



# Research Brief

New reports, bills and updates of latest research

Parliamentary Library Research Service  
Department of Parliamentary Services  
ISSN 1836-7828 (Print) 1836-8050 (Online)

**Number 11**  
21 July 2010

## Electoral Amendment (Electoral Participation) Bill 2010

This Research Brief includes the following sections:

Introduction .....	2
1. Second Reading Speech .....	2
2. Electoral Matters Committee <i>Inquiry into Voter Participation and Informal Voting</i> .....	4
Electoral Enrolment .....	4
Voter Turnout .....	6
Minority Report .....	8
3. Main Provisions of the Bill .....	9
4. Position of the Opposition and Greens Parties .....	12
5. Other Jurisdictions .....	13
References .....	17

**NB:** Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ <http://www.legislation.vic.gov.au>.

## Introduction

The Victorian Government introduced the Electoral Amendment (Electoral Participation) Bill ('the Bill') on 8 June 2010. The Bill amends the *Electoral Act 2002* ('the Act') in order to increase participation in Victorian elections. It provides for the establishment of streamlined enrolment procedures whereby the Victorian Electoral Commission (VEC) will have the power to enrol people to vote – on its own initiative – based on information obtained from sources listed in section 26(4) of the Act. It provides for enrolment procedures to take place on election day for those electors not on the electoral roll. The Bill also provides for the abolition of the 'three-month rule', which uses the elector's principal place of residence, three months prior to election day, as a measure of the electors entitlement to vote. It expands the availability of electronic voting to a wider group of electors, and requires the VEC to publish how-to-vote cards on its website.

A number of provisions in the Bill are based on the recommendations of the Electoral Matters Committee Report following its *Inquiry into Voter Participation and Informal Voting* (tabled on 30 July 2009). The provision requiring the VEC to publish how-to-vote cards on its website is based on the recommendation from the Electoral Matters Committee's *Inquiry into the Provisions of the Electoral Act 2002 (Vic) Relating to Misleading or Deceptive Political Advertising* (tabled on 11 March 2010).

### 1. Second Reading Speech

The Attorney-General, the Hon. Rob Hulls, gave the second reading speech for the Electoral Amendment (Electoral Participation) Bill on 10 June 2010. Mr Hulls began his speech by stating that the key aim of the Bill is to ensure that everybody who is eligible to vote should have the opportunity to vote. He said that the Bill will amend the *Electoral Act 2002* to ensure that the Victorian electoral system is as accessible and efficient as possible, to maintain the integrity of the electoral roll, and to promote a high level of participation by all those in the community who are eligible to vote.<sup>1</sup>

Mr Hulls emphasised that electoral participation is a key element of a healthy democracy and that enrolment processes should not serve as a barrier to the exercise of an individual's right to vote. He said that the Electoral Matters Committee's Report on its *Inquiry into Voter Participation and Informal Voting* (2009) found that, while Victoria has one of the highest voter turnouts for general elections worldwide and good enrolment rates in comparison with other Australian states and territories, there are 'some concerning trends' regarding participation in Victorian elections.<sup>2</sup> He said that both the VEC and the Australian Electoral Commission (AEC) have acknowledged that traditional enrolment strategies, which depend on people taking time to enrol and update their enrolment details, have not kept pace with busy modern lifestyles and advances in technology. He said that the AEC has stated that there is 'a growing expectation, especially among young people, that government agencies should take the initiative to provide targeted services to individuals'.<sup>3</sup>

Mr Hulls said that the Bill accordingly provides for 'streamlined enrolment procedures' that allow the VEC to act on its own initiative to enrol eligible electors, based on

---

<sup>1</sup> Victoria, Legislative Assembly (2010) *Debates*, 10 June, p. 2302.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

information it already receives in accordance with section 26(4) of the Act. The Bill provides that eligible individuals must be notified by the VEC, so as to have the opportunity to correct any errors in their proposed enrolment details or to raise any objections before they are enrolled, and be informed once they are enrolled.<sup>4</sup> The implementation of the streamlined enrolment procedures will be a long-term project, carried out in stages. Mr Hulls said that given the number of young Victorians enrolled to vote is 8 per cent below that of the general eligible population, the first stage of streamlined enrolment will target students aged eighteen and over who are registered with the Victorian Curriculum and Assessment Authority (VCAA). The second stage of implementation will then involve consideration of 'widening the group of electors who could benefit from streamlined enrolment'.<sup>5</sup>

Mr Hulls said that at the 2006 Victorian state election 66,000 eligible Victorians tried to vote but had their ballots rejected because they were not on the electoral roll. Following recent reforms in NSW that permit election day enrolment, and related initiatives in New Zealand, Canada and some states of the United States, the Bill permits enrolment on election day to enable voting by eligible people who present at voting centres but are not on the roll.<sup>6</sup> It is anticipated that election day enrolment will allow a high percentage of declaration votes, which require a written declaration by the voter that is then checked by the VEC to ensure that requirements have been met. There will still be a close of the rolls, but election day enrolment will offer another chance for eligible voters to vote. Election day enrolments will be subject to specific safeguards and proof of identity requirements to protect the security and integrity of the roll.<sup>7</sup>

Mr Hulls stated that the Bill also includes provisions for widening the availability of electronic voting to people who would otherwise be unable to vote without assistance, because of a visual or motor impairment, or insufficient literacy skills (whether in English or their spoken language).<sup>8</sup> The Bill also abolishes the 'three-month rule' which prevents people from voting who have not updated their electoral address within three months of moving. Electors who present to vote and are not on the roll will be able to enrol on the day and update their address details.<sup>9</sup> Mr Hulls said that since the three-month rule was introduced, the VEC has modernised the maintenance of the electoral roll which has reduced the need for the rule. He also said that 'the potential extension of streamlined enrolment to be progressed in the near future will add to the measures aimed at protecting the integrity of the roll'.<sup>10</sup>

Mr Hulls additionally stated that the Bill will make a number of technical amendments to the Act. These include: clarifying the provisions in the Act which relate to the acceptance of postal vote declarations; providing that Legislative Council candidates – who choose to form a group on the ballot paper – must register a group voting ticket with the VEC in accordance with the Act; and bringing the Act into line with Commonwealth laws to exempt certain electoral matter from the normal authorisation requirements.<sup>11</sup>

---

<sup>4</sup> *ibid.*, p. 2303.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*, p. 2304.

