



Electoral Legislation Amendment (Contingency Measures) Act 2021

No. 136, 2021

**An Act to amend the law relating to elections in
respect of postal votes, adjournments and
emergencies and to provide for the application of
the amendments**

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

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**An Act to amend the law relating to elections in
respect of postal votes, adjournments and
emergencies and to provide for the application of
the amendments**

[Assented to 13 December 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Electoral Legislation Amendment (Contingency Measures) Act 2021*.

No. 136, 2021 Electoral Legislation Amendment (Contingency Measures) Act 2021

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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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	14 December 2021

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Contingency powers

Commonwealth Electoral Act 1918

1 At the end of Part XXIII

Add:

396 Modifications by legislative instrument in the event of an emergency

Scope

- (1) This section applies if:
- (a) an emergency is declared (however described) under a Commonwealth emergency law; and
 - (b) the Electoral Commissioner is satisfied on reasonable grounds that the emergency to which the declaration relates would interfere with the due conduct of an election in a geographical area to which the declaration applies (the ***emergency area***).

Electoral Commissioner may modify operation of this Act, or provisions of this Act, in certain circumstances

- (2) If the Electoral Commissioner is satisfied on reasonable grounds that it is necessary or conducive to ensure the due conduct of the election in the emergency area, the Electoral Commissioner may, by legislative instrument, modify the operation of this Act, or specified provisions of this Act, in relation to any or all of the following:
- (a) expanding the grounds on which a person in the emergency area may apply for a postal vote or a pre-poll vote (see sections 183 and 200A);
 - (b) extending the period during which applications for pre-poll votes may be made to a pre-poll voting officer (see section 200BA) at a place in the emergency area (but not so

as to be earlier than 5 days after the declaration of nominations);

- (c) amending the number of scrutineers a group of candidates is entitled (see section 264) to be represented by at a scrutiny under section 273A at a particular counting centre in the emergency area (but not so as to be less than one scrutineer per group of candidates per officer engaged in a scrutiny or counting of ballot papers at that centre).

Note: For the meaning of *group*, see subsection (10).

- (3) The Electoral Commissioner may, by legislative instrument, modify the operation of this Act, or specified provisions of this Act, to allow a person to do either or both of the following:
 - (a) if the Electoral Commissioner is satisfied, on reasonable grounds, that the person being present for action that is to take place under the Act in the emergency area is necessary or conducive for the due conduct of the election in the emergency area—travel, or be present, for the action;
 - (b) conduct an activity mentioned in subsection (4) within 100 metres of the entrance to a polling booth or pre-poll voting office in the emergency area, or travel for the purposes of conducting the activity;

despite a prescribed Commonwealth, State or Territory law, or a prescribed kind of Commonwealth, State or Territory law.

Note: Paragraph (a) may cover, for example:

- (a) permitting candidates, and agents for candidates, to be present at a place of nomination, in the emergency area, for the determination of the order of the names of the candidates or of groups in ballot papers to be used in an election; or
- (b) permitting scrutineers to be present at a counting centre, in the emergency area, for scrutiny.

- (4) For the purposes of paragraph (3)(b), the activities are the following:
 - (a) canvassing for votes in an election;
 - (b) supplying electoral matter to electors;
 - (c) soliciting the vote of an elector in an election;
 - (d) exhibiting a notice or sign (other than an official notice or sign) relating to an election.

- (5) A legislative instrument made under subsection (2) or (3) has effect according to its terms, despite any other provision of this Act.

Electoral Commissioner must notify the Prime Minister and Leader of the Opposition

- (6) Before making an instrument under subsection (2) or (3), the Electoral Commissioner must notify the Prime Minister and the Leader of the Opposition in the House of Representatives, in writing:
- (a) that the Electoral Commissioner is considering making the instrument; and
 - (b) why the Electoral Commissioner considers it necessary to make the instrument; and
 - (c) how modifications to be made under the instrument will be limited to the emergency area and the period for which the relevant emergency declaration is in force.

Modification must be published on the Electoral Commission's website

- (7) If the Electoral Commissioner makes a legislative instrument under subsection (2) or (3), the Electoral Commissioner:
- (a) must publish the legislative instrument on the Electoral Commission's website; and
 - (b) may publish the legislative instrument in any other way the Electoral Commissioner considers appropriate.

