

Enrolment is not an end in itself; it is an instrument for ensuring, firstly, that eligible people are able to exercise their fundamental right to participate in the governance of the country, and, secondly, that those rights are not compromised by people who have no right to do so.¹

Introduction

- 1.1 On 1 December 2009 the Special Minister of State, Senator the Hon Joe Ludwig, referred the New South Wales Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill to the committee for inquiry and report by 25 February 2010. The Minister requested that the committee inquire into the implications of the Bill for the conduct of Commonwealth elections, including any consequences for the enrolment of persons living in NSW for the purposes of Commonwealth elections.²
- 1.2 The Bill was introduced into the NSW Parliament on 12 November 2009 by the Hon Penny Sharpe MLC, on behalf of the Hon John Hatzistergos MLC, Minister for Citizenship. The Bill was passed by the NSW Parliament on 1 December 2009 and assented to on 14 December 2009. The *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW)*³ is available online.⁴

1 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 1.

2 See inquiry Terms of Reference.

3 Long title: *An Act to amend the Parliamentary Electorates and Elections Act 1912 in relation to the preparation of electoral rolls by the Electoral Commissioner; to make miscellaneous amendments to that Act; and for other purposes.*

4 <<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+102+2009+cd+0+N>>.

- 1.3 The *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009* (NSW) amends the *Parliamentary Elections and Elections Act 1912* (NSW) and, among other things, gives effect to a smart electoral enrolment ('Smart Roll') system concept that has been developed in the State to introduce a new automatic enrolment system for state and local government elections in NSW. The Smart Roll system operates around the notion that there are alternative ways for electors to be enrolled and to notify a change in their enrolment details, particularly where such information has already been provided to other government agencies.⁵ The Act also allows for enrolment for provisional voting on the day of polling, subject to adequate identification being produced.
- 1.4 The Australian Electoral Commission (AEC) has indicated that it is 'strongly supportive' of the changes which allow NSW to add to and update their roll based on Smart Roll processes.⁶

Rationale for the legislation

- 1.5 The Second Reading Speech describes the basis of the new NSW legislation as being 'to address the declining rate of electoral participation in Australia.'⁷ Introducing the legislation, the Hon Penny Sharpe MLC referred to NSW Electoral Commission estimates that only 90 per cent of the eligible voting population in the state are enrolled. She indicated that this represented a decline of about five per cent over the last two election cycles and identified one of the most significant reasons for this decline as being that 'enrolment procedures have not kept pace with developments in technology.'⁸ Ms Sharpe stated that:

Electoral authorities are becoming very efficient at taking people off the roll, but not at keeping them on.⁹

- 1.6 NSW estimates are consistent with AEC estimates of national electoral enrolment decline. At the end of December 2009 an estimated 1.39 million eligible Australians were not on the electoral roll and therefore effectively excluded from Australia's democratic processes. Enrolment participation

5 Joint Standing Committee on Electoral Matters, Parliament NSW Legislative Assembly, *Inquiry into voter enrolment, Report No. 3 - September 2006*, Sydney, NSW, p. 26.

6 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 3.