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

## 2. Electoral Matters Committee *Inquiry into Voter Participation and Informal Voting*

On 5 May 2008, the Electoral Matters Committee ('the Committee') self-referenced an inquiry to consider and report to Parliament on issues relating to voter participation and informal voting in Victoria. The ensuing Report, based on evidence received by the Committee through submissions, public hearings and international investigations, was tabled in Parliament on 30 June 2009. The Report made 28 recommendations to the Victorian Government designed to increase voter participation and decrease informal voting in state elections.<sup>12</sup> The Report defined the term 'voter participation' according to the classification used by the VEC in its submission to the inquiry. The VEC identified three measures of participation in any electoral system:

- Enrolment: The degree to which those who are eligible enrol to vote;
- Turn-out: The degree to which those who are enrolled vote in elections; and
- Formal voting: The degree to which those who vote cast a formal vote.<sup>13</sup>

The Report noted that encouraging voter participation is currently a major concern across established democracies, including Canada, the UK and the US. It stated that voter turnout at the 2008 Canadian general election was 59.4 per cent, the lowest rate ever recorded for a Canadian general election. In the UK, the voter turnout at the 2005 general election was 61.4 per cent, the third lowest rate since the turn of the twentieth century. In the US, while turnout rates have improved in recent years, there are still major impediments to full electoral participation based on ethnicity, educational attainment and voter registration practices.<sup>14</sup> In Australia, which unlike Canada, the UK and the US, has a compulsory voting system, the turnout rates for federal elections are relatively high. Voter turnout for the 2007 Australian federal election was 94.76 per cent for the House of Representatives and 95.17 per cent for the Senate.<sup>15</sup> In Victoria, the average voter turnout rate for state elections since 1976 is 93.38 per cent.<sup>16</sup> The Committee findings, however, advised that:

Victoria cannot afford to rest on its laurels. As is the case worldwide, Victoria is facing a number of challenges to ensure that all eligible Victorians participate in the electoral process. Statistics from recent Victorian state elections suggest that there are a number of undesirable trends in relation to Victoria's democratic performance that need to be addressed.<sup>17</sup>

### Electoral Enrolment

The Committee found that the first of these trends relates to electoral enrolment. It reported that for the 2006 Victorian state election 93.81 per cent of eligible Victorians were enrolled to vote.<sup>18</sup> Of the 3,353,845 enrolled electors, 3,110,172 voted and

<sup>12</sup> This Research Brief only discusses the issues and recommendations contained in the Electoral Matters Committee Report that are relevant to the Bill. Notably, a significant portion of the Report concentrates on informal voting in Victoria. This issue is not addressed by the Bill and is therefore not canvassed by this Research Brief.

<sup>13</sup> Electoral Matters Committee (2009) *Inquiry into Voter Participation and Informal Voting: Report to Parliament*, Melbourne, Parliament of Victoria, viewed 12 June 2010, <<http://www.parliament.vic.gov.au/emc/inquiries>>, pp. 25-26.

<sup>14</sup> *ibid.*, p. ix.

<sup>15</sup> *ibid.*, pp. 11-12.

<sup>16</sup> *ibid.*, p. ix.

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*, p. 39.

243,673 did not vote.<sup>19</sup> There were also 74,403 declaration votes cast by people who believed they were on the roll. Of these declaration votes 7,596 were admitted and 66,807 were rejected.<sup>20</sup> The Report noted the VEC's view that while it was relatively satisfied with the state electoral roll at the close of rolls in 2006, 'there was still a significant number of eligible Victorians who were disqualified from voting because they were either not enrolled, or had not properly maintained their enrolment details and information'.<sup>21</sup>

The Committee considered evidence from inquiry participants regarding electoral enrolment processes in Victoria and Australia. The Report explained that the Victorian electoral roll is maintained by the VEC through a joint roll arrangement with the AEC. The AEC administers the Continuous Roll Update program which ensures the ongoing accuracy of the electoral roll. Under the authority of the *Commonwealth Electoral Act 1918*, the AEC is provided with data (such as change of address and new client information) by other agencies (such as the Residential Tenancies Bond Authority, Victorian Tertiary Admissions Centre and Vic Roads).<sup>22</sup> Electors identified through data matching initiatives are sent enrolment forms as they register a change of address, which they must fill in and send back to the AEC. If the elector does not return the form (which is followed up by a reminder letter), they are removed from the electoral roll. Hence, the AEC can remove a person from the roll when they change address, but cannot update that person's details (even though the new address is known to the AEC) unless the person fills out and returns the required paper form. The Report noted that the Democratic Audit of Australia's submission to the inquiry indicated that the AEC, through database and information sharing arrangements, has become adept at removing people from the electoral roll, but not at putting them back on.<sup>23</sup>

The Report noted the VEC's suggestion that allowing people to update their enrolment information at the same time as they update other government records, would result in greater efficiencies in the enrolment process and required investigation by electoral authorities. The VEC also contended that the fact that approximately 66,000 people presented to vote on election day unaware that they were not on the roll, makes a strong case for improving the electoral enrolment system.<sup>24</sup> In response to these issues, the Committee considered and recommended the government consider a number of strategies to increase electoral enrolment, including; automatic enrolment,<sup>25</sup> smart enrolment,<sup>26</sup> election day registration,<sup>27</sup> and the use of a dormant electoral roll.<sup>28</sup>

#### *Youth Electoral Enrolment*

The Committee found that young people, aged 18-25 years, are underrepresented on the Victorian electoral roll (as they are throughout Australia) when compared to enrolment rates for the general eligible population. For 2007-08, Victoria's youth enrolment rate was 84.78 per cent, which is approximately 3.3 per cent higher than the national youth enrolment average for that year. However, the Victorian youth electoral enrolment rate is approximately 8 per cent lower than the enrolment rate of the general

---

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*, p. 40.

