



Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

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Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010

Date introduced: 2 June 2010

House: House of Representatives

Portfolio: Special Minister of State

Commencement: As the date of the next federal election is not known at this stage, some Schedules, or elements of Schedules, commence on Proclamation to provide some flexibility in implementation. Other Schedules are drafted to commence after Royal Assent and the commencement of specified Schedules in the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010 due to the interaction between measures contained in Schedules to the two Acts.

Sections 1 to 4 commence upon Royal Assent.¹

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, 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:

- remove the requirement to publish enrolment and election-related forms and information in the Government Gazette and substitute the requirement for the Electoral Commissioner to publish the information, at a minimum, on the Australian Electoral Commission's (AEC) website;
- provide that a person making an application for enrolment or changing the name under which they are enrolled (which does not include amending address details) needs to include with their application either their driver's licence number, passport number or an attestation of identity signed by an enrolled elector;
- reduce the age at which people may provisionally enrol from 17 years old to 16 years old;
- allow for electronic roll information to be provided to parliamentarians and allow for electronic certified lists;

1. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 2.

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- introduce flexibility to print ballot papers at the local level by removing the technical requirement for ballot-papers to be ‘overprinted’;
- introduce one form of mobile polling which may visit anywhere that the Electoral Commissioner determines. The amendment removes inconsistencies that currently exist in the arrangements for visits at various places or institutions;
- enable a person to apply for a postal vote electronically by removing the requirement for an application for a postal vote to be signed and witnessed;
- prohibit written material from being attached to a postal vote application;
- clarify that a right to inspect the electoral roll does not include the right to electronically copy or record the roll;
- allow the AEC to provide the postal address of general postal voters to state and territory electoral commissions;
- introduce specific provisions to facilitate enrolment and continued enrolment for people experiencing homelessness;
- expand the grounds upon which a person may apply for a pre-poll or postal vote; and
- make a number of minor technical amendments.²

2. Ibid., p. 21.

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Background

Basis of policy commitment

In introducing the Bill, the Parliamentary Secretary for Western and Northern Australia, the Hon Gary Gray MP, stated that the amendments:

- repeals redundant provisions;
- gives the Electoral Commissioner flexibility rather than prescription; and
- places more technological tools at the AEC's disposal so that the AEC can continue to deliver the best enrolment and election practices.³

Most of the reforms proposed were based on unanimous recommendations of the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the 2007 federal election.⁴ The inquiry was referred to the JSCEM by the Special Minister of State on 27 February 2008 and by the Senate on 12 March 2008.⁵ In its report of 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.⁶ Specific recommendations relevant to the Bill included:

- the publication of electoral information on the AEC's website (Recommendation 41)
- streamlining the proof of identity requirements for enrolment purposes (Recommendation 7)
- the provision of electoral roll information in electronic form to senators and members and the use of electronic and hard copy certified lists at polling places (Recommendation 43)
- the removal of the technical requirement that ballot papers be 'overprinted' and the requirement for Divisional Returning Officers (DRO) to annotate certain ballot papers (Recommendations 37 and 38)

3. G Gray, 'Second reading: Electoral and Referendum (Modernisation and Other Measures) Bill 2010', House of Representatives, *Debates*, 2 June 2010, p. 11.

4. *Ibid.*

5. 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>

6. 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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- the consolidation of mobile polling provisions (Recommendations 18, 20, 28, 29 and 30)
- reforms to postal voting procedures (Recommendations 5, 6 and 33)
- other amendments relating to rolls and enrolment (Recommendations 19, 44 and 53)
- expanding the grounds upon which an elector may apply for an early vote (Recommendations 25 and 26), 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).⁷

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.⁸ 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.⁹ 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.

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7. G Gray, ‘Second reading: Electoral and Referendum (Modernisation and Other Measures) Bill 2010’, House of Representatives, *Debates*, 2 June 2010, p. 11.
 8. 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
 9. 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).

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On 11 February 2010, the Government introduced the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 into the House of Representatives. The Bill contained provisions 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 Division¹⁰, and
- enable electronic voting for sight-impaired electors.¹¹

The close of rolls and evidence of identity requirements for provisional electors measures in the Bill were opposed by the Opposition.¹² The Bill was passed by the House of Representatives on 10 March 2010 and introduced into the Senate on 15 March 2010. It is expected to be withdrawn from the Senate.

