

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 157

Commonwealth Electoral Act 1918

Referendum (Machinery Provisions) Act 1984

Electoral and Referendum Amendment Regulation 2012 (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 that Act, prescribing matters which by that Act are required or permitted to be prescribed, or necessary or convenient to be prescribed for giving effect to that Act. Section 202AB of the Electoral Act provides that regulations may provide for sight-impaired people to vote by an electronically assisted voting method at general elections, Senate elections and by-elections.

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. Section 73M of the Referendum Act provides that regulations may provide for sight-impaired people to vote by an electronically assisted voting method at a Referendum.

The purpose of the Regulation is to improve the mechanism for people who are blind or have low vision and are therefore sight-impaired, to cast a secret vote through the use of electronically assisted voting. This Regulation replaces Part III, Division 2 of the *Electoral and Referendum Regulations 1940* (the Principal Regulations) which set out the process that enabled sight-impaired voters to cast a secret vote at the 2010 general election.

The Regulation facilitates sight-impaired people voting by allowing them to telephone a call centre and advise their preferences to an operator who records that preference. Appropriate security measures are in place to ensure that the vote of each sight-impaired person will be secret.

The Australian Electoral Commission (AEC) has worked with blind and low vision stakeholder groups and individuals for some time, to improve the range of methods that assist them to vote. In order to assist sight-impaired people to vote at the next general election, the AEC has agreed a range of assistance options, with the method covered in these Regulations being agreed with stakeholder groups. The Joint Standing Committee on Electoral Matters (JSCEM) reviewed the method that was available to assist sight-impaired people to vote at the 2010 general election. After hearing submissions from several stakeholder groups, JSCEM supported the AEC continuing to work with stakeholder organisations to develop voting arrangements to provide secure, secret and independent voting for sight-impaired electors (Recommendation 20). The Regulations support this recommendation.

Details of the Regulations are set out in the Attachment.

The Regulations commence on the day after registration.

Authority: Section 395 of the
*Commonwealth Electoral Act
1918* and section 144 of the
*Referendum (Machinery
Provisions) Act 1984*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This legislative instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

These Regulations replace existing Regulations found at Part III, Division 2 of the *Electoral and Referendum Regulations 1940*. The existing Regulations establish a process to assist sight-impaired people to vote which was used to assist sight-impaired people to vote at the 2010 general election.

The AEC has been working with blind and low vision stake-holder groups and individuals for a number of years, to improve the range of methods that assist sight-impaired people to vote. In order to assist sight-impaired people to vote at the next general election, the AEC has agreed a range of assistance options, with the method covered in these Regulations being agreed with stakeholder groups.

The Joint Standing Committee on Electoral Matters (“JSCEM”) reviewed the method that was available to assist sight-impaired people to vote at the 2010 Election. After hearing submissions from several stakeholder groups, JSCEM supported the AEC continuing to work with stake-holder organisations to develop voting arrangements to provide secure, secret and independent voting for sight-impaired electors (Recommendation 20). The Regulations support this recommendation.

The Regulations facilitate sight-impaired people voting by allowing them to telephone a call centre and advise their preferences to an operator who records that vote. Appropriate security measures are in place to ensure that the vote of each sight-impaired person will be secret.

Human rights implications

These Regulations engage the following human rights:

Take part in the conduct of political affairs

Article 25 of the International Covenant on Civil and Political Rights (the ICCPR) provides, among other things, that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives and to vote and to be elected at periodic elections.

Participation in political and public life

Article 29 of the Convention on the Rights of Persons with Disabilities (the CRPD) requires that countries guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, including that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

- i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, facilitating the use of assistive and new technologies where appropriate;
- iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

The Regulations improve upon special arrangements that were available to sight-impaired people to assist them voting at the 2010 general election. They were developed in consultation with sight-impaired peak bodies.

They do not represent the only way in which sight-impaired people (or any people with disabilities) can participate in the political process by voting. Any person who may need assistance in voting can be helped to vote on Polling Day by a person marking their ballot paper for them at the Polling Place. They can also be assisted by being allowed to mark their ballot paper outside of the Polling Place (see s234 and s234A of the Electoral Act). If they seek to vote by lodging a Pre-Poll vote then they can also be assisted to vote by another person if that is necessary (s.200DL of the Electoral Act). Also sight-impaired people may apply for a postal vote or a general postal vote.

