



Referendum (Machinery Provisions) Amendment Act 2023

No. 11, 2023

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Postal voting		3
	<i>Referendum (Machinery Provisions) Act 1984</i>	3
Schedule 1A—Mobile polling		7
	<i>Referendum (Machinery Provisions) Act 1984</i>	7
Schedule 2—Scrutiny		8
	<i>Referendum (Machinery Provisions) Act 1984</i>	8
Schedule 3—Authorisations		13
	<i>Referendum (Machinery Provisions) Act 1984</i>	13
Schedule 3A—Commonwealth expenditure		20
	<i>Referendum (Machinery Provisions) Act 1984</i>	20
Schedule 4—Referendum financial disclosure		21
Part 1—Main amendments		21
	<i>Referendum (Machinery Provisions) Act 1984</i>	21
Part 2—Consequential amendments		43
	<i>Commonwealth Electoral Act 1918</i>	43
Part 3—Application provisions		44
Schedule 5—Designated electors		45
	<i>Commonwealth Electoral Act 1918</i>	45
	<i>Referendum (Machinery Provisions) Act 1984</i>	46
Schedule 6—Contingency measures		49
	<i>Referendum (Machinery Provisions) Act 1984</i>	49
Schedule 7—Modernisation and terminology		53
	<i>Referendum (Machinery Provisions) Act 1984</i>	53
Schedule 8—Amendment of references to “ballot-paper” and “ballot-papers”		57

Part 1—Amendment of specific references	57
<i>Referendum (Machinery Provisions) Act 1984</i>	57
Part 2—Bulk amendment of references to “ballot-paper”	58
<i>Referendum (Machinery Provisions) Act 1984</i>	58
Part 3—Bulk amendment of references to “ballot-papers”	63
<i>Referendum (Machinery Provisions) Act 1984</i>	63
Schedule 9—Advertising blackout period	67
<i>Broadcasting Services Act 1992</i>	67
<i>Special Broadcasting Service Act 1991</i>	68



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No. 11, 2023

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

[Assented to 27 March 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Referendum (Machinery Provisions) Amendment Act 2023*.

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 this Act receives the Royal Assent.	27 March 2023

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—Postal voting

Referendum (Machinery Provisions) Act 1984

1 At the end of section 3

Add:

(6) 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.

2 Subsection 25(4)

Repeal the subsection.

3 Subsection 25(6)

Repeal the subsection.

4 Paragraph 38(1)(a)

Repeal the paragraph, substitute:

- (a) a writ for a referendum has been issued; and

5 Subparagraph 38(2)(c)(i)

Omit “the earlier of the public announcement of the proposed voting day for the referendum and”.

6 Subsection 55(4)

Omit “or the public announcement of the proposed date for the voting, whichever is the earlier”.

7 Subsection 58(1)

Omit “or the public announcement of the proposed date for the voting, whichever is the earlier”.

8 Section 61A

Repeal the section.

9 After subsection 65(1)

Insert:

- (1AA) 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 voting; 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 voting; 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.

10 Paragraph 65(1A)(a)

Repeal the paragraph, substitute:

- (a) a signed and dated statement by the person setting out why the person was unable to comply with those requirements:
 - (i) accompanies the postal vote; or
 - (ii) is produced by the person in the approved form; or
 - (iii) is given in writing by the person; and

11 Paragraph 65(1A)(c)

Repeal the paragraph, substitute:

- (c) if subparagraph (a)(i) applies—the postal vote is accompanied by a photocopy, that is certified by the person

-
- to be a true copy, of a part of the person's passport that includes the details set out in subsection (1B); and
- (d) if subparagraph (a)(ii) or (iii) applies—a copy of a part of the person's passport that includes the details set out in subsection (1B) is produced in the approved form, or given in writing, by the person.

12 After subsection 65(1A)

Insert:

- (1B) For the purposes of paragraphs (1A)(c) and (d), the details of the part of the person's passport are the following:
- (a) the country and date of issue;
 - (b) the number of the passport;
 - (c) the person's name, date of birth and signature;
 - (d) a photograph of the person.
- (1C) The following provisions of the *Electronic Transactions Act 1999* apply in relation to subparagraphs (1A)(a)(ii) and (iii) and paragraph (1A)(d) of this section despite any regulations in force for the purposes of subsection 7A(2) of that Act:
- (a) subsection 8(1);
 - (b) Division 2 of Part 2;
 - (c) Division 3 of Part 2.

To avoid doubt, this subsection does not affect the operation of that Act, including as affected by any such regulations, in relation to any other provision of this Act.

13 At the end of Part IV

Add:

71AA Postal votes not to be rejected in certain circumstances

- (1) A postal vote must not be rejected because of a mistake in spelling if the elector's intention is clear.
- (2) A postal vote received in an envelope (an *outer envelope*) that also contains an envelope bearing a postal vote certificate is not to be rejected because the postal vote is not inside the envelope bearing the postal vote certificate.

- (3) For the purposes of this Act, the outer envelope is to be dealt with as if it were an envelope:
 - (a) bearing a postal vote certificate; and
 - (b) purporting to contain a postal ballot paper or postal vote.
- (4) However, despite subsection (3), the following provisions apply only in relation to the envelope bearing the postal vote certificate:
 - (a) paragraphs 67(2)(c), (d) and (e);
 - (b) section 68;
 - (c) paragraph 6 of Schedule 4.

14 Application of amendments

The amendments made by this Schedule apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.

Schedule 1A—Mobile polling

Referendum (Machinery Provisions) Act 1984

1 Subsection 51(5)

Repeal the subsection, substitute:

- (5) A day notified under paragraph (4)(b) must be:
- (a) if the voting day for the referendum is the same as that fixed for the polling at an election—any of the 12 days before voting day; or
 - (b) if the voting day for the referendum is not the same as that fixed for the polling at an election—any of the 19 days before voting day; or
 - (c) voting day; or
 - (d) a day to which the taking of votes of the electors at the referendum is adjourned.

2 After subsection 73AA(2)

Insert:

- (2A) Without limiting paragraph (1)(a), a place specified to be a pre-poll voting office for a referendum may be a place that has been determined under paragraph 51(4)(a) to be a place that teams will visit for the purposes of taking votes under section 51 at the referendum.

3 Application of amendments

The amendments made by this Schedule apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.

Schedule 2—Scrutiny

Referendum (Machinery Provisions) Act 1984

1 At the end of section 24

Add:

Note: See also subsection 93(9) for when votes are formal.

2 After subsection 27(4)

Insert:

(4A) A scrutineer appointed under this section must be appointed in the approved form.

3 Subsection 51(11)

Repeal the subsection.

4 After subsection 73AA(1)

Insert:

(1AA) The day, or the earliest of days, declared under paragraph (1)(b) must not be earlier than:

- (a) if the pre-poll voting office for a referendum is also a place that teams will visit for the purposes of taking votes under section 51 (about mobile booths) at the referendum—the day that is 19 days before the voting day for the referendum; or
- (b) if paragraph (a) does not apply—the day that is 12 days before the voting day for the referendum.

(1AB) A day or days declared under paragraph (1)(b) must not be a public holiday in the State or Territory in which the place to which the declaration relates is located.

5 Subsections 73B(4) and (5)

Repeal the subsections.

6 After subsection 73CA(5)

Insert:

(5A) A scrutineer appointed under this section must be appointed in the approved form.

6A Subsection 89(2)

Omit “one person to act as a scrutineer during the scrutiny at each counting centre”, substitute “persons to act as scrutineers during the scrutiny at each counting centre, but the number of scrutineers appointed under this subsection must not exceed the number of officers who are engaged in the scrutiny at each counting centre”.

6B Subsection 89(3)

Omit “one person to act as a scrutineer during the scrutiny at each counting centre in that State”, substitute “persons to act as scrutineers during the scrutiny at each counting centre in that State, but the number of scrutineers appointed under this subsection must not exceed the number of officers who are engaged in the scrutiny at each counting centre in that State”.

6C Subsection 89(3A)

Omit “one person to act as a scrutineer during the scrutiny at each counting centre in the Territory”, substitute “persons to act as scrutineers during the scrutiny at each counting centre in the Territory, but the number of scrutineers appointed under this subsection must not exceed the number of officers who are engaged in the scrutiny at each counting centre in the Territory”.

