



# **Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019**

**No. 2, 2019**

**An Act to amend the law relating to elections and  
referendums, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**No. 2, 2019**

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## **An Act to amend the law relating to elections and referendums, and for related purposes**

*[Assented to 1 March 2019]*

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019*.

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*No. 2, 2019      Electoral Legislation Amendment (Modernisation and Other Measures)      1*  
*Act 2019*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 March 2019
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	8 March 2019 (F2019N00024)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—Amendments relating to nominations**

### ***Commonwealth Electoral Act 1918***

#### **1 Subsection 4(1)**

Insert:

***answers***: a person ***answers*** a mandatory question in the qualification checklist if the person marks one (and only one) box that is:

- (a) directly under the question; and
- (b) adjacent to the word “Yes” or “No”, or (if applicable) “Unknown” or “N/A”.

#### **2 Subsection 4(1) (definition of *approved form*)**

Repeal the definition, substitute:

***approved form*** means:

- (a) a form that:
  - (i) is approved by the Electoral Commissioner in writing; and
  - (ii) has been published by the Electoral Commissioner; or
- (b) a manner, approved by the Electoral Commissioner in writing, for giving a notice (however described).

Note 1: An approved form under paragraph (a) might be published by the Electoral Commissioner on the Electoral Commission’s website.

Note 2: An example of an approved form under paragraph (b) is giving a notice by using a specified web portal.

### 3 Transitional provision

An approval that is in force for the purposes of paragraph (a) of the definition of **approved form** in subsection 4(1) of the *Commonwealth Electoral Act 1918* immediately before the commencement of the amendment to that definition made by this Schedule is taken, after that commencement, to be in force for the purposes of subparagraph (a)(i) of that definition as so amended.

### 4 Subsection 4(1)

Insert:

**bulk nomination** has the meaning given by subsection 167(3).

**declaration time** has the meaning given by subsection 175(2).

### 5 Subsection 4(1) (definition of *facsimile*)

Repeal the definition.

### 6 Subsection 4(1)

Insert:

**mandatory question** in the qualification checklist means a question to which the answer is “Yes” or “No”, or (if applicable) “Unknown” or “N/A”.

**qualification checklist** means the checklist in Form DB of Schedule 1.

### 7 Subsection 115(2)

After “lodged”, insert “, in the manner approved under subsection (3),”.

### 8 At the end of section 115

Add:

- (3) For the purposes of subsection (2), and without limiting the definition of **approved form** in subsection 4(1), the Electoral Commissioner may approve, in writing, a manner for lodging a private objection.



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**9 Subsection 166(1C)**

Omit “nomination form”, substitute “nomination”.

**10 Subsection 166(5)**

Omit “Electoral Commission”, substitute “Electoral Commissioner”.

**11 Subsection 166(6)**

Omit “his or her address on a nomination paper”, substitute “the person’s address in a nomination”.

**12 Subsection 166(7)**

Repeal the subsection, substitute:

- (7) A candidate who does not set out the candidate’s address in a nomination must provide the Electoral Commissioner with contact details for correspondence.

**13 Section 167**

Repeal the section, substitute:

**167 Nominations**

- (1) Nomination of candidates for election to the Senate or the House of Representatives must be made to the Electoral Commissioner in accordance with a determination under subsection (2).

Note: For when the nomination must be provided to the Electoral Commissioner, see paragraph 170(2)(a).

*Requirements for nominations*

- (2) The Electoral Commissioner may determine, in writing, the manner in which nominations are to be lodged.

*Bulk nominations*

- (3) A nomination (a **bulk nomination**) may be made under subsection (1), by the registered officer of a registered political

party, of more than one candidate endorsed by the party for election to the House of Representatives.

- (4) The registered officer of a registered political party:
- (a) may make more than one bulk nomination; and
  - (b) must not make more than one bulk nomination for a State or Territory.

**14 Subsection 168(2)**

Repeal the subsection, substitute:

- (2) A request under subsection (1) must be:
- (a) in writing; and
  - (b) signed by the candidates; and
  - (c) given to the Electoral Commissioner with the nomination or nominations of the candidates.

**15 Subsection 169(3)**

Repeal the subsection, substitute:

- (3) A request under subsection (1) must be:
- (a) in writing; and
  - (b) signed by the person making the request; and
  - (c) given to the Electoral Commissioner with the nomination of the candidate.

**16 Subsection 169A(2)**

Repeal the subsection, substitute:

- (2) A request under subsection (1) must be:
- (a) in writing; and
  - (b) signed by the candidate; and
  - (c) given to the Electoral Commissioner with the nomination of the candidate.

**17 At the end of paragraph 169B(1)(a)**

Add “or”.

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**18 Paragraph 169B(1)(b)**

Repeal the paragraph, substitute:

- (b) the name of the candidate is included in a statement, signed by the registered officer of the party, setting out the names of the candidates endorsed by the party in the election and lodged with the Electoral Commissioner before the close of nominations for the election; or

**19 Paragraph 169B(1)(c)**

Omit “Electoral Commission is satisfied, after making such inquiries as it”, substitute “Electoral Commissioner is satisfied, after making such inquiries as the Electoral Commissioner”.

**20 Paragraph 169B(2)(c)**

Repeal the paragraph, substitute:

- (c) if neither paragraph (a) nor (b) applies and the person notifies the Electoral Commissioner in writing of the person’s endorsement by one, and only one, of the parties—by that party; or

**21 Paragraph 169B(2)(d)**

Omit “Electoral Commission decides, after making such enquiries as it”, substitute “Electoral Commissioner decides, after making such inquiries as the Electoral Commissioner”.

**22 Section 169C**

Omit “Australian Electoral Officer or a Divisional Returning Officer”, substitute “Electoral Commissioner”.

**23 Paragraph 169C(a)**

Omit “be written on the same paper as the nomination”, substitute “be included in the nomination”.

**24 Subsection 170(1)**

After “nomination is not valid”, insert “(subject to sections 170A and 171)”.

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**25 Before subsection 170(1)**

Insert:

*Content of nomination*

**26 Subsection 170(1)**

Omit “nomination paper”, substitute “nomination”.

**27 At the end of subsection 170(1)**

Add:

; and (d) answers every mandatory question in the qualification checklist set out in Form DB in Schedule 1.

Note 1: The qualification checklist in Form DB can be altered by regulations made under section 392. If the checklist is altered by the regulations, a valid nomination must include an answer to every mandatory question in the checklist as altered.

Note 2: In relation to the qualification checklist, see also sections 170A and 170B and sections 181A to 181C.

Note 3: A person may commit an offence under section 137.1 or 137.2 of the *Criminal Code* if the person provides information in the nomination that the person knows is false or misleading.

**28 Subsections 170(2) and (3)**

Repeal the subsections, substitute:

(1A) To avoid doubt, the validity of a person’s nomination is not affected if an answer to a question in the qualification checklist in the nomination is incorrect, false or inadequate.

*Requirement to provide additional documents relating to renunciation of citizenship*

(1B) If a person contends that the person has renounced citizenship, or lost the status as a subject or citizen, of another country, a nomination of the person is not valid (subject to subsection 170A(4)) unless the person provides to the Electoral Commissioner, together with the nomination, one or more

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documents that the person is satisfied supports the person's contention in accordance with paragraph 170B(1)(b).

Note: See also sections 181A to 181C (publication and delivery to the Parliament, and certain laws do not apply).

*Deadline for nomination and deposit*

- (2) A nomination is not valid unless:
- (a) the nomination is received by the Electoral Commissioner after the issue of the writ and before the following time:
    - (i) for a bulk nomination—48 hours before the hour of nomination;
    - (ii) otherwise—the hour of nomination; and
  - (b) the person nominated (or someone else on that person's behalf) gives to the Electoral Commissioner a deposit of \$2,000 in relation to the person:
    - (i) before the time mentioned in paragraph (a) (whether or not the deposit is received at the same time as the nomination); and
    - (ii) in the manner approved by the Electoral Commissioner (including by electronic transfer).
- (3) The Electoral Commissioner may, in writing, approve a manner of giving a deposit for the purposes of subparagraph (2)(b)(ii).

