



## Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010

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## **Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010**

**Date introduced:** 2 June 2010

**House:** House of Representatives (the Bill passed the House on 16 June 2010)

**Portfolio:** Special Minister of State

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

**Links:** The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### **Purpose**

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

- fix the seventh day after the issue of federal election writs as the date for the close of rolls, and
- repeal the evidence of identity requirements for provisional electors and provide for a signature checking procedure.

The Bill reproduces Schedules 1 and 2 of the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010. The Bill is one of a package of four electoral Bills introduced into the House of Representatives on 2 June 2010.

### **Background**

#### **2006 Howard Government amendments to the *Commonwealth Electoral Act 1918***

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

- the introduction of evidence of identity requirements for enrolments and provisional voting

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- changing the date for the close of rolls from the seventh day after the issue of the federal election writs to the third working day after the issue of the writs for certain categories of enrolment (for updating details; for those turning 18 years of age between the issue of the writs and polling day; and for those gaining citizenship between the issue of the writs and polling day), and
- changing the date for the close of rolls from the seventh day after the issue of the federal election writs to the date of the issue of the writs for other new enrolments and re-enrolments.<sup>1</sup>

The measures in the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) were controversial and were opposed by the Australian Labor Party (ALP) (then in Opposition) and by the minor parties.<sup>2</sup>

### **Basis of policy commitment**

The Second Reading speech states that the Bill fulfils two ALP election commitments.<sup>3</sup> In its 2007 National Platform the ALP indicated that it would reverse a number of the 2006 Howard Government changes to electoral administration including the changes to the date for the close of rolls and evidence of identity requirements.<sup>4</sup>

The Second Reading speech also indicates that the Bill implements recommendations arising from the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the conduct of the 2007 federal election and related matters (referred to the JSCEM by the

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1. *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth). This Act is available online at:  
<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/DB7BE4E22B6B49BFCA257497002DC413?OpenDocument>
  2. See 'Second reading speeches: Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2006', Senate, *Debates*, 16 June 2006, pp. 1–93, viewed 18 June 2010,  
[http://parlinfo.parlInfo/download/chamber/hansards/2006-06-16/toc\\_pdf/4788-2.pdf;fileType=application%2Fpdf#search=%22electoral%20integrity%22](http://parlinfo.parlInfo/download/chamber/hansards/2006-06-16/toc_pdf/4788-2.pdf;fileType=application%2Fpdf#search=%22electoral%20integrity%22)
  3. G Gray, 'Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010', House of Representatives, *Debates*, proof, 2 June 2010, p. 8, viewed 18 June 2010,  
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2010-06-02%2F0025%22>
  4. ALP, *National Platform and Constitution 2007*, ALP, Canberra, 2007, pp. 181, 189, viewed 18 June 2010,  
[http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/download/now/2007\\_national\\_platform.pdf](http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/download/now/2007_national_platform.pdf)

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Special Minister of State on 27 February 2008 and by the Senate on 12 March 2008).<sup>5</sup> In its inquiry report (June 2009), a majority of the JSCEM made 53 recommendations relating to a range of electoral administration matters including the date for the close of rolls, evidence of identity, enrolment and participation, pre-poll voting, informal voting, electoral administration, penalties, prisoner voting rights, and overseas electors.<sup>6</sup> Specific recommendations relevant to the Bill included:

- fixing the date for the close of rolls to seven days after the date of federal election writs (Recommendation 1)
- repeal of the evidence of identity requirements for provisional electors and the introduction of a signature checking process for declaration votes where necessary (Recommendation 2)

### **Broader electoral reform agenda**

The Bill is part of the Government's broader electoral reform agenda. In December 2008 the Government issued a green paper examining electoral finance reform issues, and in September 2009 a second green paper was issued examining broader electoral reform issues.<sup>7</sup> Both green papers identified reform possibilities and invited comment.