6D Subsection 89(4)

Omit “one person to act as a scrutineer during the scrutiny at each counting centre in the Northern Territory”, substitute “persons to act as scrutineers during the scrutiny at each counting centre in the Northern Territory, but the number of scrutineers appointed under this subsection must not exceed the number of officers who are engaged in the scrutiny at each counting centre in the Northern Territory”.

7 After subsection 89(4A)

Insert:

(4B) A scrutineer appointed under this section must be appointed in the approved form.

8 Paragraph 90(1)(a)

After “referendum”, insert “(subject to subsection (1A))”.

9 After subparagraph 90(1)(e)(iii)

Insert:

- (iiia) for a pre-poll ordinary ballot-box (within the meaning of Division 3 of Part IVA) being dealt with before the close of voting in accordance with subsection (1A)—unfold the ballot papers and sort them into a group for votes given in favour of the proposed law, a group for votes given not in favour of the proposed law, and a group for informal votes;

10 After subsection 90(1)

Insert:

- (1A) The actions set out in subparagraphs (1)(e)(i), (ii), (iii) and (iiia) may be taken in relation to a pre-poll ordinary ballot-box (within the meaning of Division 3 of Part IVA) after 4 pm on voting day. A scrutineer present while the actions are being taken is not entitled to object to a ballot paper before the close of voting, but may after the closing make any objections as if the ballot-box had not been dealt with under this subsection.

Note: The actions set out in subparagraphs (1)(e)(i), (ii), (iii) and (iiia) do not include counting (see subparagraph (1)(e)(iv) and paragraphs 91(1)(b) and (c)).

11 At the end of section 90

Add:

- (3) A scrutineer commits an offence if:
 - (a) the actions mentioned in subsection (1A) (early opening and sorting of pre-poll ballot papers) are taken, in accordance with that subsection, at a counting centre before the close of voting for a referendum; and
 - (b) the scrutineer is present while those actions are taken; and
 - (c) the scrutineer discloses or communicates information that relates to those actions to persons outside the counting centre; and

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- (d) the disclosure or communication is made before the close of voting.

Note: See also section 116 (officers and scrutineers to observe secrecy).

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

- (4) A scrutineer who commits any breach of this section, or who is guilty of misconduct, or who fails to obey the lawful directions of the presiding officer, may be removed from the counting centre by any constable or by a person authorised by the presiding officer to remove the scrutineer.
- (5) In this section, *counting centre* means any premises at which a scrutiny or counting of ballot papers for a referendum is to be, or is being, conducted.

12 At the end of section 93

Add:

- (9) For the purposes of subsection (8):
- (a) a voter who writes the letter “Y” in the space provided on the ballot paper is presumed to have intended to approve the proposed law; and
 - (b) a voter who writes the letter “N” in the space provided on the ballot paper is presumed to have intended to not approve the proposed law.

13 Paragraph 16 of Schedule 4

Omit “after the close of voting in the Division,”.

14 Paragraph 16 of Schedule 4

Omit “unfolding or”.

15 After paragraph 16 of Schedule 4

Insert:

17. The DRO:
- (a) may withdraw the ballot papers in accordance with subparagraph 16(a):

- (i) for ballot papers of electors other than designated electors—at any time on or after the day that is 5 days before the voting day; or
 - (ii) for ballot papers of designated electors—after the close of voting; and
- (b) if the DRO has not withdrawn the ballot papers in accordance with subparagraph 16(a) by the close of voting—must do so after the close of voting.

16 Application of amendments

The amendments made by this Schedule apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.

Schedule 3—Authorisations

Referendum (Machinery Provisions) Act 1984

1 Subsection 3(1)

Insert:

referendum matter has the meaning given by section 3AA.

2 After section 3

Insert:

3AA Meaning of *referendum matter*

- (1) *Referendum matter* means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote at a referendum.
- (2) For the purposes of subsection (1), each creation, recreation, communication or recommunication of matter is to be treated separately for the purposes of determining whether matter is referendum matter.

Note: For example, matter that is covered by an exception under subsection (5) when originally communicated may become referendum matter if recommunicated for the dominant purpose referred to in subsection (1).

- (3) If more than one proposed law for the alteration of the Constitution is submitted to electors on a day, the dominant purpose of the communication or intended communication of matter is to be determined as if all of the proposed laws submitted to electors on that day were a single referendum.

Rebuttable presumption for matter that expressly promotes or opposes a proposed law

- (4) Without limiting subsection (1), the dominant purpose of the communication or intended communication of matter that expressly promotes or opposes a proposed law for the alteration of the Constitution, to the extent that the matter relates to a

referendum, is presumed to be the purpose referred to in subsection (1), unless the contrary is proved.

Matters to be taken into account

- (5) Without limiting subsection (1), the following matters must be taken into account in determining the dominant purpose of the communication or intended communication of matter:
- (a) whether the communication or intended communication is or would be to the public or a section of the public;
 - (b) whether the matter contains an express or implicit comment on a proposed law for the alteration of the Constitution;
 - (c) whether the communication or intended communication is or would be received by electors near a polling place;
 - (d) how soon a referendum is to be held after the creation or communication of the matter;
 - (e) whether the communication or intended communication is or would be unsolicited.

Exception

- (6) Despite subsections (1) and (4), matter is not **referendum matter** if the communication or intended communication of the matter:
- (a) forms or would form part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or
 - (b) is or would be by a person for a dominant purpose that is a satirical, academic, educative or artistic purpose, taking into account any relevant consideration including the dominant purpose of any other communication of matter by the person; or
 - (c) is or would be a private communication by a person to another person who is known to the first person; or
 - (d) is or would be by or to a person who is a Commonwealth public official (within the meaning of the *Criminal Code*) in that person's capacity as such an official; or
 - (e) is or would be a private communication to a political entity (who is not a Commonwealth public official), within the meaning of the *Commonwealth Electoral Act 1918*, in relation to public policy or public administration; or

- (f) occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

3 Section 110A (definition of *referendum matter*)

Repeal the definition.

4 Section 110A (paragraph (e) of the definition of *disclosure entity*)

Repeal the paragraph, substitute:

- (e) a referendum entity;
- (ea) a significant third party (within the meaning of Part XX of the *Commonwealth Electoral Act 1918*);

5 At the end of subsection 110B(1)

- ; (d) the integrity of the electoral system, as it relates to referendums, by ensuring that only those with a legitimate connection to Australia are able to influence Australian referendums.

6 At the end of subsection 110B(2)

- ; (c) restricting the communication of referendum matter authorised by foreign campaigners.

7 At the end of subsection 110C(3)

Add:

- ; or (d) if the matter is communicated in circumstances giving rise to a contravention of section 110CA (prohibition on foreign campaigners authorising referendum matter).

8 Subsection 110C(5) (table item 1, column headed “the following particulars are required ...”, paragraphs (c), (d) and (e))

Repeal the paragraphs, substitute:

- (c) the name of the natural person responsible for giving effect to the authorisation

9 Subsection 110C(5) (table item 3, column headed “the following particulars are required ...”, paragraphs (b), (c) and (d))

Repeal the paragraphs, substitute:

- (b) the address of the person

10 Subsection 110C(5) (table item 5, column headed “the following particulars are required ...”, paragraphs (b), (c) and (d))

Repeal the paragraphs, substitute:

- (b) the address of the entity

11 Subsection 110C(5) (table item 7, column headed “the following particulars are required ...”, paragraphs (b), (c) and (d))

Repeal the paragraphs, substitute:

- (b) the address of the person

12 After section 110C

Insert:

110CA Prohibition on foreign campaigners authorising referendum matter

- (1) A foreign campaigner contravenes this subsection if referendum matter is communicated to a person and:
- (a) all of the following apply:
 - (i) the matter is a referendum advertisement;
 - (ii) all or part of the distribution or production of the advertisement was paid for;
 - (iii) the content of the advertisement was approved by the foreign campaigner (whether or not the foreign campaigner paid for the distribution or production of the advertisement); or
 - (b) both of the following apply:
 - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice or poster;

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- (ii) the content of the matter was approved by the foreign campaigner; or
 - (c) all of the following apply:
 - (i) the foreign campaigner communicates the matter;
 - (ii) the matter is not an advertisement covered by paragraph (a);
 - (iii) the matter does not form part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice or poster.