Commonwealth emergency law

- (8) In this section, **Commonwealth emergency law** means the following:
- (a) the *Biosecurity Act 2015*;
 - (b) the *National Emergency Declaration Act 2020*;
 - (c) the *National Health Act 1953*;
 - (d) the *National Health Security Act 2007*;
 - (e) any other Commonwealth law specified under subsection (9).

- (9) The Minister may, by legislative instrument, specify a law of the Commonwealth for the purposes of the definition of ***Commonwealth emergency law*** in subsection (8).

Group of candidates

- (10) In this section, ***group*** of candidates has the same meaning as in Part XX.

Note: See subsection 287(1).

Sunset

- (11) A legislative instrument made under subsection (2) or (3) ceases to have effect at the earlier of the following:
- (a) when the emergency declaration referred to in subsection (1) is revoked, repealed or otherwise ceases to have effect;
 - (b) when the writs for the election to which the legislative instrument relates are returned.

Part 2—Polling and scrutiny

Commonwealth Electoral Act 1918

2 Section 240A

Omit “presiding officer” (wherever occurring), substitute “Electoral Commissioner”.

3 Sections 241 and 242

Omit “presiding officer”, substitute “Electoral Commissioner”.

4 At the end of section 243

Add:

Note: See also subsection 265(3) (delayed scrutiny for Divisions where there is an adjournment at a polling place in that Division).

5 Paragraph 265(1)(a)

Omit “It”, substitute “Subject to subsection (3), the scrutiny”.

6 At the end of section 265

Add:

- (3) If the polling is adjourned at any polling place in a Division under section 241 or 242, the scrutiny for the House of Representatives election for that Division must not commence until after the close of the poll for that polling place.

7 After section 323

Insert:

323A Officers and scrutineers not to divulge or communicate Senate election results before close of adjourned polling

A person commits an offence if:

- (a) the person is an officer or a scrutineer; and
- (b) the polling is adjourned at a polling place in a Division under section 241 or 242; and

Schedule 1 Amendments
Part 2 Polling and scrutiny

- (c) the person divulges or communicates the results of the Senate election for a polling place in the Division to the public or a section of the public; and
- (d) the person does so before the closing of the poll for the polling place mentioned in paragraph (b).

Penalty: 10 penalty units.

Part 3—Other amendments

Commonwealth Electoral Act 1918

8 At the end of section 4

Add:

(12) In this Act:

- (a) a reference to a postal vote certificate printed on an envelope is taken to include a reference to a postal vote certificate that is placed inside an envelope; and
- (b) a reference to an envelope on which a postal vote certificate is printed is taken to include a reference to an envelope that has a postal vote certificate placed inside.

9 Subsection 28(1)

After “Parts III and IV”, insert “and sections 240A, 241, 242 and 396”.

13 After subsection 194(1A)

Insert:

- (1B) In spite of paragraphs (1)(d), (da), (db) and (f), if the postal vote certificate is not printed on the envelope but the postal vote certificate is to be placed in the envelope:
- (a) the requirement referred to in paragraph (1)(d) for the person voting to fasten the envelope after placing the ballot paper in the envelope does not apply; and
 - (b) the person voting, or a person acting on behalf of that person under paragraph (1)(f), must declare, on the postal vote certificate, that, subject to paragraph (a) of this subsection, the requirements referred to in paragraphs (1)(a), (b) and (d) were satisfied before the close of the poll; and
 - (c) the authorised witness must declare, on the postal vote certificate, that the requirements referred to in paragraphs (1)(a) to (c) were satisfied before the close of the poll; and
 - (d) the person voting, or a person acting on behalf of that person under paragraph (1)(f), must, in the presence of the

authorised witness, place the postal vote certificate in the envelope and fasten the envelope.

14 Subsection 209(5)

Repeal the subsection.

Part 4—Application

15 Application of amendments

The amendments of the *Commonwealth Electoral Act 1918* made by this Schedule apply in relation to elections the writs for which are issued on or after the commencement of this item.

[*Minister's second reading speech made in—
House of Representatives on 28 October 2021
Senate on 2 December 2021*]

(156/21)
