



## Electoral and Referendum Amendment (Provisional Voting) Bill 2011

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### Contents

Purpose .....	2
Background .....	2
2006 Howard Government legislation.....	2
Basis of policy commitment.....	3
Broader electoral reform agenda .....	4
Previous Bills containing evidence of identity measures.....	5
Positions of the Opposition, non-government parties, and independents.....	7
Financial implications.....	9
Summary of measures in the Bill .....	9
Key provisions .....	10

# Electoral and Referendum Amendment (Provisional Voting) Bill 2011

**Date introduced:** 2 March 2011

**House:** House of Representatives

**Portfolio:** Special Minister of State

**Commencement:** On the day the Act receives Royal Assent

**Links:** The links to [the Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

## Purpose

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

- repeal the evidence of identity requirements for provisional electors and provide for a signature checking procedure.

The Bill essentially reproduces the provisions of Schedule 2 of the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 and the provisions of Schedule 2 of the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010. Both of these previous Bills lapsed with the conclusion of the 42<sup>nd</sup> Parliament.

## Background

### 2006 Howard Government legislation

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

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- 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 \$1500 to more than \$10 000 (CPI indexed).<sup>1</sup>

Measures in the 2006 Act were controversial and were opposed by the Australian Labor Party (ALP) (then in Opposition) and by the minor parties.<sup>2</sup> 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.<sup>3</sup>

## Basis of policy commitment

As is discussed further below, the Government has attempted to amend the evidence of identity provisions in the Electoral and Referendum Acts on two prior occasions since February 2010. In its 2007 National Platform the ALP indicated that it would reverse a number of the changes in the 2006 Act including the changes to the evidence of identity requirements.<sup>4</sup>

The second reading speech states that the evidence of identity requirements introduced by the 2006 Act:

... resulted in a situation where provisional votes were dealt with in a way that was inconsistent with the treatment of other types of declaration votes ... There is no reason why otherwise valid provisional votes should be treated differently to other forms of declaration voting such as postal voting and absent voting.<sup>5</sup>

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1. The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* can be accessed at: <http://www.comlaw.gov.au/Details/C2006A00065/Download>, viewed 17 March 2011.
  2. See 'Second reading speech: Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2006', Senate, *Debates*, 16 June 2006, pp. 1–93, viewed 17 March 2011, [http://parlinfo.parlInfo/download/chamber/hansards/2006-06-16/toc\\_pdf/4788-2.pdf;fileType=application%2Fpdf#search=%22electoral%20integrity%22](http://parlinfo.parlInfo/download/chamber/hansards/2006-06-16/toc_pdf/4788-2.pdf;fileType=application%2Fpdf#search=%22electoral%20integrity%22)
  3. See Joint Standing Committee on Electoral Matters (JSCEM), *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. 53–63, viewed 17 March 2011, <http://www.aph.gov.au/house/committee/em/elect07/report2/Final.pdf>
  4. Australian Labor Party (ALP), *National Platform and Constitution 2007*, ALP, Canberra, 2007, pp. 181, 189, viewed 17 March 2011, [http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/download/now/2007\\_national\\_platform.pdf](http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/download/now/2007_national_platform.pdf)
  5. G Gray (Special Minister of State), 'Second reading speech: Electoral and Referendum Amendment (Provisional Voting) Bill 2011', House of Representatives, *Debates*, 2 March 2011, p. 2029, viewed 17 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2011-03-02%2F0011%22>

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The second reading speech cites Australian Electoral Commission (AEC) data indicating that, at the 2010 general election, over 28 000 provisional votes were excluded from scrutiny due to evidence of identity not being provided, and that over 12 000 of the electors concerned were in fact enrolled.<sup>6</sup>

The speech states that the measures in the Bill are supported by the AEC in its submission to the current Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the 2010 federal election.<sup>7</sup> In its submission to the inquiry, the AEC recommends that the evidence of identity requirements for provisional electors be repealed and that provisional votes of electors who are later found to be enrolled should be included in the scrutiny.<sup>8</sup> The AEC also notes that provisional voting:

... provides a safety-net in recognition that the absence of a person's name from the roll cannot provide a final and definitive answer to the question of whether that person should be permitted to vote.<sup>9</sup>

In its 2009 inquiry report on the conduct of the 2007 federal election, a majority of the JSCEM recommended that the evidence of identity requirements for provisional electors be repealed and that the Electoral Act be amended to provide for a signature checking process for declaration votes.<sup>10</sup> Opposition members of the JSCEM dissented from this and a number of the Committee majority's other recommendations.<sup>11</sup>

## Broader electoral reform agenda

The Bill is part of the Government's broader electoral reform agenda. A separate Bill containing measures relating to the close of the electoral rolls and prisoner voting entitlements is currently before the Senate.<sup>12</sup>

In 2010 a raft of changes were made to electoral law including lowering the age of provisional enrolment from 17 to 16 years, increasing authorisation requirements for how-to-vote cards, and

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6. Ibid. See Australian Electoral Commission (AEC), Submission to the JSCEM, *Inquiry into the conduct of the 2010 Federal Election and matters related thereto*, February 2011, p. 87, viewed 17 March 2011, <http://www.aph.gov.au/house/committee/em/elect10/subs/Sub087.pdf>
  7. G Gray (Special Minister of State), 'Second reading speech: Electoral and Referendum Amendment (Provisional Voting) Bill 2011', op. cit., p. 2029.
  8. AEC, Submission to the JSCEM, *Inquiry into the conduct of the 2010 Federal Election and matters related thereto*, op. cit., p. 88.
  9. AEC, Submission to the JSCEM, *Inquiry into the conduct of the 2010 Federal Election and matters related thereto*, op. cit., p. 85.
  10. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 63.
  11. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 323–33.
  12. The Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Bill 2010. This Bill and its associated documentation, including the Bills Digest, can be accessed at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4499%22>, viewed 17 March 2011.

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limiting the number of election candidates that can be endorsed by a political party in an electoral division.<sup>13</sup>

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.<sup>14</sup> Both green papers identified reform possibilities and invited comment.

In 2008, 2009 and 2010 the Government introduced Bills making significant changes to the law relating to electoral funding, political donations, disclosure and reporting, and certain offences and penalties.<sup>15</sup> The 2008 Bill was defeated in the Senate in March 2009 and the 2009 Bill, which was a revised version of the 2008 Bill, lapsed in July 2010 with the conclusion of the 42<sup>nd</sup> Parliament. In October 2010 the Government introduced a third funding and donations reform Bill into the House of Representatives; this Bill contains essentially the same measures as the 2009 Bill and is currently before the Senate.

## Previous Bills containing evidence of identity measures

The measures in the current Bill relating to evidence of identity requirements for provisional electors are the third set of proposed changes in this area of electoral law to be introduced by the Rudd and Gillard Governments.

On 11 February 2010 the Government introduced the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 in the House of Representatives. The Bill proposed to repeal evidence of identity requirements for provisional electors and provide for a signature checking procedure along with a number of other measures including:

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13. *Electoral and Referendum Amendment (Modernisation and Other Measures) Act 2010; Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Act 2010; Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010.*
  14. Australian Government, *Electoral reform green paper—donations, funding and expenditure*, Australian Government, Canberra, December 2008, viewed 17 March 2011, [http://www.dpmc.gov.au/consultation/elect\\_reform/docs/electoral\\_reform\\_green\\_paper.pdf](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 17 March 2011, [http://www.dpmc.gov.au/consultation/elect\\_reform/strengthening\\_democracy/docs/strengthening\\_australias\\_democracy.pdf](http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy.pdf)
  15. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008; Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009; Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. 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), viewed 17 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4073%22> (2009 Bill), viewed 17 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4477%22> (2010 Bill), viewed 17 March 2011.

