



Electoral and Referendum Amendment Regulations 2010 (No. 3)¹

Select Legislative Instrument 2010 No. 227

I, MARIE BASHIR, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

Dated 19 July 2010

MARIE BASHIR
Administrator

By Her Excellency's Command

JOSEPH LUDWIG
Special Minister of State

1 Name of Regulations

These Regulations are the *Electoral and Referendum Amendment Regulations 2010 (No. 3)*.

2 Commencement

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

3 Amendment of *Electoral and Referendum Regulations 1940*

Schedule 1 amends the *Electoral and Referendum Regulations 1940*.

Schedule 1 Amendments

(regulation 3)

[1] Part III Division 2, heading

substitute

Division 2 Electronically assisted voting for sight-impaired people

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

substitute

call centre operator means a person:

- (a) who works in a national call centre; and
- (b) who is a ***pre-poll voting officer*** under section 4 of the Act.

certified list of voters means a list of voters for a Division certified by the Electoral Commissioner under section 208 of the Act.

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

substitute

national call centre means a call centre used by the Australian Electoral Commission for the purpose of providing telephone assisted voting.

officer means an officer mentioned in subsection 202A (2) of the Act.

reference Roll means a Roll that may be consulted by an officer if a voter wishes to cast an electronically assisted vote.

sight-impaired person has the meaning given by section 202AA of the Act.

[4] Regulations 42 to 52

substitute

42 Electronically assisted voting

Subject to regulation 43, a voter who is a sight-impaired person may cast an electronically assisted vote at:

- (a) a general election; and
- (b) a Senate election; and
- (c) a by-election; and
- (d) a referendum;

held after the commencement of this regulation.

43 Electoral Commissioner to determine availability of electronically assisted voting

- (1) The Electoral Commissioner may determine, in writing:
 - (a) the divisional offices and other places where electronically assisted voting is to be available; and
 - (b) the days on which and times when electronically assisted voting is to be available at the places determined under paragraph (a).

- (2) The Electoral Commissioner may give directions to officers in relation to requests for an electronically assisted vote.

44 Who is entitled to an electronically assisted vote

- (1) A voter is entitled to an electronically assisted vote if:
- (a) the voter attends a place where electronically assisted voting is available during the times when electronically assisted voting is available; and
 - (b) the voter informs an officer that the voter is sight-impaired and requests an electronically assisted vote; and
 - (c) the voter's name is on an approved list of voters, a certified list of voters or a reference Roll.
- (2) A voter is not entitled to an electronically assisted vote if:
- (a) the voter's name is not on an approved list of voters, a certified list of voters or a reference Roll; or
 - (b) the voter refuses to answer a question asked in accordance with subregulation 45 (1) or (3); or
 - (c) the voter answers Question 3 in subregulation 45 (1) in the affirmative; or
 - (d) a mark on a copy of an approved list of voters or a certified list of voters indicates that the voter has already voted; or
 - (e) the voter is provisionally enrolled; or
 - (f) on the basis of any of the voter's answers to questions mentioned in regulation 45, an officer is not satisfied that the voter is the person whose name the voter uses.

Note A voter may be eligible to cast an assisted provisional vote on polling day or an assisted pre-poll vote.

45 Questions to be put to voter

- (1) If a voter requests an electronically assisted vote, an officer must ask the voter the questions in the table.

Question 1 What is your full name?

Question 2 Where do you live?

Question 3 the appropriate question from:

- (a) Have you voted before in this election?
 - (b) Have you voted before in these elections?
 - (c) Have you voted before in this by-election?
 - (d) Have you voted before in this referendum?
- (2) However, if the voter's address does not appear on an approved list of voters, a certified list of voters or a reference Roll because the voter has requested its suppression under section 104 of the Act, the officer must not ask Question 2.
- (3) If, on the basis of any of the voter's answers to Questions 1 to 3, the officer is not satisfied that the voter is the person whose name the voter uses, the officer may ask the voter 1 or more questions about information provided on an approved list of voters, a certified list of voters or a reference Roll about the person whose name the voter uses.

46 Duty of officer to assist voter

An officer who is satisfied that a voter is entitled to an electronically assisted vote under subregulation 44 (1) must assist the voter in accordance with regulations 48 and 49.

47 Electronically assisted voting to take form of telephone assisted voting

The method of telephone assisted voting mentioned in regulations 48 and 49 is the only method of casting an electronically assisted vote for:

- (a) the first Senate election held after the commencement of this regulation; and
- (b) the first general election held after the commencement of this regulation; and
- (c) a by-election to elect a member of the House of Representatives held after the commencement of this regulation.

