Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012

Kai Swoboda
Economics Section

Contents

Purpose ........................................................................................................................................... 3
Basis of policy commitment ............................................................................................................. 3
Committee consideration ................................................................................................................. 4
Policy position of the Coalition and Australian Greens ................................................................. 4
Financial implications ................................................................................................................... 6
Schedule 1—Direct enrolment ....................................................................................................... 6
  Background .................................................................................................................................. 6
  Key issues .................................................................................................................................... 10
    Does direct enrolment dilute an elector’s responsibility to compulsorily enrol? .................... 10
    Privacy implications .................................................................................................................. 12
  Key provisions ............................................................................................................................ 13
Schedule 2—Provisional votes and objection action .................................................................... 15
  Background .................................................................................................................................. 15
  Key issue—A defacto move to ‘election day’ enrolment for electors who have once been on the electoral roll? .................................................................................................................. 18
  Key provisions ............................................................................................................................ 20
Concluding comments ................................................................................................................... 21

Figure 1  Estimated proportion of eligible electors enrolled, 1999–2011 ...................................... 7
Figure 2  Electors removed from the Commonwealth electoral roll due to objection action, 2005–06 to 2010–11 ........................................................................................................................................... 16
Figure 3  Difference between election roll and close of rolls enrolment at federal elections, 1993 to 2010
Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012

Date introduced: 15 February 2012

House: House of Representatives

Portfolio: Special Minister of State

Commencement: Section 1-3 the day of Royal Assent. Schedule 1 will commence on the later day after Royal Assent and immediately after the commencement of Schedule 2 to the Electoral and Referendum Amendment (Maintaining Address) Act 2012. However Schedule 1 will not commence if the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 does not commence.

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/Parliamentary_Business/Bills_Legislation. 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 Bill proposes to amend the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984 to give the Electoral Commissioner greater flexibility to maintain the electoral roll by:

• providing the Commissioner with a capacity to directly enrol an eligible person who is not on the electoral roll if the Commissioner is satisfied that the person is entitled to enrolment, has lived at an address for at least one month and the person is not enrolled, and
• allowing the Electoral Commissioner to enrol certain persons who have been removed from the electoral roll and admit their declaration votes.

The Bill also proposes to make largely technical amendments to simplify the provisions relating to reviewable decisions.

Basis of policy commitment

The Explanatory Memorandum notes that the Bill implements the Government response to two recommendations (recommendations 1 and 24) made by the Joint Standing Committee on Electoral

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Matters in its report on the inquiry into the 2010 federal election. The recommendations form the basis for each Schedule of the Bill.

Committee consideration

The Bill has been referred to the Joint Standing Committee on Electoral Matters (JSCEM) for inquiry and report. No reporting date has been announced by the Committee. Details of the inquiry are at the inquiry’s webpage.

Policy position of the Coalition and Australian Greens

The Coalition, in minority reports for the JSCEM inquiries that have recommended automatic enrolment, have indicated that they do not support moving away from an elector-initiated enrolment process. For example, in the JSCEM report into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections, the Coalition noted that:

... a move away from an individual enrolling on his or her own initiative in compliance with electoral legislation to a situation where the state can enrol a person of its own accord represents a drastic and dramatic change in our enrolment processes. Such a change should not be enacted without due consideration and deliberation.

The [Australian Electoral Commission] submits that the declining enrolment rate is “in part caused and perpetuated by enrolment processes based on antediluvian mechanisms and overly prescriptive legislation”. If this statement is to be taken at face value, then this is a reason to reconsider some of these practices – it does not justify a movement away from individual registration to automatic enrolment.

---


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Coalition members of the JSCEM for the inquiry into the 2010 election and related matters opposed the Committee’s recommendation to admit an elector’s declaration vote to the count if the elector had been removed from the roll on the grounds of non-residence in certain circumstances, noting that:

Opposition members believe that the responsibility for an elector to keep their details up to date and to provide their correct address when they attend a polling booth is not an onerous responsibility for an elector and notes that the overwhelming majority of the Australian population carries out these requirements with no issue. The proposal that electors who provide an incorrect address when attending a polling booth should have their vote counted sets a dangerous precedent relating to providing information to Government authorities and makes current provisions for electors to provide identification when enrolling essentially meaningless.