Civil penalty: 120 penalty units.

Exception

- (2) Subsection (1) does not apply in relation to referendum matter referred to in paragraphs (1)(b) and (c) if the matter forms part of:
 - (a) an opinion poll or research relating to voting intentions at a referendum; or
 - (b) a communication communicated for personal purposes; or
 - (c) an internal communication of the foreign campaigner; or
 - (d) a communication at a meeting of 2 or more persons if the identity of the person (the *speaker*) communicating at the meeting, and any foreign campaigner on whose behalf the speaker is communicating, can reasonably be identified by the person or persons to whom the speaker is speaking; or
 - (e) a live communication of a meeting covered by paragraph (d), but not any later communication of that meeting; or
 - (f) a communication communicated solely for the purpose of announcing a meeting.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see section 96 of the Regulatory Powers Act).

Application of civil penalty to entities that are not legal persons

- (3) For the purposes of this Act and the Regulatory Powers Act, a contravention of subsection (1) that would otherwise have been committed by a foreign campaigner that is not a legal person is taken to have been committed by each member, agent or officer (however described) of the foreign campaigner who, acting in the

foreign campaigner's actual or apparent authority, engaged in the conduct or made the omission constituting the contravention.

Note 1: For paragraph (1)(c), matter may be communicated on behalf of a disclosure entity whether or not the disclosure entity pays for the communication of the matter.

Note 2: Examples of matters that may be covered by this section include internet advertisements, bulk text messages and bulk voice calls containing referendum matter.

Note 3: For the geographical application of this section, see section 110D.

Note 4: For the meaning of *communicate* in relation to carriage service providers, see the definition of that term in section 110A.

13 Section 110D (at the end of the heading)

Add “and 110CA”.

14 Section 110D

After “section 110C” (wherever occurring), insert “or 110CA”.

15 Subsection 110E(1)

Omit all the words after “relevant”, substitute:

to:

- (a) assessing compliance with section 110C; or
- (b) investigating a possible contravention of section 110CA.

16 After subsection 110E(4)

Insert:

- (4A) A person or entity commits an offence if:
- (a) the person or entity is given a notice under subsection (2);
 - and
 - (b) the person or entity does an act or omits to do an act; and
 - (c) the act or omission contravenes the notice.

Penalty: 200 penalty units.

17 Subsection 110E(5)

After “effect of”, insert “subsection (4A) of this section and”.

18 Paragraph 140AA(b)

Omit “that fact; and”, substitute “that fact.”.

19 Paragraph 140AA(c)

Repeal the paragraph.

20 Application of amendments

- (1) Section 110CA of the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, applies in relation to referendum matter communicated on or after the commencement of this Schedule, regardless of when:
 - (a) the writ for the referendum to which the communication relates was issued; or
 - (b) when the content of the matter was approved.
- (2) Section 110E of the *Referendum (Machinery Provisions) Act 1984*, as amended by this Schedule, applies in relation to notices given after the commencement of this Schedule.

Schedule 3A—Commonwealth expenditure

Referendum (Machinery Provisions) Act 1984

1 At the end of paragraph 11(4)(c)

Add “, including salaries, remuneration, allowances and expenses payable under the Constitution, the *Parliamentary Business Resources Act 2017* and agreements for employment or engagement referred to in the *Members of Parliament (Staff) Act 1984*”.

2 At the end of section 11

Add:

- (5) Subsection (4) applies in respect of expenditure incurred on or after the end of the day on which a proposed law to alter the Constitution passes the Parliament, as referred to in subsection (1) or (2).
- (6) To avoid doubt, subsection (4) does not prevent the Commonwealth from expending money in relation to neutral public civics education and awareness activities.
- (7) To avoid doubt, activities referred to in subsection (6) must not address the arguments for or against a proposed law for the alteration of the Constitution.
- (8) Subsection (4) does not prevent the Commonwealth from expending money in relation to meetings of the Constitutional Expert Group, the Referendum Engagement Group or the Referendum Working Group.
- (9) Subsections (5) to (8) and this subsection are repealed at the start of the polling day for the first general election of the members of the House of Representatives held after the commencement of this subsection.

Schedule 4—Referendum financial disclosure

Part 1—Main amendments

Referendum (Machinery Provisions) Act 1984

1 Subsection 3(1)

Insert:

disclosure threshold has the meaning given by Part XX of the *Commonwealth Electoral Act 1918*.

foreign campaigner has the meaning given by the *Commonwealth Electoral Act 1918*.

foreign donor has the meaning given by section 287AA of the *Commonwealth Electoral Act 1918*.

gift has the meaning given by Part XX of the *Commonwealth Electoral Act 1918*.

referendum entity means a person or entity that incurs referendum expenditure during a referendum expenditure period that exceeds the disclosure threshold.

referendum expenditure has the meaning given by section 3AAA.

referendum expenditure period means the period:

- (a) starting on the day that is 6 months before the writ for a referendum is issued; and
- (b) ending on the voting day for the referendum.

scheme has the meaning given by Part XX of the *Commonwealth Electoral Act 1918*.

2 Before section 3A

Insert:

3AAA Meaning of *referendum expenditure*

- (1) *Referendum expenditure* means expenditure incurred for the dominant purpose of creating or communicating referendum matter, except to the extent that the expenditure is incurred by a person or entity (the *service provider*):
 - (a) in providing a communication service or communication platform that is used to create or communicate referendum matter; or
 - (b) in providing a service for another person or entity that engaged the service provider, on a commercial basis, to create or communicate referendum matter.
- (2) Expenditure may be referendum expenditure whether the expenditure is incurred for the dominant purpose of creating or communicating particular referendum matter or referendum matter generally.

Note 1: For example, expenditure incurred in relation to the communication of referendum matter for which particulars are required to be notified under section 110C is referendum expenditure.

Note 2: Expenditure by a person who creates matter that is covered by an exception under subsection 3AA(6) is not referendum expenditure. However, as each creation or communication of matter is treated as separate matter under subsection 3AA(2), expenditure incurred by another person who communicates the same matter for the dominant purpose referred to in subsection 3AA(1) may be referendum expenditure.
- (3) If more than one proposed law for the alteration of the Constitution is submitted to electors on a day, referendum expenditure is to be determined by reference to the total expenditure incurred in relation to all of the proposed laws submitted to electors on that day.

3 After Part VIII

Insert:

Part VIIIA—Disclosure of referendum expenditure and gifts

Division 1—Preliminary

109B Application of this Part

In this Part:

- (a) a reference to a referendum entity does not include a reference to the Commonwealth, a State or a Territory; and
- (b) a reference to a gift does not include a reference to a gift by the Commonwealth, a State or a Territory.

109C Determining amount or value of certain gifts

If regulations made for the purposes of subsection 287(5) of the *Commonwealth Electoral Act 1918* are in force, the amount or value of a gift consisting of or including a disposition of property other than money is, for the purposes of this Part, to be determined in accordance with principles set out or referred to in those regulations.

109D Entities that are not incorporated

For the purposes of this Act and the Regulatory Powers Act:

- (a) referendum expenditure is taken to be incurred by, or with the authority of, an entity that is not a legal person if the referendum expenditure is incurred by or with the authority of any member or officer (however described) of the entity who, acting in their actual or apparent authority, incurred the referendum expenditure; and
- (b) a contravention of a provision of this Part that would otherwise have been committed by a referendum entity that is not a legal person is taken to have been committed by each member or officer (however described) of the referendum entity, who, acting in that person's actual or apparent authority, engaged in any conduct or made any omission contributing to the contravention.

Division 2—Disclosure of referendum expenditure and gifts

109E Returns by referendum entities

- (1) A person or entity (the *relevant person*) must provide a return in accordance with this section if the relevant person is a referendum entity at any time during a referendum expenditure period.

Note: Returns provided under this section must be published by the Electoral Commissioner on the Transparency Register (see section 320 of the *Commonwealth Electoral Act 1918*).