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*, p. 33.

<sup>23</sup> *ibid.*, pp. 44-45.

<sup>24</sup> *ibid.*, p. 40.

<sup>25</sup> For further information see *ibid.*, pp. 46-49.

<sup>26</sup> *ibid.*, p. 49.

<sup>27</sup> *ibid.*, pp. 50-57.

<sup>28</sup> *ibid.*, p. 57.

eligible Victorian voting population.<sup>29</sup> The Report cites the VEC submission to the inquiry which contends that electoral enrolment rates may 'be even lower for some groups in the 18 to 25 age group; in particular young people experiencing homelessness, Indigenous young people and young people from CALD communities'.<sup>30</sup> The VEC also contends that approximately 60,000 young Victorians become eligible to enrol each year, but only 73 per cent enrol within a year of turning 18.<sup>31</sup> The Committee found that encouraging young people to enrol and vote is a major issue for Australian and international electoral commissions. In Victoria, the VEC currently draws on information provided by the VCAA, to send a birthday card with an enrolment form to all Victorians in the education system when they turn 17 years old.<sup>32</sup>

The Committee considered strategies to increase youth electoral enrolment which focused on two areas: increasing awareness of the importance of enrolment and voting through civics education initiatives; and changing the system of electoral enrolment in Victoria to be as practically accessible as possible.<sup>33</sup> In regard to the latter point, the Committee noted the current complexity of the enrolment form and the VEC's suggestion that the implementation of automatic and smart enrolment may have a positive impact on levels of youth electoral enrolment.<sup>34</sup>

### **Voter Turnout**

The Committee also addressed voter turnout in Victoria and examined evidence exploring declining levels of voter turnout. The Report provided voter turnout figures for Victorian elections between 1976 and 2006. It stated that:

The voter turnout figure was lowest in 1988 at 92.35 percent compared with the highest voter turnout in 1992 of 95.13 percent, when there was a change of government. There has been a small yet steady decline in voter turnout since peaking in 1992; on average, 0.5 percent per election. However, an examination of figures over the 30 year period shows that voter turnout has remained steady from 92.68 percent in 1976 and 92.73 percent in 2006.<sup>35</sup>

The Committee considered strategies to increase voter turnout suggested by inquiry participants. It concentrated on the two strategies proposed by the VEC: expanding electronic voting and repealing the three-month rule.<sup>36</sup>

### *Electronic Voting*

In regard to electronic voting, the VEC stated that expanding the electronic voter franchise could increase voter turnout for Victorians with disabilities who would otherwise not vote. Electronic voting for electors who are blind or visually impaired was

---

<sup>29</sup> *ibid.*, p. 111.

<sup>30</sup> *ibid.*, pp. 111-112.

<sup>31</sup> *ibid.*, p. 12.

<sup>32</sup> *ibid.*, p. 108. The system of 'provisional enrolment' allows eligible 17 year old Australian citizens to apply to enrol to vote. Their name is placed on the electoral roll so they will be able to vote in federal, state and local government elections when they turn 18. According to the VEC Annual Report 2008-09, 15.7 per cent of 17 year olds (9,175) who received a birthday card in 2008-09, enrolled as a result of the program. A further 4,198 students enrolled during 2008-09 as a result of receiving a birthday card in 2007-08. See Victorian Electoral Commission (2009) *Annual Report 2008-09*, Melbourne, VEC, viewed 21 July 2010, <<http://www.vec.vic.gov.au/>>, p. 32.

<sup>33</sup> *ibid.*, p. 120.

<sup>34</sup> *ibid.*, p. 126.

<sup>35</sup> *ibid.*, p. 65.

<sup>36</sup> *ibid.*, p. 74.

trialled at the 2006 Victorian state election. The VEC proposed that the electronic franchise be expanded to include:

- People with motor impairments, who may have difficulty filling out paper ballots by hand without assistance;
- People with poor English-language skills who may have difficulties understanding the instructions on the ballot paper (instructions, formality warnings etc, can be provided in multiple languages);
- People who are illiterate in either English or their primary spoken language (instructions and options could be provided in audio through the headphones in multiple languages); and
- Electors outside Victoria (electronic voting could avoid the delays of posting paper ballots).<sup>37</sup>

The Committee considered the proposal and recommended that the 'Victorian Government amend the *Electoral Act 2002 (Vic)* to allow very limited electronic voting trials for those eligible electors with a motor-impairment, people with poor English-language skills and people who are illiterate in English'.<sup>38</sup>

#### *Three-Month Rule*

In regard to the three-month rule, the VEC suggested that repealing the rule would increase voter turnout at Victorian state elections. The Report explained that the three-month rule – as stated in the *Electoral Act 2002* – uses the elector's principal place of residence, three months prior to election day, as a measure of the elector's entitlement to vote.<sup>39</sup> The VEC submission cited in the Report stated that the three-month rule is based on the principle that only people who live within an electorate should be able to vote in that electorate. However, the rule can also work to deny people a vote who have moved but have not updated their enrolment before close of rolls. The VEC contended that Victoria has a highly mobile population and that a high proportion of people who move, stay within their electoral district.<sup>40</sup> It stated that:

Despite the VEC's enrolment programs, and concentrated advertising before the roll closes, a substantial number of electors do not update their enrolment in time. These are likely to include a high proportion of the more mobile segments of the population, such as young people, the unemployed and the mentally ill.<sup>41</sup>

The VEC estimated that around 10,000 people were denied a vote though the application of the three-month rule at the 2006 state election.<sup>42</sup> The Committee considered the VEC's suggestion that the three-month rule be repealed, or that electors who move within the same electorate without updating their enrolment be exempted from the rule. The Committee recommended that the Victorian Government amend the *Electoral Act 2002 (Vic)* to exempt electors from the three-month rule, who change residential address (but remain within their existing electorate) without updating their enrolment.<sup>43</sup>

---

<sup>37</sup> *ibid.*, pp. 173-174.

<sup>38</sup> *ibid.*, p. 174.

<sup>39</sup> *ibid.*, p. 74.

<sup>40</sup> For statistical details see *ibid.*, p. 75.

<sup>41</sup> *ibid.*, p.75. Also see Chapter 7 on strategies to increase voter turnout among specific community groups.

<sup>42</sup> *ibid.*, p. 75.

<sup>43</sup> *ibid.*, p. 76.

### Minority Report

The Report included a Minority Report authored by the three Coalition Members on the seven Member Committee. The Minority Report stated the Coalition Members' opposition to recommendation 3.1, which includes the recommendation that the Victorian Government examine legislative reform to maximise the electoral enrolment of eligible Victorians, and consider the options of smart enrolment, automatic enrolment, election day registration, and a dormant roll.<sup>44</sup>

The Minority Report firstly noted that the Committee should have reached a conclusion on the proposals referred to in contested recommendations, rather than recommending that the government conduct further examination and consideration of options.<sup>45</sup>

The Minority Report then emphasised the Coalition Members' support for the harmonisation of state and federal electoral laws and the 'streamlining of the enrolment process, subject to maintaining the consistency with federal electoral law and the primary obligation to preserve the integrity of the electoral roll'.<sup>46</sup> The Minority Report stated that the Coalition Members therefore support measures to enhance the harmonisation of electoral laws which will make the process of enrolment easier for citizens. It said that:

Measures such as 'smart enrolment', where an electoral commission can use information held by it about citizens to pre-populate fields on enrolment forms and thereby make completing forms easier, hold much promise in this regard.<sup>47</sup>

The Coalition Members did not, however, support automatic enrolment, because it would 'fundamentally change the civic balance between citizen and government'.<sup>48</sup> The Minority Report further stated that:

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 the Coalition Members of the Committee can support.<sup>49</sup>

---

<sup>44</sup> *ibid.*, p. 214. It should be noted that the Minority Report also records the Coalition Members' opposition to recommendation 5.3, which relates to changing the formality provisions in the *Electoral Act 2002*. This recommendation was not included in the Bill and is therefore not discussed by this Research Brief.

<sup>45</sup> *ibid.*, p. 214.

<sup>46</sup> *ibid.*, p. 215.

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*

### 3. Main Provisions of the Bill

#### **Purpose**

Section 1 of the Bill states that the purpose of the proposed Act is to amend the *Electoral Act 2002* to provide for –

- (a) increased electoral participation; and
- (b) improved operation of the Act.

#### **Commencement**

Section 2 of the Bill provides that if a provision of the proposed Act does not come into operation before 1 July 2011, it will come into operation on that day.

#### **New Section 23A – Enrolment by the Commission**

Section 3 of the Bill inserts new section 23A into the Act to enable the VEC – referred to in the Act as ‘the Commission’ – to enrol persons to vote on its own initiative, based on information it obtains under section 26(4) of the Act. Section 26(4) of the Act states that the Commission may require a public service body Head, a CEO appointed by a Council, a CEO of a public statutory authority, a member of the police force, an electricity distribution company or retailer, or an elector or person qualified to be an elector – to provide information that, in the opinion of the Commission, is required in connection with the preparation, maintenance or review of the register of electors.

Subsection (1) states that the new section 23A applies if a person who would be entitled to enrol on the register of electors under section 22(5) of the Act has attained 18 years of age, but has not made a claim for provisional enrolment under section 23(2) of the Act.

Subsection (2) states that if a person to whom this section applies has not made a claim for enrolment within 21 days of becoming entitled to do so, the Commission may advise that person in writing that: the person is entitled to be enrolled; the Commission proposes to enrol them under the person’s principal place of residence as specified in the notice; and that the Commission will enrol the person within a specified period (not less than 14 days after the date of the notice) unless the person advises that they are not entitled to be enrolled, or that the details of the proposed enrolment are incorrect.

Subsection (3) then provides that if the Commission does not receive any advice under subsection (2) by the expiry of the specified period, the Commission must register the person and advise the person in writing that they have been registered.

Subsections (4) and (5) set out the actions for the Commission to take if it does receive advice under subsection (2) before the expiry of the specified period.

#### **Consequential Amendment of Section 23**

Section 4 of the Bill inserts new section 23(8) in to the Act, which states that:

- (8) If the Commission sends a person a notice in writing under section 23A(2), proceedings must not be instituted against the person for any offence against subsection (1) which occurred before the Commission sent the notice.

This consequential amendment is designed to prevent a person whom the Commission proposes to enrol under the new section 23A from being penalised for a breach of section 23(1) of the Act. Section 23(1) of the Act states that a person who is entitled to enrol (other than under sections 22(3), 22(4) or 22(5)), and whose name is not on the

register of electors, must do so within 21 days of becoming entitled, or be liable to a fine of one penalty unit.