48 Telephone assisted voting — home Divisional Office

- (1) Subregulation (2) applies in relation to a voter who votes at the Divisional Office of the Division in which the voter is enrolled to vote.
- (2) The method of telephone assisted voting consists of the following steps:
 - (a) an officer must place a mark against the voter's name on a copy of an approved list of voters or a certified list of voters;
 - (b) the officer must escort the voter, and a person assisting the voter (if necessary), to an area where:
 - (i) there is a telephone; and
 - (ii) it is unlikely that the voter will be overheard by anyone other than a person assisting the voter;
 - (c) the officer must call the national call centre;
 - (d) the officer must tell the call centre operator:
 - (i) the Division and State or Territory for which the voter is enrolled; and
 - (ii) the Division from which the officer is calling;without telling the call centre operator the voter's name or otherwise identifying the voter;
 - (e) the call centre operator must verify the authenticity of the call;
 - (f) the call centre operator must collect the ballot papers for the voter's Division and tell the officer that the call centre operator has collected the ballot papers;
 - (g) the officer must hand the telephone to the voter and then leave the area so that the voter cannot be overheard by anyone other than a person assisting the voter;
 - (h) the call centre operator must ensure that the voter:
 - (i) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election that the voter would be given if the voter were voting under Part XVI of the Act; and

-
- (ii) is able to indicate the voter's vote in a way that, if the voter were marking a ballot paper, would satisfy the requirements of section 239 or 240 of the Act;
 - (i) the voter may tell the call centre operator how the voter wants the ballot papers to be marked;
 - (j) if the voter tells the call centre operator how the voter wants the ballot papers to be marked, the call centre operator must:
 - (i) initial the voter's ballot papers on the top front of each ballot paper; and
 - (ii) mark the voter's ballot papers in accordance with the voter's instructions; and
 - (iii) read the voter's voting preferences back to the voter; and
 - (iv) put the voter's ballot papers in an envelope marked with the name of the voter's Division; and
 - (v) place the envelope in a ballot box used at the national call centre for electronically assisted voting.
- (3) An assistant call centre operator must:
- (a) listen to the call; and
 - (b) if the call centre operator has not marked the voter's ballot papers in accordance with the voter's instructions (if any) — ensure that the voter's ballot papers are marked in accordance with the instructions.
- (4) The officer must, after allowing a reasonable period of time to elapse and after the voter has confirmed that he or she is ready to leave, escort the voter and any person assisting the voter from the area mentioned in paragraph (2) (b).
- (5) A voter who uses the voting method mentioned in subregulation (2) must leave the Divisional Office as soon as practicable after he or she has voted.

**49 Telephone assisted voting — outside home
Divisional Office**

- (1) Subregulation (2) applies in relation to a voter who votes at a place, other than the Divisional Office of the Division in which the voter is enrolled to vote, where electronically assisted voting is available.
- (2) The method of telephone assisted voting consists of the following steps:
 - (a) an officer must:
 - (i) place a mark against the voter's name on a reference Roll; or
 - (ii) make a record in accordance with regulation 52;
 - (b) the officer must escort the voter, and a person assisting the voter (if necessary), to an area where:
 - (i) there is a telephone; and
 - (ii) it is unlikely that the voter will be overheard by anyone other than a person assisting the voter;
 - (c) the officer must call the national call centre;
 - (d) the officer must tell the call centre operator:
 - (i) the Division and State or Territory for which the voter is enrolled; and
 - (ii) the Division from which the officer is calling;without telling the call centre operator the voter's name or otherwise identifying the voter;
 - (e) the call centre operator must verify the authenticity of the call;
 - (f) the call centre operator must find the ballot papers for the voter's Division and tell the officer that the call centre operator has found the ballot papers;
 - (g) the officer must hand the telephone to the voter and then leave the area so that the voter cannot be overheard by anyone other than a person assisting the voter;

-
- (h) the call centre operator must ensure that the voter:
- (i) receives the same information (in the same order), and has the same voting options, as would appear in the ballot paper for the election that the voter would be given if the voter were voting under Part XVI of the Act; and
 - (ii) is able to indicate the voter's vote in a way that, if the voter were marking a ballot paper, would satisfy the requirements of section 239 or 240 of the Act;
- (i) the voter may tell the call centre operator how the voter wants the ballot papers to be marked;
- (j) if the voter tells the call centre operator how the voter wants the ballot papers to be marked, the call centre operator must:
- (i) initial the voter's ballot papers on the top front of each ballot paper; and
 - (ii) mark the voter's ballot papers in accordance with the voter's instructions; and
 - (iii) read the voter's voting preferences back to the voter; and
 - (iv) put the voter's ballot papers in an envelope marked with the name of the voter's Division; and
 - (v) place the envelope in a ballot box used at the national call centre for electronically assisted voting.
- (3) An assistant call centre operator must:
- (a) listen to the call; and
 - (b) if the call centre operator has not marked the voter's ballot papers in accordance with the voter's instructions (if any) — ensure that the voter's ballot papers are marked in accordance with the instructions.
- (4) The officer must, after allowing a reasonable period of time to elapse and after the voter has confirmed that he or she is ready to leave, escort the voter and any person assisting the voter from the area mentioned in paragraph (2) (b).
- (5) A voter who uses the voting method mentioned in subregulation (2) must leave the Divisional Office as soon as practicable after he or she has voted.