Civil penalty:

The higher of the following amounts:

- (a) 60 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of referendum expenditure not disclosed—3 times that amount.
- (2) The relevant person must provide to the Electoral Commission a return:
- (a) setting out:
 - (i) details of the referendum expenditure incurred by or with the authority of the relevant person during the referendum expenditure period; and
 - (ii) the total value of gifts covered by subsection (3) that were received by the relevant person during the referendum expenditure period; and
 - (iii) the total number of persons and entities who made gifts covered by that subsection to the relevant person during the referendum expenditure period; and
 - (b) including a statement that the relevant person complied with section 109J during the referendum expenditure period, signed by the members, agents or officers (however described) of the relevant person who have responsibility for ensuring that the relevant person complies with this Part.

Note: For the purposes of subparagraph (a)(i), referendum expenditure is the total amount of expenditure incurred during the referendum

expenditure period in relation to all referendums held on a single day
(see subsection 3AAA(3)).

- (3) A gift is covered by this subsection if:
- (a) the relevant person knows that the person or entity who made the gift intends the gift to be used for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter; or
 - (b) the relevant person accepted the gift intending to use the gift for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter.
- (4) The return must:
- (a) be provided before the end of 15 weeks after the voting day for the referendum to which the referendum expenditure period relates; and
 - (b) be in the approved form; and
 - (c) if the relevant person is also required to provide a return under section 109F—include that return.
- (5) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

109F Returns relating to gifts received by referendum entities for referendum expenditure

- (1) A person or entity (the *relevant person*) must provide a return for a referendum expenditure period in accordance with this section if:
- (a) the relevant person is required to provide a return for the period under section 109E (returns by referendum entities); and
 - (b) the relevant person received a gift or gifts covered by subsection (2) of this section during the referendum expenditure period; and
 - (c) either:
 - (i) the amount of at least one such gift was more than the disclosure threshold; or
 - (ii) the total amount of all gifts received by the relevant person from at least one single person during the

referendum expenditure period was more than the disclosure threshold.

Note: The return required under this section must be included in the return provided under section 109E (see paragraph 109E(3)(c)).

- (2) A gift is covered by this subsection if:
- (a) the relevant person knows that the person or entity who made the gift intends the gift to be used for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter; or
 - (b) the relevant person accepted the gift intending to use the gift for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter.
- (3) The relevant person must provide to the Electoral Commission a return for the referendum expenditure period setting out the following details:
- (a) for subparagraph (1)(c)(i):
 - (i) the amount of each gift covered by that subparagraph; and
 - (ii) the date on which the gift was made;
 - (b) for subparagraph (1)(c)(ii):
 - (i) the total amount of gifts made by each single person who is covered by that subparagraph; and
 - (ii) the date on which each of those gifts were made; and
 - (c) in any case:
 - (i) for a gift or gifts on behalf of the members of an unincorporated association (other than a registered industrial organisation within the meaning of Part XX of the *Commonwealth Electoral Act 1918*)—the name of the association, and the names and addresses of the members of the executive committee (however described) of the association; or
 - (ii) for a gift or gifts purportedly made out of a trust fund, or out of the funds of a foundation—the names and addresses of the trustees of the fund or foundation, and the title, name or other description of the trust fund or foundation; or

- (iii) for any other gift or gifts—the name and address of the person who made the gift or gifts.

109G Returns relating to gifts to referendum entities

- (1) This section applies to a person or entity (the *donor*) if:
 - (a) the donor makes one or more gifts to another person or entity at any time during a referendum expenditure period; and
 - (b) the other person or entity is a referendum entity at any time during the referendum expenditure period; and
 - (c) the donor intends for the gift or gifts to be used:
 - (i) for the dominant purpose of incurring referendum expenditure; or
 - (ii) for the dominant purpose of creating or communicating referendum matter; and
 - (d) the total value of the gift or gifts exceeds the disclosure threshold.
- (2) The donor must, within 15 weeks after the end of the referendum expenditure period, give to the Electoral Commission a return, in an approved form and in accordance with subsection (3).

Civil penalty:

The higher of the following amounts:

- (a) 60 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the gifts not disclosed—3 times that amount.
- (3) The return must include the following information:
 - (a) the value of the gift or gifts made in the referendum expenditure period by the person or entity to the referendum entity;
 - (b) the name of the referendum entity to whom the gift or gifts were made;
 - (c) the date or dates on which the gift or gifts were made.

Note: Returns provided under this section must be published by the Electoral Commissioner on the Transparency Register (see section 320 of the *Commonwealth Electoral Act 1918*).

- (4) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2) of this section.

Division 3—Requirements relating to foreign donor gifts

109H Object of this Division

- (1) The object of this Division is to secure and promote the actual and perceived integrity of the Australian referendum process by reducing the risk of foreign persons and entities exerting (or being perceived to exert) undue or improper influence in the outcomes of referendums.
- (2) This Division aims to achieve this object by restricting the receipt and use of gifts made by foreign persons or entities that do not have a legitimate connection to Australia.

109J Gifts provided for the purposes of incurring referendum expenditure etc.

Offence by gift recipient

- (1) A person or entity (the **relevant person**) contravenes this subsection if:
- (a) the relevant person is a referendum entity at any time during a referendum expenditure period; and
 - (b) a gift is made to, or for the benefit of, the relevant person by a foreign donor at any time during the referendum expenditure period; and
 - (c) the relevant person knows that the donor is a foreign donor; and
 - (d) the amount or value of the gift is at least \$100; and
 - (e) either of the following applies:
 - (i) the relevant person knows that the foreign donor intends the gift to be used for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter;
 - (ii) the relevant person accepted the gift intending to use the gift for the purposes of incurring referendum

expenditure, or for the dominant purpose of creating or communicating referendum matter; and

- (f) acceptable action has not been taken in relation to the gift before the end of the day that is 6 weeks after the latest of the following:
 - (i) the day the gift is made;
 - (ii) the day that the writ for the referendum is issued;
 - (iii) the day the relevant person exceeds the disclosure threshold during the referendum expenditure period.
- (2) For the purpose of an offence against subsection (6), strict liability applies to:
 - (a) paragraph (1)(a); and
 - (b) the element of the offence in paragraph (1)(b) that the gift was made at any time during the referendum expenditure period.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Offence by foreign donor

- (3) A person or entity (the **donor**) contravenes this subsection if:
 - (a) the donor is a foreign donor; and
 - (b) the donor makes a gift at any time during the referendum expenditure period for a referendum to, or for the benefit of, another person or entity; and
 - (c) the other person or entity is a referendum entity at any time during the referendum expenditure period; and
 - (d) the amount or value of the gift is at least \$100; and
 - (e) either of the following applies:
 - (i) the donor intends the gift to be used for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter;
 - (ii) the donor knows that the other person or entity accepts the gift intending to use the gift for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter; and

- (f) acceptable action has not been taken in relation to the gift before the end of the day that is 6 weeks after the latest of the following:
 - (i) the day the gift is made;
 - (ii) the day that the writ for the referendum is issued;
 - (iii) the day the referendum entity exceeds the disclosure threshold during the referendum expenditure period.
- (4) For the purpose of an offence against subsection (6), strict liability applies to:
 - (a) the element of the offence in paragraph (3)(b) that the gift was made at any time during the referendum expenditure period; and
 - (b) paragraph (3)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) For the purposes of paragraphs (1)(f) and (3)(f), ***acceptable action*** is taken in relation to a gift if any of the following action is taken:
 - (a) an amount equal to the amount or value of the gift is transferred to the Commonwealth for the purposes of this Part;
 - (b) the gift is returned to the donor or the person who made the gift;
 - (c) an amount equal to the amount or value of the gift is transferred to the donor or the person who made the gift.

Offence

- (6) A person or entity commits an offence if the person or entity contravenes subsection (1) or (3).

Penalty: 100 penalty units.

- (7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (6) of this section.

Civil Penalty

- (8) A person or entity is liable to a civil penalty if the person or entity contravenes subsection (1) or (3).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift at the time the gift was made—3 times that amount.
- (9) Subsection (8) applies:
- (a) whether or not the conduct constituting the contravention of that subsection occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of that subsection occurs in Australia.

Provision not continuing offence or civil penalty

- (10) Section 4K of the *Crimes Act 1914* does not apply in relation to an offence against subsection (4) of this section. Subsection 93(2) of the *Regulatory Powers Act* does not apply in relation to a contravention of subsection (8) of this section.