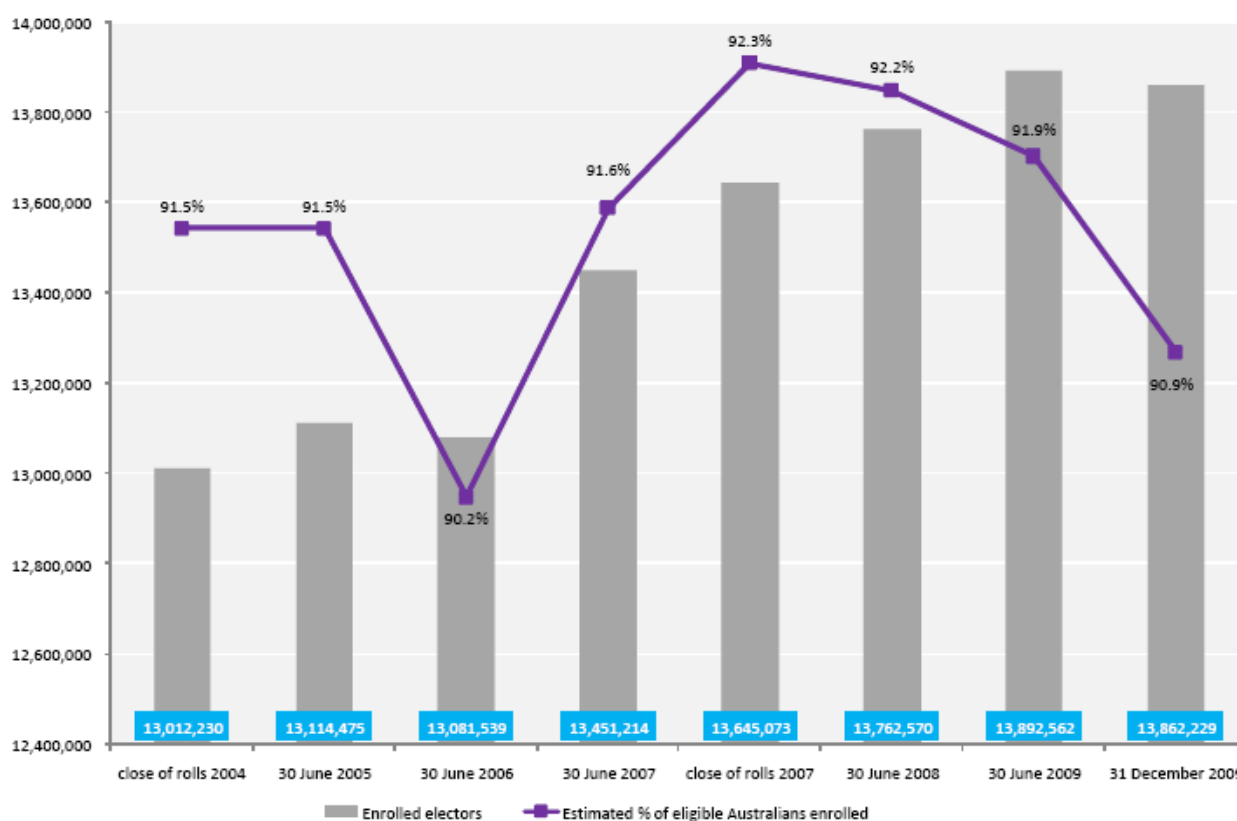
7 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

8 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

9 NSW Parliamentary Debates, Legislative Council, 12 November 2009, p. 19518.

levels dropped from an estimated 92.3 per cent at the 2007 election to 90.9 per cent at the end of 2009 despite routine enrolment stimulation and roll maintenance activities undertaken by the AEC during this period.¹⁰ The decline in the percentage of enrolled electors as a proportion of the eligible population is shown in Figure 1.1.

Table 1.1 Number of enrolled electors and estimated eligible enrolled population, close of rolls 2004 to 31 December 2009



Source: Australian Electoral Commission, *Submission no. 2*, p. 7.

1.7 In its submission to the Australian Government Electoral Reform Green Paper, the AEC stated that:

...declining participation rates, in part caused and perpetuated by enrolment processes resulting from overly prescriptive legislation, present the most serious threat to Australia's democratic model.¹¹

1.8 The AEC has previously indicated to the committee that it is eager to modernise the electoral enrolment process where it is possible to do so

¹⁰ Australian Electoral Commission, *Submission no. 2*, p. 6.