## **29 Section 171**

Repeal the section, substitute:

### **170A Objects and effect of qualification checklist**

- (1) The objects of the qualification checklist are:
- (a) to ensure that electors are informed about the eligibility under the Constitution and this Act of candidates in elections; and
  - (b) to provide a way for candidates to actively consider their circumstances and whether they are eligible to be elected.
- (2) To avoid doubt, the Electoral Commissioner, or a member of the staff of the Electoral Commission, has no power to make any

determination in relation to the qualification checklist in a person's nomination, except whether the person has answered every mandatory question (see paragraph 170(1)(d)).

- (3) Without limiting subsection (2), the Electoral Commissioner, or a member of the staff of the Electoral Commission, has no power to determine whether:
- (a) an answer to a question in a qualification checklist is incorrect, false or inadequate; or
  - (b) a person is satisfied that a document provided under subparagraph 170B(1)(a)(ii) or paragraph 170B(1)(b) supports the contention of the person; or
  - (c) a document so provided by a person supports the person's contention; or
  - (d) a declaration or statement under paragraph 170(1)(b) or (c) in a person's nomination, that is inconsistent with an answer in the qualification checklist in the nomination or a document provided under subsection 170B(1) with the nomination, is true or false; or
  - (e) the person is qualified to be elected as a Senator or member of the House of Representatives under the Constitution or this Act.

Note: A person's eligibility to be elected under the Constitution or this Act may be determined by the Court of Disputed Returns.

*Limit on ability to dispute election as a result of decision relating to qualification checklist*

- (4) If a person's nomination for election is accepted, but paragraph 170(1)(d) or subsection 170(1B) was not in fact complied with in relation to the nomination:
- (a) the nomination, and the decision to accept the nomination, are taken for all purposes to be valid; and
  - (b) the decision is not a contravention of this Act or an illegal practice (within the meaning of Part XXII).

This subsection does not affect the nomination, or the decision to accept the nomination, to the extent that the nomination is invalid for other reasons.

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- (5) If a person's nomination for election is rejected on the basis that paragraph 170(1)(d) or subsection 170(1B) was not complied with in relation to the nomination, but that provision was in fact complied with:
- (a) the decision is an illegal practice (within the meaning of Part XXII), but a petition disputing the election or the return relating to the election must not be made except if it is signed by the person; and
  - (b) except as provided by paragraph (a), the decision:
    - (i) is final and conclusive; and
    - (ii) must not on any ground be challenged, appealed against, reviewed, quashed, set aside or called in question in any court or tribunal, including in the Court of Disputed Returns under Division 1 of Part XXII; and
    - (iii) is not subject on any ground to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, in any court, including in the Court of Disputed Returns under that Division.

This subsection does not affect the decision to reject the nomination to the extent that the nomination is rejected for any other reason despite being valid.

- (6) Subsection (5) applies despite:
- (a) section 355 (except as provided by paragraph (5)(a)); and
  - (b) section 383; and
  - (c) anything in any other law, except the Constitution, and section 39B and Part VII of the *Judiciary Act 1903*.

Note: For paragraph (a), a petition disputing an election or return may be made under section 355 because a person whose nomination is accepted is incapable of being chosen or sitting as a Senator or member of the House of Representatives under section 44 of the Constitution.

### **170B Providing additional documents with nomination**

- (1) A person who is nominating for election as a Senator or a member of the House of Representatives:

- (a) may provide to the Electoral Commissioner, together with the nomination of the person (and not otherwise), the following additional documents:
  - (i) documents providing particulars of the person's Australian citizenship;
  - (ii) documents providing particulars that the person is satisfied support the person's contention that the person is not disqualified or incapable of being chosen or of sitting as a Senator or member of the House of Representatives by reason of section 44 of the Constitution or this Act;
  - (iii) documents providing particulars as specified in the qualification checklist; and
- (b) if the person contends that the person has renounced citizenship, or lost the status as a subject or citizen, of another country—must provide to the Electoral Commissioner, together with the nomination, one or more documents that the person is satisfied supports the person's contention.

Note 1: See also sections 181A to 181C (publication and delivery to the Parliament, and certain laws do not apply).

Note 2: A person may commit an offence under section 137.1 or 137.2 of the *Criminal Code* if the person provides a document under this subsection that the person knows is false or misleading.

*Manner of providing documents*

- (2) Documents provided under subsection (1) must:
  - (a) be able to be uploaded, or published electronically or on a website; and
  - (b) if the Electoral Commissioner determines an electronic format under subsection (9)—be in that format.

*Redacting etc. information from documents*

- (3) Before a person provides a document under subsection (1), the person:



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- (a) may omit, redact or delete from the document any information that the person does not wish to be published under section 181A or delivered to a House of the Parliament under section 181B; and
  - (b) if the person does so—must indicate in the document, or in the manner (if any) determined under subsection (9), that information has been omitted, redacted or deleted; and
  - (c) if the Electoral Commissioner has determined under subsection (9) a manner for omitting, redacting or deleting the information—must do so in that manner and only that manner.

*Silent electors*

- (4) The address of a person whose address is not shown on the Roll for a Subdivision under section 104 may be included in a document published or to be published under section 181A only if:
  - (a) the person is the person who provides the document, and the person's address is not shown on the Roll at the time the document is provided; or
  - (b) the person has consented to the publication of the address.

Note: A document published under section 181A includes the qualification checklist.
- (5) The Electoral Commissioner must delete an address, from a document published or to be published under section 181A, if the Electoral Commissioner becomes aware that:
  - (a) the address of a person has been included in the document in contravention of subsection (4); or
  - (b) the person's address has been deleted from the Roll since the document was provided.
- (6) The Electoral Commissioner may omit, redact or delete, from a document published or to be published under section 181A, any information that the Electoral Commissioner is satisfied on reasonable grounds is unreasonable, unacceptable, inappropriate or offensive.

- (7) Subsections (5) and (6) apply in relation to a document that has been published only while the document is published on the Electoral Commission's website.
- (8) The Electoral Commissioner is not:
  - (a) under a duty to determine whether an address has been included in a document in contravention of subsection (4); or
  - (b) permitted to omit, redact or delete any information from a document published or to be published under section 181A other than in accordance with subsection (5) or (6) of this section.

*Determinations*

- (9) The Electoral Commissioner may determine, in writing:
  - (a) an electronic format for the purposes of paragraph (2)(b); or
  - (b) a manner for the purposes of paragraph (3)(b) or (c).
- (10) A determination under subsection (9) is not a legislative instrument.

**171 Form of consent to act**

- (1) A consent to act if elected, and a declaration referred to in paragraph 170(1)(b), may be provided by signing the form of consent and declaration in the nomination.
- (2) The Electoral Commissioner may accept any other form of consent, and declaration referred to in paragraph 170(1)(b), that the Commissioner is satisfied is satisfactory (whether or not the consent and declaration are in the nomination).

**30 Subsection 172(1)**

Omit "the officer to whom it is made", substitute "the Electoral Commissioner".

**31 Paragraph 172(1A)(b)**

Omit "under subsection 167(3)", substitute "in a bulk nomination".

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**32 Subsection 172(2)**

Repeal the subsection, substitute:

- (2) No nomination may be rejected by reason of any formal defect or error in the nomination if the Electoral Commissioner is satisfied that the provisions of sections 166, 167, 170 (except paragraph 170(1)(d) and subsection 170(1B)) and 171 have been substantially complied with.

Note: A nomination must be rejected if a person does not answer every mandatory question in the qualification checklist or provide a document required by subsection 170(1B) (see subsections 170(1) and (1B)).

**33 Subsection 174(1)**

Omit “for that State or Territory shall”, substitute “for that State or Territory, or any other place determined in writing by the Electoral Commissioner, is to”.

**34 Subsection 174(2)**

Omit “for the Division shall”, substitute “for the Division, or any other place determined in writing by the Electoral Commissioner, is to”.