... The Coalition believes that enrolling to vote and casting a vote on Election Day is the responsibility of each individual citizen.

.. these moves will reduce the integrity of the electoral roll and recommend: That electors wishing to cast a valid declaration vote must provide correct information about their address prior to the close of rolls, failure to do this will result in their vote not being included in the count.5

The Australian Greens were represented on JSCEM for the inquiry into the 2010 election and the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections and did not dissent from the recommendations relating to enrolment of the majority of the Committee. Submissions by the NSW and Victorian branches of the Australian Greens to parliamentary committee inquiries into electoral reform have supported the introduction of the NSW model of automatic updates to the electoral roll.6


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Financial implications

The Explanatory Memorandum notes that the costs associated with the measures contained in the Bill will be absorbed by the Australian Electoral Commission (AEC) from existing resources.  

Schedule 1—Direct enrolment

This Bill seeks to provide the Electoral Commissioner with broad discretion to directly enrol people who are eligible to be on the electoral roll but are not currently on the roll.

Another Bill currently before the Parliament, the Electoral and Referendum Amendment (Maintaining Address) Bill 2011, proposes to give the Electoral Commissioner broad powers to directly update the address details of people who are already on the electoral roll based on administrative data provided by other agencies. A Bills Digest prepared in relation to the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 is also relevant for this Bill.

Background

Under the Commonwealth Electoral Act 1918, all eligible individuals are required to enrol and, when they change address, update their enrolment within 21 days of residing at their new address for at least one month. Failure to do so can lead to a fine of $110.

Requirements for electors to be proactive in enrolling and updating their enrolment can lead to electors being removed from the electoral roll when they change address and/or update their details when an election is called. The AEC estimates that, of those eligible to be enrolled, around $1.4 million eligible electors were not on the Commonwealth electoral roll as at 30 June 2011. The percentage of enrolled electors as a proportion of those eligible has been in general decline since the 2001 election, with the AEC estimating that as at 31 December 2011, some 90.2 per cent of the eligible population were enrolled (figure 1).

---

8. The Bills Digest for the Electoral and Referendum Amendment (Maintaining Address) Bill 2011 is available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F1409733%22
tainingbill/subs.htm

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Proactive enrolment requirements can also mean that electors delay updating their enrolment until a significant electoral event occurs. For example, in the period between the announcement of the election (Saturday 17 July 2010) and the final close of the electoral rolls for the 2010 federal election (Monday 26 July 2010), a total of 563 638 enrolment transactions were processed by the AEC. This activity accounted for more than 26 per cent of total enrolment transactions processed in 2010–11.

Automatic enrolment, which incorporates an individual’s electoral enrolment being updated or being directly enrolled, is already in operation in NSW and Victoria, with implementation in

---


**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Queensland delayed until after the 2012 state election. The specific requirements in each of these jurisdictions vary to some degree.

In NSW, automatic enrolment is provided for by section 29 of the Parliamentary Electorates and Elections Act 1912 (NSW). In summary, this provides that:

- the Electoral Commissioner may initiate an enrolment for a person who is not on the electoral roll and a change in address for a person who is on the electoral roll
- notification to the elector is to be provided in writing (which may be by email, SMS text message or other electronic means) and a response period of seven days is provided for, after which the proposed enrolment can take place. Notification is then also required in writing that the enrolment transaction has occurred
- the Electoral Commissioner may base his or her belief about a person’s eligibility to be enrolled on information from the Commonwealth electoral roll and a number of other sources including from bodies such as Roads and Maritime Services and the Registry of Births, Deaths and Marriages, and
- the Electoral Commissioner may exercise this automatic enrolment function at any time, including after the issue of the writ for the election.