Division 4—Referendum expenditure by foreign campaigners

109K Objects of this Division

- (1) The objects of this Division are:
- (a) to ensure, to the extent possible, that only Australians and those with a genuine, legitimate stake in the outcomes of the Australian referendum process are able to influence those outcomes; and
 - (b) to reduce the risk of foreign persons or entities influencing the results of Australian referendums through referendum expenditure.
- (2) This Division aims to achieve these objects by limiting referendum expenditure and fundraising for referendum expenditure by foreign persons or entities that do not have a legitimate connection to Australia.

109L Prohibition on foreign campaigner incurring referendum expenditure or fundraising for that purpose

- (1) A foreign campaigner contravenes this subsection if:
- (a) amounts of referendum expenditure incurred by or with the authority of the foreign campaigner in a financial year total \$1,000 or more; or
 - (b) amounts fundraised for the purpose of referendum expenditure being incurred by or with the authority of the foreign campaigner in a financial year total \$1,000 or more.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine or estimate the amount of referendum expenditure incurred or fundraised in contravention of this subsection—3 times that amount.
- (2) Subsection (1) applies:
- (a) whether or not the conduct constituting the contravention of that subsection occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of that subsection occurs in Australia.

Division 5—Other matters

109M Anti-avoidance

- (1) The Electoral Commissioner may give a person or entity (the *relevant person*) a written notice if:
- (a) the relevant person, whether alone or together with one or more other persons or entities, enters into, begins to carry out or carries out a scheme; and
 - (b) there are reasonable grounds to conclude that the relevant person did so for the sole or dominant purpose of avoiding the application of section 109E, 109F, 109G, 109J or 109L to the relevant person or another person or entity.

Note: A decision to give a notice under this subsection is reviewable: see Part X of the *Commonwealth Electoral Act 1918*.

- (2) The notice must:
- (a) specify the conduct constituting the scheme; and
 - (b) require the relevant person:
 - (i) not to enter into the scheme; or
 - (ii) not to begin to carry out the scheme; or
 - (iii) not to continue to carry out the scheme.

Civil penalty

- (3) A person or entity is liable to a civil penalty if:
- (a) the person or entity is given a notice under subsection (1); and
 - (b) the person or entity does an act or omits to do an act; and
 - (c) the act or omission contravenes the notice.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine or estimate the amount that was not prohibited as a result of the scheme or part of the scheme—3 times that amount.
- (4) This section applies whether or not the scheme is entered into, begun to be carried out or carried out:
- (a) in Australia; or
 - (b) outside Australia; or
 - (c) partly in Australia and partly outside Australia.

109N Electoral Commission may obtain information and documents from persons

- (1) This section applies to a person if the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to assessing compliance with this Part.
- (2) The Electoral Commissioner may, by written notice given to the person, require the person:

- (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
- (b) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents.

Matters to which regard must be had before giving notice

- (3) Before giving a person a notice under subsection (2), the Electoral Commissioner must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (4) Subsection (3) does not limit the matters to which regard may be had.

Offence

- (5) A person commits an offence if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

Content of notice

- (6) A notice given to a person under this section must set out the effect of subsection (5) of this section and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

Review

- (7) A person who is given a notice under subsection (2) may request that the Electoral Commission review the decision to issue the notice. The request must be:
 - (a) in writing; and
 - (b) given to the Electoral Commission during the period of 14 days beginning on the day on which the notice was received.
- (8) The Electoral Commission must:
 - (a) review the decision as soon as practicable after receiving a request under subsection (7); and

- (b) affirm, vary or set aside the decision; and
 - (c) notify the person in writing of its decision on the review.
- (9) If a person requests a review of a decision, the person is not taken to have refused or failed to comply with the notice to which the review relates at any time before the Electoral Commission has notified the person of its decision on the review.

109P Copies of documents

The Electoral Commissioner may inspect a document produced under section 109N and may make and retain copies of such a document.

109Q Retention of documents

- (1) The Electoral Commissioner may take, and retain for as long as is necessary, possession of a document produced under section 109N.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Electoral Commissioner to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Electoral Commissioner must, at such times and places as the Electoral Commissioner thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

109R Debts due to the Commonwealth

- (1) This section applies if:
 - (a) a gift is made to, or for the benefit of, a person (the **gift recipient**); and
 - (b) a court has determined that the gift recipient or any other person has contravened section 109J in relation to the gift.
- (2) The amount or value of the gift (determined at the time the gift is made) is payable by the gift recipient to the Commonwealth and

may be recovered by the Commonwealth as a debt due to the Commonwealth by action in a court of competent jurisdiction.

109S Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Part provides that a person contravening another provision of this Part (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.
- (3) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

109T Recovery of payments

- (1) An action in a court to recover an amount due to the Commonwealth under section 109R, or under a civil penalty order made in relation to a contravention of a civil penalty provision in this Part, may be brought in the name of the Commonwealth by the Electoral Commissioner.
- (2) Any process in the action required to be served on the Commonwealth may be served on the Electoral Commissioner.
- (3) Nothing in this section is intended to limit the operation of section 61 or 63 of the *Judiciary Act 1903*.

109U Keeping records

- (1) A person who is subject to a civil penalty provision in this Part must keep the following records in accordance with subsections (2) and (3):
 - (a) records allowing the person to provide an accurate return under section 109E, 109F or 109G;

- (b) records required for the purposes of complying with section 109J (about gifts from foreign donors);
- (c) any other records required for the purposes of allowing the Electoral Commissioner to determine whether the person is complying, or has complied, with this Part;
- (d) any other records required by the regulations or a determination made under subsection (4) of this section.

Civil penalty: 200 penalty units.

- (2) A record kept under subsection (1) must be kept for:
 - (a) if the record relates to a return in relation to referendum expenditure—5 years after the voting day for the referendum; and
 - (b) if the record relates to a return in relation to a gift—5 years after the day the gift is made; and
 - (c) if the record relates to compliance with Division 3—5 years after the day the relevant gift is made.
- (3) The record must be kept in accordance with any other requirements determined under subsection (4).
- (4) The Electoral Commissioner may, by legislative instrument, determine:
 - (a) records for the purposes of paragraph (1)(d); or
 - (b) requirements for records for the purposes of subsection (3).

109V Inability to complete returns

- (1) If a person who is required to give a return under section 109E, 109F or 109G considers that it is impossible to complete the return because the person is unable to obtain particulars that are required for the preparation of the return, the person may:
 - (a) prepare the return to the extent that it is possible to do so without those particulars; and
 - (b) give the return so prepared; and
 - (c) give to the Electoral Commission notice in writing:
 - (i) identifying the return; and
 - (ii) stating that the return is incomplete by reason that the person is unable to obtain certain particulars; and

- (iii) identifying those particulars; and
 - (iv) setting out the reasons why the person is unable to obtain those particulars; and
 - (v) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars—stating that belief and the reasons for it and the name and address of that other person.
- (2) A person who complies with subsection (1) is not, by reason of the omission of those particulars, to be taken, for the purposes of this Part, to have given a return that is incomplete.
- (3) If the Electoral Commission has been informed under paragraph (1)(c) or subsection (5) that a person can supply particulars that have not been included in a return, the Electoral Commission may, by notice in writing served on that person, require the person to provide to the Electoral Commission, within the period specified in the notice and in writing, those particulars and, subject to subsection (5), the person must comply with that requirement.
- (4) Particulars that were not provided in a return under section 109E, 109F or 109G that are provided under subsection (3) of this section are, for the purposes of this Part, taken to be a return provided under section 109E, 109F or 109G (as the case may be).
- (5) If a person who is required to give particulars under subsection (3) considers that the person is unable to obtain some or all of the particulars, the person must give to the Electoral Commission a written notice:
- (a) setting out the particulars (if any) that the person is able to give; and
 - (b) stating that the person is unable to obtain some or all of the particulars; and
 - (c) identifying the particulars the person is unable to obtain; and
 - (d) setting out the reasons why the person considers they are unable to obtain those particulars; and
 - (e) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give those particulars—setting out the name and address of that

other person and the reasons why the person believes that that other person is able to give those particulars.

- (6) A person who complies with subsection (5) must not, because of the omission of particulars required under subsection (3), be taken, for the purpose of this Part, to have given a return that is incomplete.

109W Non-compliance with Part does not affect referendum

A failure of a person to comply with a provision of this Part in relation to a referendum does not invalidate that referendum.