**35 At the end of section 174**

Add:

- (3) A determination made under this section is not a legislative instrument.

**36 At the end of subsection 175(1)**

Add:

Note: For when bulk nominations are required to be given to the Electoral Commissioner, see subparagraph 170(2)(a)(i).

**37 Subsection 176(1)**

After “Australian Electoral Officer”, insert “, or any other officer authorised by the Electoral Commissioner,”.

**38 Subsection 176(1)**

Omit “publicly produce all nomination papers received by him or her,”.

**39 Paragraph 176(1)(b)**

Repeal the paragraph, substitute:

- (b) either of the following:
  - (i) the town or suburb of the candidate’s place of residence;
  - (ii) if an address has been specified by the candidate under subsection 166(1A)—the town or suburb of that address; and
- (c) the relevant State or Territory; and
- (d) either:
  - (i) if the candidate is endorsed by a registered political party—the name of the party; or
  - (ii) otherwise—that the candidate is not endorsed by a registered political party; and
- (e) if the candidate has requested under subsection 168(1) that the candidate’s name be grouped with one or more other candidates’ names in the ballot papers:
  - (i) the name requested to be printed on the ballot papers under subsection 169(4); or
  - (ii) if no such name is requested—a name given to the group by the Electoral Commissioner; and
- (f) if the candidate has requested the word “Independent” be printed adjacent to the candidate’s name on the ballot paper for the election—that fact.

**40 Subsection 176(2)**

After “DRO”, insert “, or any other officer authorised by the Electoral Commissioner,”.

**41 Subsection 176(2)**

Omit “publicly produce all nomination papers received by him or her,”.

**42 Paragraph 176(2)(b)**

Repeal the paragraph, substitute:

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- (b) either of the following:
    - (i) the town or suburb of the candidate's place of residence;
    - (ii) if an address has been specified by the candidate under subsection 166(1B)—the town or suburb of that address; and
  - (c) the State or Territory in which the Division is located; and
  - (d) either:
    - (i) if the candidate is endorsed by a registered political party—the name of the party; or
    - (ii) otherwise—that the candidate is not endorsed by a registered political party; and
  - (e) if the candidate has requested the word “Independent” to be printed adjacent to the candidate's name on the ballot paper for the election—that fact.

**43 Subsection 176(3)**

Repeal the subsection, substitute:

- (3) The Australian Electoral Officer, DRO or authorised officer, as the case requires, must not declare a candidate's town or suburb if the candidate's address has been excluded from the Roll under section 104.

**44 Subsection 176(4) (paragraph (a) of the definition of *declaration place*)**

After “for that State or Territory”, insert “, or by the Electoral Commissioner”.

**45 Subsection 176(4) (paragraph (b) of the definition of *declaration place*)**

After “for the relevant State or Territory”, insert “, or by the Electoral Commissioner”.

**46 Subsections 177(1) to (4)**

Repeal the subsections, substitute:

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*Withdrawal by candidate in election*

- (1) A candidate for a Senate election or House of Representatives election may withdraw the candidate's consent to a nomination by lodging a notice of withdrawal with the Electoral Commissioner. The withdrawal must be made before the hour of nomination.
- (2) If:
  - (a) a candidate for a House of Representatives election for a Division is nominated in a bulk nomination by the registered officer of a registered political party; and
  - (b) the candidate withdraws the candidate's consent to a nomination;then:
  - (c) the withdrawal does not affect the nomination of the other candidates nominated in the bulk nomination; and
  - (d) the registered officer may amend the nomination, at any time before the hour of nomination, to substitute another candidate for that Division.

**47 Subsection 177(5)**

Omit "paragraph (4)(c)", substitute "paragraph (2)(d)".

**48 Paragraph 177(5)(a)**

Omit "Australian Electoral Officer", substitute "Electoral Commissioner".

**49 Subsection 177(6)**

Omit "under subsection (1), (2) or (3)".

**50 Subsection 177(7)**

Omit "under this section".

**51 Subsections 179(1) and (2)**

Omit "Officer shall", substitute "Officer, or any other person authorised by the Electoral Commissioner, must".

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**52 Subsection 179(3)**

Omit “shall”, substitute “must”.

**53 Subsection 180(3)**

Omit “under subsection 167(3)”, substitute “in a bulk nomination”.

**54 At the end of Part XIV**

Add:

**181A Publication of qualification checklist etc. on website**

- (1) As soon as practicable after nominations for an election are declared under section 176, the Electoral Commissioner must (subject to subsection (3) of this section) publish the following documents on the Electoral Commission’s website:
  - (a) the qualification checklist in the nomination of a person whose name is declared under that section;
  - (b) any additional documents that the Electoral Commissioner is satisfied were provided by the person, together with the nomination, in accordance with subsections 170B(1), (2) and (3).

Note: Certain laws do not apply in relation to personal information included in a document published under this section (see section 181C).

- (2) The documents must remain available to the public until a petition disputing the election or return can no longer be filed under section 355.
- (3) The Electoral Commissioner may decide not to publish a document under this section, or to remove a document published under this section from the Electoral Commission’s website, if the Electoral Commissioner is satisfied on reasonable grounds that the publication of the document is unreasonable, unacceptable, inappropriate or offensive.

Note: The Electoral Commissioner may also omit, redact or delete information from documents under section 170B.

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**181B Delivery of qualification checklist etc. to the Parliament**

- (1) This section applies if:
  - (a) a document is published under section 181A, that is:
    - (i) the qualification checklist in a person's nomination for an election; or
    - (ii) an additional document provided by the person, together with the nomination, under section 170B; and
  - (b) the person is declared elected as a result of the election.
- (2) As soon as practicable after the return of the last writ for the election and any other election held on the same day, the Electoral Commissioner must arrange for a copy of the document to be delivered for tabling to:
  - (a) for a person who is elected as a Senator—the Senate; and
  - (b) for a person who is elected as a member of the House of Representatives—the House of Representatives.

Note: Certain laws do not apply in relation to personal information included in a document delivered under this section (see section 181C).

**181C Certain laws do not apply**

- (1) This section applies in relation to personal information if:
  - (a) the information is included in:
    - (i) the qualification checklist in a person's nomination for an election; or
    - (ii) an additional document provided by the person, together with the nomination, under section 170B; and
  - (b) the checklist or document is:
    - (i) collected by the Electoral Commissioner for the purposes of paragraph 170(1)(d) or under section 170B; or
    - (ii) published under section 181A; or
    - (iii) delivered to a House of the Parliament under section 181B.
- (2) The following do not apply in relation to the personal information:



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- (a) Australian Privacy Principles 3, 5, 6, 10 and 13 in Schedule 1 to the *Privacy Act 1988*;
- (b) Part V of the *Freedom of Information Act 1982*.

*Effect of this section*

- (3) This section does not limit the effect this Part has on any other law of the Commonwealth, a State or a Territory relating to information or privacy.

**55 Subsections 200D(4) and (5)**

Omit “fourth”, substitute “fifth”.

**56 Paragraph 213(1)(a)**

Omit “the place where nominations for the election were publicly produced”, substitute “the place of nomination under section 174 for the election”.

**57 Subsection 213(6)**

Repeal the subsection.

**58 Paragraph 214A(1)(a)**

Omit “time of the declaration of the nominations”, substitute “declaration time for an election”.

**59 Subsection 214A(2)**

Omit “A ballot paper for a Senate election”, substitute “If the election is a Senate election, a ballot paper for the election”.

**60 Subsection 214A(4)**

Omit “A ballot paper for a House of Representatives election”, substitute “If the election is a House of Representatives election, a ballot paper for the election”.

**61 At the end of subsection 336(5)**

Add:

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Note: An approved form and signature may be electronic (see paragraph (b) of the definition of *approved form* in subsection 4(1) and section 10 of the *Electronic Transactions Act 1999*).

**62 Subsection 337(2) (note)**

Omit “Note”, substitute “Note 1”.