Also introduced in the House of Representatives on 2 June 2010 were three other electoral and referendum Bills:

- Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010, advances the contentious components of the previous Bill, the close of rolls and evidence of identity requirements for provisional electors measures.
- Electoral and Referendum Amendment (Pre-poll voting and Other Measures) Bill 2010, proposes the other, non-controversial components of the previous Bill. This Bill was passed by the Senate on 17 June 2010.
- Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010, to introduce expanded authorisation requirements for how-to-vote cards and to

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

11. Ibid.p. 2.

12. J Hockey, 'Second reading: Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010', House of Representatives, *Debates*, 25 February 2010, pp. 7–9.

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expand the definition of misleading or deceptive publication to include the telephone and the internet.¹³

Committee Consideration

The Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the current Bill, were referred to the Senate Finance and Public Administration Committee for inquiry and report. The Committee tabled its report on 17 June 2010, and recommended that the Bills be passed.¹⁴

Opposition and minor party positions

The Opposition indicated its support for the majority of new measures in the Bill with two main exceptions. First, the Opposition objected to part of Schedule 6 requiring that new postal vote applications be returned directly to the AEC and the prohibition on the attachment of extra material to a postal vote application form. Second, the Opposition objected to part of Schedule 7 concerning the proposed repeal of paragraph 96(9)(a) of the Electoral Act, which currently provides that a person will no longer hold enrolment as an itinerant elector if the person neither votes or applies for a postal vote at a general election.¹⁵ In a dissenting report to the Senate Finance and Public Administration Committee inquiry into the Bill, the Opposition Senators noted those matters and also raised concerns with other aspects of the Bill relating to the proposed removal of the requirement that DRO supply hard copy forms.¹⁶

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13. G Gray, 'Second reading: Electoral Referendum (How-to-Vote Cards and Other Measures) Bill 2010', House of Representatives, *Debates*, 2 June 2010, p. 13, viewed 3 June 2010, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=BillId_Phrase%3A4388%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20\(Dataset%3Ahansardr%20%7C%20Dataset%3Ahansards\);querytype=:rec=0;resCount=](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=BillId_Phrase%3A4388%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20(Dataset%3Ahansardr%20%7C%20Dataset%3Ahansards);querytype=:rec=0;resCount=)
 14. Terms of reference and other inquiry documentation, including the inquiry report, are available at the Committee website: viewed 17 June 2010, http://www.aph.gov.au/Senate/committee/fapa_ctte/electoral_bills/index.htm
 15. A Robb, 'Second reading: Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010', House of Representatives, *Debates*, 15 June 2010, pp. 34–35, viewed 16 June 2010, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=:db=:group=:holdingType=:id=:orderBy=:page=:query=BillId_Phrase%3A%22r4388%22%20Dataset%3Ahansardr,hansards%20Title%3A%22second%20reading%22%20Speaker_Phrase%3A%22robb,%20Andrew,%20mp%22;querytype=:rec=0;resCount=
 16. Senate Finance and Public Administration Legislation Committee, *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 [Provisions]* *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*

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In additional comments to the Senate Committee inquiry into the Bill, Australian Greens leader, Senator Bob Brown, recommended that the Bill be amended to, among other things, reduce the voting age to 16, enable adequate funding for youth electoral programs, and include truth in political advertising provisions.¹⁷ As yet, there is no indication of Senator Xenophon and the Family First Party positions on the Bill.

Financial implications

The Government estimates that the cost of implementing the measures in the Bill will be approximately \$3.3 million.¹⁸

Summary of key measures in the Bill

Schedule 1— Publishing forms and information about places to vote

Currently under the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act), the Australian AEC is required to publish certain information including the location of polling places and ‘approved’ enrolment forms in the *Commonwealth of Australia Gazette*. The original intention of this requirement was to provide transparency and enable the public to have full access to that information. The Explanatory Memorandum notes that publishing this information in the *Gazette* is a ‘rigid, time consuming and expensive process.’¹⁹ The proposed amendments recognise the growing trend of people accessing information from the web.

In its inquiry into the 2007 federal election JSCEM heard that the AEC was constrained by provisions in the Electoral Act that require one specific form to be used for each type of enrolment transaction, approved by publication in the *Gazette*. The AEC suggested that greater flexibility could be achieved by enabling it to design forms for different groups of electors to be used in online transactions. The Committee concurred and recommended amendments to enable a number of versions of the approved form and the facilitation of online transactions.²⁰ Schedule 1 implements that unanimous recommendation.

[Provisions], June 2010, p. 10, viewed 17 June 2010,
http://www.aph.gov.au/Senate/committee/fapa_ctte/electoral_bills/report/report.pdf

17. Ibid.
18. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 1.
19. Ibid, p. 3.
20. Recommendation 41, JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. 275.

