



Electoral and Referendum Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 157

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

Dated 28 June 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

GARY GRAY
Special Minister of State

1 Name of regulation

This regulation is the *Electoral and Referendum Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Electoral and Referendum Regulations 1940*

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

Schedule 1 Amendment

(section 3)

[1] Part III, Division 2

substitute

Division 2 Electronically assisted voting for sight-impaired people

41 Definitions for Division 2

In this Division:

authorised call centre means a call centre established in accordance with arrangements made by the Electoral Commissioner under subregulation 42 (1).

call centre operator means a person who:

- (a) works in an authorised call centre; and
- (b) is a pre-poll voting officer under subsection 4 (1) of the Act.

electronically assisted vote means a vote cast using the electronically assisted voting method.

electronically assisted voting means voting by an electronically assisted vote.

electronically assisted voting method means the procedures determined under subregulation 46 (1) for enabling a registered sight-impaired voter to vote by an electronically assisted vote.

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 vote by an electronically assisted vote.

registered sight-impaired voter means a sight-impaired person who is registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote.

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

Note ***certified list of voters*** is defined in subsection 4 (1) of the Act.

42 Authorised call centres

- (1) The Electoral Commissioner must make arrangements for the establishment of one or more call centres to receive telephone calls from sight-impaired persons who wish to:
 - (a) register for the purpose of being eligible to vote by an electronically assisted vote; or
 - (b) vote by an electronically assisted vote.
- (2) The Electoral Commissioner may approve forms and other documents to be used by call centre operators and other officers for the purpose of:
 - (a) registering a sight-impaired person for the purpose of being eligible to vote by an electronically assisted vote; and
 - (b) assisting a registered sight-impaired voter to vote by an electronically assisted vote.

Example

Statements and responses that allow call centre operators to explain to a sight-impaired person how to register or vote.

43 Registration

- (1) The Electoral Commissioner must determine, in writing:
 - (a) the days on which and times when a person may apply to be registered by the Electoral Commissioner as a registered sight-impaired voter; and
 - (b) procedures for assessing whether a person may be registered by the Electoral Commissioner as a registered sight-impaired voter.

Note The procedures may include requirements for the person to:

- (a) be on an approved list of voters, a certified list of voters or a reference Roll; and
 - (b) affirm that he or she is sight-impaired.
- (2) A determination under subregulation (1) is not a legislative instrument.
 - (3) A person who wishes to apply to be registered by the Electoral Commissioner as a registered sight-impaired voter must:
 - (a) contact an authorised call centre on a day and time determined under paragraph (1) (a); and
 - (b) comply with the procedures determined under paragraph (1) (b).
 - (4) The Electoral Commissioner must:
 - (a) register a person who complies with subregulation (3) as a registered sight-impaired voter; and
 - (b) make and keep a register for that purpose.

Note The person will have a personal identification number and a registration number for requesting an electronically assisted vote.

- (5) A registered sight-impaired voter may vote by an electronically assisted vote at:
 - (a) a general election; and
 - (b) a Senate election; and
 - (c) a by-election; and

-
- (d) a referendum.

44 Who is entitled to vote by an electronically assisted vote

- (1) The Electoral Commissioner:
- (a) must determine, in writing, the days on which and times when electronically assisted voting is to be available; and
 - (b) must determine, in writing, procedures for assessing whether a person is a registered sight-impaired voter; and
 - (c) may give directions to officers in relation to requests for voting by an electronically assisted vote.

Example for paragraph (b)

If a call centre operator is not satisfied that a person is the registered sight-impaired voter whose name the person has used, the procedures may include a requirement for the operator to ask the person one or more questions about information provided on an approved list of voters, a certified list of voters or a reference Roll about the voter whose name the person has used.

- (2) A determination under subregulation (1) is not a legislative instrument.
- (3) A person is entitled to vote by an electronically assisted vote if:
- (a) the person calls an authorised call centre on a day on which and at a time when electronically assisted voting is available; and
 - (b) the person informs a call centre operator that the person wishes to vote by an electronically assisted vote; and
 - (c) a call centre operator is satisfied that the person is a registered sight-impaired voter; and
 - (d) the person's name is on an approved list of voters, a certified list of voters or a reference Roll.
- (4) A person is not entitled to vote by an electronically assisted vote if:
- (a) the person does not call an authorised call centre on a day on which and at a time when electronically assisted voting is available; or

- (b) a call centre operator is not satisfied that the person is a registered sight-impaired voter after complying with the procedures for assessing whether the person is a registered sight-impaired voter; or
- (c) the person's name is not on an approved list of voters, a certified list of voters or a reference Roll; or
- (d) the person refuses to answer a question asked in accordance with subregulation 45 (2); or
- (e) the person answers Question 3 in subregulation 45 (2) in the affirmative; or
- (f) the person has already voted; or
- (g) the person is provisionally enrolled; or
- (h) on the basis of any of the person's answers to questions mentioned in regulation 45, a call centre operator is not satisfied that the person is the voter whose name the person has used; or
- (i) the person does not otherwise comply with the procedures for:
 - (i) assessing whether the person is a registered sight-impaired voter; or
 - (ii) voting by an electronically assisted vote.

