

ABS survey: entitlement to participation 16 and 17-year-olds**Issue**

Will 16 and 17-year-olds participate in the ABS statistical collection?

Headline Statement

- Speculation that 16 and 17 year olds will be able to participate in the marriage equality statistical survey is not correct.

Key Points

- While the *Commonwealth Electoral Act 1918* (the Electoral Act) allows 16 and 17-year-olds to enrol, section 93(3) of the Electoral Act does not allow them to be added to the Commonwealth electoral roll until they turn 18 years old.
- The AEC will continue to meet its lawful obligations to add 16 and 17-year-olds to the Roll that is maintained under section 111 of the Electoral Act.
- The AEC will also continue its practice of only providing a version of the Roll under sections 90A (public inspection) and 90B (to politicians, political parties and others) which is the version of the Roll referred to in section 83 of the Electoral Act which does not include persons who are not “electors” (e.g. excludes 16 and 17-year-olds).
- Any other approach would raise serious issues about the contact details for persons under the age of 18 years being made publicly available.

Policy Commitments

- To give all participating Australian electors the opportunity to express a view about whether the law should be changed to allow same-sex couples to marry.

Background

The provisions relating to the inspection and provision of the Roll in sections 90A and 90B of the Electoral Act are there for the purpose of enabling the public, political parties and candidates to examine the Roll to confirm the eligibility of electors to take part in an election. This is clearly apparent from the terms of the items described in the table in subsection 90B(1) of the Electoral Act.

As the Roll referred to in subsection 90B(1) is the same term that is used in subsection 90B(4) and section 90A of the Electoral Act, the AEC has taken the view that the references to the Roll in these provisions are a reference to the Roll referred to in section 83 of the Electoral Act i.e. it is only the Roll that includes electors it is only a Roll listing “electors” who are entitled to vote at an election. To hold an alternative view would result in the details of person under the age of 18 being available for public inspection under section 90A which was clearly not the intention of the Parliament when the amendments were made to enable provisional enrolment of persons under the age of 18 years.

The Act refers to different versions of the Roll in several provisions. The full version of the Roll contains the additional information set out in subsection 90B(10) of the Electoral Act. The full version of the Roll is required to be maintained on a computer in section 111 of the Act. However, the actual minimum Roll information is set out in section 83 of the Act which only refers to the surname, Christian or given name and place of living of each elector. Persons under the age of 18 years cannot be an elector (see subsection 93(1)).

Accordingly the Roll referred to in item 4 of the table in subsection 90B(4) of the Electoral Act which can be provided to a “prescribed authority” is the Roll referred to in section 83 of the Act. The additional information which includes date of birth is clearly not part of the Roll that is referred to in each item in subsections 90B(1) and (4). This results in only electors on the Roll (i.e. persons over the age of 18 years) whose details can be provided to the ABS for the purposes of the statistical survey.

The AEC will continue to meet its lawful obligations to add 16 and 17-year-olds to the Roll that is maintained under section 111 of the Electoral Act. The AEC will also continue its previous practice of only providing a version of the Roll under sections 90A (public inspection) and 90B (to politicians, political parties and others) which is the version of the Roll referred to in section 83 of the Electoral Act which does not include persons who are not “electors” (e.g. excludes 16 and 17-year-olds). Any other approach would raise serious issues about the contact details for persons under the age of 18 years being made publicly available.