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In a dissenting report to the Senate Committee inquiry into the Bill, the Opposition Senators noted that Schedule 1 would also delete section 37 of the Electoral Act, which requires Divisional Returning Officers to keep and supply prescribed forms. The Opposition considered that this would be an unnecessary deletion.²¹ The Government has argued that those forms can be printed on demand.²²

Schedule 2—Evidence of identity for enrolment

Since the introduction of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, electors who wish to enrol or change their enrolment details are required to:

- supply a driver’s licence number.
- if the person does not have a driver’s licence, he or she must show a prescribed document (for example a birth certificate) to an authorised person (for example a nurse) who is an enrolled elector.
- if the person cannot meet either requirement (a) or requirement (b), he or she must have his or her enrolment form countersigned by two electors who are on the Commonwealth electoral roll, and who have known the person for at least one month.²³

This system of evidence of identity for enrolment followed a JSCEM recommendation from its report into the 2004 federal election.²⁴ In recommending that evidence of identity requirements be strengthened, the Committee emphasised its ‘commitment to ensuring that the process of enrolment is not conducive to electoral fraud or electoral roll manipulation’.²⁵ The then Opposition dissented from that recommendation arguing that the change would make it more difficult for people to enrol, particularly seniors, younger people, people of a non-English speaking background, and indigenous people.²⁶

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21. Senate Finance and Public Administration Legislation Committee, *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 [Provisions] Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 [Provisions]*, June 2010, p. 10.
 22. Explanatory Memorandum, *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 3.
 23. *Ibid.*, p. 8.
 24. Recommendation 3, JSCEM, *Report of the inquiry into the conduct of the 2004 federal election and matters related thereto*, 2005, p. 28.
 25. JSCEM, *Report of the inquiry into the conduct of the 2004 federal election and matters related thereto*, 2005, p. 22.
 26. *Ibid.*, p. 358.

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The current proposal is to amend the 2006 reforms to evidence of identity for enrolment to achieve greater flexibility and ensure that people are not unduly restricted from the franchise. It is proposed that to enrol, people will be required to produce a driver's licence, passport number or the signature of one person currently on the electoral roll attesting the identity of the person. It is further proposed that evidence of identity will not be required for people changing their address details.²⁷ The proposal implements Recommendation 7 of the JSCEM Report.

Following the 2007 election the AEC told JSCEM that it considered those evidence of identity requirements discriminatory to those who do not hold a drivers licence and that it limited the franchise of particular groups including the poor, and people in remote and indigenous communities. Moreover, the AEC argued that the current requirements could be circumvented by those with a determination to do so.²⁸ Other groups offered similar arguments supporting the change including Uniting Justice Australia, the Human Rights and Equal Opportunity Commission and Public Interest Law Clearing House (PILCH) Homeless Persons' Legal Clinic.²⁹ By contrast, the Festival of Light and the Coalition parties supported the current arrangements, although the Opposition members on the Committee did not dissent from the Committee's recommendation on the matter.³⁰ Although, in its dissenting report, the Coalition stated its opposition to 'any weakening of proof-of-identity provisions in relation to enrolling or provisional voting on the grounds that it removes an important deterrent that acts to prevent citizens from failing to maintain their enrolment or who may seek to engage in multiple voting'.³¹

Schedule 3—Age 16 enrolment

Currently under the Electoral Act and the Referendum Act, people who are 17 years of age may provisionally enrol and their provisional enrolment automatically becomes full enrolment at the time of their eighteenth birthday. The proposed amendments aim to lower the age of provisional enrolment to those aged 16 years. The purpose of the proposal is to enable the AEC to better target young people in its enrolment promotional activities, particularly young people in school. The amendments follow JSCEM's unanimous Recommendation 12. In a supplementary submission to the Committee, the AEC noted the potential to engage younger people with the political process while they are at school, citing the following data from the Australian Bureau Statistics (ABS):

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27. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 8.
 28. AEC, Submission 169 to JSCEM, *Inquiry into the conduct of the 2007 federal election and matters related thereto*, p. 17.
 29. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 89.
 30. Ibid.
 31. Ibid.