### **Grouping of Candidates for Legislative Council Elections**

Section 6 of the Bill inserts new section 69A(8) into the Act. Section 69 of the Act deals with the nomination of candidates and section 69A deals specifically with the grouping of candidates for Legislative Council elections. New section 69A(8) provides that if two or more candidates for a Legislative Council election make a request to be grouped on the ballot paper – under subsection 69A(1), (2) or (3) – the request may, at any time before noon on the final nomination day, be amended, withdrawn or replaced, by a written notice to the Commission.

### **Group Voting Tickets**

Section 7 of the Bill makes a number of amendments to section 69B of the Act which deals with group voting tickets in Legislative Council elections. According to the Explanatory Memorandum, the intention of the amendments in section 7 of the Bill is to impose a mandatory obligation to lodge a group voting ticket in relation to requests made under section 69A(1),(2) or (3) of the Act, and make it an offence to fail to lodge a group voting ticket with the Commission in accordance with section 69B(7) of the Act. Such lodgements are optional at present.<sup>50</sup>

### **Commission to Make How-to-Vote Cards Available**

Section 8 of the Bill replaces section 82 of the Act with a new section 82. The existing section 82 provides that, as soon as practicable after registering a how-to-vote card under section 79 or 80 of the Act, the Commission must make a copy of that card available for inspection at the office of the Commission. The new section 82 retains this provision and adds that the Commission must also publish a copy of the card on an internet website maintained by the Commission. The amendment is based on the recommendation of the Electoral Matters Committee in its Report on its *Inquiry into the Provisions of the Electoral Act 2002 (Vic) Relating to Misleading or Deceptive Political Advertising* (2010).<sup>51</sup>

### **Authorisation Requirement for Letters and Cards**

Section 9 of the Bill amends section 83 of the Act which sets out the authorisation requirements for the printing and publication of electoral advertisements, handbills, pamphlets or notices (electoral matter). Section 9 of the Bill inserts a new section 83(3)(aa) into the Act in order to provide for the exemption of letters and cards – provided they bear the name and address of the sender and do not contain a representation, or purported representation of a ballot paper for use in an election – from the authorisation requirements in relation to electoral matter specified in section 83(1) of the Act.

### **Abolition of the Three-Month Rule**

Section 11 of the Bill provides for the abolition of the three-month rule, which uses the elector's principal place of residence, three months prior to election day, as a measure of the elector's entitlement to vote. The three-month rule is set out in subsection

---

<sup>50</sup> Mr Hulls, in his second reading speech, said that these amendments to group voting tickets will ensure that the Commission has sufficient time to 'print the relevant ballot papers and guard against the possibility of inadvertent informal votes being cast in favour of groups who fail to lodge a group voting ticket'. See Victoria, Legislative Assembly (2010) op. cit., p. 2304.

<sup>51</sup> See Electoral Matters Committee (2010) *Inquiry into the Provisions of the Electoral Act 2002 (Vic) Relating to Misleading or Deceptive Political Advertising*, Melbourne, Parliament of Victoria, viewed 9 July 2010, <<http://www.parliament.vic.gov.au/emc/inquiries>>.

87(1)(c) of the Act, and states that a person is entitled to vote in an election if the person is 'enrolled in respect of the address of the person's principal place of residence or the address of the place that was the person's principal place of residence during the period of 3 months immediately before election day'. Section 11 of the Bill repeals subsection 87(1)(c) of the Act.

### **Postmarking and Acceptance of Postal Vote Declarations**

Section 13 of the Bill amends section 106 of the Act in order to clarify the directions relating to the acceptance of postal votes. Section 13 of the Bill inserts new section 106(3)(aa) into the Act in order to provide that postal vote envelopes postmarked on the Sunday immediately after election day are assessed according to the witness date on the declaration, as is the case when no postmark is legible under section 106(3)(b). According to the Explanatory Memorandum, the amendment reflects the existing practice of the Commission, which seeks to reconcile the provisions in section 106(3) of the Act with Australia Post mail collection practices.

### **Enrolment on Election Day**

Section 14 of the Bill amends section 108 of the Act to provide for enrolment on election day. The heading of existing section 108 reads 'Vote of person whose name is not on the electoral roll but who is entitled to vote'. Section 14(1) of the Bill substitutes the existing heading with the new heading 'Provisional voting'. Section 14(2) of the Bill then substitutes section 108(1) of the Act with a new extended section 108(1). The existing section 108(1) states that section 108 applies if a person claims to be entitled to vote at an election, and the name of that person is not on, or cannot be found on, the relevant electoral roll. The new section 108(1) retains this provision and adds that section 108 also applies to a person who:

- (b) completes the prescribed enrolment, application and declaration form;
- (c) signs the prescribed enrolment, application and declaration form in the presence of an election official;
- (d) provides to the satisfaction of the election official –
  - (i) a form of identification prescribed for the purposes of this section: or
  - (ii) the name of a service provider from the list of service providers prescribed for the purposes of this section to enable the identification of the person.

### **Who Can Access Electronic Voting?**

Section 16 of the Bill broadens the range of people who can access electronic voting by substituting section 110D of the Act with a new section 110D. The current section 110D states that electronic voting can be accessed at an electronic voting centre by an elector who, because of a visual impairment, cannot otherwise vote without assistance. New section 110D retains this provision and adds that electronic voting can also be accessed by an elector who otherwise cannot vote without assistance because of a motor impairment, or insufficient literacy skills (whether in the English language or in their primary spoken language).