In Victoria, automatic enrolment is provided for by section 23A of the Electoral Act 2002 (Vic). In summary, this provides that:

- the Electoral Commission may initiate an enrolment for a person who, within 21 days of turning 18, has not applied to be on the electoral roll
- notification to the elector is to be provided (the form of which is unspecified) and a response period of seven days is provided for, after which the proposed enrolment can take place. Notification is then also required in writing that the enrolment transaction has occurred, and
- the roll for an election, which is closed seven days after the issue of the writ for the election, does not include automatic enrolment transactions from the close of rolls.

In Queensland, legislation has yet to be developed to implement automatic enrolment. Under the proposals included in the Queensland Government’s White Paper on reforming Queensland’s electoral system, the main features of automatic enrolment were proposed to be:

- the Electoral Commissioner may initiate an enrolment for a person who turns 18 and is not enrolled within 21 days of turning 18
- notification to the elector is to be provided in writing (the form of which is unspecified) and a response period of seven days is provided for, after which the proposed enrolment can take place, and

---

15. Electoral Act 2002 (Vic), section 29(3).

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
• no person can be automatically added to the electoral roll after the close of rolls (which is between five and seven days after the issue of the writ).  

The Explanatory Memorandum to this Bill notes that proposal to allow the Electoral Commissioner to directly enrol electors who are not on the electoral roll implements the Government’s response to recommendation 1 of the report on the conduct of the 2010 federal election and related matters by the Joint Standing Committee on Electoral Matters. This recommendation noted:

The Committee recommends that, wherever appropriate, the Commonwealth Electoral Act 1918 should be amended to allow the Australian Electoral Commission (AEC) to directly enrol eligible electors on the basis of data or information provided by an elector or electors to an agency approved by the AEC, as an agency which performs adequate proof of identity checks, where that information is subsequently provided by that agency to the AEC for the purposes of updating the electoral roll. Approval of such agencies by the AEC should be made by disallowable instrument.

In summary, the basis of the Committee’s recommendation was that direct enrolment was a legitimate response to addressing the completeness of the electoral roll. The committee considered that completeness was a critical component of roll integrity and that declining enrolment had the potential to diminish the community’s continued acceptance of election results.

The Joint Standing Committee also made a recommendation in 2009 about direct enrolment in its inquiry into a proposed NSW electoral Bill that provided for automatic enrolment. In this report, the Committee’s recommendation to adopt automatic enrolment was also based on the need to address the risk of divergence between the NSW electoral roll and the Commonwealth electoral roll:

The NSW Automatic Enrolment legislation could, however, have serious implications for the conduct of Commonwealth elections if similar provisions are not incorporated in amendments to the Commonwealth Electoral Act 1918. Of greatest concern is a scenario whereby a proportion of NSW voters who have been automatically enrolled—or had their enrolment details updated—for the purposes of NSW elections, mistakenly believe that they have also been enrolled for the purposes of Commonwealth elections. Under the Commonwealth Electoral Act, automatically enrolled NSW electors will still be required to complete and submit a Commonwealth compliant enrolment form to the AEC before they are eligible to vote in Commonwealth elections.


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Key issues

Does direct enrolment dilute an elector’s responsibility to compulsorily enrol?

By automatically enrolling eligible voters but at the same time maintaining compulsory enrolment provisions, the requirement to maintain enrolment is arguably diluted, as those individuals who regularly interact with government agencies when they change address need not be concerned with the requirement to take proactive steps to ensure that they maintain their electoral enrolment.

As noted previously, the Commonwealth Electoral Act 1918 requires all eligible individuals to enrol and, when they change address, update their enrolment within 21 days of residing at their new address for at least one month. Failure to do so can lead to a fine of $110.

Compulsory enrolment has been a feature of Australian federal electoral since 1912 and is also a feature of state electoral law, with compulsory enrolment enshrined in other Australian jurisdictions—except South Australia—for lower house elections between 1915 and 1930. While there will always be some people that will avoid the requirement to enrol and maintain their enrolment, the principle of compulsory participation in elections in Australia, as expressed by support for compulsory voting, generally receives high levels of community support.