¹¹ Australian Electoral Commission, *Submission to Australian Government Electoral Reform Green Paper – Sept 2009: "Strengthening Australia's Democracy"*, p. 6.

without jeopardising the integrity of the electoral roll. While it has received some criticism in the past for focussing on 'short-term temporary fixes to roll stimulation', the AEC suggests that this is due to the limited tools at its disposal under existing provisions of the Commonwealth Electoral Act relating to enrolment processes. AEC Commissioner, Mr Ed Killesteyn, stated:

I can assure you the AEC is ready to innovate if it is given the tools to do so.¹²

- 1.9 NSW has been examining electoral reform relating to enrolment and electoral administration through its *Smart Electoral Enrolment Register Project* (the 'Smart Roll' Project). The NSW Parliament's Joint Standing Committee on Electoral Matters has recommended extensive reforms in these areas in a number of recent reports.¹³ The Smart Roll Project has been overseen by the NSW Electoral Commission and the AEC accepted an invitation to provide representation on the project's working party.¹⁴ While the NSW legislation represents 'a fundamental change in the manner in which electoral roll administration has been engineered in Australia', the AEC acknowledged that it is not unique and reflects existing practice in other countries.¹⁵
- 1.10 The NSW Government has indicated that the Smart Roll system is expected to be introduced prior to the 26 March 2011 NSW State General Election.¹⁶

Key features of the legislation

- 1.11 Explanatory notes relating to the NSW Automatic Enrolment Bill describe that the object of the legislation is to amend the *Parliamentary Electorates and Elections Act 1912 (NSW)* so as:

12 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2009, p. 2.

13 A full list of NSW JSC EM reports are available at: <<http://www.parliament.nsw.gov.au/electoralmatters>>.

14 Australian Electoral Commission, Submission no. 169.1 to the JSC EM inquiry into the conduct of the 2007 federal election.

15 Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2009, p. 3.

16 NSW Electoral Commission, *Submission to Australian Government Electoral Reform Green Paper – Sept 2009: "Strengthening Australia's Democracy"*, 27 November 2009, p. ii.

- to facilitate automatic enrolment of electors on the rolls for NSW state elections and NSW local government elections;
- 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.¹⁷

1.12 In evidence to the committee, NSW Electoral Commissioner, Mr Colin Barry, stated that there were four aims of the Smart Roll process:

- to reduce the number of eligible NSW electors missing from the electoral roll;
- to improve the time in which electors' address details are changed when they move address;
- to improve the quality of the enrolment register in NSW; and
- to provide electors and citizens with a simpler system to enrol and have their addresses updated.¹⁸

Impact of the NSW legislation on existing electoral roll arrangements

1.13 The NSW automatic enrolment legislation has implications for existing electoral roll arrangements between the Commonwealth and NSW. Implementation of automatic enrolment for NSW electors will involve a departure from current processes whereby the AEC maintains electoral rolls for state, territory and local government elections through joint roll agreements with the states and territories. Under the joint roll agreements, electors only need to complete one form to enrol for Federal, State and local government elections.

1.14 The Joint Roll Arrangements (JRAs) are bilateral agreements between the Commonwealth and each state/territory to provide a single point of

17 Explanatory notes to the Bill are available online at:
<http://www.austlii.edu.au/au/legis/nsw/bill_en/peaeaeb2009673/>.

18 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 5.

electoral enrolment. Most JRAs also provide for the maintenance of a joint electoral roll, for Commonwealth, state/territory and local government.

- 1.15 Under the authority of the *Commonwealth Electoral Act 1918*, the AEC obtains information for updating the Commonwealth Electoral Roll from other agencies, who supply the AEC with change of address data and new clients' details.
- 1.16 If the AEC receives information that a person is no longer living at their enrolled address, a notice is sent to the elector's enrolled address advising that their name will be removed if a satisfactory reply is not received. When the elector completes an electoral enrolment form for their new address, the elector is then placed back onto the electoral roll.
- 1.17 Under the new NSW legislation (Part 4, Section 26), the NSW Electoral Commissioner will assume responsibility for preparing and maintaining a roll for each NSW electoral district using enrolment data supplied by the Commonwealth and data held by various NSW government agencies.
- 1.18 It was acknowledged by the NSW Government that a new arrangement concerning the exchange of enrolment information would need to be negotiated between the Commonwealth and NSW before automatic enrolment can be implemented. During debate on the legislation, Mr Robert Furolo MP stated:
- ...the bill contains new joint roll arrangement provisions to enable the Governor and the Governor-General to make arrangements for the exchange of enrolment information, rather than joint electoral rolls. A new arrangement based on the exchange of enrolment information must be negotiated before automatic enrolment can be implemented in New South Wales. It is anticipated that the new arrangements will be modelled on those entered into by the Commonwealth and Victoria in 2004.¹⁹
- 1.19 The AEC advised during the public hearing on 2 February 2010 that it had not yet started negotiating with the NSW Electoral Commission about a new joint roll agreement.²⁰