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ABS estimates of the proportion of the population in full time study (2008)³²

Age	14	15	16	17	18
Est %	98.6	94.7	82.9	62.7	14.5

There are no proposals to reduce the voting age as part of the measures. The AEC also stressed that there was ‘no necessary link’ between age at which a person can enrol and the voting age.³³ The Coalition has accepted Government assurances that the measures are not part of any process to reducing the voting age.³⁴ The leader of the Australian Greens, Senator Bob Brown, however, argued that the Bill should also include provisions to lower the voting age to 16.³⁵

Schedule 4—Electoral rolls, related lists and ballot papers

Schedule 4 comprises the following four proposals concerning technology and electoral roll lists and ballot papers:

- enabling the provision of electronic copies of rolls,
- enabling the production of electronic lists of voters,
- flexibility in the printing of ballot papers, and
- clarifying the process of authenticating ballot papers.

Printed and electronic copies of rolls

Under current legislation, senators and members of the House of Representatives are entitled to receive certain electoral roll information including the ‘latest print of the roll’ in hardcopy. The proposed amendments provide that a senator or member may elect to

32. AEC, Submission 169.18, to JSCEM, *Inquiry into the conduct of the 2007 federal election and matters related thereto*, p. 6.

33. *Ibid.*

34. Senate Finance and Public Administration Legislation Committee, *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 [Provisions] Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 [Provisions]*, June 2010, p. 11.

35. *Ibid.*, p. 15.

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receive a copy of the electoral roll or certified list in an electronic form. The proposed amendment implements Recommendation 50 of the JSCEM.³⁶

Electronic lists of voters

Under current legislation the Electoral Commissioner is required to produce a certified list of voters for each Division, and the person issuing ballots must mark each voter off the certified list. The proposed amendments will enable the Commissioner to produce electronic certified lists or ‘approved lists’ to be used along side or instead of the hard copy certified lists at polling places. The proposal gives effect to unanimous Recommendation 43 of JSCEM.³⁷ The proposal was put to the Committee by the AEC which noted the use of electronic certified lists in recent state elections in, Western Australia, Queensland, Victoria and the Australian Capital Territory. The benefits of using electronic lists include reducing the carbon footprint (in 2007 the lists used over six million A4 sheets of paper) and ease of transportation.³⁸

The printing of ballot papers

Current legislation requires that ballot papers must include an official mark for purposes of authentication, being a specified water mark or an ‘overprinting’ of the paper with a design approved by the Electoral Commission. What constitutes overprinting is not defined in the Electoral Act. Following the Court of Disputed Returns petition concerning the Division of McEwen the AEC obtained advice from the Australian Government Solicitor suggesting that there is some legal doubt over the technical meaning of overprinting.³⁹ The nature of the legal doubt concerns whether printing on a ballot paper dyed green in the production process amounts to ‘overprinting’, as opposed to printing on a white paper that had been printed green. The distinction can be particularly important where ballot papers are printed locally from PDF files in Australian embassies overseas.⁴⁰ This is also of significance in relation to certain pre-poll and absentee voting.⁴¹

The amendments propose to remove the technical requirement for ‘overprinting’ ballot papers and provide that ballot papers contain a design approved by the Commissioner. The aim of the proposal is to provide greater flexibility in the printing of ballot papers and to

36. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009.

37. *Ibid.*, p. 279.

38. *Ibid.*, p. 278.

39. *Mitchell v Bailey* (No 2) (2008) 169 FCR 529.

40. AEC, Submission 169.18 to JSCEM, *Inquiry into the conduct of the 2007 federal election and matters related thereto*, p. 7.

41. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 18.

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enable the printing of ballot papers on demand where supplies are exhausted in pre-poll voting offices and polling places. The measure implements unanimous Recommendation 38 of JSCEM.⁴²

The process of authenticating ballot papers.

In *Mitchell v Bailey*, the Court of Disputed Returns raised the issue of how votes are determined to be formal.⁴³ The Court overturned 153 of the 643 votes that had been excluded from the count on the grounds of formality during a recount for the Division. The recount and the Court's decision raised a degree of uncertainty about the process of scrutinising ballot papers. In 2008 the AEC commissioned former public servant Alan Henderson PSM to review the implications of the Court's decision and made a number of recommendations, most of which were endorsed by JSCEM.⁴⁴

The proposed amendments aim to clarify the law in relation to ballot papers considered formal by the DRO despite not containing the initials of an issuing officer nor a water mark. To remove any uncertainty, it is proposed the DROs write on such ballot papers, 'I am satisfied that this ballot paper is an authentic ballot paper on which a voter has marked a vote'.⁴⁵ The measure follows the unanimous recommendation 37 of JSCEM. Henderson had originally recommended that AEC manuals, handbooks and training be amended to specify that ballot papers lacking official marking but believed to be authentic by the DRO be marked as proposed. However, JSCEM considered that the Act should also be amended in order to clarify the procedure in statute.⁴⁶

Schedule 5—Mobile polling

Current provisions with the Electoral Act and the Referendum Act enable mobile polling at various places including hospitals, prisons and remote divisions. The Acts contain separate provisions for mobile polling in those different places, but does not authorise mobile polling as may be required more generally. The proposed amendments consolidate the currently separate mobile polling provisions for hospitals, prisons and remote divisions into a single general section of each Act and introduce flexibility into determining where

42. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 18.

