

# **Electoral and Referendum Amendment Regulations 2000 (No. 2)**

## **2000 No. 196**

### **EXPLANATORY STATEMENT**

#### **Statutory Rules 2000 No. 196**

Issued by the authority of the Special Minister of State

*Commonwealth Electoral Act 1918*

Electoral and Referendum Amendment Regulations 2000 (No. 2)

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

The Regulations amend the *Electoral and Referendum Regulations 1940* (the Regulations) to prescribe permitted purposes for the use of elector information provided on tape or disk to prescribed authorities under the combined powers of paragraph 91(4A)(e) and subsection 91(11) of the Act. There are a number of related amendments to current Regulations 5, 7, 8, 9 and Schedule 2. The proposed Regulations also update Schedule 2 of the Regulations.

Sections 91 and 91 A of the Act provide, among other things, that in relation to electoral rolls and habitation indexes, the Regulations may prescribe the purposes for which elector information may be disclosed and the authorities to whom disclosure may be made.

Subsection 91(10) of the Act provides that the Electoral Commission may provide a prescribed authority with a microfiche of the roll or with information that discloses the occupations, sex or dates of birth of electors. Prescribed authorities are the Agency Heads of the agencies and the Chief Executive Officers of the authorities set out in Schedule 2 of the Regulations.

Paragraph 91(4A)(e) of the Act provides that the Electoral Commission may, on request, if it considers it appropriate, and subject to conditions (if any) determined by the Commission, provide to any person or organisation a copy on tape or disk of any Roll or any supplement to a Roll. This power was delegated to the Electoral Commissioner on 3 December 1998.

Advice from the Solicitor-General is that the Electoral Commission may provide a copy of the Roll, including the information that discloses the occupations, sex or dates of birth of electors on tape or disk to prescribed authorities under the combined powers of paragraph 91(4A)(e) and subsection 91(10) of the Act.

However, subsection 91A(1) of the Act provides that where elector information is provided under paragraph 91(4A)(e) of the Act, it may only be used for a permitted purpose. Paragraph 91A(2A)(c) provides that the permitted purposes for use of elector information provided to a person or organisation on tape or disk under paragraph 91(4A)(e) of the Act may be prescribed. Currently, there is no purpose prescribed for use of elector information by prescribed authorities. This means that while the Electoral Commission can lawfully supply the elector information to prescribed authorities, the prescribed authorities may not lawfully use it.

The Regulations prescribe the purposes for which elector information provided on tape or disk to specific prescribed authorities may be used (item 12, Schedule 1). However, a sunset clause has been inserted (item 6, Schedule 1) as it is the government's intention to amend the CEA, within an 18 month period, to expressly provide for the provision of elector information to prescribed authorities in electronic format.

The Regulations also amend Schedule 2 to delete the names of prescribed authorities that have recently advised the Electoral Commission that they no longer wish to seek access to elector information (items 8 and 10, Schedule 1).

Further, the Insolvency and Trustee Service of Australia (ITSA) has been added to Schedule 2, Part 2 as it became an Executive Agency on 1 July 2000. This means that it must be listed in its own right, rather than being provided with the information as a part of the Attorney-General's Department (item 11, Schedule 1). The Department of Family and Community Services is also added to reflect the movement of the Child Support Agency to that portfolio (item 9, Schedule 1).

Details of the Regulations are in the attachment.

The Regulations commenced on gazettal.

## **Attachment**

### **Electoral and Referendum Amendment Regulations 2000 (No. 2)**

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations commence on gazettal.

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

#### **Schedule 1**

Item 1 inserts a definition of 'prescribed authority' to clarify that it has the same meaning in the Regulations as in subsection 91 (11) of the *Commonwealth Electoral Act 1918* (the CEA).

Items 2, 3, 4 and 7 are necessary to clarify that, as set out in subsection 91 (11) of the CEA, prescribed authorities are the Agency Heads of the agencies and the Chief Executive Officers of the authorities listed in Schedule 2, not the agencies and authorities themselves.

Item 5 is a machinery amendment to bring the Regulation into line with current drafting practice.

Item 6 amends Regulation 10 by inserting proposed subregulation 10(2) which will prescribe additional uses of elector information, provided on tape or disk to prescribed authorities under paragraph 91(4A)(e), as permitted purposes under paragraph 91A(2A)(c). These uses are detailed in proposed Schedule 3.

Item 6 also inserts subregulation 10(3) which in effect, is a sunset clause. Subregulation 10(3) will provide that subregulation 10(2) will cease to be effective 18 months after its commencement. A sunset clause has been inserted as it is the government's intention to amend the CEA, within the 18 month period, to expressly provide for the provision of elector information to prescribed authorities in electronic format.

Items 8, 9, 10 and 11 amend Schedule 2 of the Regulations. The Attorney-General's Department is to be deleted from Part 1 and the Australian Government Solicitor is to be deleted from Part 2 as these prescribed authorities have advised that access to elector information is no longer required. The Department of Family and Community Services is added to Part 1 to reflect the movement of the Child Support Agency to that portfolio. Insolvency and Trustee Service Australia is added to Part 2 as it became an executive agency on 1 July 2000 and accordingly must be listed in its own right. The Electoral Commissioner, as delegate of the Electoral Commission, has determined that it is appropriate to provide the elector information to the Child Support Agency and to the Insolvency and Trustee Service Australia.

Item 12 inserts a new Schedule 3 detailing new permitted purposes for use, by each prescribed authority, of elector information that has been provided on tape or disk. The Electoral Commissioner, as delegate of the Electoral Commission, has determined that it is appropriate to provide the information on tape or disk for these purposes.