

Electoral and Referendum Amendment Regulations 2001 (No. 1) 2001 No. 248

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 248

Issued by the authority of the Special Minister of State

Commonwealth Electoral Act 1918

Electoral and Referendum Amendment Regulations 2001 (No. 1)

Section 395 of the *Commonwealth Electoral Act 1918* (the Act) provides that the Governor-General may make Regulations for the purposes of the Act.

The Regulations amended the *Electoral and Referendum Regulations 1940* to prescribe a class of persons who may attest claims for enrolment, the methods of verifying the identity of a person making a claim, the methods of verifying the Australian citizenship of a person making a claim, and those persons prescribed as a person with whom a claim for enrolment may be lodged by hand. The amendments also inserted new schedules to the *Electoral and Referendum Regulations 1940*, listing those persons who can attest claims for enrolment, the original documents that may be used by a person making a claim to verify their identity, and those electoral authorities whose staff are prescribed as persons able to accept claims lodged by hand (deemed to have been received by the Australian Electoral Commission).

Electoral and Referendum Amendment Regulations 2001 (No. 1)

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations will commence on the same date as the date on which items 10, 11 and 12 of Schedule 1 to the *Electoral and Referendum Amendment Act (No.1) 1999* commence. Items 10, 11 and 12 of Schedule 1 to the *Electoral and Referendum Amendment Act (No.1) 1999* will commence on Proclamation.

Regulation 3 provides that Schedule 1 amends the *Electoral and Referendum Regulations 1940*.

Schedule 1

Item 1 replaced the current Regulation 5 with a new Regulation 5 that inserts definitions of:

`Act' to mean the *Commonwealth Electoral Act 1918*;

`claim for enrolment' to mean any claim or application for enrolment or transfer of enrolment under Part VII (Qualifications and disqualifications for enrolment and for voting) and Part VIII (Enrolment) of the Act; and

`prescribed authority' to mean the Agency Head of an Agency referred to in regulation 8 or the Chief Executive Officer of an Authority referred to in regulation 9.

Item 2 inserted new regulations 11, 12, 13, 14 and 15.

Regulation 11 provides that for paragraph 98(2)(c) of the Act (which states that a person's claim for enrolment must be witnessed and attested by a person in a class of electors prescribed by the regulations), those electors prescribed in Schedule 4 are deemed to be prescribed electors. Where an elector prescribed in Schedule 4 is unavailable to a person making a claim for enrolment, the claim may be attested by an elector who is not related to the claimant by birth or marriage and is approved by the Australian Electoral Officer (AEO) for the State or Territory, or the Divisional Returning Officer for the Division (DRO), in which the claim is made. Silent electors who attest claims for enrolment are not required to provide their address details, but must write the words 'silent elector' in the space on the form provided for their address.

Regulation 12 provides that a person making a claim for enrolment must verify their identity by providing at least one original document prescribed in Schedule 5. This document must be provided to either the Australian Electoral Commission (AEC), or to the person attesting their claim. In the latter case, the person attesting the claim must also provide a written statement on the claim that they are satisfied about the identity of the claimant. If the claim is made on an enrolment form provided by the Department of Immigration and Multicultural Affairs, and the claimant's identity has been verified by that Department for the purposes of granting citizenship, the claimant's identity is not required to be further verified.

Where an original document is provided to the AEC by post it must be returned by registered post unless otherwise agreed. Where an original document is handed to the AEC it must be handed back unless otherwise agreed.

Regulation 13 sets out alternate provisions whereby claimants may have their identity verified if they are unable to comply with Regulation 12. Under this regulation, a written reference may be provided to the relevant AEO or DRO containing the claimant's name and address, the qualifications of the referee, and a statement that the referee has known the claimant for at least one month. The referee must either be a person mentioned in Schedule 4, or be a community leader or representative of a community organisation (to the satisfaction of the relevant AEO or DRO), or be a person approved by the AEO or DRO to be a referee for the particular claim.

Regulation 14 provides that where a person making a claim for enrolment claims to be an Australian citizen because of having received a certificate of citizenship under the *Australian Citizenship Act 1948*, verification may be provided to the AEC through the Australian citizenship certificate number, the date of the grant of citizenship (or other relevant information) or a certificate of Australian citizenship. The AEC will then be required to confirm this information with the Department of Immigration and Multicultural Affairs. A person's citizenship may also be verified by providing a current Australian passport, the relevant electoral enrolment form provided to the person when he or she was granted citizenship, or an annotation on the AEC's enrolment database that the person's Australian citizenship has been previously verified.

Regulation 15 sets out that enrolment forms may be lodged by hand with a member of the staff of an electoral authority mentioned in Schedule 6. When an enrolment form is lodged in this manner it is deemed to have been received by the AEC at the time of lodgement.

Item 3 corrected incomplete references to the *Referendum (Machinery Provisions) Act 1984* in Subregulations 81(1) and 83(1).

Item 4 inserted new Schedules 4, 5 and 6 into the Electoral and Referendum Regulations 1940.

Schedule 4 lists persons who can attest/witness claims for enrolment. Schedule 5 lists the original documents that can be provided as proof of identity. Schedule 6 lists the agencies with

which enrolment forms may be lodged by hand and receipt is deemed to have been by the AEC at that time.