

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 227

Section 395 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Electoral Act, prescribing all matters which by that Act are required or permitted to be prescribed, or necessary or convenient to be prescribed for giving effect to the Electoral Act.

In addition, section 144 of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) provides, in part, that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The purpose of the Regulations is to provide a mechanism for people who are blind or have low vision (sight-impaired) to cast a secret vote through the use of electronically assisted voting.

At the 2007 federal election a trial of electronic voting was conducted for two categories of voters. The first category was voters who are sight-impaired and the second category was those voters who are defence personnel serving outside of Australia. The trial was limited to the 2007 federal election.

Part XVB of the Electoral Act and Part IVB of the Referendum Act provided for these electronic voting trials. The *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010* amended these Parts to provide a broad legislative framework for the conduct of electronically assisted voting at future elections for voters who are sight-impaired.

Similar to the approach adopted for the 2007 federal election, the legislative framework provides for the making of regulations to implement the electronically assisted voting mechanism. The Regulations amend the existing regulations that provided for the electronic voting trials in 2007.

For the next federal election the electronically assisted voting will take place through the use of a call centre. It is anticipated that electronically assisted voting for people who are sight-impaired will continually evolve as technology develops.

Details of the Regulations are set out in the Attachment.

Consultation for this legislative instrument has been ongoing over a number of years including in inquiries of the Joint Standing Committee on Electoral Matters and with stakeholders. The stakeholders who have specifically been consulted on the development of this form of electronic voting include Vision Australia, Blind Citizens Australia, Australian Blindness Forum and the Australian Human Rights Commission.

The Regulations commence on the commencement of Schedule 2 to the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010*.

Details of the Electoral and Referendum Amendment Regulations 2010 (No. 3)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Electoral and Referendum Amendment Regulations 2010 (No. 3)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the commencement of Schedule 2 to the *Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Act 2010*.

Regulation 3 – Amendment of Electoral and Referendum Regulations 1940

This regulation provides that the *Electoral and Referendum Regulations 1940* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Part III, Division 2, heading

Item 1 substitutes a new heading which reads ‘Electronically assisted voting for sight-impaired people’ for Division 2 of Part III of the Principal Regulations.

Item [2] – Regulation 41, definition of *declaration envelope*

Item 2 repeals the definition of ‘declaration envelope’ and substitute definitions for ‘call centre operator’ and ‘certified list of voters’ in the Principal Regulations.

Item [3] – Regulation 41, definitions of *Electronic voting machine* and *issuing officer*

Item 3 repeals the definitions of ‘Electronic voting machine’ and ‘issuing officer’ and substitute definitions for ‘national call centre’, ‘officer’, ‘reference Roll’ and ‘sight-impaired person’ in the Principal Regulations.

Item [4] – Regulations 42 to 52

Item 4 repeals regulations 42 to 52 of the Principal Regulations and substitute new regulations.

Regulation 42 provides that, unlike electronic voting trials at the 2007 federal election, a voter who is sight-impaired may cast an electronically assisted vote at all elections and referendums after the regulation commences. The operation of this regulation is subject to regulation 43 which provides for the availability of electronically assisted voting.

Subregulation 43(1) allows the Electoral Commissioner to determine in writing the places where electronically assisted voting is to be available and the days and times when electronically assisted voting is to be available

Subregulation 43(2) also allows the Electoral Commissioner to give directions to officers in relation to requests for an electronically assisted vote. This regulation encourages consistency across Australia in dealing with such requests.

Regulation 44 prescribes who is entitled to cast an electronically assisted vote. Subregulation 44(1) provides that a sight-impaired voter is entitled to an electronically assisted vote if the voter attends a place where electronically assisted voting is available and asks an officer to cast an electronically assisted vote. The voter's name must be on an electronic approved list of voters, a hard copy certified list of voters or a reference Roll. All these products should contain the same names of voters however might be used in different locations.

Subregulation 44(2) provides when a voter is not entitled to cast an electronically assisted vote. This subregulation is modelled on section 235 of the Electoral Act which applies to all voters seeking to cast a vote without signing a declaration. The note at the end of the subregulation informs a voter that if he or she is not entitled to cast an electronically assisted vote then the voter may be eligible to cast an assisted provisional vote on polling day or an assisted pre-poll vote.