109X Amendment of returns

- (1) If the Electoral Commissioner is satisfied that a return under section 109E, 109F or 109G contains a formal error or is subject to a formal defect, the Commissioner may amend the return to the extent necessary to correct the error or remove the defect.
- (2) A person who has given a return under this Part may request the permission of the Electoral Commission to make a specified amendment of the return for the purpose of correcting an error or omission.
- (3) A request under subsection (2) must:
- (a) be by notice in writing signed by the person making the request; and
 - (b) be given to the Electoral Commission.
- (4) If:
- (a) a request has been made under subsection (2); and
 - (b) the Electoral Commission is satisfied that there is an error in, or omission from, the return to which the request relates;
- the Commission must permit the person making the request to amend the return in accordance with the request.
- (5) If the Electoral Commission decides to refuse a request under subsection (2), the Commission must give to the person making the request written notice of the reasons for the decision.

- (6) An officer authorised for the purpose by the Electoral Commission may exercise the power of the Commission under subsection (4).
- (7) If an officer acting under subsection (6) decides to refuse a request under subsection (2):
 - (a) subsection (5) applies as if the officer were the Electoral Commission; and
 - (b) the person who made the request may, by notice in writing given to the Commission within 28 days after notice of the refusal was given, request the Commission to review the decision.
- (8) Where a request is made under subsection (7), the Electoral Commission must review the decision to which the request relates and make a fresh decision.
- (9) The amendment of a return under this section does not affect whether a civil penalty order may be made against a person because of a contravention of a civil penalty provision in this Part arising out of the giving of the return.

109Y Report by Electoral Commission

- (1) The Electoral Commission must, as soon as practicable after the voting day for a referendum, prepare and give to the Minister a report of the operation of this Part in relation to that referendum.
- (2) A report under subsection (1) in relation to a referendum must include a list of the names of all persons or entities who, in the opinion of the Electoral Commission, are or may be required to give a return under section 109G in relation to that referendum.
- (3) The Electoral Commission may prepare and give to the Minister, otherwise than under subsection (1), such reports on the operation of this Part as the Electoral Commission thinks appropriate.
- (4) Subject to section 109Z, the Electoral Commission must include in any report referred to in this section particulars of the operation of section 109N since the preparation of the last report referred to in this section that included particulars of the operation of section 109N.

- (5) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to a report under subsection (1) of this section.
- (6) The Minister must cause a copy of a report given under subsection (1) or (3) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (7) A report referred to in this section need not include particulars of a matter if those particulars have been included in an earlier report referred to in this section.

109Z Certain particulars not to be included in reports

- (1) This section applies if a notice is given under section 109N to a person whose name is included in a list in a report mentioned in subsection 109Y(2).
- (2) A report referred to in section 109Y must not include particulars of any information given or contained in documents produced in compliance with the notice under section 109N, unless, in the opinion of the Electoral Commission, the information relates to a contravention or potential contravention of a civil penalty provision in this Act.

109ZA Implied freedom of political communication

This Part does not apply to a person or entity to the extent that any constitutional doctrine of implied freedom of political communication would be infringed if this Part were to apply to the person or entity.

4 Subsection 140AAA(1)

Repeal the subsection, substitute:

Application of Regulatory Powers Act

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Schedule 4 Referendum financial disclosure

Part 1 Main amendments

(1A) Section 110C is enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

5 Subsection 140AAA(2)

Omit “in relation to section 110C of this Act”.

Part 2—Consequential amendments

Commonwealth Electoral Act 1918

6 Subsection 120(2) (at the end of the table)

Add:

- 15 A decision under section 109M (anti-avoidance) of the *Referendum (Machinery Provisions) Act 1984* to give a notice to a person or entity.

7 Subsection 320(1) (at the end of the table)

Add:

- | | | |
|---|--|---|
| 6 | each return provided under Division 2 of Part VIIIA of the <i>Referendum (Machinery Provisions) Act 1984</i> | before the end of 24 weeks after the voting day for the referendum to which the return relates. |
|---|--|---|

Part 3—Application provisions

8 Application of amendments

- (1A) For the purposes of the definition of *disclosure threshold* in the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, the amount for an indexation year is not replaced if the indexation year begins during the period:
- (a) beginning on the day after this subitem commences; and
 - (b) ending on polling day for the first general election of the members of the House of Representatives held after the commencement of this subitem.
- (1B) Subitem (1A) applies despite section 321A of the *Commonwealth Electoral Act 1918*.
- (1) Division 2 of Part VIIIA of the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, applies in relation to referendum expenditure periods for which the writs referred to in paragraph (a) of the definition of that term in that Act, as inserted by this Schedule, are issued on or after the commencement of this Schedule (whether the 6-month period referred to in that paragraph begins before, on or after that commencement).
- (2) Section 109J of the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, applies in relation to gifts made on or after the commencement of this item.
- (3) Section 109L of the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, applies to the financial year in which this Schedule commences, and later financial years, in relation to amounts of referendum expenditure incurred or amount fundraised on or after the commencement of this Schedule.
- (4) A notice may be given to a person under section 109N of the *Referendum (Machinery Provisions) Act 1984*, as inserted by this Schedule, in relation to the provision of information or documents regardless of whether the information or documents were obtained by the person before, on or after that commencement.

Schedule 5—Designated electors

Commonwealth Electoral Act 1918

1 Section 202AG (paragraph beginning “The Electoral Commissioner”)

After “in an election”, insert “or a referendum”.

2 Subsection 202AH(1)

Repeal the subsection, insert:

- (1) The Electoral Commissioner may, in writing, declare that an elector is a *designated elector* if the Electoral Commissioner reasonably suspects either or both of the following:
 - (a) that the elector has voted more than once in an election, whether or not the elector has been convicted of an offence against subsection 339(1A) or (1C);
 - (b) that the elector has voted more than once in a referendum (within the meaning of the *Referendum (Machinery Provisions) Act 1984*), whether or not the elector has been convicted of an offence against subsection 130(1A) or (1C) of that Act.

3 Subsection 202AH(3)

Repeal the subsection, substitute:

- (3) A declaration under subsection (1) ceases to have effect if:
 - (a) if the declaration relates to an elector who has been convicted of an offence against subsection 339(1A)—the elector’s conviction is quashed on appeal; and
 - (b) if the declaration relates to an elector who has been convicted of an offence against subsection 339(1C)—the elector’s conviction is quashed on appeal; and
 - (c) if the declaration relates to an elector who has been convicted of an offence against subsection 130(1A) of the *Referendum (Machinery Provisions) Act 1984*—the elector’s conviction is quashed on appeal; and

- (d) if the declaration relates to an elector who has been convicted of an offence against subsection 130(1C) of the *Referendum (Machinery Provisions) Act 1984*—the elector’s conviction is quashed on appeal.

Referendum (Machinery Provisions) Act 1984

4 Subsection 3(1)

Insert:

designated elector means an elector in relation to whom a declaration under subsection 202AH(1) of the *Commonwealth Electoral Act 1918* is in effect.

5 After subsection 22(2A)

Insert:

- (2B) The list must not include the address of a person who is on the Roll for the Division if the person is a designated elector.

6 At the end of subsection 46(1)

Add:

Note: See section 46AA for rules about voting by designated electors.

7 After section 46

Insert:

46AA Voting by designated electors at referendums

- (1) A designated elector is not permitted to vote in a referendum except in accordance with this section.
- (2) A designated elector may vote only by declaration vote.

Note: The effect of subsection (2) is that designated electors are able to cast declaration votes in accordance with the rules relating to postal voting (see Part IV), pre-poll declaration voting (see Part IVA) and provisional and absent voting (see this Part, particularly sections 37 and 46).

8 After subsection 62(2)

Insert:

- (2A) The Electoral Commissioner must not, for the purposes of subparagraph (2)(b)(iii), determine any particulars relating to whether an applicant is a designated elector.

9 After subsection 72(2) (before the note)

Insert:

- Note 1: A person who is a designated elector is not entitled to vote by pre-poll ordinary vote: see paragraph 73CG(2)(ea).

10 Subsection 72(2) (note)

Omit “Note”, substitute “Note 2”.

