

## EXPLANATORY STATEMENT

### **Electoral and Referendum Regulation 2016**

Issued by Authority of the Minister for Finance

*Commonwealth Electoral Act 1918*

*Referendum (Machinery Provisions) Act 1984*

#### **Legislative Authority**

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.

#### **Background**

The purpose of the *Electoral and Referendum Regulation 2016* (the Regulation) is to repeal and replace the *Electoral and Referendum Regulations 1940* (the 1940 Regulations) which sunset on 1 April 2016. The Regulation is substantially based upon the 1940 Regulations however the Regulation has been restructured, redundant material has been omitted and the wording of some provisions recast to closer reflect provisions in the Electoral Act and the Referendum Act.

#### **Purpose and operation**

Specific provisions in the Electoral Act and the Referendum Act provide that regulations may be made to support particular electoral or enrolment activity.

For the Electoral Act, these include section 202AB which provides that regulations may provide for people who are sight-impaired to vote by an electronically assisted voting method. Subsection 382(7) provides that a requirement to sign a claim or application is satisfied if a person satisfies the requirements specified in the regulations. The definition of 'prescribed authority' in section 4 and circumstances specified in item 4 of the table in subsection 90B(4) establish a scheme where the Australian Electoral Commission (AEC) can provide roll information to Commonwealth government agencies specified in the regulations.

For the Referendum Act, these include section 73M which provides that regulations may provide for people who are sight-impaired to vote by an electronically assisted voting method.

The Regulation, amongst other things, will provide for the provision of roll information to prescribed Commonwealth agencies and specify the purposes for which the roll information may be used. The Regulation will also provide for roll information to be disclosed to entities with obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, or entities that act as agents for entities with reporting obligations.

The Regulation will also provide the mechanics for conducting electronically assisted voting at elections and referendums for sight-impaired people.

Details of the proposed Regulation are set out in the Attachment.

### **Consultation**

The Australian Electoral Commission consulted extensively with Commonwealth agencies to recast Schedule 1 so that the correct functional group in each agency was receiving roll information and the Department was correctly identified. No new permitted purposes or agencies were added to Schedule 1 as part of the remaking exercise.

As the remaining provisions are essentially the same, no further consultation was conducted.

### **Statement of compatibility with Human rights**

The Regulation engages 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 Regulation improves 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 peak bodies representing people who are sight-impaired.

They do not represent the only way in which an elector who is sight-impaired (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. There are equivalent provisions in the Referendum Act.

### *Conclusion*

The Regulation is compatible with human rights because it provides a further method for people who are sight-impaired to participate in political and public life by being able to vote more easily by calling a telephone call center. The Regulation does 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 Regulation 2016***

### **Part 1—Preliminary**

#### Section 1- Name of Regulation

This section provides that the name of the Regulation is the *Electoral and Referendum Regulation 2016*.

#### Section 2 – Commencement

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

#### Section 3- Authority

This section provides that the Regulation is made under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

#### Section 4 – Schedules

This section provides that the items specified in a Schedule to the Regulation is amended, repealed or has effect as specified or set out in the items in the relevant Schedule.

#### Section 5 - Definitions

This section specifies the meaning of terms that have been used through the Regulation or clarifies the meaning of term as it is used in the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

### **Part 2 – Electoral roll matters**

#### Section 6 – Prescribed authorities

This section provides that the Agencies and authorities mentioned in the column headed ‘Agency or authority’ of the table in clause 1 of Schedule 1 have been specified as prescribed authorities for the purposes of the *Commonwealth Electoral Act 1918*.

#### Section 7 – Arrangements with States – form of Roll

This section provides that for the purposes of paragraph 84(2)(a) of the *Commonwealth Electoral Act 1918*, a circle (o) may appear on the Roll before a person’s name so as to indicate that the person is not enrolled as a Commonwealth elector. The circle (o) signifies that the person is enrolled for the purposes of voting under a State or Territory law only.

#### Section 8 Provision of information on Rolls to particular people and organisations

This section provides that the persons and organisations specified in the table are prescribed for the purposes of receiving Electoral Roll information pursuant to subsection 90B(4) of the *Commonwealth Electoral Act 1918*.

#### Section 9 Permitted purposes for use of information – prescribed authorities

This section provides that for the purposes of paragraph 91A(2AA)(b) of the *Commonwealth Electoral Act 1918*, the prescribed authorities listed Schedule 1 are permitted to use electoral Roll information for the purposes as described in the table in clause 1 of Schedule 1 of the Regulation.

#### Section 10 – Permitted purposes for use of information – Australian Red Cross Blood Service

This section provides that pursuant to paragraph 91A(2A)(c) of the *Commonwealth Electoral Act 1918*, the Australian Red Cross Blood Service may use electoral Roll information provided under section 90B of the Act to contact blood donors for the listed medical purposes.