Conclusion

The Regulations are compatible with human rights because they provide a further method for sight-impaired people participating in political and public life by being able to vote more easily by calling a telephone call center. The Regulations do not preclude sight-impaired people from using existing alternative methods to vote, including seeking a Pre-Poll Vote or a Postal Vote or being assisted to complete their vote at a Polling Station on Election Day.

Details of the *Electoral and Referendum Amendment Regulation 2012 (No. 1)*

Regulation 1 – Name of Regulation

This regulation provides that the title of the Regulations is the *Electoral and Referendum Amendment Regulation 2012 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulation commences on the day after it is registered.

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

Item 1 substitutes a new Division 2 of Part III of the Principal Regulations.

Regulation 41, definition of *authorised call centre*

An ‘authorised call centre’ is a call centre operating to receive calls and assist in voting for people who are sight-impaired.

Regulation 41, definition of *call centre operator*

A “call centre operator” is a person who works at a call centre.

Regulation 41, definition of *electronically assisted vote*

Regulation 41, definition of *electronically assisted voting*

Regulation 41, definition of *electronically assisted voting method*

These definitions refer to vote and voting methods assisted by the procedures established under this regulation.

Regulation 41, definition of *officer*

Subsection 202A(2) of the Act lists several categories of ‘officers’. These categories are applied to this regulation.

Regulation 41, definition of *reference Roll*

A ‘Roll’ is defined in the Act as an ‘Electoral Roll’. Hence a reference Roll is an Electoral Roll which is available to be consulted in this voting process.

Regulation 41, definition of *registered sight-impaired voter*

Regulation 41, definition of *sight-impaired person*

A “sight-impaired person” is defined in section 202AA of the Electoral Act as a person whose sight is impaired to the extent that he or she is unable to vote without assistance. Therefore a “registered sight-impaired voter” is a sight-impaired person who has chosen to register to vote using the system established by this regulation.

Regulations 42 to 53

Regulation 42 empowers the Electoral Commissioner to make arrangements to establish one or more authorised call centres. Authorised call centres are the places where operators will receive calls from sight-impaired voters seeking to register to vote with electronic assistance and then to vote with electronic assistance. The Electoral Commissioner is also empowered to approve forms or documents to establish consistent procedures to assist call centre operators registering a sight-impaired person and recording a vote made by a sight-impaired person.

Regulation 43 requires the Electoral Commissioner to determine the hours and days when an authorised call centre will be open; and how a person may be assessed as being eligible to be registered as a sight-impaired person who needs assistance with voting. Once a person has been assessed as being a sight-impaired person who requires assistance with voting that assessment is registered. Such voters are described as being ‘registered sight-impaired voters’ and they may vote with an electronically assisted vote at any of a general election, a Senate election, a by-election and a referendum.

Regulation 44 sets out how a registered sight-impaired voter can vote with electronic assistance. The Electoral Commissioner must determine the hours and days when operators at an authorised call centre will help registered sight-impaired voters to vote and will give directions to operators in relation to requests for an electronically assisted vote. The regulation also sets out what will be required to qualify a person to vote with electronic assistance and what will disqualify a person from voting with electronic assistance. The note at the end of the regulation 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 that when a person calls to request an electronically assisted vote the call centre operator must be satisfied that the person is a ‘registered sight-impaired voter’. If the operator is satisfied, they must ask the caller similar questions to those that are asked to all voters under section 229 of the Electoral Act. These questions include “What is your full name?”, “Where do you live?” and “Have you voted before in this election?”.

Regulation 46 requires a call centre operator to assist a person who he or she is satisfied is entitled to an electronically assisted vote to place a vote. The Electoral Commissioner may also determine procedures to ensure that all sight-impaired persons who vote receive the same information regarding voting that they would if they were sighted.

Regulation 47 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 call centre.

Regulation 48 provides for the appointment and regulation of scrutineers attending the national call centre. Regulation 48 also provides for an offence with a penalty of five penalty units for scrutineers at the national call centre that interfere with specified personnel or unnecessarily communicate with any person in the national call centre. These provisions are modelled on existing provisions in the Electoral Act

Regulation 49 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 50 provides for the treatment of ballot papers once the poll is closed for all Divisions. An 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 51 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. A breach of this regulation is an offence.

Regulation 52 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 regulation 52.

Regulation 53 creates an offence subject to five penalty units for a person who destroys or interferes with a computer program, data file, electronic device which are used or intended to be used for or in connection with electronically assisted voting.