Arguments about the need for compulsory enrolment are also tied to arguments about compulsory voting and generally emphasise the increased legitimacy of elections as a result of higher participation, the civic obligations of citizens to participate in the election of their government and increasing expectations of electors that sharing of data between government agencies will lead to their enrolment being automatically updated. The potential electoral advantage provided by

---


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
compelling citizens to enrol (and then vote with the introduction of compulsory voting at a federal level in 1924) and the administrative simplicity of requiring electors to enrol, were also cited as reasons for the introduction of compulsory enrolment.\textsuperscript{27}

Evidence from the 2011 NSW state election and 2010 Victorian state election suggests that participation by electors is increased as a result of direct enrolment:

- in New South Wales, of the 18 996 new electors directly added to the electoral roll, 12 216 electors (64 per cent) subsequently voted at the state election\textsuperscript{28}, and
- in Victoria, of 1795 students who were new electors directly added to the electoral roll, 1557 electors (87 per cent) subsequently voted at the state election.\textsuperscript{29}

While arguments against automatic enrolment refer to the reliability of data used by electoral agencies to update the electoral roll and the reliability and integrity of administrative processes\textsuperscript{30}, opponents also point to the inconsistency between the rights and responsibilities of individuals and breaches of privacy.\textsuperscript{31} A minority report by members of the Victorian Parliament’s Electoral Matters Committee on proposals to introduce automatic enrolment in that state noted:

For government to assert the right to enrol citizens, even without their knowledge, is fundamentally undemocratic and an abrogation of the long-held civic rights of individuals. Enrolling to vote has always been a right and a responsibility of individual citizens. The idea that this right and responsibility should be taken away from individuals and usurped by government is not one which [we] can support.\textsuperscript{32}

---


\textsuperscript{32} Parliament of Victoria, Investigatory Committee on Electoral Matters, Inquiry into voter participation and informal voting in Victoria, July 2009, p. 215, viewed 1 March 2012,
However, one argument in favour of automatic enrolment is that people have come to expect that government-held information will be used in new and innovative ways and that the government is facilitating electoral participation by all citizens for the benefit of democracy. This does raise questions about whether the requirement to vote is beneficial and whether privacy standards are appropriate and being adhered to.

Privacy implications

The use by the AEC of information obtained from other agencies to update the electoral roll potentially has implications for the privacy of personal information.

The AEC note that in using this information to directly update the electoral roll, it will comply with a range of existing privacy law and practice:

- the AEC will comply with the various relevant requirements contained in the Privacy Act 1988 which include, that a record keeper must take reasonable steps to ensure that before ‘personal information’ is used it is accurate, up to date and complete. It is apparent that for the AEC to comply with this requirement, the decision maker will need to be satisfied that the data from the third party sources meets the test in Information Privacy Principle 87 before action can be taken to directly enrol an eligible person. In addition, the AEC intends that the data matching undertaken with the data from third party sources will comply with the Privacy Commissioner’s data matching guidelines, The use of data matching in Commonwealth administration – Guidelines.

In a submission to JSCEM, the Australian Privacy Foundation (APF) raise a number of privacy concerns (amongst other concerns) about the proposal to directly update the electoral roll using information from other agencies. These include:

- that it is not clear that any risk assessment has been performed – APF consider that risk assessment is normal business practice, and is expected by the Department of Finance and the Australian National Audit Office but that ‘none is apparent even from the perspective of the AEC and the integrity of the Rolls, let alone from the perspective of the people whose data is being expropriated, and for whom an entry is to be created by the AEC’, and

---


**Warning**: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
that it appears that no Privacy Impact Assessment (PIA) has been performed – The APF consider that ‘a PIA is normal business practice, and is an expectation of both the Privacy Commissioner and the Government as a whole’.  

Key provisions

Amendments to the Commonwealth Electoral Act 1918

Item 4 inserts proposed section 103B which provides the Electoral Commissioner with broad discretion to notify a person who is currently not enrolled, but whom the Commissioner is satisfied is eligible to enrol and has lived at their address for at least one month, that the Commissioner intends to add their name and address details to the electoral roll.