43. *Mitchell v Bailey* (No 2) (2008) 169 FCR 529.

44. A Henderson, 'Review of ballot paper formality guidelines and recount policy', AEC, 2008; JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 259.

45. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 18.

46. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 259.

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mobile polling is conducted and extends how long it may be conducted for. More specifically, the proposed amendments:

- provide for mobile polling 12 days prior to, and on, polling day,
- enable the Electoral Commissioner to determine the locations of mobile polling places,
- enable the Electoral Commissioner to notify the public of the provision of mobile polling on the AEC website and by other means.

The proposals primarily give effect to Recommendation 20 of JSCEM which was framed in terms of providing facilities for homeless people. That recommendation called for the Electoral Act to be amended, ‘to allow mobile polling and/or pre-poll facilities to be provided at such locations and at such times as the Australian Electoral Commission deems necessary for the purposes of facilitating voting’.⁴⁷ The proposals also satisfy Recommendations 18 (mobile polling for indigenous town camps), Recommendation 28 (for mine workers), Recommendation 29 (in hospitals) and Recommendation 30 (extending the period of mobile polling where it is provided). Also, as recommended by JSCEM, consistent changes are proposed for the Referendum Act.

However, Recommendation 20 was not unanimous. While supporting the more flexible arrangements for mobile polling, the Coalition members of the Committee opposed the application of the recommendation to people who are itinerant or homeless. It was considered that homeless people already had access to existing polling facilities, whereas voters in rural and remote areas did not.⁴⁸

Schedule 6—Postal voting

Schedule 6 proposes four main changes to the existing postal voting provisions consistent with unanimous Recommendations 5, 6 and 33 of JSCEM. First, it is proposed that the requirement that postal vote applications are signed by the applicants and a witness is removed so that the applications may be submitted online and processed expeditiously. Second, it is proposed that extraneous material attached or incorporated into blank application forms for postal voting, such as party political material, be prohibited. Third, that completed postal vote application forms are required to be returned directly to the AEC, rather than via a third party such as a political party. Fourth, to require that written declarations from the elector and witness to certify that the conditions for the completion of the postal vote were met before the close of the poll. Amendments also propose that the date of the witness signature on the postal vote is the date of the completion of the vote, not the post mark. As noted above, it is intended that Schedule 6 would commence six months following Royal Assent.

47. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 172.

48. *Ibid.*, p. 330

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At the 2007 federal election, a total of 12 930 814 votes were counted for candidates of the House of Representatives and of those, 706 0466 or 5.46 per cent were postal votes.⁴⁹ JSCEM considered that the postal delivery system had failed a proportion of voters, despite their fulfilment of their requirements *vis-à-vis* the lodgement of postal votes. Other evidentiary requirements such as the signature of witnesses for postal vote applications were found to introduce delays in the process without actually enhancing the integrity of the system. The Committee noted that in 2007, there were 50 000 postal vote applications that required rectification and resubmission, mainly due to issues with witnessing. The Nationals and the Liberal Party, in separate submissions, told the Committee that the postal vote application form was unduly complex and not user-friendly.⁵⁰

Since 1998 the Electoral Act has enabled individuals and organisations, to provide postal vote applications physically attached to, or forming part of, other written material.⁵¹ Political parties have relied on this provision to produce their own version of the application form. In 2003 the Special Minister of State granted an extension of members' entitlements to include expenditure on postal vote application letters to constituents as a 'community service'.⁵²

Australian National Audit Office Report 2009

Previously, public funding in the form of parliamentarians' entitlements, has been used as supplementary funding for the production and distribution of postal vote applications. In 2009 the Australian National Audit Office (ANAO) released a performance audit on the administration of parliamentarians' entitlements. In relation to the use of entitlements for producing postal vote material, the ANAO noted:

- at least 8.23 million PVA [postal vote application] documents were produced by Parliamentarians in 2007-08 using their Printing Entitlement, providing the capacity for 16.5 million applications to be made to the AEC for a Postal Voting Pack, meaning that Parliamentarians printed 2.9 million more postal vote application forms than the number of voters enrolled for the election;
- the Monthly Management Reports indicated that 91 members used their Printing Entitlement to have sufficient PVAs produced that would have enabled every enrolled elector in their electorate to apply for a Postal Voting Pack. In two instances, the

49. ANAO, *Administration of Parliamentarians' entitlements by the Department of Finance and Deregulation, performance audit report no. 3, 2009–10*, ANAO, September 2009, p. 143.

50. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. 67–80, 214.

51. Section 184 AA, *Commonwealth Electoral Act 1918*.

52. ANAO, *Administration of Parliamentarians' entitlements by the Department of Finance and Deregulation, performance audit report no. 3, 2009–10*, ANAO, September 2009, p. 145.

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number of PVAs produced would have enabled every enrolled voter in the electorate to have submitted more than four applications for a Postal Voting Pack; and

- the AEC received 400 775 ‘party’ PVAs for the 2007 federal election, meaning that, at best, 97.6 per cent of applications for a Postal Voting Pack printed and distributed by Parliamentarians were not used by voters. By way of comparison, in 2007-08 the AEC wrote to more than three million people as part of its roll review and roll stimulation activities and received back slightly more than 700 000 completed application forms, but did not consider this rate of response to be sufficiently efficient or effective.⁵³

The Government accepted all of the recommendations from the ANAO report including ending the use of printing entitlements for electioneering.⁵⁴

Concerns about the involvement of parties in the postal voting process

The Australian Government’s, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, canvassed some concerns that have been expressed about the involvement of political parties in the postal voting process. These concerns included:

- that the practice may subvert the independence of the AEC in the postal voting process,
- the practice may unduly delay the postal voting process,
- that political parties could use the completed applications to capture the personal details of voters.⁵⁵

However, it could be argued that political parties have a legitimate role in facilitating postal voting by encouraging people to use the facility.⁵⁶ Notably, the proposed amendments do not completely remove political parties from the postal voting process. Parties may still provide postal vote applications and include their own political material in the same envelope so long as that material is not attached to, or incorporated into, the form.⁵⁷ If passed, the new provisions would apply to individuals and organisations, including lobby groups, not just political parties.

53. Ibid., pp. 146–7.

54. J Ludwig (Special Minister of State), *Reform of parliamentary entitlements*, media release, 8 September 2009, viewed 9 September 2009, http://www.smos.gov.au/media/2009/mr_352009.html

55. Australian Government, *Electoral reform green paper—strengthening Australia’s democracy*, Australian Government, Canberra, September 2009, p. 167.

56. Ibid.

57. Explanatory Memorandum, *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 18.

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Although it was not the intention of the provisions, the proposed measures to require postal vote applications to be returned directly to the AEC could be interpreted as restricting the ability of old or infirm postal voters to use a ‘third party’ to submit their application. It was suggested to the Senate Finance and Public Administration Committee that Schedule 6 be rethought so as not to preclude a postal voter using a friend to deliver or post their application.⁵⁸

The proposals to return postal vote applications directly to the AEC and prevent the attachment of extraneous material from applications were not recommended the JSCEM. The Opposition have argued that these measures would adversely impact on the share of the vote by Coalition parties and have objected to the measures.⁵⁹

Schedule 7—Other amendments relating to rolls and enrolment

Schedule 7 contains three sets of provisions concerning rolls and enrolment based on unanimous recommendations of JSCEM. Current legislation requires that a version of the electoral roll containing names and addresses is available for the public to inspect at the office of each DRO, capital cities and other places. There are no provisions that specifically prohibit the recording or copying the information contained therein. The AEC and JSCEM raised concerns that, given technological developments, large-scale reproduction of the information may be conducted for inappropriate purposes. The first part of Schedule 7 proposes to clarify that there is no right to copy such information, although no offence is specified.⁶⁰ This is based on Recommendation 53 of the JSCEM.

The AEC also shares electoral roll information with states and territories under ‘joint roll arrangements’ for the purpose of conducting elections, referenda and maintaining the roll. The second part of Schedule 7 proposes to provide for regulations to proscribe other purposes for which states and territories can use electoral roll information. The Explanatory Memorandum lists the compilation of jury lists as one example of such an additional purpose.⁶¹ This proposal is based on Recommendation 44 of JSCEM. That recommendation referred to a range of minor technical and operational changes suggested

58. Associate Professor Graeme Orr, AEC, Submission to the Senate Finance and Public Administration Committee, *Inquiry into the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 4.