**63 At the end of subsection 337(2)**

Add:

Note 2: An approved form and signature may be electronic (see paragraph (b) of the definition of *approved form* in subsection 4(1) and section 10 of the *Electronic Transactions Act 1999*).

**64 Paragraph 339(1)(c)**

Repeal the paragraph, substitute:

- (c) fraudulently do an act that results in the destruction, defacement or other corruption of any nomination or ballot paper; or

**65 Subsection 339(5)**

Repeal the subsection.

**66 Section 386A**

Before “No”, insert “(1)”.

**67 At the end of section 386A**

Add:

- (2) No action, suit or proceeding (except proceedings under this Act) lies against the Commonwealth, or a person who has been an officer or employee of the Commonwealth, in relation to anything done in good faith by the Electoral Commission, or an officer or an employee of the Electoral Commission, in relation to publishing documents under section 181A (publication of qualification checklist etc. on website).

**68 Subsection 392(1)**

After “Schedule 1”, insert “, except the qualification checklist in Form DB in Schedule 1,”.

**69 At the end of subsection 392(1)**

Add:

Note: Paragraph 170(1)(d) provides that a nomination is not valid if a mandatory question in the qualification checklist in Form DB of Schedule 1 is not answered.

**70 At the end of section 392**

Add:

*Alteration of the qualification checklist*

- (6) To avoid doubt, regulations made for the purposes of this section may alter the qualification checklist in Form DB in Schedule 1.
- (7) However, alterations of that Form by the regulations must not be expressed to commence before the first day those regulations are no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

**71 Schedule 1 (Form C)**

Omit “Australian Electoral Officer for the [State/Territory] of [name of State or Territory]”, substitute “Electoral Commissioner”.

**72 Schedule 1 (Form C)**

Omit “the above [State/Territory]” (first occurring), substitute “[name of State or Territory]”.

**73 Schedule 1 (Form C)**

Omit “the above [State/Territory] (second occurring), substitute “that [State/Territory]”.

**74 Schedule 1 (Form CA)**

Omit “Australian Electoral Officer for the [State/Territory] of [*name of State or Territory*]”, substitute “Electoral Commissioner”.

**75 Schedule 1 (Form CA)**

Omit “the above [State/Territory]” (first occurring), substitute “[*name of State or Territory*]”.

**76 Schedule 1 (Form CC)**

Omit “Australian Electoral Officer for the [State/Territory] of [*name of State or Territory*]”, substitute “Electoral Commissioner”.

**77 Schedule 1 (Form CC)**

Omit “the above [State/Territory]” (first occurring), substitute “[*name of State or Territory*]”.

**78 Schedule 1 (Form D)**

Omit “Divisional Returning Officer for the Division of [*name of Division*]”, substitute “Electoral Commissioner”.

**79 Schedule 1 (Form D)**

Omit “the above Division” (first occurring), substitute “the Division of [*name of Division*]”.

**80 Schedule 1 (Form D)**

Omit “the above Division” (second occurring), substitute “that Division”.

**81 Schedule 1 (Form DA)**

Omit “Divisional Returning Officer for the Division of [*name of Division*]”, substitute “Electoral Commissioner”.

**82 Schedule 1 (Form DA)**

Omit “the above Division” (first occurring), substitute “the Division of [*name of Division*]”.

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**83 After Form DA in Schedule 1**

Insert:

FORM DB

**QUALIFICATION CHECKLIST RELATING TO YOUR ELIGIBILITY  
UNDER SECTION 44 OF THE AUSTRALIAN CONSTITUTION**

.....  
[*Candidate's name*]

Please fill out this checklist.

Be aware that completing this checklist does not guarantee that you are eligible to be elected under section 44 of the Australian Constitution or under the *Commonwealth Electoral Act 1918*.

If you have any doubts about your eligibility, you should seek independent legal advice.

If you provide information in this checklist that you know is false or misleading, you may commit an offence against the *Criminal Code* with a maximum penalty of imprisonment for 12 months, \$12,600 or both.

You must answer every question in the checklist that has check boxes by marking one, and only one, of the boxes provided. Your nomination will be rejected if you do not mark any of the boxes, or if you mark more than one of the boxes, provided for any of these questions.

Please provide supporting documentation as appropriate. You may provide additional documents if you are unable to fit all your responses in this checklist.

Note: If you answer 'yes' in question 10 then you **must provide at least one document** in response to question 10a.

You should not include information in this checklist, or in any additional documents you provide, that is inappropriate in any way. If you do, the

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information may be redacted by the Electoral Commissioner and not published on the Australian Electoral Commission's website.

You may choose to redact information (for example, your own or another person's personal information) from additional documents before providing them. Redactions must be in accordance with any directions of the Electoral Commissioner.

The candidate statement and declaration that you have made elsewhere in this nomination also relate to your eligibility to be elected. In that statement and declaration:

- (a) you have declared that you are qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or member of the House of Representatives; and
- (b) you have stated that you are an Australian citizen.

1. Do you know the place of birth of each of your parents and grandparents (whether biological or adoptive)?

YES  NO

1a. Please provide any relevant details (for example, why you do not know the place of birth of a parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' places of birth

[Please provide particulars of, or documents related to, any details provided in response to question 1a. These will be published with this checklist on the Australian Electoral Commission's website.]

2. Do you have a parent or grandparent that you know was born in another country? This may be a biological or adoptive parent or grandparent. (If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)

YES       NO       N/A

2a. If 'yes', please provide the following details, to the extent known:

Relationship to you (eg mother or adoptive father)	Place of birth	Date of birth

2b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' places and dates of birth

[Please provide particulars of, or documents related to, any details provided in response to questions 2a and 2b. These will be published with this checklist on the Australian Electoral Commission's website.]

3. Have you provided details in question 2a in relation to each parent and grandparent that you know was born in another country? (If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)

YES       NO       N/A

3a. If 'no', please explain why you have not provided those details:

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Explanation of why you have not provided details relating to each parent and grandparent that you know was born in another country

4. Do you know which citizenships have been held by each of your parents and grandparents (whether biological or adoptive)?

YES  NO

4a. Please provide any relevant details (for example, why you do not know the citizenships held at a particular time by a particular parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' citizenships

[Please provide particulars of, or documents related to, any details provided in response to question 4a. These will be published with this checklist on the Australian Electoral Commission's website.]

5. Do you have a parent or grandparent that you know acquired citizenship of another country by descent, naturalisation or other means? This may be a biological or adoptive parent or grandparent. (If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)

YES  NO  N/A

5a. If 'yes', please provide the following details, to the extent known:

Relationship to you (eg mother or adoptive father)	Country of foreign citizenship	Period foreign citizenship held




5b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' foreign citizenships

[Please provide particulars of, or documents related to, any details provided in response to questions 5a and 5b. These will be published with this checklist on the Australian Electoral Commission's website.]

6. Have you provided details in question 5a in relation to each parent and grandparent that you know acquired citizenship of another country by descent, naturalisation or other means? (If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)

YES       NO       N/A

6a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each parent and grandparent that you know acquired citizenship of another country

7. Do you know which citizenships have been held by each of your current and former spouses and similar partners? (If you do not have a current or former spouse or similar partner, please mark the 'N/A' box.)

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YES  NO  N/A

7a. Please provide any relevant details (for example, why you do not know the particular citizenships held at a particular time by a current or former spouse or similar partner):

Other relevant details relating to your knowledge of the citizenships of your current and former spouses and similar partners
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[Please provide particulars of, or documents related to, any details provided in response to question 7a. These will be published with this checklist on the Australian Electoral Commission's website.]

8. Do you have a current or former spouse or similar partner who you know is or was a citizen of another country? (If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)

YES  NO  N/A

8a. If 'yes', please provide the following details, to the extent known:

Relationship to you (eg wife or former de facto partner)	Country of foreign citizenship	Was foreign citizenship held at the time of marriage (if applicable)?