Automatic enrolment provisions

- 1.20 Provisions of the new legislation which allow the automatic enrolment of persons in certain circumstances are included at Section 29 of the
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¹⁹ NSW Parliamentary Debates, Legislative Assembly, 1 December 2009, p. 20335.

²⁰ Mr E. Killesteyn (Australian Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 11.

Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW). Under this section, if the NSW Electoral Commissioner, at any time, believes that a person who is not enrolled is entitled to be enrolled for a district, the Commissioner may enrol the person. However, the Act provides that the Commissioner must not do so without first contacting the person concerned in writing (including by email or SMS text message) and allow them at least seven days to provide the Commissioner with reasons as to why they should not be enrolled in a district.

- 1.21 If no response is provided within the specified time period, or if a response is provided but the Electoral Commissioner still believes that the person is entitled to be enrolled for the district, the Commissioner is to enrol the person for the district, and notify the person in writing that he or she has been enrolled for that district.
- 1.22 Section 47 imposes an obligation on certain persons and bodies to provide information to the NSW Electoral Commissioner on request, which in the opinion of the Electoral Commissioner is required in connection with the preparation, maintenance or revision of rolls. These persons and bodies include:
- a) a person employed in a public sector service (within the meaning of the Public Sector Employment and Management Act 2002),
 - b) a police officer,
 - c) a member of staff of a council within the meaning of the Local Government Act 1993,
 - d) Sydney Water Corporation,
 - e) a distribution network service provider within the meaning of the Electricity Supply Act 1995,
 - f) a university established or constituted by an Act of New South Wales,
 - g) an elector or person entitled to be enrolled.

Provisions enabling eligible persons to enrol and cast a provisional vote on polling day

- 1.23 Schedule 1[14] of the *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009* (NSW) facilitates the ability for eligible persons to enrol in a NSW district and cast a provisional vote in an election for that district on election day – subject to the person concerned

being able to produce as proof of identity a driver licence or a NSW Photo Card.

- 1.24 During the committee's hearing, NSW Electoral Commissioner, Mr Colin Barry, elaborated on the Commission's preliminary thinking about how election day enrolment may proceed, while acknowledging that the legislation had only recently been passed and that there was still work to be done on various aspects. Mr Barry stated:

Certainly all our advertising would be directed strongly to people to enrol or update their enrolment before the issue of the writ. Once the writ is issued, our advertising strategy would change along the lines that, if you have not enrolled in time, all is not lost. There is a savings provision: you can turn up on election day and enrol. If you turn up on election day, you will only be able to enrol and vote if you have a New South Wales drivers licence or a proof of identity card issued by the New South Wales RTA for the address that is on that identification. You will fill out a declaration in much the same way as the declaration is currently on the purple form. That ballot paper will go into a declaration envelope – in a sense it is a declaration vote.²¹

Conduct of the inquiry

- 1.25 The committee advertised the inquiry on its website and in *The Australian* on 14 December 2009. Relevant stakeholders were invited to make submissions to the inquiry by 22 January 2010.
- 1.26 The committee received 5 submissions, which are listed at Appendix A. A public hearing was held in Canberra on 2 February 2010. A list of witnesses who appeared before the committee is included in Appendix B. Copies of the submissions and the public hearing transcript are available from the committee's website at: <<http://www.aph.gov.au/em>>.

Structure of the report

- 1.27 The report consists of two chapters including this introduction. Chapter two examines the main issues arising from the enactment of the NSW

21 Mr C. Barry (NSW Electoral Commission), *Transcript of Evidence*, 2 February 2010, p. 7.

Automatic Enrolment legislation with respect to its implications for the conduct of Commonwealth elections and is followed by the committee's conclusions and recommendations.