11 After paragraph 73CG(2)(e)

Insert:

- (ea) the voter is a designated elector; or

12 After subsection 130(1A) (before the penalty)

Insert:

- Note: The Electoral Commissioner may declare that a person convicted of an offence against this subsection is a designated elector (see subsection 202AH(1) of the *Commonwealth Electoral Act 1918*).

13 After subsection 130(1C) (before the penalty)

Insert:

- Note: The Electoral Commissioner may declare that a person convicted of an offence against this subsection is a designated elector (see subsection 202AH(1) of the *Commonwealth Electoral Act 1918*).

14 Application provision

Subsection 202AH(1) of the *Commonwealth Electoral Act 1918*, as amended by this Schedule, applies in relation to a reasonable suspicion that a person has voted more than once in an election or referendum, whether the election or referendum occurred before or after the commencement of this item.

15 Saving provision

- (1) This item applies if a declaration by the Electoral Commissioner for the purposes of subsection 202AH(1) of the *Commonwealth Electoral Act 1918* was in force immediately before the commencement of this item.
- (2) The declaration is taken, after that commencement, to be a declaration for the purposes of subsection 202AH(1), as repealed and substituted by item 2 of this Schedule.

Schedule 6—Contingency measures

Referendum (Machinery Provisions) Act 1984

1 Subsection 41A(1)

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

2 Paragraph 41A(2)(b)

Repeal the paragraph, substitute:

- (b) the Electoral Commissioner temporarily suspends the polling at a polling booth for a period under section 240A of the *Commonwealth Electoral Act 1918*;

3 Subsection 41A(2)

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

4 Subsection 42(1)

Omit “presiding officer at a polling booth may adjourn the voting at a referendum at that polling booth from day to day if the voting is interrupted by”, substitute “Electoral Commissioner may adjourn the voting at a referendum at a polling booth from day to day in any case where voting is interrupted by”.

5 Subsection 42(2)

Omit “presiding officer at the polling booth”, substitute “Electoral Commissioner”.

6 Paragraph 43(b)

Omit “presiding officer at a polling booth”, substitute “Electoral Commissioner”.

7 Section 43

Omit “the presiding officer shall”, substitute “the Electoral Commissioner must”.

8 Section 138

After “Act”, insert “, other than the powers and functions conferred by sections 41A, 42, 43 and 144A,”.

9 After section 144

Insert:

144A 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 a referendum 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 in relation to emergency area voting

- (2) If the Electoral Commissioner is satisfied on reasonable grounds that it is necessary or conducive to ensure the due conduct of the referendum 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 expanding the grounds on which a person in the emergency area may apply for a postal vote or a pre-poll vote (see sections 54 and 72).
- (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 referendum 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, 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 a referendum;
(b) inducing an elector to vote in a particular way at a referendum;
(c) soliciting the vote of an elector in a referendum;
(d) exhibiting a notice or sign (other than an official notice or sign) relating to a referendum.

- (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).

Sunset

- (10) 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 writ for the referendum to which the legislative instrument relates is returned.

10 Application of amendments

The amendments made by this Schedule apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.

Schedule 7—Modernisation and terminology

Referendum (Machinery Provisions) Act 1984

1 Subsection 3(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.

2 Subsection 8(3)

Omit “o’clock in the afternoon”, substitute “pm”.

3 Paragraph 29(1)(b)

Omit “o’clock in the morning”, substitute “am”.

4 Paragraph 29(1)(b)

Omit “o’clock in the afternoon”, substitute “pm”.

5 Paragraph 29(1)(c)

Omit “o’clock in the afternoon”, substitute “pm”.

6 Subsection 41(4)

Omit “shall be sealed up in a parcel which shall be”, substitute “must be bundled up and”.

7 Subsection 41AA(3)

Repeal the subsection, substitute:

- (3) The envelopes containing discarded ballot papers that have been cancelled under this section must be bundled up and given to the DRO for the Division after the close of voting.

8 Subsection 48(4)

Omit “a.m.”, substitute “am”.

9 Subsection 48(4)

Omit “p.m.”, substitute “pm”.

10 Subsection 50(6)

Omit “p.m.”, substitute “pm”.

11 Paragraph 51(8)(da)

Omit “p.m.”, substitute “pm”.

12 Subsection 58(1)

Omit “delivery of,”, substitute “delivery of”.

13 At the end of paragraph 73E(a)

Add “and”.

14 Paragraph 73E(b)

Repeal the paragraph.

15 Paragraph 73J(a)

After “obey all”, insert “lawful”.

16 Paragraph 89A(2)(b)

Omit “p.m.”, substitute “pm”.

17 Paragraph 91(1)(a)

Omit “allowed”, substitute “admitted”.

18 Subsection 92(1)

Omit “allowed”, substitute “admitted”.

19 Subsection 92(1)

Omit “allow”, substitute “admit”.

20 Subsection 95(3)

Omit “allowance”, substitute “admission”.

21 Paragraph 95A(b)

Omit “p.m.”, substitute “pm”.

22 Subsection 96(2)

Omit “allowed and”.

23 Subsection 96(2)

Omit “disallowed and”.

24 Section 110A (note to the definition of *disclosure entity*)

Omit “political campaigners”, substitute “significant third parties”.

25 Section 120 (penalty)

Repeal the penalty, substitute:

Note: Violence, obscene or discriminatory abuse, property damage and harassment or stalking are examples of conduct that may be an offence under this section.

Penalty: Imprisonment for 3 years or 100 penalty units, or both.

26 Subsection 127(1)

Omit “Every paper”, substitute “Every referendum paper”.

27 Saving provision

- (1) This item applies if a form approved by the Electoral Commissioner for the purposes of the definition of *approved form* in subsection 3(1) of the *Referendum (Machinery Provisions) Act 1984* was in force immediately before the commencement of this item.
- (2) The form is taken, after that commencement, to be an approved form for the purposes of that definition, as repealed and substituted by item 1 of this Schedule.

28 Application of amendments

- (1) Subsections 41(4) and 41AA(3) and section 73E of the *Referendum (Machinery Provisions) Act 1984*, as amended by this Schedule, apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.
- (2) Section 120 of the *Referendum (Machinery Provisions) Act 1984*, as amended by this Schedule, applies in relation to offences committed on or after the commencement of this Schedule.

Schedule 8—Amendment of references to “ballot-paper” and “ballot-papers”

Part 1—Amendment of specific references

Referendum (Machinery Provisions) Act 1984

1 Section 26 (heading)

Omit “Ballot-papers”, substitute “Ballot papers”.

2 Subsections 91(2), (3) and (4)

Omit “Ballot-papers”, substitute “Ballot papers”.

3 Form B in Schedule 1

Omit “BALLOT-PAPER”, substitute “BALLOT PAPER”.

4 Form C in Schedule 1

Omit “BALLOT-PAPERS”, substitute “BALLOT PAPERS”.

Part 2—Bulk amendment of references to “ballot-paper”

Referendum (Machinery Provisions) Act 1984

5 Amendment of provisions

The specified provisions listed in this Part are amended by omitting “ballot-paper” (wherever occurring) and substituting “ballot paper”.