8b. Please provide any other relevant details (for example, whether you acquired foreign citizenship because of a spouse's foreign citizenship):

Other relevant details relating to your current or former spouse's or similar partner's foreign citizenship

[Please provide particulars of, or documents related to, any details provided in response to questions 8a and 8b. These will be published with this checklist on the Australian Electoral Commission's website.]

9. Have you provided details in question 8a in relation to each current or former spouse or similar partner that you know is or was a citizen of another country? (If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)

YES       NO       N/A

9a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each current or former spouse or similar partner that you know is or was a citizen of another country

10. Have you ever been a subject or citizen of any country other than Australia?

YES       NO       UNKNOWN

10a. If 'yes', please provide the following details, to the extent known:

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Country of foreign citizenship	Manner in which foreign citizenship was lost (if applicable)	Date of losing foreign citizenship (if applicable)

[If you contend that you have renounced or lost your foreign citizenship, you **must provide at least one document** that you are satisfied supports your contention. (The document may be an official document, or if you have no official document, a statutory declaration.) This will be published with this checklist on the Australian Electoral Commission’s website.]

10b. Please provide any other relevant details (for example, how you lost your foreign citizenship, or why the response to question 10 is unknown):

Other relevant details relating to the loss of your foreign citizenship

[In addition to the requirement to provide at least one document mentioned under question 10a, please provide particulars of, or documents related to, any other details provided in response to questions 10a and 10b. These will be published with this checklist on the Australian Electoral Commission’s website.]

11. Are you now a subject or citizen of any country other than Australia?

YES  NO  UNKNOWN

11a. If ‘yes’, please provide the following details, to the extent known:

Country of foreign citizenship	Date of acquiring foreign citizenship


11b. Please provide any other relevant details (for example, why you are prevented from renouncing your foreign citizenship, or why the response to question 11 is unknown):

Other relevant details relating to possible disqualification by reason of section 44(i) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to questions 11a and 11b. These will be published with this checklist on the Australian Electoral Commission’s website.]

12. Are you under sentence or subject to be sentenced, for an offence for which you have been convicted, which is punishable by imprisonment for one year or longer?

NOTE: A person convicted of an offence with a maximum penalty of imprisonment for one year or longer may be disqualified even if the sentence imposed on the person for the offence is less than the maximum penalty.

YES  NO

12a. If ‘yes’, please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(ii) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 12a. These will be published with this checklist on the Australian Electoral Commission's website.]

13. Are you an undischarged bankrupt or insolvent?

YES  NO

13a. If 'yes', please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(iii) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 13a. These will be published with this checklist on the Australian Electoral Commission's website.]

14. Do you hold an office of profit under the Crown, other than an office expressly exempt from section 44(iv) of the Australian Constitution? (Offices of profit under the Crown include, for example, many public sector jobs in Australia.)

YES  NO  UNKNOWN

14a. Please provide any relevant details, to the extent known (for example, the relevant body in which you hold the office of profit and your role, or why the response to question 14 is unknown):

Relevant details relating to possible disqualification by reason of section 44(iv) of the Australian Constitution
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[Please provide particulars of, and documents related to, any details provided in your response to question 14a. These will be published with this checklist on the Australian Electoral Commission's website.]

15. Do you have a direct or indirect financial interest in any contract or other agreement with the Commonwealth public service? Do not count an interest that is expressly excluded from section 44(v) of the Australian Constitution, such as a shareholding in a company that has 25 or more other shareholders.

NOTE: Section 44(v) may disqualify you even if you are not a party to the relevant contract or agreement. A disqualifying financial interest may arise, for example, from an agreement between the Commonwealth public service and a trustee of a family trust of which you are a beneficiary.

YES       NO       UNKNOWN

15a. Please provide any relevant details, to the extent known (for example, your direct or indirect financial interests, or why the response to question 15 is unknown):

Relevant details relating to possible disqualification by reason of section 44(v) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 15a. These will be

**Schedule 1** Amendments relating to nominations

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published with this checklist on the Australian Electoral Commission's website.]

16. Please provide any additional details relating to your qualification under the Australian Constitution or the *Commonwealth Electoral Act 1918*:

[Please provide particulars of, and documents related to, any details provided in your response to question 16. These will be published with this checklist on the Australian Electoral Commission's website.]

I confirm the information in the checklist provided above, and any additional information provided in support of my statements, to be true and correct, to the best of my knowledge.

[*Signature of candidate*]

[*Date*]

***Referendum (Machinery Provisions) Act 1984***

**84 Subsections 73B(4) and (5)**

Omit "fourth", substitute "fifth".



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## **Schedule 2—Amendments relating to voting and scrutiny processes**

### ***Commonwealth Electoral Act 1918***

#### **3 Paragraphs 195A(5)(b) and (c)**

After “Divisional Returning Officer”, insert “or Assistant Returning Officer”.

#### **4 Paragraph 195A(6)(a)**

After “DRO”, insert “(the *capital city DRO*)”.

#### **5 Paragraphs 195A(6)(b) to (d)**

Repeal the paragraphs, substitute:

(b) the capital city DRO must:

- (i) remove the envelopes from the ballot-box and place in a parcel all the envelopes that relate to a particular Division; and
- (ii) endorse on the parcel the number of the envelopes; and
- (iii) seal up the parcel and cause the parcel, and the record made by the officer under paragraph (2)(e), to be forwarded to, or made available to be collected by, the Divisional Returning Officer for that Division in accordance with the instructions of the capital city DRO.

#### **6 Subsection 195A(7)**

Omit “paragraphs (6)(b) and (d)”, substitute “subparagraph (6)(b)(iii)”.

#### **22 After section 202A**

Insert:

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**202B Officers may act as Divisional Returning Officers in relation to declaration votes**

- (1) The Electoral Commissioner may, in writing, authorise one or more persons who are members of the staff of the Electoral Commission to exercise or perform, in relation to one or more specified Divisions, powers, functions or duties that are conferred on a Divisional Returning Officer for those Divisions under:
  - (a) section 228 (forwarding declaration votes); or
  - (b) Schedule 3 (preliminary scrutiny of declaration votes).
- (2) An authorisation:
  - (a) may be made subject to conditions or limitations specified in the authorisation; and
  - (b) does not limit the power of a Divisional Returning Officer to act in any matter.
- (3) If an authorisation is given:
  - (a) the person authorised in relation to a specified Division may exercise or perform any power, function or duty of a Divisional Returning Officer for the Division, subject to:
    - (i) any condition or limitation under paragraph (2)(a); and
    - (ii) any direction of a Divisional Returning Officer for the Division; and
  - (b) a reference to a Divisional Returning Officer or DRO in section 228 or Schedule 3, or in any other provision of this Act that relates to that section or Schedule, is taken to include a reference to the person.

**28 Subsection 224(4)**

After “adjourned”, insert “for the election”.

**29 Subsection 226(5)**

After “340(1)”, insert “or (1A)”.

**30 Subsection 227(5)**

After “adjourned”, insert “for the election”.

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**31 Paragraph 227(8)(e)**

Repeal the paragraph, substitute:

- (e) section 340 applies as if the references (however described) in subsections 340(1), (1A) and (2) to polling day, or a day to which the polling is adjourned for the election, were a reference to the time of the visit.

**32 Subsection 227(10)**

Omit “appropriate Divisional Returning Officer designated for the purposes of this subsection by the Australian Electoral Officer for the State or Territory in which that last visit occurred”, substitute “Divisional Returning Officer or Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer for the Division in which that last visit occurred”.

**33 Before subsection 228(1)**

Insert:

*Presiding officer to forward declaration votes to ARO*

**34 Subsection 228(1)**

Omit “shall forward to the Divisional Returning Officer designated for the purposes of this subsection by the Australian Electoral Officer for the relevant State or Territory”, substitute “must forward to the Assistant Returning Officer designated for the purposes of this subsection by a Divisional Returning Officer”.

**35 Subsection 228(1A)**

Omit “shall forward the envelope, together with”, substitute “must forward the envelope, and”.

**36 Subsection 228(1B)**

Omit “shall”, substitute “must”.