In 2008 and 2009 the Government introduced Bills making significant changes to the law relating to electoral funding, political donations, disclosure and reporting, and certain offences and penalties.<sup>8</sup> The 2008 Bill was defeated in the Senate in March 2009 and the

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5. G Gray, 'Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010', op. cit., p. 8. Terms of reference and other documentation for the Joint Standing Committee on Electoral Matters' inquiry, including the inquiry report, are available at the Committee website:  
<http://www.aph.gov.au/house/committee/em/elect07/tor.htm>
  6. Joint Standing Committee on Electoral Matters (JSCEM), *Report on the conduct of the 2007 federal election and matters related thereto*, JSCEM, Canberra, 2009, pp. xxiii–1, viewed 18 June 2010, <http://www.aph.gov.au/house/committee/em/elect07/report2/Final.pdf>
  7. Australian Government, *Electoral reform green paper—donations, funding and expenditure*, Australian Government, Canberra, December 2008, viewed 18 June 2010, [http://www.dpmc.gov.au/consultation/elect\\_reform/docs/electoral\\_reform\\_green\\_paper.pdf](http://www.dpmc.gov.au/consultation/elect_reform/docs/electoral_reform_green_paper.pdf); Australian Government, *Electoral reform green paper—strengthening Australia's democracy*, Australian Government, Canberra, September 2009, viewed 18 June 2010, [http://www.dpmc.gov.au/consultation/elect\\_reform/strengthening\\_democracy/docs/strengthening\\_australias\\_democracy.pdf](http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy.pdf)
  8. Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009. These Bills and associated documentation, including Bills Digests, can be accessed at:  
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs627%22> (2008 Bill),

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2009 Bill, which is a revised version of the 2008 Bill, was introduced and passed in March 2009 in the House of Representatives and is currently before the Senate.

### **The original Bill—the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010**

On 11 February 2010 the Government introduced the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 into the House of Representatives. Schedules 1 and 2 of that Bill contained the same provisions relating to the close of rolls and evidence of identity requirements for provisional electors as the current Bill. The original Bill also included a range of other provisions to:

- make provision for electronic updating of electors' details
- enable the AEC to process enrolment transactions outside the electoral division for which a person is enrolling
- 'enable pre-poll votes cast in an elector's 'home' division to be cast and counted as ordinary votes, wherever practicable'
- 'restrict the number of candidates that can be endorsed by a political party in each Division', and
- enable electronic voting for sight-impaired electors.<sup>9</sup>

The original Bill was passed by the House of Representatives on 10 March 2010 and introduced into the Senate on 15 March 2010. The Bill is still before the Senate.

The current Bill reproduces Schedules 1 and 2 of the original Bill. The remaining provisions of the original Bill are now contained in the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010, which was also introduced into the House of Representatives on 2 June 2010 and which passed the House on 16 June 2010 and the Senate on 17 June 2010.<sup>10</sup>

In addition, two further electoral Bills were introduced into the House of Representatives on 2 June 2010: the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (How-to-Vote Cards

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4073%22> (2009 Bill).

9. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 1; Supplementary Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, p. 2.
10. Australia, House of Representatives, *Votes and proceedings*, proof, no. 168, 2008–09–10, p. 1854; Australia, Senate, *Journals*, proof, no. 125, 2008–10, p. 3602.

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and Other Measures) Bill 2010. These Bills passed the House of Representatives on 16 June 2010 and were introduced into the Senate on 16 June 2010.<sup>11</sup>

## Referral to committee

On 13 May 2010 the Senate referred the provisions of ‘all bills introduced into the House of Representatives after 13 May 2010 and before 3 June 2010 that contain provisions commencing on or before 1 July 2010’ to Senate committees for consideration and report by 15 June 2010.<sup>12</sup>

On 15 June 2010 the Senate Finance and Public Administration Legislation Committee tabled a report in the Senate indicating that the Committee had considered both the Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010 and the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010, and had ‘determined that there are no substantive matters that require examination’.<sup>13</sup>

## Opposition and minor party positions

Consistent with its stance in relation to Schedules 1 and 2 of the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010, the Opposition opposes the Bill.<sup>14</sup> The Opposition’s stance is also consistent with the JSC EM Opposition members’ dissent, in the Committee’s report on the 2007 election, from the majority

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11. Australia, House of Representatives, *Votes and proceedings*, proof, no. 168, 2008–09–10, pp. 1854–57; Australia, Senate, *Journals*, proof, no. 124, 2008–10, p. 3582.