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- fixing the seventh day after the issue of federal election writs as the date for the close of rolls
- making provision for the electronic updating of electors' details
- enabling the AEC to process enrolment transactions outside the electoral division for which a person is enrolling, and
- enabling electronic voting for sight-impaired electors.<sup>16</sup>

The Bill passed the House on 10 March 2010 and was introduced in the Senate on 15 March 2010, but lapsed in July 2010 with the conclusion of the 42<sup>nd</sup> Parliament.

On 2 June 2010, while the original Bill was still before the Parliament, the Government introduced a second Bill, the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010, in the House of Representatives.<sup>17</sup> This second Bill reproduced the schedules of the original Bill relating to roll closure and evidence of identity requirements for provisional electors. Other elements of the original Bill were not contained in the second Bill but were re-introduced in separate legislation.<sup>18</sup> The Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 passed the House on 16 June 2010 and was introduced in the Senate on the same day, but was not debated in the Senate and lapsed in July 2010 with the conclusion of the 42<sup>nd</sup> Parliament.

The current Bill essentially reproduces the provisions of both the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 relating to evidence of identity requirements for provisional electors.

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16. The Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 and its associated documentation, including the Bills Digest, can be accessed at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4306%22>, viewed 17 March 2011.
  17. The Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 and its associated documentation, including the Bills Digest, can be accessed at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4378%22>, viewed 17 March 2011.
  18. The separate Bill was the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010, which was also introduced in the House of Representatives on 2 June 2010 and subsequently passed the Parliament. Two further electoral Bills were also introduced into the House of Representatives on 2 June 2010 and subsequently became law: the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010.

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## Positions of the Opposition, non-government parties, and independents

It is likely that the Opposition will oppose the Bill. The Opposition opposed the evidence of identity measures in the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 and the subsequent Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010.<sup>19</sup>

As noted above, in the JSCEM 2007 federal election inquiry report Opposition JSCEM members dissented from the majority recommendation concerning evidence of identity requirements for provisional electors. In their dissenting report the Opposition members stated that:

The Coalition is opposed to any weakening of the 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.<sup>20</sup>

The Opposition members also expressed the view that a signature checking process 'would fail to provide any deterrent or consequence for voters who fail to meet their obligations to maintain their enrolment under the [Electoral] Act'.<sup>21</sup>

The Australian Greens endorsed the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 but also proposed amendments creating offences for inaccurate and misleading electoral advertising and for pre-election automated telephone calls to electors intended to affect voting.<sup>22</sup> Given this endorsement it would seem likely that the Greens will support the current Bill, although they may again propose amendments. The *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Act 2010* brought material published by telephone or the internet within the existing provisions in the Electoral and Referendum Acts

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19. J Hockey, 'Second reading speech: Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010', House of Representatives, *Debates*, 25 February 2010, p. 1850, viewed 17 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-25%2F0021%22>; A Robb, 'Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010; Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010; Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010; Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010', House of Representatives, *Debates*, 15 June 2010, pp. 5348–50, viewed 17 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-06-15%2F0056%22>
20. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 326.
21. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., p. 327.
22. S Hanson-Young, 'Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010', Senate, *Debates*, 17 March 2010, pp. 2149–50, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-03-17%2F0194%22>. The Australian Greens' proposed amendments can be accessed at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4306%22>

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prohibiting the printing, publication or distribution of material likely to mislead or deceive an elector in relation to the casting of a vote in an election.<sup>23</sup>

House of Representatives independent members Tony Windsor and Robert Oakeshott voted in favour of passage of both the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 and the subsequent Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010.<sup>24</sup> One relevant factor here is that the ALP minority government agreements with the Greens and with Windsor and Oakeshott commit the signatories to amending the Electoral Act so as to create a ‘truth in advertising’ offence.<sup>25</sup>

Independent Bob Katter voted against passage of the original Bill, but did not vote on the passage of the second Bill; it is not clear whether he will support or oppose the current Bill.<sup>26</sup> The other cross-bench members in the House of Representatives, Andrew Wilkie and Tony Crook, have not yet indicated their positions on the current Bill.