The Explanatory Memorandum notes that it is expected that the direct enrolment process would follow the receipt and analysis of reliable and current data from sources external to the AEC that indicate a person is eligible to enrol and is not enrolled.

Proposed section 103B also provides that the Electoral Commissioner will not take the proposed action to add the person to the electoral roll if satisfied by information given by the person within 28 days after the issue of the notice that the person does not live at the proposed enrolment address or is not entitled to enrolment. The Electoral Commissioner may take the proposed action to add the person to the electoral roll before the end of the 28 day period if the person indicates to the Commissioner that they live at the proposed address and are entitled to enrolment. It is noted that the Commissioner cannot take action from 8pm on the day the roll is close until that election is over (proposed subsection 103B(5)).

Following the Electoral Commissioner’s decision on the proposed action to add the person to the electoral roll proposed subsection 103B(6) requires the Commissioner to give notice to the person in writing of the outcomes of the Commissioner’s decision.

35. Australian Privacy Foundation, Submission to the Joint Standing Committee on Electoral Matters, Inquiry into the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012, 24 February 2012, p. 1, viewed 8 March 2012,

36. Explanatory Memorandum, p. 5.

37. The entitlement and disqualifications for enrolment are set out in sections 93 and 100 of the Commonwealth Electoral Act 1918. In general, the key entitlements and disqualifications relate to a requirement to be an Australian citizen (unless a British subject enrolled immediately before 26 January 1984) and to be aged 16 years or older (only those aged 18 years or older are eligible to vote). Key disqualifications include a person who has been convicted of treason or treachery and has not been pardoned and a person by reason of being of ‘unsound mind’ is incapable of understanding the nature and significance of enrolment and voting. Prisoners are entitled to enrol or remain on the Commonwealth electoral roll (section 96A), although prisoners serving a sentence of three years or longer are not entitled to vote (subsection 93(8AA)).

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Comment

The 28 day period providing for a response by the elector is significantly longer than the seven day period provided for in New South Wales and Victoria. 38

Proposed subsection 103B(5) prohibits the Electoral Commissioner from directly updating the electoral roll during the period commencing at 8pm, seven days after the issue of the writ for an election and finishing at the close of poll for the election.

Comment

Under the NSW automatic enrolment model, elector’s details can be updated after the issue of the writ for the election, including up to election day. 39

Under section 102(1)(b)(ii) of the Act the Electoral Commissioner must notify an elector in writing that the elector’s enrolled address has been updated following the receipt of a claim for transfer of enrolment from the elector. Proposed subsection 103B(7) exempts the Electoral Commissioner from this obligation if the Electoral Commissioner has already given notice under proposed subsection 103B(6). This results in the elector being sent a single confirmation of their enrolment change.

Proposed subsection 103B(8) provides that a written notice made under proposed section 103B can be an electronic communication as defined in the Electronic Transactions Act 1999, irrespective of whether the person has consented to such communication. 40

Comment

While the Australian Electoral Commission has used SMS and email communication to contact individuals about the possible need to update their address details or to confirm their address details41, the inclusion of proposed subsection 103B(8) will allow for more widespread use of email and/or SMS communication to inform electors about the outcomes of the Electoral Commissioner’s decision to update, or not update, an electors address details.

38. Parliamentary Electorates and Elections Act 1912 (NSW), section 29(5)(b); Electoral Act 2002 (Vic), section 23A.
40. Under subsection 9(2)(d) of the Electronic Transactions Act 1999, if the information is permitted to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is permitted to be given consents to the information being given by way of electronic communication.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
The New South Wales Electoral Commission, through the SmartRoll process, utilises a cascading system of confirming enrolment details with electors that first uses electronic means (e.g., SMS or email) and if no delivery or response is made then a letter is posted to the newly-enrolled address.\(^{42}\)

**Item 6** repeals subsections 120(1) to 120(3), which set out the existing grounds for a reviewable decision, and includes 13 different decisions which can be the subject of review.