59. A Robb, ‘Second reading: Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010’, House of Representatives, *Debates*, 15 June 2010, pp. 34–35.

60. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 34.

61. *Ibid.*

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by the AEC. The new measures only proposes to implement one of those changes, to expand the list of purposes for which states and territories could use roll information.⁶²

Under current legislation, homeless people could lose their enrolment as itinerant electors if they reside in temporary accommodation for a month or longer. Furthermore, homeless people could be removed from the roll if they do not vote at a general election. Voting is not compulsory for itinerant people.⁶³ The third part of Schedule 7 seeks to broaden the ability for homeless people to vote by maintaining their enrolment while they live in crisis or transitional accommodation and if they have not voted at a general election. The amendments further propose to clarify the current legislation to define a homeless person as a person without adequate access to safe and secure housing consistent with the meaning under the *Supported Accommodation Assistance Act 1994*.⁶⁴ The proposal gives effect to Recommendation 19 of JSCEM.

In its inquiry, JSCEM heard that the AEC did not fully implement electoral services to homeless people as recommended by the Committee following the 2004 federal election. In forming its recommendation to provide greater flexibility in the enrolment of homeless people, the Committee particularly noted submissions from Hanover Welfare Services and PILCH Homeless Persons' Legal Clinic. The Committee's recommendation, as adopted in the current proposal, is based on Victorian electoral provisions.⁶⁵

As noted above, the Opposition indicated that it would not support the proposal to repeal paragraph 96(9)(a) of the Electoral Act which currently provides that a person will no longer hold enrolment as an itinerant elector if the person neither votes or applies for a postal vote at a general election. The Opposition argued that measures to maintain the enrolment of itinerant electors if they do not vote or apply for a postal vote reduces the integrity of the electoral roll by leaving 'no alternative mechanism for roll-cleansing of itinerant voters'.⁶⁶

Schedule 8—Eligibility for early voting

'Early voting' comprises of pre-poll and postal voting. Current legislation prescribes the grounds upon which an application for postal and pre-poll votes may be made. These

62. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 283.

63. Section 245, *Commonwealth Electoral Act 1918*.

64. Explanatory Memorandum, Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010, p. 36.

65. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. 158–171.

66. A Robb, 'Second reading: Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010', House of Representatives, *Debates*, 15 June 2010, pp. 34–35.

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grounds include absence from the state in which an elector is enrolled, being outside eight kilometres of a polling booth in an elector's own state, serious illness and so on.⁶⁷ The new measures proposed in the Bill seek to provide two additional grounds upon which an elector may apply for an early vote, that an elector will be absent from their own division throughout the hours of polling on polling day, and due to a reasonable fear for, or reasonable apprehension about, their personal safety or wellbeing.⁶⁸

These proposed changes follow unanimous Recommendations 25 and 26 of JSCEM. In its report, the Committee noted that thousands of absent votes had been cast in divisions that adjoined elector's home divisions. It considered that allowing absence from a division as a ground for early voting would reduce the number of absent votes cast on polling day. Homelessness Australia told the Committee fear for personal safety may prevent people from attending polling places, particularly people fleeing domestic violence in rural and remote areas where polling locations are limited.⁶⁹ In previous years, JSCEM has resisted certain reforms to early voting primarily because it wanted to encourage electors to vote in person on polling day.⁷⁰ However, this no longer appears to be of great concern to the Committee.⁷¹

67. Schedule 2, *Commonwealth Electoral Act 1918*.

68. Explanatory Memorandum, *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, p. 37.

69. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, p. 195.

70. For example, proposals to count pre-poll votes as ordinary votes were resisted by JSCEM on number of occasions. In its report on the 2001 election the Committee 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*, JSCEM, 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>

71. A proposal to count pre-poll votes as ordinary votes was recommended by JSCEM in its report on the 2007 election and now forms part of the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010*, currently before the Parliament. See the Bills Digest for a discussion of the rise in early voting and the Governments proposed measures in this regard.

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Schedule 9—Minor technical amendments

Schedule 9 of the Bill proposes a range of less significant technical amendments to:

- remove gender specific language;
- amend incorrect cross references; and
- provide for consistent use of terminology.⁷²

Main provisions

Only the more significant provisions amending the Electoral Act are canvassed in this part of the Digest.

Schedule 1 — Publishing forms and information about places to vote

Item 2 inserts a definition of ‘approved form’ to be a form that is approved by the Commissioner in writing, and that has been published by the Commissioner. The note to the new definition gives as an example that the form ‘might have been’ published by the Commissioner on the Commissioner’s website.