50 Requirements relating to ballot boxes

The requirements in relation to ballot boxes in Subdivision C of Part IVA of the Referendum (Machinery Provisions) Act, other than section 73CR, are taken to apply to ballot boxes used at the national call centre for electronically assisted voting as if the electronically assisted voting were ordinary pre-poll voting.

51 Role of scrutineers — national call centre

- (1) A candidate in an election to which a method of telephone assisted voting mentioned in regulations 48 and 49 applies may appoint 1 scrutineer to attend the national call centre for the purpose of monitoring:
 - (a) the duties of call centre operators and assistant call centre operators mentioned in regulations 48 and 49; and
 - (b) the duties of an Assistant Returning Officer mentioned in regulation 52A.
- (2) The appointment of a scrutineer must be made by notice, in writing:
 - (a) addressed to the Returning Officer or a pre-poll voting officer; and
 - (b) signed by the candidate; and
 - (c) stating the scrutineer's name and address.
- (3) A scrutineer who has not complied with subsection 202A (3) of the Act must not attend the national call centre to discharge a scrutineer's functions.
- (4) A scrutineer who attends the national call centre is guilty of an offence if:
 - (a) the scrutineer attempts to interfere with the duties of a call centre operator, assistant call centre operator or Assistant Returning Officer mentioned in regulations 48 to 50 and 52A; or
 - (b) the scrutineer:
 - (i) communicates with a person in the national call centre; and

-
- (ii) the communication is not reasonably necessary for the discharge of the scrutineer's functions.

Penalty: 5 penalty units.

52 Record of electronically assisted votes

- (1) The Electoral Commissioner must make a record of an electronically assisted vote.
- (2) The record of an electronically assisted vote may take either of the following forms:
 - (a) a mark on an approved list of voters or a certified list of voters beside the voter's name;
 - (b) a record on a document other than an approved list of voters or a certified list of voters which states:
 - (i) the voter's name (whether or not it also states the voter's address or date of birth); and
 - (ii) the Division in which the voter is enrolled to vote.
- (3) If the record takes the form mentioned in paragraph (b):
 - (a) it must be forwarded to a Divisional Returning Officer for the Division in which the voter is enrolled to vote; and
 - (b) the Divisional Returning Officer must place a mark beside the voter's name on an approved list of voters or a certified list of voters.

52A What must be done with the voter's ballot papers

- (1) As soon as the close of the poll for all Divisions, an Assistant Returning Officer must:
 - (a) open each ballot box mentioned in subparagraph 48 (2) (j) (v) or 49 (2) (j) (v); and
 - (b) sort the envelopes, unopened, into bundles corresponding to Divisions.
- (2) An Assistant Returning Officer must forward each bundle to a Divisional Returning Officer for the appropriate Division for the conduct of a scrutiny.

- (3) A person who is not an Assistant Returning Officer, or a person performing tasks under the direction of an Assistant Returning Officer, must not perform any of the duties mentioned in subregulation (1) or (2).

Penalty: 5 penalty units.

- (4) An offence under subregulation (3) is an offence of strict liability.

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

52B Scrutiny of ballot papers

- (1) For the purpose of conducting a scrutiny of the ballot papers forwarded by the Assistant Returning Officer under subregulation 52A (2), the Divisional Returning Officer must conduct the scrutiny.

- (2) The procedures in Part XVIII of the Act apply to the scrutiny with such modifications as are necessary to ensure that:

- (a) no preliminary scrutiny mentioned in section 266 of the Act is to be conducted; and
- (b) the electronically assisted vote is taken to be a pre-poll ordinary vote; and
- (c) it is irrelevant that the voter did not complete the ballot paper personally; and
- (d) it is irrelevant that the vote can be identified as being cast by a sight-impaired person.

- (3) A person who is not the Divisional Returning Officer, or a person performing tasks under the direction of the Divisional Returning Officer, must not conduct the scrutiny.

Penalty: 5 penalty units.

- (4) An offence under subregulation (3) is an offence of strict liability.

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

[5] Regulations 54 to 56

substitute

54 Offences related to electronically assisted voting

- (1) A person commits an offence if the person:
- (a) interferes with a voter while the voter casts an electronically assisted vote; or
 - (b) communicates with a voter who casts an electronically assisted vote about the voter's vote; or
 - (c) does anything to find out how a voter who casts an electronically assisted vote voted.

Penalty: 5 penalty units.

- (2) Subregulation (1) does not apply to:
- (a) an officer assisting the voter under regulation 45 or 46; or
 - (b) a person assisting a voter as mentioned in paragraph 48 (2) (b) or 49 (2) (b); or
 - (c) a call centre operator or assistant call centre operator acting under regulation 48 or 49.

[6] Regulation 57, heading

substitute

57 Protection of electronic voting hardware or software

[7] Subregulation 57 (1)

omit

Penalty: 50 penalty units.

substitute

Penalty: 5 penalty units.

[8] Part III, Divisions 3 and 4

omit

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.