### **Auditory Description of Ballot Papers**

Section 17 of the Bill amends sections 110E, 110G and 110H of the Act, in order to clarify that electronic voting – which is dealt with in Part 6A of the Act – can include the auditory description of ballot-papers.

#### 4. Position of the Opposition and Greens Parties

The Shadow Minister for Scrutiny of Government, the Hon. David Davis MLC, presented the Coalition's position on the electoral reforms proposed by the Bill in a Media Release on 6 June 2010. Mr Davis stated the Coalition's opposition to election day enrolment. He argued that election day enrolment has the potential to undermine the integrity of the electoral roll and risks corrupting the election process in Victoria. Mr Davis said that under the proposed changes:

[A]nyone can walk into a polling booth on election day without having enrolled and simply vote. The vote will then be counted. Previous checks in the system, including VEC verification of people's residence, and citizenship, door to door checks, and postal confirmations, will not occur. This will open the way to the organised rorting of enrolments and voting in elections where the vote is close.<sup>52</sup>

Mr Davis said that election day enrolment is not needed because under the existing *Electoral Act*, a person whose name is not on the electoral roll but is entitled to vote, can make a provisional vote on the day of the election which is then checked. He further said that if the government wishes to encourage more people to vote, the better option would be to follow the Electoral Matters Committee recommendation that 'the VEC run a strong public information campaign to educate people to enrol'.<sup>53</sup> Mr Davis also stated the Coalition's opposition to the automatic enrolment of 18 year old students, and cited the arguments contained in the Minority Report authored by the Coalition Members of the Electoral Matters Committee (discussed on page 8 of this Research Brief).<sup>54</sup>

The Victorian Greens have not commented on the Bill but have articulated their views on the issues relating to voter participation in a submission to the Electoral Matters Committee inquiry. In the submission, the Greens stated their support for automatic enrolment for persons turning 18 and new citizens. They stated their tentative support for election day enrolment but called for further research into its advantages and disadvantages before determining whether it should be introduced in Victoria. They noted that 'there is considerable room for improvement in enrolment and turnout at state elections' and called for increased funding for the VEC to expand enrolment campaigns.<sup>55</sup> They stated their opposition to the current practice of removing electors from the roll, if they fail to update their details, after a change of address:

The Greens seek an end to the punitive system of dealing with changes in enrolment. When moving house updating their enrolment is generally the last thing on people's minds. The situation where someone can be removed from the roll at their old address without being informed or any effort made to enrol

---

<sup>52</sup> D. Davis (2010) 'Brumby Opens Up Election Rigging with Last Minute Changes to Electoral Act', 6 June, Media Release, viewed 21 June 2010, <<http://www.vic.liberal.org.au/News/MediaReleases/tabid/159/articleType/ArticleView/articleId/1978/categoryId/1/BRUMBY-OPENS-UP-ELECTION-RIGGING-WITH-LAST-MINUTE-CHANGES-TO-ELECTORAL-ACT.aspx>>.

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> S. Luntz (2009) *Submission to the Electoral Matters Committee Inquiry on Voter Participation and Informal Voting*, Melbourne, Australian Greens (Victoria), viewed 6 July 2010, <<http://www.parliament.vic.gov.au/emc/inquiries/article/132>>, p. 2.

them at their new address should change... We should be working to make enrolment easier, not putting obstacles in voters' way.<sup>56</sup>

The Greens further stated that electronic voting has 'a role to play in improving voter participation' but 'must be used with considerable care'. They oppose electronic voting for 'the bulk of voters' but said that the introduction of electronic voting for the vision impaired was 'a worthy initiative' and with 'proper assessment', they would support 'moderate expansion'.<sup>57</sup>

## 5. Other Jurisdictions

Electoral procedures in each Australian jurisdiction are subject to some variation. The Commonwealth and each state and territory has its own constitutional requirements, electoral act, and separate statutory authority for the conduct of elections. The reform of Australian electoral procedures is currently being considered across Commonwealth and state and territory governments. The Commonwealth is examining options to modernise enrolment procedures and harmonise Australia's electoral laws.

Notably, in December 2009, NSW was the first Australian jurisdiction to pass legislation to permit automatic and election day enrolment. The enrolment procedures in NSW are now set to be significantly different to those in other Australian jurisdictions. The NSW reforms complicate the NSW Electoral Commission's Joint Roll Arrangement with the AEC, and have implications for the potential harmonisation of Australian electoral laws. If the Electoral Amendment (Electoral Participation) Bill (2010) is passed, Victoria will follow NSW to be the second Australian jurisdiction to introduce automatic and election day enrolment. The other states, the territories, and the Commonwealth currently do not permit automatic and election day enrolment.<sup>58</sup> However, the Commonwealth is considering introducing the reforms.

This section of the Research Brief provides a short outline of the Commonwealth's actions regarding the potential harmonisation of Australia's election laws. It then provides an overview of the NSW electoral reforms and the potential implications for the conduct of Commonwealth elections. The electoral systems and strategies employed to increase electoral participation in the overseas jurisdictions of the UK, USA, Canada, and NZ are discussed in detail in the Victorian Electoral Matters Committee's Report on its *Inquiry into Voter Participation and Informal Voting*.<sup>59</sup>

### Harmonisation of Australian Electoral Laws

The Commonwealth Government is currently considering issues relating to electoral reform and the harmonisation of certain aspects of Australian electoral laws. It has released two Green Papers on electoral reform for public comment. The production of both Green Papers involved meetings of federal, state and territory ministers with responsibility for electoral matters. *The Electoral Reform Green Paper – Donations, Funding, Expenditure* was released in December 2008 and the *Electoral Reform Green Paper – Strengthening Australian Democracy* was released in September 2009. The second Green Paper examined options to increase participation in elections, including:

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*, p. 3.