6 Paragraph 24(a)

7 Section 25 (heading)

8 Paragraph 25(3)(c)

9 Subsection 25(5)

10 Subsection 25B(1)

11 Subsections 26(1) and (3)

12 Section 33 (heading)

13 Subsection 33(1)

14 Section 34 (heading)

15 Section 35

16 Subsections 36(1), (2) and (3)

17 Paragraphs 36A(3)(a) and (b)

18 Subsections 36A(4), (5), (6) and (7)

19 Subsections 37(5), (6) and (7)

20 Paragraph 40(b)

- 21 Subsections 41(1), (2) and (3)**
 - 22 Paragraphs 41(3)(a) and (b)**
 - 23 Paragraphs 41AA(1)(a) and (b)**
 - 24 Paragraphs 41AA(2)(a), (b) and (c)**
 - 25 Paragraph 41AB(6)(b)**
 - 26 Subsections 41AB(7) and (8)**
 - 27 Subsections 46(4) and (5)**
 - 28 Paragraph 46(9)(c)**
 - 29 Paragraphs 46A(1A)(a) and (b)**
 - 30 Subsection 46A(6)**
 - 31 Paragraph 48(3)(a)**
 - 32 Paragraph 50(3)(b)**
 - 33 Subsection 50(5)**
 - 34 Subsection 58(2) (paragraph (b) of definition of *postal voting papers*)**
 - 35 Paragraphs 59(c) and (f)**
 - 36 Paragraph 61(1)(b)**
 - 37 Subsection 61(1A)**
 - 38 Paragraphs 61(1A)(a) and (c)**
 - 39 Paragraphs 65(1)(a) and (d)**
 - 40 Paragraphs 65(2)(a) and (b)**
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- 41 Subsections 65(2) and (3)**
- 42 Paragraphs 66(a) and (b)**
- 43 Paragraphs 67(2)(a) and (b)**
- 44 Section 68 (heading)**
- 45 Paragraph 68(1)(a)**
- 46 Subsection 68(1)**
- 47 Paragraph 69(b)**
- 48 Section 70 (heading)**
- 49 Section 70**
- 50 Paragraph 73C(e)**
- 51 Section 73CJ (heading)**
- 52 Subsections 73CJ(1) and (3)**
- 53 Section 73CK (heading)**
- 54 Section 73CK**
- 55 Paragraphs 73CK(a) and (b)**
- 56 Paragraphs 73CL(1)(d) and (e)**
- 57 Section 73CM**
- 58 Paragraph 73CM(a)**
- 59 Subsections 73D(1), (2), (5) and (6)**
- 60 Paragraphs 73D(7)(d) and (e)**
- 61 Subsection 73D(9)**

- 62 Paragraph 73D(9)(b)**
- 63 Subsection 73F(2)**
- 64 Paragraphs 73F(2)(d) and (e)**
- 65 Paragraph 73H(1)(a)**
- 66 Subsection 73H(1)**
- 67 Section 73J**
- 68 Subparagraph 73J(b)(iii)**
- 69 Paragraphs 73M(4)(a) and (b)**
- 70 Subsections 73Q(2) and (3)**
- 71 Subsections 92(1) and (2)**
- 72 Subsections 93(1), (3), (4), (7) and (8)**
- 73 Subsection 95(3)**
- 74 Paragraph 95B(7)(b)**
- 75 Subsections 96(1) and (2)**
- 76 Subsection 108AA(1)**
- 77 Section 129**
- 78 Paragraphs 130(1)(aa), (b), (c) and (d)**
- 79 Paragraph 130A(b)**
- 80 Subparagraph 3A(a) of Schedule 4**
- 81 Subparagraphs 6(a), (b), (c), (ca), (cb) and (e) of
Schedule 4**

82 Paragraph 7 of Schedule 4

83 Paragraph 7A of Schedule 4

84 Paragraph 7B of Schedule 4

85 Subparagraph 7B(a) of Schedule 4

86 Paragraph 8 of Schedule 4

87 Paragraph 18 of Schedule 4

Part 3—Bulk amendment of references to “ballot-papers”

Referendum (Machinery Provisions) Act 1984

88 Amendment of provisions

The specified provisions listed in this Part are amended by omitting “ballot-papers” (wherever occurring) and substituting “ballot papers”.

89 Paragraph 17(1)(b)

90 Subsection 17(7)

91 Section 20

92 Paragraph 23(b)

93 Subsections 25(1), (2) and (3)

94 Paragraph 25(3)(b)

95 Section 25A

96 Subsection 26(2)

97 Section 41 (heading)

98 Subsection 41(4)

99 Section 41AA (heading)

100 Subsection 41AB(1)

101 Paragraphs 41AB(2)(a) and (c)

102 Paragraph 41AB(6)(a)

103 Subsection 41AB(11)

- 104 Paragraphs 41AB(11)(a), (b) and (f)**
- 105 Subsection 41AB(12)**
- 106 Paragraphs 41AB(13)(b) and (c)**
- 107 Subsection 46A(1)**
- 108 Paragraph 51(8)(a)**
- 109 Section 61 (heading)**
- 110 Subsection 61(1A) (heading)**
- 111 Section 73CE**
- 112 Section 73CQ**
- 113 Subsection 89(5) (definition of *counting centre*)**
- 114 Paragraphs 89A(1)(b) and (c)**
- 115 Subparagraphs 90(1)(e)(iii) and (iv)**
- 116 Paragraphs 91(1)(a), (b), (c), (d) and (e)**
- 117 Subparagraph 91(1)(e)(iii)**
- 118 Paragraph 91(1)(f)**
- 119 Subparagraph 91(1)(f)(iii)**
- 120 Subparagraph 91(1)(g)(ii)**
- 121 Section 92 (heading)**
- 122 Section 93 (heading)**
- 123 Paragraph 94(c)**
- 124 Subsections 95(1) and (2)**

- 125 Section 95A**
 - 126 Subsections 95B(1), (2), (3) and (5)**
 - 127 Paragraph 95B(7)(a)**
 - 128 Subsection 95B(8)**
 - 129 Paragraphs 95B(8)(a) and (b)**
 - 130 Subsections 95B(9), (11) and (12)**
 - 131 Section 96 (heading)**
 - 132 Subsection 96(3)**
 - 133 Subparagraph 97(a)(iii)**
 - 134 Subparagraph 98(1)(a)(iii)**
 - 135 Section 107A (heading)**
 - 136 Paragraphs 107A(a) and (b)**
 - 137 Section 129 (heading)**
 - 138 Section 130 (heading)**
 - 139 Paragraphs 130(1)(f) and (g)**
 - 140 Section 130A (heading)**
 - 141 Subsection 135(6) (definition of *counting centre*)**
 - 142 Paragraph 142A(1)(a)**
 - 143 Paragraph 5 of Schedule 4**
 - 144 Subparagraph 6A(b) of Schedule 4**
 - 145 Paragraph 14 of Schedule 4**
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146 Subparagraph 16(a) of Schedule 4

147 Subparagraphs 19(a) and (b) of Schedule 4

Schedule 9—Advertising blackout period

Broadcasting Services Act 1992

1 Subclause 1(1) of Schedule 2

Insert:

referendum advertisement, in relation to a referendum, means an advertisement:

- (a) that contains referendum matter (within the meaning of the *Referendum (Machinery Provisions) Act 1984*) that relates to that referendum; and
- (b) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration.

2 Subclause 1(1) of Schedule 2 (definition of *relevant period*)

Repeal the definition, substitute:

relevant period:

- (a) in relation to an election—means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day; and
- (b) in relation to a referendum—means the period that commences at the end of the Wednesday before the voting day for the referendum and ends at the close of voting on that voting day.

3 After clause 3A of Schedule 2

Insert:

3B Broadcasting of referendum advertisements

- (1) In this clause, ***broadcaster*** means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or

- (d) a subscription television broadcasting licensee; or
- (e) a person providing broadcasting services under a class licence.

- (2) A broadcaster must not broadcast a referendum advertisement in relation to a referendum during the relevant period for the referendum.

4 Paragraphs 7(1)(j), 8(1)(i), 9(1)(i), 10(1)(i) and 11(1)(d) of Schedule 2

After “3A,”, insert “3B,”.

5 Paragraph 24(1)(a) of Schedule 6

After “3A,”, insert “3B,”.

6 Subclause 24(4) of Schedule 6

After “3A,”, insert “3B,”.

Special Broadcasting Service Act 1991

7 Subsection 45(1)

Omit “section 70C”, substitute “sections 70C and 71”.

8 After section 70C

Insert:

71 Broadcasting of referendum advertisements

- (1) The SBS must not broadcast a referendum advertisement in relation to a referendum during the relevant period for the referendum.
- (2) In this section:

referendum has the same meaning as in the *Referendum (Machinery Provisions) Act 1984*.

referendum advertisement, in relation to a referendum, means an advertisement:

- (a) that contains referendum matter (within the meaning of the *Referendum (Machinery Provisions) Act 1984*) that relates to that referendum; and
- (b) in respect of the broadcasting of which the SBS has received or is to receive, directly or indirectly, any money or other consideration.

relevant period, in relation to a referendum, means the period that commences at the end of the Wednesday before the voting day for the referendum and ends at the close of voting on that voting day.

9 Application of amendments

The amendments made by this Schedule apply in relation to referendums the writs for which are issued on or after the commencement of this Schedule.

[*Minister's second reading speech made in—
House of Representatives on 1 December 2022
Senate on 8 March 2023*]

(144/22)