Regulation 45 requires an officer to ask the applicant for an electronically assisted vote three prescribed questions, and depending upon the answers, some follow up questions. These questions are modelled on subsection 229(1) of the Electoral Act and are asked of all voters seeking to vote without signing a declaration. The answers to these questions might mean that a voter is not entitled under subregulation 44(2) to cast an electronically assisted vote.

Subregulation 45(2) ensures that electors who have requested that their address details are suppressed from the Roll are not asked 'Where do you live?'

Regulation 46 requires an officer to assist a person whom the officer is satisfied is entitled to an electronically assisted vote in accordance with regulations 48 and 49.

Regulation 47 provides that the only method of electronically assisted voting for the first Senate election and the first general election held after the commencement of regulation 47 is telephone assisted voting. Regulation 47 also provides that telephone assisted voting is the only method of electronically assisted voting for a by-election held after the commencement of the regulation.

Regulation 48 sets out the method of voting available to a sight-impaired person who requests an electronically assisted vote at the Divisional Office of the Division in which the person is enrolled to vote. The main difference between regulation 48 and regulation 49 is that a hard copy certified list will be available at the Divisional Office which can be checked for the person's name as the person is seeking to vote in his or her 'home Division'.

Regulation 49 sets out the method of voting available to a sight-impaired person who requests an electronically assisted vote at a place other than the Divisional Office of the Division in which the voter is enrolled to vote. This might, for example, be at Vision Australia. As a person could come from any Division in Australia to vote at Vision Australia, it is possible that a hard copy certified list would not be available to check the person's name. Accordingly, subregulation 49(2) allows for different recording mechanisms.

Regulation 50 provides that procedures set out in Subdivision C of Part IVA of the Referendum Act, other than section 73CR, apply to ballot boxes used at the national call centre. This is a drafting efficiency to use existing provisions for dealing with the security and handling of ballot boxes at the national call centre.

Regulation 51 provides for the appointment and regulation of scrutineers attending the national call centre. Regulation 51 would also provide for an offence with a penalty of 5 penalty units for scrutineers at the national call centre that interfere with specified personnel or unnecessarily communicate with people in the national call centre. These provisions are modelled on existing provisions in the Electoral Act.

Regulation 52 requires that a record of the name of each person who casts an electronically assisted vote must be made. To ensure that a central record is made to check for instances of multiple voting, if a person votes outside his or her 'home' Division then the record of the person voting must be supplied to the Divisional Returning Officer for the Division in which the person is enrolled to vote.

Regulation 52A provides for the treatment of ballot papers once the poll is closed for all Divisions. Appointed Assistant Returning Officers will sort the envelopes of ballot papers into bundles for each Division and forward each bundle to the relevant Divisional Returning Officer. Offences apply to persons dealing with ballot papers who are not Assistant Returning Officers or acting under the direction of such a person.

Regulation 52B provides that it is the Divisional Returning Officer, or a person under the direction of such a person, that counts the votes cast by the electronically assisted method. An offence applies to a breach of regulation 52B.

Item [5] – Regulations 54 to 56

Item 5 repeals regulations 54 to 56 of the Principal Regulations and substitute new regulation 54.

Regulation 54 provides for a number of offences related to electronically assisted voting, such as interfering with a voter while the voter casts an electronically assisted vote. The offences do not apply to an officer or person assisting the voter or a call centre operator or assistant call centre operator acting in accordance with subregulation 54(2).

Item [6] – Regulation 57, heading

Item 6 substitutes a new heading which reads 'Protection of electronic voting hardware or software' for regulation 57 of the Principal Regulations.

Item [7] – Subregulation 57(1)

Item 7 amends the penalty imposed under subregulation 57(1) from 50 penalty units to 5 penalty units. A penalty unit is currently \$110.

Item 8 – Part III, Divisions 3 and 4

Item 8 repeals Division 3 which provides for the electronic voting trial for defence personnel serving overseas as this is now redundant. Division 4 is also repealed which is a technical legal provision no longer required.