<sup>58</sup> The Electoral Council of Australia website provides a table comparing the electoral systems of Australia's parliaments. See Electoral Council of Australia (2009) *Electoral Systems of Australia's Parliaments and Local Government*, Canberra, ECA, viewed 7 July 2010, <<http://www.eca.gov.au/>>.

<sup>59</sup> See Electoral Matters Committee (2009) *op. cit.*, pp. 22-24, 46-48, 198-206.

improving enrolment processes; improving civic education; amending and harmonising rules for voting; and improving and harmonising the accessibility of voting services.<sup>60</sup> It stated that harmonisation can offer a range of benefits, including that it can:

- Create efficiencies, by reducing duplication across different levels of government;
- Ensure greater certainty, if consistent rules apply across all jurisdictions;
- Reduce compliance costs for those who must comply with multiple regulatory regimes across jurisdictions; and
- Improve the effectiveness and integrity of laws by removing regulatory inconsistencies.<sup>61</sup>

The Green Paper proposed that harmonisation can be effected through a range of mechanisms, including 'cooperative schemes negotiated between jurisdictions, the enactment of complementary legislation by different levels of government, or the referral of state powers to the Commonwealth'.<sup>62</sup>

In the second reading speech, for the Electoral Participation Bill, Mr Hulls noted the importance of considering the Bill in the context of current electoral reform across Australia. He said that 'Victoria will continue to work closely with the Commonwealth and other states and territories, to examine options to harmonise electoral law' and in 'the meantime, the measures in the Bill aim to make the Victorian electoral system as accessible as possible'.<sup>63</sup>

### **New South Wales**

The NSW Government introduced the Parliamentary Electorate and Elections Amendment (Automatic Enrolment) Bill on 12 November 2009. The Bill provided for automatic enrolment and election day enrolment for voters in NSW elections. The Bill was passed without amendments on 1 December 2009 and assented to on 14 December 2009. In the second reading speech, the NSW Parliamentary Secretary, the Hon. Penny Sharpe MLC, explained that the Bill assigns responsibility for the preparation of rolls for state and local government elections to the NSW Electoral Commissioner, and allows the Commissioner to enrol eligible NSW voters and update the details of voters who are already enrolled via data held by other agencies.<sup>64</sup> Accordingly, NSW will no longer rely on the AEC to manage electoral rolls for NSW elections. There will be two different enrolment regimes operating for NSW voters: one at the state level and one at the Commonwealth level.<sup>65</sup>

The key features of the NSW legislation can be summarised as follows:

- To facilitate automatic enrolment of electors on the rolls for NSW state elections and NSW local government elections;

---

<sup>60</sup> Australian Government (2010) *Electoral Reform Green Paper – Strengthening Australian Democracy*, Canberra, Department of Premier and Cabinet, viewed 8 July 2010, <[http://forums.pmc.gov.au/Electoral\\_Reform\\_Green\\_Paper](http://forums.pmc.gov.au/Electoral_Reform_Green_Paper)>.

<sup>61</sup> Australian Government (2009) *Electoral Reform Green Paper – Strengthening Australian Democracy*, Canberra, Department of Premier and Cabinet, viewed 7 July 2010, <[http://www.dpms.gov.au/consultation/elect\\_reform/strengthening\\_democracy/index.cfm](http://www.dpms.gov.au/consultation/elect_reform/strengthening_democracy/index.cfm)>, pp. 26-27.

<sup>62</sup> *ibid.*, p. 27.

<sup>63</sup> Victoria, Legislative Assembly (2010) *op. cit.*, p. 2305.

<sup>64</sup> New South Wales, Legislative Council (2009) *Debates*, 12 November, p. 19519.

<sup>65</sup> *ibid.*

- To allow eligible NSW electors to enrol and cast a provisional vote on polling day, subject to being able to produce a valid NSW driver licence or Photo Card issued by the NSW Roads and Traffic Authority;
- To centralise the processing of postal vote applications and to allow such applications to be made on-line;
- To allow for pre-poll voting places to be operated outside of NSW (for example, in interstate capital cities and overseas); and
- To make miscellaneous amendments to improve the conduct of NSW elections.<sup>66</sup>

### **Commonwealth Inquiry into NSW Automatic Enrolment Legislation**

In February 2010, the Commonwealth Joint Standing Committee on Electoral Matters (JSCEM) tabled the results of an inquiry into the NSW automatic enrolment legislation, in terms of its implications for the conduct of federal elections. The JSCEM Report concluded that the NSW legislation could have serious implications for the conduct of Commonwealth elections if similar provisions are not incorporated in amendments to the *Commonwealth Electoral Act 1918*. It stated that:

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.<sup>67</sup>

The JSCEM Report then stated the Committee's view that legislative change is required at the Commonwealth level to complement the new NSW legislation, in order to more effectively address declining enrolment participation across Australia, and reduce the potential for elector confusion that would likely result from two different enrolment systems operating at the Commonwealth and state level.<sup>68</sup> The Committee accordingly recommended that the *Commonwealth Electoral Act 1918* be amended to firstly allow the AEC to automatically enrol electors on the basis of data provided by trusted agencies, and secondly to allow for election day enrolment, subject to the elector being able to produce suitable identification to the AEC.<sup>69</sup>

The JSCEM Report into the NSW legislation contained a Dissenting Report, authored by the four Coalition members of the Committee. The Dissenting Report recorded the Coalition members' opposition to the recommendations of the government majority regarding the application of automatic and election day enrolment procedures to the Commonwealth electoral roll.<sup>70</sup> It emphasised that the responsibility to enrol to vote lies with the individual and that complying with current enrolment requirements is not especially difficult.<sup>71</sup>

---

<sup>66</sup> Commonwealth Joint Standing Committee on Electoral Matters (2010) *Inquiry into the Implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the Conduct of Commonwealth Elections*, February 25, Canberra, Parliament of the Commonwealth of Australia, viewed 1 July 2010, <<http://www.aph.gov.au/house/committee/em/reports.htm>>, p. 5.