Item 5 deletes from subsection 80(1) that the Commissioner publishes the declaration and abolition of polling places in the *Gazette*, and stipulates instead that the Commissioner will do these things ‘in writing’. **Item 7** inserts **new subsections 80(2A) and (2B)** to the effect that the Commissioner will publish notice appointments, declarations and the abolition of polling places on the Commissioner’s website and in any other way the Commissioner considers appropriate. Failure to do so however, will not affect the validity of appointment, declaration or abolition.

Similar amendments are made to the Referendum Act.

Schedule 2— Evidence of identity for enrolment

Item 6 makes the substantive amendment in this Schedule by repealing existing section 98AA and re-enacting a **new section 98AA** to have the effect that certain claims or applications must include or be accompanied by any of the following:

- a driver’s licence number
- an Australian passport number

72. G Gray, ‘Second reading speech: Electoral and Referendum (Modernisation and Other Measures) Bill 2010’, House of Representatives, *Debates*, 2 June 2010, p. 12.

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- an attestation of identity on an approved form by another enrolled person
- any other evidence prescribed by the regulations

According to the Explanatory Memorandum the new provision:

Provides that the new requirements for evidence of identity apply to a person that makes an application or claim under the provisions providing for enrolment from outside Australia, as a child or spouse of an overseas elector, or as an applicant for citizenship. The new requirements also apply to people who make an application or claim as an itinerant elector, or for standard enrolment if the person is not already enrolled, or if the person wants to change the name under which he or she is enrolled. If an elector is simply changing his or her address details then evidence of identity is not required.⁷³

Schedule 4— Electoral rolls, related lists and ballot papers

Section 89 of the Electoral Act requires that the electoral roll be printed at regular intervals. **Item 1** repeals that provision. The rationale for this includes that the provision is largely defunct

Given the Commission's powers in section 90 to determine the manner and form in which information is to be provided under Part VI of the Electoral Act. Section 90 specifically includes 'electronic form'.⁷⁴

Item 5 inserts **new subsections 90B(3A)-(3D)** to provide generally that the Electoral Commission may provide a single electronic copy of the relevant roll to a Senator or Member, and in certain circumstances, a further one or two copies of that roll.

Item 12 repeals and substitutes subsection 232(1) to the effect that a polling official must either place a mark against a person's name, or electronically record, that a person has been handed a ballot paper.

Item 47 amends subsection 268(2) to require the polling officer to also endorse a ballot paper with the words 'I am satisfied that this ballot paper is an authentic ballot paper on which a voter has marked a vote'.

Schedule 6 —Postal voting

Item 1 repeals and substitutes subsection 184(1) to the effect that an application for a postal vote will no longer be required to be witnessed by another person.

73. Explanatory Memorandum, op. cit. paragraph 56, p. 9.

74. Ibid., paragraph 78, p. 12.

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Item 7 inserts **new paragraphs 194(1)(da) and (db)** to require that postal vote elector and the witness to declare that the vote the requirements of the provision were satisfied before the close of the poll.

Schedule 3 of the Electoral Act contains the rules for the conduct of a preliminary scrutiny of declaration votes. Currently the DRO under Rules 3 and 3A must compare the signature of the elector on the application with the signature on the relevant postal vote certificate and allow the scrutineers to inspect both signatures. **Item 9** repeals these Rules and substitutes **new rule 3** which will provide that in the event the DLO has reason to doubt that the signature on the postal vote certificate is the elector's signature, then the DRO must check the signature against the most recent record (if any) of the elector's signature that is available. The Explanatory Memorandum notes that in practice this is likely to be the elector's application for enrolment. Note that this amendment means that the checking need only be undertaken if the DLO holds a doubt about authenticity, whereas under the current law, the checking must be done in all cases.

Item 23, although a small amendment, is significant. It removes the word 'may' and inserts 'must not' into subsection 184AA(1), so that a postal vote application form must not have anything attached to it or form part of other material. A similar amendment is made to the Referendum Act. The Explanatory Memorandum does make clear that other material can still be included in an envelope with the postal vote application.⁷⁵

Schedule 7—Other amendments relating to rolls and enrolment

Item 1 clarifies the Electoral Act by adding **new subsection 90A(5)** so that a right to inspect the roll does not include a right to copy or record by electronic means the roll or part of the roll.

Items 4-11 make the amendments relating to enrolment of persons experiencing homelessness and itinerant electors discussed at page 19 of this Digest.

75. Ibid. paragraph 234, p. 33.

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