The Explanatory Memorandum notes that this amendment, with one exception, does not change the existing law. The one change to the existing law is the inclusion of decisions under section 116 (notice of an objection) as a reviewable decision rather than under section 118 (determination of objection) to clarify that the point of review is in issuing the notice not in determining the notice.\(^{43}\)

**Schedule 2—Provisional votes and objection action**

The Bill proposes to provide a broad safety net for electors who have been removed from the electoral roll. This removal could be the result of objection action by the Commissioner or another voter. The Bill would give the Commissioner power to re-instate the elector to the roll at their former or current address and to have their declaration vote included in both the House of Representatives and Senate election.

**Background**

Under the *Commonwealth Electoral Act 1918*, an elector may be removed (or ‘objected’) from the electoral roll following a defined process that is initiated by another elector or by the Electoral Commissioner.\(^{44}\) The process requires the Electoral Commissioner to give notice to the elector proposed to be ‘objected’ from the roll, and to determine the outcome of the objection generally within 20 days of giving the notice to the elector.\(^{45}\) Electors can be objected from the electoral roll for a range of reasons, including no longer living at their enrolled address (non-residence) and for being of ‘unsound mind’.\(^{46}\)

Since 2005–06, the AEC has removed an average of 250,000 electors from the electoral roll as a result of objection action, with the number varying significantly from year to year (figure 2).

---


44. *Commonwealth Electoral Act 1918*, Part IX.


**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Figure 2  Electors removed from the Commonwealth electoral roll due to objection action, 2005–06 to 2010–11

Source: Australian Electoral Commission annual reports.

Once an elector is removed from the electoral roll, they are required to submit another signed enrolment form. Objection action contributes to the maintenance of an up to date electoral roll. However, it can lead to circumstances where an elector, believing that they are enrolled at a particular address but not finding their name on the certified list of voters at a polling booth, casts a provisional vote which is then subject to further scrutiny to determine whether the electors vote is eligible to be admitted.47

The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 made a number of significant amendments to the Commonwealth Electoral Act which, amongst other things, changed provisions relating to the admission of provisional votes so that if an elector was objected from the electoral roll on the grounds of non-residence, their provisional vote for the same address was excluded from the count and they could not be re-instated to the electoral roll.48

47. Commonwealth Electoral Act 1918, section 235.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
The Explanatory Memorandum notes that Bill implements the Government’s response to recommendation 24 of the report on the conduct of the 2010 federal election and related matters by the Joint Standing Committee on Electoral Matters.\(^49\) That recommendation was:

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who had lodged a declaration vote at an election has been removed from the electoral roll by objection action on the ground of non-residence; and

- the removal from the roll occurred after the election prior to the election to which the scrutiny relates, or

- where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the removal from the roll was made after the last such redistribution, then:

  o if the address at which the elector claims to be enrolled at the time of voting is within the electoral division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but

  o if the address at which the elector claims to be enrolled at the time of voting is in a different electoral division in the same state or territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.\(^50\)

While the proposals in the Bill implement this recommendation by providing for provisional votes to be included in the count where an elector has been objected from the roll, this recommendation is silent on providing for the re-instatement of these electors to the electoral roll. However, other considerations make it clear that the majority of the Committee considered that re-instatement for these electors should be provided:

The Committee believes that the reinstatement provisions were designed to provide relief to those electors so affected, to ameliorate the objection processes mandated by the legislation, which are prone to error.

The Committee notes that an elector who presents at a polling place and who is found to be on the electoral roll at a different address to that which is shown on the certified list, but still in the same electoral division, is entitled to cast an ordinary vote, and that vote will be counted.

However, if that same elector had been taken off the roll on the basis of an erroneous belief that they did not reside at the enrolled address (even if they moved to another address in the same electoral division), and they presented at the polling place, they would be required to cast a provisional vote, which under the current provisions, would not be counted.