**37 Subsection 228(3)**

Repeal the subsection, substitute:

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*Obligations on AROs in relation to declaration votes*

- (2) An Assistant Returning Officer to whom a ballot-box is forwarded under subsection (1) or subsection 227(10) must:
- (a) compare the particulars on the envelopes with the particulars appearing in the relevant records forwarded to the Assistant Returning Officer under this Act, note the number of envelopes and report any discrepancies to a Divisional Returning Officer; and
  - (b) place the envelopes in one or more securely fastened containers, and cause them to be delivered to a Divisional Returning Officer; and
  - (c) forward to that Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the containers delivered to that Divisional Returning Officer.
- (2A) Each Divisional Returning Officer to whom envelopes or records are forwarded under subsection (1A) must:
- (a) compare the particulars on the envelopes with the particulars appearing in the records made under paragraph 195A(2)(e) or subsection 200G(2), note the number of envelopes and, if the envelopes are to be forwarded to another Divisional Returning Officer, report any discrepancies to that Divisional Returning Officer; and
  - (b) place the envelopes, together with the record made under paragraph 195A(2)(e) or subsection 200G(2), in one or more securely fastened containers; and
  - (c) if the envelopes are to be forwarded to another Divisional Returning Officer:
    - (i) cause the envelopes to be delivered to the other Divisional Returning Officer; and
    - (ii) forward to the other Divisional Returning Officer advice in writing of the total number of envelopes delivered to that Divisional Returning Officer.

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*Obligations on DROs in relation to declaration votes*

- (3) Each Divisional Returning Officer to whom advices or envelopes are forwarded under subsection (2) or (2A), or who deals with advices or envelopes under subsection (2A), must:
- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received from each Assistant Returning Officer and pre-poll voting officer; and
  - (b) until they are dealt with under another provision of this Act, keep the envelopes so received in one or more securely fastened containers; and
  - (c) compare the record referred to in paragraph (a) with the envelopes received and note any discrepancies.

**38 Subsection 228(3A)**

Omit “Each DRO to whom ballot-boxes are forwarded, or by whom ballot-boxes are collected, as mentioned in paragraph 195A(6)(b)”, substitute “After receiving envelopes in accordance with subparagraph 195A(6)(b)(iii), each DRO”.

**39 Paragraph 228(3A)(a)**

Repeal the paragraph, substitute:

- (a) must compare the records received by the DRO in accordance with that subparagraph with the envelopes and note any discrepancy; and

**40 Paragraph 228(3A)(b)**

Omit “ballot-boxes”, substitute “containers”.

**41 Subsections 228(4) and (5)**

Repeal the subsections, substitute:

*DROs to forward declaration votes to the appropriate DROs*

- (4) A Divisional Returning Officer must do the following in relation to envelopes bearing certificates or declarations dealt with under this section:

- (a) place in a parcel all the envelopes bearing certificates or declarations that relate to a particular Division;
- (b) endorse on the parcel the number of envelopes;
- (c) seal up the parcel and cause the parcel to be delivered to the Divisional Returning Officer for that Division to be dealt with in accordance with subsection (5);
- (d) forward to that Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the parcel delivered to that Divisional Returning Officer.

*Obligations on DROs who receive declaration votes under subsection (4) or (9)*

- (5) Each Divisional Returning Officer for a Division to whom advices, or envelopes bearing certificates or declarations, are forwarded under subsection (4) or (9) must:
  - (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received under that subsection; and
  - (b) maintain a securely fastened container and identify it as a declaration vote container; and
  - (c) keep in that container, until the scrutiny, all envelopes bearing a certificate or declaration and purporting to contain a ballot paper recording a declaration vote in relation to the Division that, in accordance with subsection (5A), are received within sufficient time to be taken into account in the scrutiny.

#### **42 Subsection 228(5A)**

Omit “(7) or”.

#### **43 At the end of subsection 228(5A)**

Add:

Note: An envelope is also received within sufficient time to be taken into account in the scrutiny if it is received by a person who is authorised under section 202B.

**44 Subsection 228(6)**

Omit “ballot-box”, substitute “container”.

**45 Subsection 228(6)**

Omit “shall endorse on the envelope the date of its receipt and shall”, substitute “must endorse on the envelope the date of its receipt and must”.

**46 Subsection 228(7)**

Repeal the subsection.

**47 Before subsection 228(8)**

Insert:

*Declaration votes received outside Australia to be forwarded to a specified person*

**48 Subsection 228(8)**

Omit “shall, in accordance with the written instructions of the Electoral Commissioner,”, substitute “must, in accordance with the written instructions of the Electoral Commissioner, deal with and”.

**49 Subsection 228(8)**

Omit “together with”.

**50 Subsection 228(9)**

Omit “and records”, substitute “or records”.

**51 Subsection 228(9)**

Omit “shall”, substitute “must”.

**59 Subsection 235(8)**

Omit “Divisional Returning Officer”, substitute “Assistant Returning Officer”.

**62 Subsection 266(1)**

Omit “on or after the last Monday before the close of the poll for a Division, the DRO shall conduct such preliminary scrutinies as he or she considers necessary”, substitute “after receiving any declaration votes, a DRO must conduct preliminary scrutinies of the declaration votes received”.

**63 Paragraph 266(1)(a)**

Repeal the paragraph.

**65 Paragraph 273(2)(c)**

Repeal the paragraph, substitute:

- (c) open the ballot-box and remove the ballot papers from the box;

**66 Paragraph 273(3)(a)**

Repeal the paragraph, substitute:

- (a) in relation to each container of ballot papers for the Division received under paragraph (2)(f):
  - (i) open the container; and
  - (ii) remove the ballot papers from the container; and
  - (iii) count the number of ballot papers removed from the container; and

**67 Subparagraph 273(3)(c)(ii)**

Omit “subparagraph (a)(iii) and”.

**68 Paragraph 273(3)(d)**

Omit “subparagraph (a)(iii) and”.

**70 Subsection 274(2)**

After “attend”, insert “, do the following”.

**71 Paragraphs 274(2)(ab), (b) and (c)**

Repeal the paragraphs, substitute:

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- (ab) open the ballot-box and remove the ballot papers from the box;
- (b) count:
  - (i) the number of ballot papers with first preference votes marked for each candidate; and
  - (ii) the number of informal ballot papers, and reject those papers;
- (c) bundle up the ballot papers in accordance with the directions of the Electoral Commissioner;

**72 Paragraph 274(2)(e)**

Repeal the paragraph.

**73 Paragraph 274(2)(g)**

Repeal the paragraph, substitute:

- (g) record on each bundle a description of the contents;
- (ga) seal up the bundles in a securely fastened container in accordance with the directions of the Electoral Commissioner, and endorse on each container a description of the contents of the container, and permit any scrutineers present to countersign the endorsement;

**74 Paragraph 274(2)(h)**

Omit “parcels”, substitute “container”.

**75 Paragraph 274(7)(a)**

Omit “the sealed parcels”, substitute “the containers”.

**76 Paragraph 274(7)(b)**

Omit “contained in the parcels”.

**77 Paragraph 274(12)(c)**

Repeal the paragraph, substitute:

- (c) seal up the parcels and endorse on each parcel a description of the contents, and permit any scrutineers present, if they so desire, to countersign the endorsement.

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**78 Section 340 (heading)**

Repeal the heading, substitute:

**340 Prohibition of certain behaviour near polling booths and pre-poll voting places**

**79 Subsection 340(1)**

Repeal the subsection, substitute:

- (1) A person commits an offence if:
- (a) the person engages in any of the following activities:
    - (i) canvassing for votes in an election;
    - (ii) soliciting the vote of an elector in an election;
    - (iii) inducing an elector not to vote for a particular candidate in an election;
    - (iv) inducing an elector not to vote in an election;
    - (v) exhibiting a notice or sign (other than an official notice or sign) relating to an election; and
  - (b) the activity is engaged in at an entrance to, or in any place (whether public or private) within 6 metres of an entrance to:
    - (i) a polling booth at which voting in the election is taking place; or
    - (ii) a pre-poll voting office or office of a DRO at which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, for the election; and
  - (c) the activity is engaged in:
    - (i) in relation to a polling booth—on polling day or on a day to which the polling is adjourned for the election; or
    - (ii) in relation to a pre-poll voting office or office of a DRO—at any time during which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, at the office.