12. Australia, Senate, *Journals*, proof, no. 122, 2008–10, p. 3485.

13. Australia, Senate, *Journals*, proof, no. 123, 2008–10, pp. 3558–59.

14. A Robb, ‘Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010; Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Bill 2010; Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010; Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010’, House of Representatives, *Debates*, proof, 15 June 2010, p. 31, viewed 18 June 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-06-15%2F0057%22>. See also J Hockey, ‘Second reading speech: Electoral and Referendum (Close of Rolls and Other Measures) Bill 2010’, House of Representatives, *Debates*, 25 February 2010, p. 1850, viewed 18 June 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-25%2F0021%22>

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recommendations concerning the close of rolls and evidence of identity for provisional electors.<sup>15</sup>

The Australian Greens endorsed the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 but also proposed amendments creating offences for inaccurate and misleading electoral advertising and for pre-election automated telephone calls to electors intended to affect voting.<sup>16</sup> The Greens may propose such amendments again in relation to the current Bill. The Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 proposes to bring material published by telephone or the internet within the existing provisions in the Electoral Act prohibiting the printing, publication or distribution of misleading or deceptive material.<sup>17</sup>

Independent Senator Nick Xenophon proposed amendments to the original Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010 retaining the existing evidence of identity requirements for provisional electors in the *Commonwealth Electoral Act 1918* but also providing for a signature checking procedure which, if satisfied, would mean that the evidence of identity requirements did not apply.<sup>18</sup> Senator Xenophon may propose such amendments again in relation to the current Bill.

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

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15. JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 323–33.
  16. S Hanson-Young, ‘Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill 2010’, Senate, *Debates*, 17 March 2010, pp. 2149–50, viewed 18 June 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2010-03-17%2F0194%22>. The Australian Greens’ proposed amendments are available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4306%22>
  17. The Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010 and associated documentation including the Bills Digest are available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4387%22>
  18. Senator Xenophon’s proposed amendments are available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4306%22>

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## Financial implications

The Government estimates that the cost of implementing the measures in the Bill will be just over \$0.2 million.<sup>19</sup>

## Summary of key measures in the Bill

### Schedule 1—close of rolls

Currently under the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Cth) (the Referendum Act) the electoral and referendum rolls close on the third working day after the issue of the federal election/referendum writs for those updating their details and for those turning 18 years of age or gaining citizenship between the issue of the writs and polling day. For other new enrolments and for re-enrolments the electoral rolls close on the date of the issue of the writs. The rolls close at 8 pm on the relevant day as this is the deadline by which claims or applications for enrolment must be made.

The Bill proposes to amend the Electoral Act and Referendum Act so as to fix the seventh day after the issue of the federal election/referendum writs as the date for the close of the rolls. This closure date would apply for all categories of enrolment including new enrolments, updating details, those applying for enrolment at 17 years of age, and applications for enrolment from eligible overseas electors, itinerant electors, and those set to gain citizenship between the issue of the writs and polling day. The deadline for the making of claims or applications for enrolment (and therefore the point at which the rolls would close) would be 8 pm on the seventh day after the issue of the writs.

The new date for the close of the rolls would also apply to the removal of electors from the rolls resulting from an objection to their enrolment, so that removal could not occur between 8 pm on the day of the close of rolls and the close of polling on polling day.

The Second Reading speech states that the new measures in Schedule 1 will ‘provide sufficient time for new voters to enrol to vote for a federal election or existing electors to update their address details with the AEC’.<sup>20</sup> Reversal of the reduction in the close of rolls changes introduced by the Howard Government in 2006 has been ALP policy since before the 2007 election (see above). The main issues in contention in relation to roll closure

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19. Explanatory Memorandum, *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010*, p. 1.
  20. G Gray, ‘Second reading speech: *Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010*’, op. cit., p. 8.