\(^49\) Explanatory Memorandum, Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012, p. 1.\(^50\) Joint Standing Committee on Electoral Matters, *The 2010 federal election: report on the conduct of the election and related matters*, op. cit., p. 95. Note that discussion of the matter is also found at p. 36.

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Clearly, the effect of the [2006 amendment] is that the elector who is retained on the roll is treated significantly different to an elector who is removed from the roll, even when the removal from the roll occurred in error.

The Committee therefore concludes that the amendments made to Schedule 3 to prevent reinstatement should not have occurred, and recommends that the Commonwealth Electoral Act be amended to provide for reinstatements to the electoral roll to be made in the same circumstances as they were before the 2006 amendments took effect.51

Key issue—A de facto move to ‘election day’ enrolment for electors who have once been on the electoral roll?

One indication of the number of electors who are affected by the 2006 changes to provisional voting (which also included the introduction of evidence of identity provisions in relation to provisional votes) is the difference between the roll used for the election and enrolment at the close of rolls.52 At federal elections held between 1993 and 2004 (where re-instatement provisions applied), election enrolment is significantly higher than close of rolls enrolment (figure 3). Not all of the electors added to the roll prior to the 2007 election were likely to have been objected due to non-residence.

One effect of the provisions in Schedule 2 of the Bill is that, in addition to potentially saving the affected elector’s vote from being excluded from the count, the elector is once again enrolled on the electoral roll.

This effectively provides for de facto election day enrolment for electors who have previously been removed from the electoral roll and for the entitlement to vote to occur simultaneously. At the NSW 2011 state election and Victorian 2010 state election, around 21 000 electors and 30 000 electors respectively were enrolled under election day enrolment provisions and had the opportunity for their votes to be included in the election count.53


52. The proof of identity provision has now been addressed by the Electoral and Referendum Amendment (Provisional Voting) Act 2011, with the requirement for provisional voters to provide evidence of identity on polling day or in the week following polling day repealed.


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Figure 3  
**Difference between election roll and close of rolls enrolment at federal elections, 1993 to 2010**

![Bar chart showing the difference between election roll and close of rolls enrolment at federal elections, 1993 to 2010](chart.png)


Provisions allowing election day enrolment are a feature of enrolment provisions in New South Wales and Victoria.54 The 2010 JSCEM election report also included recommendations to adopt election day enrolment, with the Committee noting that:

The Committee believes that enrolment at the time of voting provides an important safety net for a system which allows for direct enrolment and update. The Committee is satisfied that such an option should be available at the Commonwealth level, but believes that enrolment obtained in this manner should only be permitted for the address which appears on the evidence of identity document.55

Arguments for election day enrolment are related to those used to support automatic enrolment such as enfranchising those who have not enrolled or maintained their enrolment, and arguments

---


**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
against election day enrolment cite the potential for electoral fraud and administrative workloads on polling day.\textsuperscript{56}

The Coalition are opposed to election day enrolment for a number of reasons, including the impact on the workload of AEC election officials and the incentives faced by electors. In the dissenting report for the 2010 JSCEM election report, Coalition members noted that:

Election Day enrolment poses a number of problems. As well as exposing the roll to fraudulent enrolments, it will potentially cause significant delays on Election Day, additional to those that have been reported and are of increasing concern, especially at peak voting times.

It cannot be expected of election officials, only engaged on a casual basis, given the pressures and time constraints placed upon them on polling day to closely cross-check every enrolment form accurately. The Opposition notes the evidence of the CPSU to the inquiry that experienced casual officials are not offering themselves for duty as previously because of the impact of the new Labor changes to pension arrangements which can result in the loss of pension entitlements.

Secondly, the recommendation will cause additional queues on polling day. It will also provide delays in finalising the count while awaiting verification of the enrolments received that day. It is a significant additional administrative burden for the AEC at a time when measures, such as processing pre-poll votes as ‘ordinary votes’ have been taken to quicken the vote counting process on Election Day.

