeals and substitutes **section 155** of the Electoral Act to provide that the date for the close of the rolls is the seventh day after the date of the writ. **Item 14** makes the same amendment to the Referendum Act by the repeal and substitution of **subsection 9(1)** of that Act.

By repealing the whole of section 155, the definition of 'working day' in subsection 155(2) is repealed, and **item 15** repeals the definition of 'working day' from the Electoral Act.

Schedule 2—amendments relating to evidence of identity for provisional voters

Schedule 2 amends both the Electoral Act and the Referendum Act to provide that the DRO must check the most recent record of an elector's signature in the circumstance that the DRO has doubts about the authenticity of the elector's signature on the envelope that purports to contain the provisional vote ballot paper. As discussed above, the proposed amendment does not address the possibility that there may be no earlier signature on record.

Schedule 3—amendments relating to pre-poll votes

Part 1 items 1-39 amend the Electoral Act, and **items 40-76** amend the Referendum Act in a similar way. The effect of the amendments is that there are 2 types of pre-poll vote, the ordinary vote, and the declaration vote (**new section 200AA**). As discussed in the background section of this Digest the new category of pre-poll ordinary votes would

68. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 307.

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enable pre-poll votes cast in an elector's 'home' division to be treated as ordinary votes and counted on election night.

A pre-poll ordinary vote is made in accordance with Division 3, and a pre-poll declaration vote is made in accordance with Division 4.

Item 7 amends subsection 200A(2) to add a note that explains that a person who is provisionally enrolled is not entitled to vote by pre-poll ordinary vote. **Item 14** inserts **new Division 3 sections 200DC to 200DR** which determine how voting by pre-poll ordinary vote is to occur.

New section 200DD provides that pre-poll ordinary voting can be carried out at:

- any pre-poll voting office in the division
- any other specified place declared by the Electoral Commission (see **new subsection 200BA(1A)**)
- the office of the DRO for the division.

New section 200DG provides for when a voter is and is not entitled to vote by pre-poll ordinary vote. The circumstances for when a voter is not entitled to vote are set out in **new subsection 200DG(2)** and include matters such as failure to comply with the requirements relating to signing the pre-poll vote certificate for ordinary voting, failing the tests relating to answering to questions set out in **new section 200DI** (name, address and whether voter has already voted), if the information on the roll is not in accordance with the requirements or if the voter is provisionally enrolled.

Division 4 makes minor amendments to the Electoral Act to incorporate the concept of a (pre-poll) declaration vote into the part of the Act relating to pre-poll voting. The Division applies to persons who have applied to pre-poll vote who are not entitled to vote by (pre-poll) ordinary vote.

Schedule 4—amendments relating to management of AEC workload and electronic updates

Much of Schedule 4 concerns the ability of the Electoral Commissioner to delegate his or her powers and functions to any officer or member to the staff of the Electoral Commission.

New subsection 28(4) extends the powers and functions of the Electoral Commissioner that can be delegated to those contained in:

- sections 86 and 87
- the provisions of Parts VII, VIII, IX and X
- sections 184A to 185C, and

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- section 249.

These pertain to new rolls and additions to the rolls, qualifications and disqualifications for enrolment and voting, enrolment, objections, review of decisions, postal vote applications and processes, and Antarctic electors respectively. As explained in the background to this Digest, these amendments will enable the AEC to share its enrolment workload across its divisional offices during non-election periods.

Schedule 5—amendments relating to limitations on the number of endorsed candidates per division

Item 2 inserts **new subsection 166(1AA)** into the Electoral Act so that in a House of Representatives election the registered officer of a registered political party is prohibited from nominating more than one candidate for a particular Division.. If they do so the nominations will be rejected under section 172(1), although **item 4** inserts **new subsection 172(1A)** which has the effect that where:

a bulk nomination has been received by the AEO and it includes 2 or more candidates for a single Division (in breach of the requirements of new subsection 166(1AA)), the AEO must reject the bulk nomination for the 2 or more same Division candidates, but the remainder of the bulk nomination will be valid.⁶⁹

Schedule 6—amendments relating to electronically assisted voting for sight-impaired electors

Part XVB of the Electoral Act relating to electronic voting methods is amended so that it applies only to electronic assisted voting for sight-impaired people. **Item 20** accordingly repeals Division 2 of Part XVB which provides for remote electronic voting for defence personnel serving outside Australia.

69. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 32.

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