<sup>67</sup> *ibid.*, p. 21.

<sup>68</sup> *ibid.*, pp. 21-22.

<sup>69</sup> *ibid.*, pp. 22-23.

<sup>70</sup> *ibid.*, p. 25.

<sup>71</sup> *ibid.*, pp. 25-26.

The Dissenting Report stated that, the fact that NSW has moved to change its enrolment procedures, does not mean that the changes should be adopted at the federal level, simply to avoid elector confusion.<sup>72</sup> It stated the Coalition members' concerns regarding the updating of elector records though data received from 'trusted agencies', when that data has not been collected specifically for the purpose of updating the electoral roll and may not be accurate. It stated that updating the roll through third party information may also invite public questioning over the validity of the roll or the lack of transparency in its upkeep.<sup>73</sup> It also recorded the Coalition members' opposition to election day enrolment on the grounds that it will 'expose the roll to fraudulent enrolments and potentially cause significant delays on Election Day'.<sup>74</sup> The Dissenting Report concluded that:

Such changes to the Commonwealth Electoral Act 1918 as recommended in the inquiry could exacerbate perceptions in the community of the electoral system being flawed. It is more important to have a system that takes every step to maintain the integrity of the processes involved than to undertake untested measures to increase enrolment numbers.<sup>75</sup>

---

<sup>72</sup> *ibid.*, p. 31.

<sup>73</sup> *ibid.*, p. 29.

<sup>74</sup> *ibid.*, p. 30.

<sup>75</sup> *ibid.*, p. 32.

## References

### Relevant Legislation

*Commonwealth Electoral Act 1918*

*Electoral Act 2002 (Vic)*

*Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW)*

### Bibliography

Australian Government (2009) *Electoral Reform Green Paper – Strengthening Australian Democracy*, Canberra, Department of Premier and Cabinet, viewed 7 July 2010, <[http://www.dpmc.gov.au/consultation/elect\\_reform/strengthening\\_democracy/index.cfm](http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/index.cfm)>

Australian Government (2010) *Electoral Reform Green Paper – Strengthening Australian Democracy*, Canberra, Department of Premier and Cabinet, viewed 8 July 2010, <[http://forums.pmc.gov.au/Electoral\\_Reform\\_Green\\_Paper](http://forums.pmc.gov.au/Electoral_Reform_Green_Paper)>.

Commonwealth Joint Standing Committee on Electoral Matters (2010) *Inquiry into the Implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the Conduct of Commonwealth Elections*, February 25, Canberra, Parliament of the Commonwealth of Australia, viewed 1 July 2010, <<http://www.aph.gov.au/house/committee/em/reports.htm>>.

Davis, D (2010) 'Brumby Opens Up Election Rigging with Last Minute Changes to Electoral Act', 6 June, Media Release, viewed 21 June 2010, <<http://www.vic.liberal.org.au/News/MediaReleases/tabid/159/articleType/ArticleView/articleId/1978/categoryId/1/BRUMBY-OPENS-UP-ELECTION-RIGGING-WITH-LAST-MINUTE-CHANGES-TO-ELECTORAL-ACT.aspx>>.

Electoral Council of Australia (2010) *Electoral Systems of Australia's Parliaments and Local Government*, Canberra, ECA, viewed 7 July 2010, <<http://www.eca.gov.au/>>.

Electoral Matters Committee (2009) *Inquiry into Voter Participation and Informal Voting: Report to Parliament*, Melbourne, Parliament of Victoria, viewed 12 June 2010, <<http://www.parliament.vic.gov.au/emc/inquiries>>.

Electoral Matters Committee (2010) *Inquiry into the Provisions of the Electoral Act 2002 (Vic) Relating to Misleading or Deceptive Political Advertising*, Melbourne, Parliament of Victoria, viewed 9 July 2010, <<http://www.parliament.vic.gov.au/emc/inquiries>>.

Luntz, S (2009) *Submission to the Electoral Matters Committee Inquiry on Voter Participation and Informal Voting*, Melbourne, Australian Greens (Victoria), viewed 6 July 2010, <<http://www.parliament.vic.gov.au/emc/inquiries/article/132>>.

Victorian Electoral Commission (2009) Annual Report 2008-09, Melbourne, VEC, viewed 21 July 2010, <<http://www.vec.vic.gov.au/>>.

© 2010 Library, Department of Parliamentary Services, Parliament of Victoria

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by Members of the Victorian Parliament in the course of their official duties.

### **Research Service**

This paper has been prepared by the Research Service for use by Members of the Victorian Parliament. The Service prepares briefings and publications for Parliament in response to Members, and in anticipation of their requirements, undertaking research in areas of contemporary concern to the Victorian legislature. While it is intended that all information provided is accurate, it does not represent professional legal opinion.

Research publications present current information as at the time of printing. They should not be considered as complete guides to the particular subject or legislation covered. The views expressed are those of the author(s).

### **Author**

Dr. Catriona Ross  
Research Officer  
Victorian Parliamentary Library

### **Enquiries**

Enquiries should be addressed to:  
Dr. Greg Gardiner  
Senior Research Officer  
Victorian Parliamentary Library  
Parliament House  
Spring Street, Melbourne

Telephone (03) 9651 8640  
Facsimile (03) 9654 1339

Information about Research Publications is available on the Internet at:  
<http://www.parliament.vic.gov.au>