

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 190**

*Commonwealth Electoral Act 1918*  
*Referendum (Machinery Provisions) Act 1984*

*Electoral and Referendum Amendment Regulations 2011 (No. 1)*

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 are required or permitted to be prescribed, or necessary or convenient to be prescribed for giving effect to the Electoral Act.

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 the Referendum Act, prescribing matters required or permitted by the Referendum Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The purpose of *Electoral and Referendum Amendment Regulations 2011 (No. 1)* (the Amending Regulations) is to amend the *Electoral and Referendum Regulations 1940* (the Principal Regulations) to:

- (a) repeal redundant regulations;
- (b) prescribe the Australian Bureau of Statistics (ABS) as a prescribed authority that may be given electoral roll information and specify the purposes for which that information may be used; and
- (c) make consequential amendments.

Details of the Amending Regulations are set out in the Attachment.

The Amending Regulations commence on the day after registration on the Federal Register of Legislative Instruments.

The Australian Bureau of Statistics was consulted in the preparation of the Regulations.

**Details of the Electoral and Referendum Amendment Regulations 2011 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Amending Regulations is the *Electoral and Referendum Amendment Regulations 2011 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides that the Amending Regulations commence on the day after registration.

**Regulation 3 – Amendment of Electoral and Referendum Regulations 1940**

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

**Schedule 1 – Amendments**

Schedule 1 of the Amending Regulations will:

- (a) repeal redundant regulations;
- (b) specify the Australian Bureau of Statistic as a prescribed authority for the receipt of electoral roll information; and
- (c) make consequential amendments.

**Repeal Redundant Regulations**

A number of amendments have been made to the Electoral Act and the Referendum Act which require consequential amendments to repeal redundant regulations.

Item 1 of Schedule 1 to the Amending Regulations repeals redundant subregulations 6(3) and 6(4). The purpose of subregulations 6(3) and 6(4) of the Principal Regulations was to preserve the operation of previously repealed regulations. Paragraph 15(b) of the *Legislative Instruments Act 2003* (Legislative Instruments Act) can now be relied upon to preserve the previous operation of the Regulations upon repeal and replacement.

Item 2 of Schedule 1 to the Amending Regulations repeals redundant regulations 11A and 12. The *Electoral and Referendum Amendment (Modernisation and Other Measures) Act 2010* (the Modernisation Act) amended the Electoral Act to provide that only a person making an application for enrolment, or a person changing the name in which he or she is enrolled, will need to provide evidence of identity with their enrolment application. If an elector is simply changing his or her address details then evidence of identity is not required.

Prior to amendments made under the Modernisation Act, applications for enrolment need to be supported by the evidence of identity as prescribed in regulations. The power to make regulations 11A and 12 has now been repealed from the Electoral

Act. Namely, paragraphs 94A(2)(e), 95(2)(d), 96(2)(d), 98(2)(d) and 99A(4)(e) of the Electoral Act.

Item 3 of Schedule 1 to the Amending Regulations repeals redundant subregulations 13(2), 13(3) and 13(4). Subregulation 13(2) relates to subparagraphs 99B(4)(b)(ii) and (iii) of the Electoral Act and subparagraphs 38(4)(b)(ii) and (iii) of the Referendum Act which do not have separate ‘prescribed classes of electors’ as subregulation 13(2) appears to provide, making subregulation 13(2) redundant.

Subregulations 13(3) and 13(4) of the Principal Regulations are transitional measures dependent upon the commencement of the *Australian Citizenship Act 2007* which commenced on 1 July 2007, making subregulations 13(3) and 13(4) redundant.

Item 4 of Schedule 1 to the Amending Regulations repeals redundant regulations 38A, 39, 39A, 39B and 39C.

The Electoral Act allows for a Form to be amended by regulation. Regulations 38A, 39 and 39A of the Principal Regulations amended some of the Forms in Schedule 1 to the Electoral Act. These amendments have since been incorporated directly into the Electoral Act, making regulations 38A, 39 and 39A redundant. Paragraph 15(b) of the Legislative Instruments Act will preserve the changes made in the Electoral Act by the Principal Regulations.

The *Electoral and Referendum Amendment (Provisional Voting) Act 2011* (the Provisional Voting Act) removed the evidence of identity requirements for provisional voting. Regulation 39B of the Principal Regulations is redundant due to the repeal of subsection 235(1B) of the Electoral Act and subsection 37(1B) of the Referendum Act by the Provisional Voting Act.

Regulation 39C is redundant due to the repeal of subparagraph 6(cb)(ii) of Schedule 3 to the Electoral Act and Schedule 4 to the Referendum Act by the Provisional Voting Act.

Item 5 of Schedule 1 to the Amending Regulations repeals redundant regulation 87.

Broadly speaking the Electoral Act requires all electoral advertising to contain the details of the persons who authorised the advertisement. Regulation 87 of the Principal Regulations provides for a class of articles to be exempt from such authorisation requirements. A subsequent amendment to the Electoral Act inserted paragraph 328(3)(b). This paragraph incorporates the articles that are exempt from authorisation from the Principal Regulations into the Electoral Act. The wording and terms used in paragraph 328(3)(b) of the Electoral Act are exactly the same as the wording and terms used in regulation 87 of the Principal Regulations, making regulation 87 redundant.

### **New Prescribed Authority – Australian Bureau of Statistics**

Item 4 of the table in subsection 90B(4) of the Electoral Act provides that a prescribed authority may be given any information on the electoral roll if authorised by regulation. Prescribed authorities are agency heads and chief executive officers

of Commonwealth agencies and authorities specified in the table at Schedule 1 to the Principal Regulations.

Item 6 of Schedule 1 to the Amending Regulations adds the ABS as a prescribed authority. The ABS will be entitled to use the roll information for the permitted purpose of collecting, compiling, analysing and disseminating statistics and related information.

### **Consequential Amendments**

Item 1 of Schedule 1 to the Amending Regulations renumbers subregulation 6(2) as regulation 6 due to the repeal of redundant subregulations 6(3) and 6(4) of the Principal Regulations. At the same time the language of the regulation has been modernised including the removal of gender specific language.

Item 3 of Schedule 1 to the Amending Regulations renumbers subregulation 13(1) as regulation 13 due to the repeal of redundant subregulations 13(2), 13(3) and 13(4) of the Principal Regulations. In addition, item 3 of Schedule 1 to the Amending Regulations makes a consequential amendment to the title of new regulation 13.

Item 7 of Schedule 1 to the Amending Regulations makes a consequential amendment to the heading of Schedule 2 to the Principal Regulations due to the repeal of regulations 13, 38A, 39, 39A, 39B and 39C.

Item 8 of Schedule 1 to the Amending Regulations repeals Schedule 3 and 4 to the Principal Regulations which are redundant due to the repeal of regulations 12, 13, 39B and 39C.