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have been electoral roll integrity and voting fraud and restriction of the vote/disenfranchisement.<sup>21</sup>

Whereas currently the Electoral Act and Referendum Act both specify that the close of rolls is to take place on the third working day after the issue of the writs (defined as any day except a Saturday, Sunday or a public holiday in any state or territory), the proposed amendments fixing the seventh day after the issue of the writs as the date for the close of rolls does not specify that the seventh day must be a working day. The Bill proposes to repeal the current definition of ‘working day’ from the Electoral Act and the Referendum Act. In relation to the latter Act, the Explanatory Memorandum states this is because it is ‘now otiose’.<sup>22</sup>

## **Schedule 2—evidence of identity for provisional electors**

Currently under the Electoral Act and the Referendum Act electors casting provisional votes at elections and referendums are required to provide evidence of identity either at the time of voting or by the first Friday following the polling day.<sup>23</sup> If provided at the time of voting, the evidence of identity must be the original of either the elector’s driver’s licence or one of a prescribed set of documents (e.g. a birth certificate, a certificate of Australian citizenship, a current Australian passport, or a current credit or bank account card). If provided by the first Friday after the polling day, the evidence of identity must be the original or an attested copy of the elector’s driver’s licence or prescribed document. If the prescribed evidence of identity is not provided within the timeframe the provisional vote is not counted.

The Bill proposes to repeal the evidence of identity requirements for provisional electors from both the Electoral Act and the Referendum Act. In place of these requirements, Divisional Returning Officers (DROs) would be required to check the signature of an elector on the envelope containing the provisional vote against the most recent record of that elector’s signature (if any) where the DRO had reason to doubt that the signature on the envelope was genuine. If the signature on the envelope was not that of the elector, the provisional vote would not be counted. The Explanatory Memorandum states that in most

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21. See JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 43–51.

22. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010, p. 4.

23. Provisional votes can be cast in a range of circumstances including where an elector’s name cannot be found on the certified list of electors for the relevant Division; where the elector’s name appears on the certified list for the Division but not his/her address; or where a mark on the certified list indicates that the elector has already voted. Electors casting provisional votes must sign a declaration in an approved form on an envelope into which the ballot-paper is placed. Provisional votes are subject to specified scrutiny processes.

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cases the most recent record ‘will be the signature on the claim for enrolment form’<sup>24</sup>; the Bill is silent however regarding arrangements where no recent record of an elector’s signature was available.

The Second Reading speech states that, along with Schedule 1, the new measures in Schedule 2 will ‘implement recommendations of the JSCEM supported by the Government as necessary to provide eligible electors with the greatest opportunity to enrol and vote in an election’.<sup>25</sup> Reversal of the evidence of identity requirements introduced by the Howard Government in 2006 has been ALP policy since before the 2007 election (see above). The main issues in contention in relation to evidence of identity for provisional electors have been enrolment integrity and integrity of the provisional voting system, and restriction of the vote/disenfranchisement.<sup>26</sup>

## Main provisions

Only significant amendments are detailed in this part of the Digest. In most instances amendments to the Electoral Act are mentioned as most amendments to the Referendum Act are in similar terms.

### Schedule 1—amendments relating to close of rolls

**Item 6** repeals **subsections 102(4), (4AA) and (4AB)** and substitutes **new section 102(4)** of the Electoral Act to ensure that a claim by a person, made after the close of polls and before the election, to have his or her name put on the roll cannot be considered until after the close of polling (that is, until after the election).

The major amendment in this Schedule is made by **item 12** which repeals and substitutes **section 155** of the Electoral Act to provide that the date for the close of the rolls is the seventh day after the date of the writ. **Item 14** makes the same amendment to the Referendum Act by the repeal and substitution of **subsection 9(1)** of that Act.

By repealing the whole of section 155, the definition of ‘working day’ in subsection 155(2) is repealed, and **item 15** repeals the definition of ‘working day’ from the Referendum Act.

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24. Explanatory Memorandum, Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010, p. 5.

25. G Gray, ‘Second reading speech: Electoral and Referendum Amendment (Close of Rolls and Other Measures) Bill (No. 2) 2010’, op. cit., p. 8.

26. See JSCEM, *Report on the conduct of the 2007 federal election and matters related thereto*, op. cit., pp. 53–63.

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## **Schedule 2—amendments relating to evidence of identity for provisional voters**

**Schedule 2** amends both the Electoral Act and the Referendum Act to provide that the DRO must check the most recent record of an elector's signature in the circumstance that the DRO has doubts about the authenticity of the elector's signature on the envelope that purports to contain the provisional vote ballot paper. As discussed above, the proposed amendment does not address the possibility that there may be no earlier signature on record.

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