Penalty: 5 penalty units.

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**80 Paragraphs 340(1A)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the person engages in any of the following activities:
  - (i) canvassing for votes in an election;
  - (ii) soliciting the vote of an elector in an election;
  - (iii) inducing an elector not to vote for a particular candidate in an election;
  - (iv) inducing an elector not to vote in an election; and
- (b) the activity is engaged in in any place (whether public or private) 6 metres or more from an entrance to:
  - (i) a polling booth at which voting in the election is taking place; or
  - (ii) a pre-poll voting office or office of a DRO at which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, for the election; and
- (ba) the activity is engaged in:
  - (i) in relation to a polling booth—on polling day or on a day to which the polling is adjourned for the election; or
  - (ii) in relation to a pre-poll voting office or office of a DRO—at any time during which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, at the office; and

**81 Subparagraph 340(1A)(d)(i)**

After “booth”, insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**82 Subparagraphs 340(1A)(d)(ii) and (iii)**

Omit “entrance of the polling booth”, substitute “entrance to the polling booth, pre-poll voting office or office of the DRO (as the case requires)”.

**83 Subsection 340(1B)**

Repeal the subsection.

**84 Paragraph 340(2)(a)**

After “polling booth”, insert “, pre-poll voting office or office of a DRO”.

**85 Paragraph 340(2)(b)**

Omit “throughout the hours of polling”, substitute “throughout the days or at all times referred to in paragraph (1)(c) or (1A)(ba)”.

**86 Paragraph 340(2)(b)**

After “polling booth”, insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**87 Subsection 340(2)**

After “polling booth” (last occurring), insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**92 Paragraph 2 of Schedule 3**

Repeal the paragraph.

**93 Paragraph 23 of Schedule 3**

Omit “, as soon as practicable after the ballot papers that are required, under that scrutiny, to be placed in a ballot-box under paragraph 18 or 19 are so placed, but not before the close of the poll for the Division, must”, substitute “must, at a time determined to be appropriate by the DRO (which may be before the close of the poll for the Division)”.

***Referendum (Machinery Provisions) Act 1984***

**94 After section 16A**

Insert:

**16B Officers may act as Divisional Returning Officers in relation to declaration votes**

- (1) The Electoral Commissioner may, in writing, authorise one or more persons who are members of the staff of the Electoral

Commission to exercise or perform, in relation to one or more specified Divisions, powers, functions or duties that are conferred on a Divisional Returning Officer for those Divisions under:

- (a) section 46A (forwarding of declaration votes); or
  - (b) Schedule 4 (preliminary scrutiny of declaration votes).
- (2) An authorisation:
- (a) may be made subject to conditions or limitations specified in the authorisation; and
  - (b) does not limit the power of a Divisional Returning Officer to act in any matter.
- (3) If an authorisation is given:
- (a) the person authorised in relation to a specified Division may exercise or perform any power, function or duty of a Divisional Returning Officer for the Division, subject to:
    - (i) any condition or limitation under paragraph (2)(a); and
    - (ii) any direction of a Divisional Returning Officer for the Division; and
  - (b) a reference to a Divisional Returning Officer or DRO in section 46A or Schedule 4, or in any other provision of this Act that relates to that section or Schedule, is taken to include a reference to the person.

**105 Before subsection 46A(1)**

Insert:

*Presiding officer to forward declaration votes to ARO*

**106 Subsection 46A(1)**

Omit “shall”, substitute “must”.

**107 Subsection 46A(1A)**

Omit “shall forward the envelope, together with”, substitute “must forward the envelope, and”.

**108 Subsections 46A(1B) and (2)**

Omit “shall”, substitute “must”.

**109 Paragraph 46A(2)(a)**

Omit “the Divisional Returning Officer”, substitute “a Divisional Returning Officer”.

**110 Paragraphs 46A(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) place the envelopes in one or more securely fastened containers, and cause them to be delivered to a Divisional Returning Officer; and
- (c) forward to that Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the containers delivered to that Divisional Returning Officer.

**111 Subsection 46A(3)**

Repeal the subsection, substitute:

- (2A) Each Divisional Returning Officer to whom envelopes or records are forwarded under subsection (1A) must:
  - (a) compare the particulars on the envelopes with the particulars appearing in the records made under paragraph 67(2)(e) or subsection 73F(2), note the number of envelopes and, if the envelopes are to be forwarded to another Divisional Returning Officer, report any discrepancies to that Divisional Returning Officer; and
  - (b) place the envelopes, together with the record made under paragraph 67(2)(e) or subsection 73F(2), in one or more securely fastened containers; and
  - (c) if the envelopes are to be forwarded to another Divisional Returning Officer:
    - (i) cause the envelopes to be delivered to the other Divisional Returning Officer; and

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- (ii) forward to the other Divisional Returning Officer advice in writing of the total number of envelopes delivered to that Divisional Returning Officer.

*Obligations on DROs in relation to declaration votes*

- (3) Each Divisional Returning Officer to whom advices or envelopes are forwarded under subsection (2) or (2A), or who deals with advices or envelopes under subsection (2A), must:
- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received from each Assistant Returning Officer and pre-poll voting officer; and
  - (b) until they are dealt with under another provision of this Act, keep the envelopes so received in one or more securely fastened containers; and
  - (c) compare the record referred to in paragraph (a) with the envelopes received and note any discrepancies.

**112 Subsection 46A(3A)**

Omit “Each DRO to whom ballot-boxes are forwarded, or by whom ballot-boxes are collected, as mentioned in paragraph 67(6)(b)”, substitute “After receiving envelopes in accordance with subparagraph 67(6)(b)(iii), each DRO”.

**113 Paragraph 46A(3A)(a)**

Repeal the paragraph, substitute:

- (a) must compare the records received by the DRO in accordance with that subparagraph with the envelopes and note any discrepancy; and

**114 Paragraph 46A(3A)(b)**

Omit “ballot-boxes”, substitute “containers”.

**115 Subsections 46A(4) and (5)**

Repeal the subsections, substitute:

*DROs to forward declaration votes to the appropriate DROs*

- (4) A Divisional Returning Officer must do the following in relation to envelopes bearing certificates or declarations dealt with under this section:
- (a) place in a parcel all the envelopes bearing certificates or declarations that relate to a particular Division;
  - (b) endorse on the parcel the number of envelopes;
  - (c) seal up the parcel and cause the parcel to be delivered to the Divisional Returning Officer for that Division to be dealt with in accordance with subsection (5);
  - (d) forward to that Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the parcel delivered to that Divisional Returning Officer.

*Obligations on DROs who receive declaration votes under subsection (4) or (9)*

- (5) Each Divisional Returning Officer for a Division to whom advices, or envelopes bearing certificates or declarations, are forwarded under subsection (4) or (9) must:
- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received under that subsection; and
  - (b) maintain a securely fastened container and identify it as a declaration vote container; and
  - (c) keep in that container, until the scrutiny, all envelopes bearing a certificate or declaration and purporting to contain a ballot paper recording a declaration vote in relation to the Division that, in accordance with subsection (5A), are received within sufficient time to be taken into account in the scrutiny.

**116 Subsection 46A(5A)**

Omit “(7) or”.



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**117 At the end of subsection 46A(5A)**

Add:

Note: An envelope is also received within sufficient time to be taken into account in the scrutiny if it is received by a person who is authorised under section 16B.

**118 Subsection 46A(6)**

Omit “ballot-box”, substitute “container”.

**119 Subsection 46A(6)**

Omit “shall endorse on the envelope the date of its receipt and shall”, substitute “must endorse on the envelope the date of its receipt and must”.

**120 Subsection 46A(7)**

Repeal the subsection.