Note The person may be eligible to vote by an assisted provisional vote on polling day or an assisted pre-poll vote.

45 Electronically assisted voting—questions to be put to person

- (1) If a person requests an electronically assisted vote, a call centre operator must be satisfied that the person is a registered sight-impaired voter in accordance with the procedures determined under paragraph 44 (1) (b).

Note The person will have a personal identification number and a registration number for requesting an electronically assisted vote.

- (2) If the person is a registered sight-impaired voter, a call centre operator must then ask the person the appropriate question from the following questions:
 - (1) Have you voted before in this election?
 - (2) Have you voted before in these elections?

-
- (3) Have you voted before in this by-election?
 - (4) Have you voted before in this referendum?

46 Enabling registered sight-impaired voter to vote

- (1) The Electoral Commissioner must determine, in writing, procedures for enabling a registered sight-impaired voter to vote by an electronically assisted vote.

Examples

1 The procedures may require a call centre operator to ensure that the voter:

- (a) 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
- (b) 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.

2 The procedures may permit the voter's ballot papers to be checked to ensure that they have been marked in accordance with the voter's instructions (if any).

- (2) A determination under subregulation (1) is not a legislative instrument.
- (3) A call centre operator who is satisfied that a registered sight-impaired voter is entitled to vote by an electronically assisted vote must assist the voter in accordance with the procedures determined under subregulation (1).
- (4) The voter may tell the call centre operator how the voter wants the ballot papers to be marked.
- (5) If the voter tells the call centre operator how the voter wants the ballot papers to be marked, the call centre operator must:
 - (a) initial the voter's ballot papers on the top front of each ballot paper; and
 - (b) mark the voter's ballot papers in accordance with the voter's instructions; and
 - (c) read the voter's voting preferences back to the voter; and
 - (d) put the voter's ballot papers in an envelope marked with the name of the voter's Division; and

- (e) place the envelope in a ballot box used at the authorised call centre for electronically assisted voting.

47 Requirements relating to ballot boxes

The requirements in relation to ballot boxes in Subdivision C of Division 3 of Part IVA of the Referendum (Machinery Provisions) Act, other than section 73CR, are taken to apply to ballot boxes used at an authorised call centre for electronically assisted voting as if the electronically assisted voting were ordinary pre-poll voting.

48 Role of scrutineers—authorised call centre

- (1) A candidate in an election for which electronically assisted voting is available may appoint one scrutineer to attend an authorised call centre for the purpose of monitoring the duties of call centre operators.
- (2) The appointment of a scrutineer must be made by notice, in writing:
 - (a) addressed to the Returning 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 an authorised call centre to discharge a scrutineer’s functions.
- (4) A scrutineer commits an offence if:
 - (a) the scrutineer attends an authorised call centre; and
 - (b) the scrutineer attempts to interfere with the duties of a call centre operator or an Assistant Returning Officer.

Penalty: 5 penalty units.

- (5) A scrutineer commits an offence if:
 - (a) the scrutineer attends an authorised call centre; and
 - (b) the scrutineer communicates with a person in the authorised call centre; and

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

Penalty: 5 penalty units.

49 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 must be:
 - (a) a mark on an approved list of voters or a certified list of voters beside the voter's name; or
 - (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 is in the form mentioned in paragraph (2) (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.

50 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 paragraph 46 (5) (e); 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 commits an offence if the person:
 - (a) is not an Assistant Returning Officer, or a person performing tasks under the direction of an Assistant Returning Officer; and
 - (b) performs a duty 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*.

51 Scrutiny of ballot papers

- (1) For the purpose of conducting a scrutiny of the ballot papers forwarded by the Assistant Returning Officer under subregulation 50 (2), the Divisional Returning Officer must conduct the scrutiny.
- (2) The procedures in Part XVIII of the Act apply to the scrutiny with the modifications 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 commits an offence if the person:
 - (a) is not the Divisional Returning Officer, or a person performing tasks under the direction of the Divisional Returning Officer; and
 - (b) conducts 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*.

52 Offences related to electronically assisted voting

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

Penalty: 5 penalty units.

- (2) For subregulation (1), it is a defence if the person is a call centre operator who is assisting the voter to vote.

53 Protection of electronic voting hardware or software

- (1) A person commits an offence if:
 - (a) he or she destroys or interferes with:
 - (i) a computer program; or
 - (ii) a data file; or
 - (iii) an electronic device; and
 - (b) the program, file or device is used, or intended to be used, for or in connection with electronically assisted voting.

Penalty: 5 penalty units.

- (2) For subregulation (1), it is a defence if the person is an officer acting in the course of his or her duties.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.