

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 225

Item 189 of Schedule 2 to the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010* (the Pre-poll Voting Act) provides that the Governor-General may make regulations of a transitional, application or savings nature in relation to the amendments and repeals made by Schedule 2 to the Pre-poll Voting Act.

The purpose of the proposed Regulations is to provide for transitional and application provisions following amendments to the *Commonwealth Electoral Act 1918* (Electoral Act) by Schedule 2 to the Pre-poll Voting Act.

Details of the Regulations are set out in the Attachment.

The Regulations commence on the commencement of Schedule 2 to the Pre-poll Voting Act.

Consultation was unnecessary for this legislative instrument as this instrument is of a technical nature only.

Details of the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Regulations 2010

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Regulations 2010*

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the commencement of Schedule 2 to the Pre-poll Voting Bill.

Regulation 3 – Definitions

This regulation will define four terms used in the proposed Regulations for drafting efficiency.

Regulation 4 – Review of Rolls

Section 104 of the Electoral Act enables a person to request that his or her address is not shown or deleted from the electoral Roll. The request may be made if the person considers that having his or her address shown would place the personal safety of the person or members of the person's family at risk. Subsection 104(7) of the Electoral Act provides that the Electoral Commission may direct a Divisional Returning Officer to conduct a review of the Electoral Roll in relation to electors whose addresses are not shown on the Roll.

The Pre-poll Voting Act amends subsection 104(7) of the Electoral Act to provide that it is the Electoral Commissioner, rather than the Electoral Commission, that may direct a Divisional Returning Officer to conduct a review of the Roll. This regulation provides that a review of the electoral Roll under subsection 104(7) of the Electoral Act that had commenced, but not completed, before that provision was amended is taken to be a review of the Roll conducted by the Electoral Commissioner under subsection 104(7) of that Act.

Regulation 5 – Lists of deaths

Section 108 of the Electoral Act requires the Registrar-General to provide each month to a Divisional Returning Officer or Australian Electoral Officer specified details of each person aged 17 years or upwards who has died in the preceding month. Section 108 also requires the Registrar-General to forward any information required under an agreement between the Electoral Commission and the Registrar-General or a Minister of State. The Pre-poll Voting Act amends section 108 of the Electoral Act to require the information to be forwarded to the Electoral Commissioner or an officer nominated by the Electoral Commissioner.

This regulation provides that the Registrar-General is taken to comply with section 108 of the Electoral Act as amended by forwarding the information to either a Divisional Returning Officer or Australian Electoral Officer, as applicable, until the Electoral Commissioner

notifies the Registrar-General of the person to whom the Registrar-General must provide the information.

Regulation 6 – Lists of convictions

Section 109 of the Electoral Act requires a Controller-General of Prisons to provide an Australian Electoral Officer specified information at specified times. The Pre-poll Voting Act amends section 109 of the Electoral Act to require the information to be forwarded to the Electoral Commissioner or an officer nominated by the Electoral Commissioner.

This regulation provides that the Controller-General of Prisons is taken to comply with section 109 as amended by forwarding the information to an Australian Electoral Officer until the Electoral Commissioner notifies the Controller-General of the person to whom the Controller-General must provide the information.

Regulation 7 – Claims sent by fax

Section 111A of the Electoral Act provides that a claim under Part VIII may be sent by fax. As amendments made by the Pre-poll Voting Act allow an enrolment-related claim or notice to be sent to an electronic address in specified circumstances, the Pre-poll Voting Act repeals section 111A as it is redundant.

This regulation provides that if a claim was received by the Australian Electoral Commission (AEC) by fax before section 111A was repealed, then the repeal of section 111A does not affect that claim.

Regulation 8 – Objection action

Part IX of the Electoral Act sets out the procedures for how an elector is ‘objected’ off the Roll. While amendments made by the Pre-poll Voting Act to Part IX did not substantially change the manner in which objection action is undertaken, the amendments did substitute references to ‘Divisional Returning Officer’ with ‘Electoral Commissioner’.

This regulation provides that objection action undertaken before the commencement of amendments made by the Pre-poll Voting Act continues to be governed by Part IX of the Electoral Act as in force before the commencement of Schedule 2 to the Pre-poll Voting Act.

Regulation 9 – Review of decisions

Part X of the Electoral Act provides for a review of specified enrolment-related decisions. Before the amendments made by the Pre-poll Voting Act, a review of a decision by a Divisional Returning Officer was undertaken by an Australian Electoral Officer, and then if the person wished, could seek a review of the Australian Electoral Officer’s decision in the Administrative Appeals Tribunal (AAT). If an Australian Electoral Officer made the decision at first instance then the person could seek a review in the AAT if it is a decision that may be reviewed by the AAT. The amendments to this Part made by the Pre-poll Voting Act did not substantially change a person’s right of review.

This regulation provides that a request for review under section 120 or 121 of the Electoral Act made before the commencement of amendments made by the Pre-poll Voting Act continues to be governed by Part X of the Electoral Act as in force before the commencement of Schedule 2 to the Pre-poll Voting Act.

Regulation 10 – Registration as a general postal voter

Section 184A of the Electoral Act enables a person to apply to become registered as a general postal voter if he or she satisfies one of the grounds specified in subsection 184A(2). A Register of General Postal Voters is then kept under section 184B of the Electoral Act at each Divisional Office for that Division. The Pre-poll Voting Act amended these provisions to provide that a person applies to the Electoral Commissioner to be registered as a general postal voter and that it is the Electoral Commissioner who is tasked with the responsibility of keeping the Register.

This regulation provides that an application to be registered as a general postal voter made under section 184A of the Electoral Act made before the commencement of amendments made by the Pre-poll Voting Act continues to be governed by Part XV of the Electoral Act as in force before the commencement of Schedule 2 to the Pre-poll Voting Act.

Regulation 11 – Review of registers

Before the amendments made by the Pre-poll Voting Act, section 184B of the Electoral Act required a register of general postal voters to be kept by the Divisional Returning Officer at each Divisional Office. Before the amendments made by the Pre-poll Voting Act, section 185B of the Electoral Act provided that the Electoral Commission could direct the Divisional Returning Officer to conduct a review of the general postal voter register.

The Pre-poll Voting Act amended section 185B of the Electoral Act to provide that it is the Electoral Commissioner, rather than the Electoral Commission, who may direct a review of the register to be conducted. This regulation provides that a review of the register under section 185B that had commenced, but not completed, before that provision was amended is taken to be a review of the register conducted by the Electoral Commissioner under section 185B of the Electoral Act.

Regulation 12 – Antarctic electors

Section 249 of the Electoral Act provides that an elector who is, or expects to be, in Antarctica in the course of employment, may request that he or she be treated as an Antarctic elector. The Pre-poll Voting Act amended section 249 to substitute references to 'Divisional Returning Officer' and 'DRO' with 'Electoral Commissioner' and make other minor changes to provide that it is the Electoral Commissioner and not a Divisional Returning Officer responsible for this function.

This regulation provides that a request to be treated as an Antarctic elector under subsection 249(1) of the Electoral Act before the commencement of amendments made by the Pre-poll Voting Act continues to be governed by Part XV of the Electoral Act as in force before the commencement of Schedule 2 to the Pre-poll Voting Act.