**121 Subsection 46A(8)**

Repeal the subsection, substitute:

*Declaration votes received outside Australia to be forwarded to a specified person*

- (8) An Assistant Returning Officer at a place outside Australia must, in accordance with the written instructions of the Electoral Commissioner, deal with and forward envelopes bearing certificates or declarations, and the relevant records made by the officer under paragraph 67(2)(e) or subsection 73F(2), to such person as are specified in those instructions.

**122 Subsection 46A(9)**

Omit “and records”, substitute “or records”.

**123 Subsection 46A(9)**

Omit “shall”, substitute “must”.

**124 Subsection 48(4)**

Omit “voting is adjourned”, substitute “the taking of votes of the electors at the referendum is adjourned”.

**125 Subsection 50(4)**

After “131(1)”, insert “or (1A)”.

**126 Paragraph 50(4)(a)**

Repeal the paragraph, substitute:

- (a) the reference in that subsection to voting day for the referendum, or a day to which the taking of votes of the electors at a referendum has been adjourned under section 42 or 43, were a reference to the period:
  - (i) commencing on the day of the issue of the writ for the referendum; and
  - (ii) ending immediately after the voting day or, if the voting is adjourned, after the last day to which the voting is so adjourned; and

**127 Subsection 51(5)**

Omit “voting is adjourned”, substitute “taking of votes of the electors at the referendum is adjourned”.

**128 Paragraph 51(8)(e)**

Repeal the paragraph, substitute:

- (e) section 131 applies as if the references (however described) in subsections 131(1), (1A) and (2) to voting day for the referendum, or a day to which the taking of votes of the electors at the referendum has been adjourned, were a reference to the time of the visit.

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**129 Subsection 51(10)**

Omit “appropriate Assistant Returning Officer designated for the purposes of this subsection by the Australian Electoral Officer for the State or Territory in which that last visit occurred”, substitute “Divisional Returning Officer or Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer for the Division in which that last visit occurred”.

**132 Paragraph 67(5)(b)**

After “designated”, insert “Divisional Returning Officer or”.

**133 Paragraph 67(5)(c)**

Omit “Assistant Returning Officer, also forward to that Assistant Returning Officer”, substitute “Divisional Returning Officer or Assistant Returning Officer, also forward to that Officer”.

**134 Paragraph 67(6)(a)**

After “DRO”, insert “(the *capital city DRO*)”.

**135 Paragraphs 67(6)(b) to (d)**

Repeal the paragraphs, substitute:

(b) the capital city DRO must:

- (i) remove the envelopes from the ballot-box and place in a parcel all the envelopes that relate to a particular Division; and
- (ii) endorse on the parcel the number of the envelopes; and
- (iii) seal up the parcel and cause the parcel, and the record made by the officer under paragraph (2)(e), to be forwarded to, or made available to be collected by, the Divisional Returning Officer for that Division in accordance with the instructions of the capital city DRO.

**136 Subsection 67(7)**

Omit “paragraphs (6)(b) and (d)”, substitute “subparagraph (6)(b)(iii)”.

**154 Subsection 89A(1)**

Omit “on or after the last Monday before the close of voting in a Division, the DRO shall conduct such preliminary scrutinies as he or she considers necessary”, substitute “after receiving any declaration votes, a DRO must conduct preliminary scrutinies of the declaration votes received”.

**155 Paragraph 89A(1)(a)**

Repeal the paragraph.

**156 Paragraph 90(1)(e)**

After “who attend”, insert “, do the following”.

**157 Subparagraph 90(1)(e)(iii)**

Repeal the subparagraph, substitute:

- (iii) open the ballot-box and remove the ballot-papers from the box;
- (iv) count the number of ballot-papers with votes given in favour of the proposed law, the number of ballot-papers with votes given not in favour of the proposed law, and the number of informal ballot-papers;

**158 Paragraph 91(1)(d)**

Omit “sealed parcels”, substitute “bundles”.

**159 Paragraph 91(1)(d)**

Omit “such parcels”, substitute “such bundles”.

**160 Paragraph 91(1)(e)**

Omit “sealed parcels”, substitute “bundles”.

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**161 Paragraph 91(1)(f)**

Omit “opened by the Officer, send to the relevant Divisional Returning Officer the sealed parcels of ballot-papers”, substitute “opened by the Officer, place the bundles of ballot-papers into a securely fastened container and send the container to the relevant Divisional Returning Officer”.

**162 Subparagraph 91(1)(g)(i)**

Omit “sealed parcels of ballot-papers”, substitute “containers”.

**163 Subparagraph 91(1)(g)(ii)**

Omit “parcels”, substitute “containers”.

**164 Section 131 (heading)**

Repeal the heading, substitute:

**131 Prohibition of certain behaviour near polling booths and pre-poll voting places**

**165 Subsection 131(1)**

Repeal the subsection, substitute:

- (1) A person commits an offence if:
- (a) the person engages in any of the following activities:
    - (i) inducing an elector to vote in a particular way at a referendum;
    - (ii) inducing an elector not to vote at a referendum;
    - (iii) exhibiting any notice or sign (other than an official notice or sign) that relates to a referendum; and
  - (b) the activity is engaged in at the entrance to, or in any place (whether public or private) within 6 metres of an entrance to:
    - (i) a polling booth at which voting at the referendum is taking place; or
    - (ii) a pre-poll voting office or office of a DRO at which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, for the referendum; and

- (c) the activity is engaged in:
  - (i) in relation to a polling booth—on voting day for the referendum, or on a day to which the taking of votes of the electors at the referendum has been adjourned under section 42 or 43; or
  - (ii) in relation to a pre-poll voting office or office of a DRO—at any time during which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, at the office.

Penalty: 5 penalty units.

### **166 Paragraphs 131(1A)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the person engages in either of the following activities:
  - (i) inducing an elector to vote in a particular way at a referendum;
  - (ii) inducing an elector not to vote at a referendum; and
- (b) the activity is engaged in in any place (whether public or private) 6 metres or more from an entrance to:
  - (i) a polling booth at which voting at the referendum is taking place; or
  - (ii) a pre-poll voting office or office of a DRO at which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, for the referendum; and
- (ba) the activity is engaged in:
  - (i) in relation to a polling booth—on the voting day for the referendum, or on a day to which the taking of votes of the electors at the referendum has been adjourned under section 42 or 43; or
  - (ii) in relation to a pre-poll voting office or office of a DRO—at any time during which applications for pre-poll votes may be made, or pre-poll ordinary voting is available, at the office; and

**167 Subparagraph 131(1A)(d)(i)**

After “booth”, insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**168 Subparagraphs 131(1A)(d)(ii) and (iii)**

Omit “entrance of the polling booth”, substitute “entrance to the polling booth, pre-poll voting office or office of the DRO (as the case requires)”.

**169 Subsection 131(1B)**

Repeal the subsection.

**170 Paragraph 131(2)(a)**

After “polling booth”, insert “, pre-poll voting office or office of a DRO”.

**171 Paragraph 131(2)(b)**

Omit “throughout the hours on which the polling booth is open on the voting day for the referendum, or on any day to which the taking of the votes of the electors at the referendum has been adjourned under section 42 or 43”, substitute “through the days or at all times referred to in paragraph (1)(c) or (1A)(ba)”.

**172 Paragraph 131(2)(b)**

After “polling booth”, insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**173 Subsection 131(2)**

After “polling booth” (last occurring), insert “, pre-poll voting office or office of the DRO (as the case requires)”.

**175 Paragraph 2 of Schedule 4**

Repeal the paragraph.

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**176 Paragraph 19 of Schedule 4**

Omit “, as soon as practicable after the ballot-papers that are required, under that scrutiny, to be placed in a ballot-box under paragraph 16 are so placed, but not before the close of the poll for the Division, must”, substitute “must, at a time determined to be appropriate by the DRO (which may be before the close of the poll for the Division)”.

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*[Minister’s second reading speech made in—  
House of Representatives on 29 November 2018  
Senate on 14 February 2019]*

(255/18)