Independent Senator Nick Xenophon proposed amendments to the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 retaining the existing evidence of identity requirements for provisional electors in the *Commonwealth Electoral Act 1918* but also providing for a signature checking procedure which, if satisfied, would mean that the

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23. The *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Act 2010* can be accessed at: <http://www.comlaw.gov.au/Details/C2010A00108/Download>, viewed 21 March 2011.
24. Australia, House of Representatives, *Votes and proceedings*, vol. 150, 2008–09–10, 10 March 2010, pp. 1672–73, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2010-03-10%2F0008%22>; Australia, House of Representatives, *Votes and proceedings*, vol. 168, 2008–09–10, 16 June 2010, pp. 1853–54, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2010-06-16%2F0012%22>
25. J Gillard, W Swan, B Brown, C Milne and A Bandt, *The Australian Greens & The Australian Labor Party (‘The Parties’)—Agreement*, 1 September 2010, p. 1, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F165017%22>; J Gillard, W Swan, T Windsor and R Oakeshott, *The Australian Labor Party & the Independent Members (Mr Tony Windsor and Mr Rob Oakeshott) (‘the Parties’)—Agreement*, 7 September 2010, p. 2, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F218795%22>
26. Australia, House of Representatives, *Votes and proceedings*, vol. 150, 2008–09–10, 10 March 2010, pp. 1672–73, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2010-03-10%2F0008%22>; Australia, House of Representatives, *Votes and proceedings*, vol. 168, 2008–09–10, 16 June 2010, pp. 1853–54, viewed 21 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2010-06-16%2F0012%22>

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evidence of identity requirements did not apply.<sup>27</sup> Senator Xenophon may propose such amendments again in relation to the current Bill.

Family First Senator Steve Fielding has not yet indicated his position on the Bill.

## Financial implications

The Government has stated that it does not expect the implementation of the measures in the Bill to involve 'any significant costs'.<sup>28</sup>

## Summary of measures in the Bill

Currently under the Electoral and Referendum Acts 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.<sup>29</sup> 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 (for example a birth certificate, a certificate of Australian citizenship, a current Australian passport, a Medicare card, or a current credit or bank account card).<sup>30</sup> 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 and Referendum Acts. 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 provisional vote would not be counted. The Explanatory Memorandum for the Bill states that in most cases the most recent record 'will be the signature on

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27. Senator Xenophon's proposed amendments can be accessed at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4306%22>, viewed 21 March 2011.

28. Explanatory Memorandum, Electoral and Referendum Amendment (Provisional Voting) Bill 2011, p. 1.

29. 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.

30. Prescribed documents are set out in Schedule 3 to the Electoral and Referendum Regulations 1940. The Regulations can be accessed at: <http://www.comlaw.gov.au/Details/F2010C00578/Download>, viewed 21 March 2011.

the claim for enrolment form'.<sup>31</sup> The Bill is silent, however, regarding arrangements where no recent record of an elector's signature is extant.

## Key provisions

**Items 1 and 4** propose to repeal the existing provisions in the Electoral Act (subsections 235(1B), 235(9) and 235(10)) and the Referendum Act (subsections 37(1B), 37(9) and 37(10)) containing evidence of identity requirements for provisional electors.

**Items 2 and 5** would insert a **new paragraph 3A** in Schedule 3 of the Electoral Act and Schedule 4 of the Referendum Act requiring DROs to check the most recent record of an elector's signature where the DRO had reason to doubt the authenticity of the elector's signature on the envelope that purported to contain the provisional vote ballot paper. As noted above, the proposed amendments do not provide for the situation where no recent record of the elector's signature is extant.

**Items 3 and 6** propose to repeal existing subparagraph 6(ca) in Schedule 3 of the Electoral Act and Schedule 4 of the Referendum Act and insert a **new subparagraph 6(ca)** in each Schedule to ensure that, where the DRO was not satisfied that a provisional vote ballot paper envelope bore the elector's signature, that ballot paper would be excluded from scrutiny.

**Item 7** would provide that the provisions of the Bill would only apply to elections or referendums taking place after the commencement of the Bill.

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31. Explanatory Memorandum, Electoral and Referendum Amendment (Provisional Voting) Bill 2011, p. 3.