Thirdly, Election Day enrolment will inadvertently provide an incentive to people to not comply with the existing law and initially enrol or update their election details when they move residence. The knowledge that one can simply turn up on Election Day and enrol to vote after turning eighteen, taking out citizenship or moving residence will only weaken the effectiveness of the AEC enrolment and education campaigns. This will reduce the accuracy and integrity of the roll between elections.\textsuperscript{57}

Key provisions

Section 105 of the Act allows the Electoral Commissioner to make alterations to the Roll for example, when a person has been removed from the Roll by mistake or omission (subsection 105(1)). \textbf{Item 1} of Schedule 2 repeals and substitutes a \textit{new subsection 105(4)} to enable the Electoral Commissioner to enter the name of an elector on the Roll in circumstances where the elector has made a declaration vote, and, at a preliminary scrutiny of votes under Schedule 3 of the

\begin{itemize}
\end{itemize}

\textit{Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.}
Act (‘Rules for the conduct of a preliminary scrutiny of declaration votes’), the envelope satisfies the requirements of paragraphs 6 and 12 of that Schedule.

Currently, by operation of paragraph 12(b)(iii), the omission from the Roll could not be remedied when it has happened because of an objection on the grounds that the elector had not lived at an address for at least one month.\(^{58}\) This paragraph is removed by virtue of item 3.

**Item 2** repeals and substitutes paragraphs 10 and 11 of Schedule 3 of the Act to the effect to include people who were not enrolled when making a declaration vote but were living either at an address in the Division or at an address in the state or territory in which the Division is situated (new paragraph 10).

Current subsection 118(4) allows the Electoral Commissioner to remove an elector’s name from the Roll if an objection has been made to the person’s enrolment on the grounds of not living at a particular address.

As discussed above, Schedule 3 of the Act sets out the rules for the conduct of a preliminary scrutiny of declaration votes.\(^ {59}\) Currently paragraph 12 of Schedule 3 refers to envelopes of persons who have signed a certificate or declaration and the elector was entitled to be enrolled but has been removed from the Roll because of error or mistake or because of objection under subsection 118(4). **Item 3** of the Bill’s Schedule 2 amends paragraph 12 so that it only refers to electors entitled to be enrolled but who were removed from the Roll by reason of error or mistake. The Explanatory Memorandum states:

> The existing law provides that where such people have been removed from the electoral Roll due to error or mistake of fact, his or her vote can be admitted to further scrutiny after the AEC has verified the entitlement to enrolment and voting. However, being removed from the roll through objection action does not currently constitute an error or mistake of fact. The Bill removes this limitation to ensure that an administrative error or mistake of fact does not hinder an otherwise eligible elector from exercising the right to vote at an election.\(^ {60}\)

**Concluding comments**

This Bill contains a number of proposals which have proven controversial in the past. On the one hand the amendments proposed by the Bill provide for a greater opportunity for electors, who for a range of reasons do otherwise not comply with the compulsory enrolment provisions of the *Commonwealth Electoral Act 1918*, to participate in elections. However, these amendments also raise questions about privacy and the individual’s right to autonomy in the matter of enrolment, as well as concerns that (by automating the process there is a danger that) the individual’s responsibility with respect to requirements to compulsorily enroll may be undermined.

---


\(^{59}\) Rules for the conduct of preliminary scrutiny of declaration votes.

\(^{60}\) Explanatory Memorandum, pp. 2-3.

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
© Commonwealth of Australia

Creative Commons

With the exception of the Commonwealth Coat of Arms, and to the extent that copyright subsists in a third party, this publication, its logo and front page design are licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia licence.

In essence, you are free to copy and communicate this work in its current form for all non-commercial purposes, as long as you attribute the work to the author and abide by the other licence terms. The work cannot be adapted or modified in any way. Content from this publication should be attributed in the following way: Author(s), Title of publication, Series Name and No, Publisher, Date.

To the extent that copyright subsists in third party quotes it remains with the original owner and permission may be required to reuse the material.

Inquiries regarding the licence and any use of the publication are welcome to webmanager@aph.gov.au.

Disclaimer: Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library’s Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2495.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.