#### Section 11 - Permitted purposes for use of information – other persons or organisations

This section provides that pursuant to paragraph 91A(2A)(c) of the *Commonwealth Electoral Act 1918*, persons or organisations may use electoral Roll information provided under section 90B to conduct medical research or provide health screening programs where the conditions prescribed in paragraphs 11(a) and (b) can be satisfied.

### **Part 3 – Enrolment matters**

#### Section 12 – Provisional enrolment by applicant for citizenship – prescribed electors

This section provides that a person who makes an application for provisional enrolment under section 99B can, for the purposes of subparagraph 99B(4)(b)(i), have his or her Department of Immigration and Border Protection notification attested to by an elector who falls within the class of electors mentioned in the table in clause 1 of Schedule 2.

#### Section 13 – Enrolment-related claims or notices do not have to be signed in certain circumstances

This section provides that if a person includes his or her date of birth and driver's licence number on an enrolment claim or application, the requirement for the claim or application to be signed is satisfied.

## **Part 4 – Voting matters**

### **Division 1 – Electronically assisted voting for sight-impaired people**

#### Section 14 – Purpose of Division

This section provides that the Division is made for the Parts of the Electoral Act and Referendum Act that provide for electronically assisted voting for sight-impaired people.

#### Section 15 – Authorised call centres

This section provides that an 'authorised call centre' is a call centre operating to receive calls and assist in voting for people who are sight-impaired.

Section 15 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.

#### Section 16 – Registration

This section 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 general election, a Senate election, a by-election and a referendum.

#### Section 17 – Who is entitled to vote by an electronically assisted vote

Section 17 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. Section 17 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 section 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.

#### Section 18 – Electronically assisted voting—questions to be put to person

Section 18 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?”.

#### Section 19 – Enabling registered sight-impaired voter to vote

Section 19 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 have received if they were sighted.

#### Section 20 – Requirements relating to ballot boxes

Section 20 provides that, for an election, Subdivision C of Division 3 of Part XVA of the Act, other than section 200DR, is taken to apply to ballot-boxes used at an authorised call centre for electronically assisted voting as if the electronically assisted voting were pre-poll ordinary voting.

Section 20 would also provide that, for a referendum, the procedures set out in Subdivision C of Division 3 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.

#### Section 21 – Role of scrutineers—authorised call centre

Section 21 provides for the appointment and regulation of scrutineers attending an authorised call centre. Section 21 also provides for an offence with a penalty of five penalty units for scrutineers at an authorised call centre that interfere with specified personnel or unnecessarily communicate with any person present in the national call centre. These provisions are modelled on existing provisions in the Electoral Act.

#### Section 22 – Record of electronically assisted votes

Section 22 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.

#### Section 23 – What must be done with the voter’s ballot papers

Section 23 provides for the treatment of ballot papers once the poll is closed for all Divisions. An Assistant Returning Officer 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.

#### Section 24 – Scrutiny of ballot papers

Section 24 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. Section 24 also provides for an offence with a penalty of five penalty units if a person conducts the scrutiny who is not the Divisional Returning Officer or a person acting under the direction of such a person.

#### Section 25 – Offences related to electronically assisted voting

Section 25 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 section 19.

#### Section 26 – Protection of electronic voting hardware or software

Section 26 creates an offence subject to five penalty units for a person who destroys or interferes with a computer program, data file or electronic device which is used or intended to be used for or in connection with electronically assisted voting.

### **Division 2 — Enforcement of law in relation to compulsory voting**

#### Section 27 – Proceedings in court on failure of elector to vote

#### Section 28 – Evidence in court of summary jurisdiction

Section 27 provides that for the prosecution of a person to failing to vote without a valid and sufficient reason at an election or referendum, the Divisional Returning Officer must provide to the court the elector's response to correspondence from the AEC.

Section 28 provides that if the officer authorised by the Electoral Commissioner to initiate proceedings for non-voting files with the court a statutory declaration and a certified extract in the approved form then the officer does not have to attend the hearing. This is particularly important for large electoral Divisions that might involve considerable travel for a minor penalty. The 'certified extract' is the list of electors that the Divisional Returning Officer must prepare in accordance with subsection 245(12) of the Electoral Act and subsection 45(12) of the Referendum Act

Advice from the Australian Government Solicitor was sought on if these sections came within the regulation-making power of section 395 of the Electoral Act and section 144 of the Referendum Act. The Australian Government Solicitor advised that in its view sections 27 and 28 were likely to be supported by the regulation-making powers noted above.

### **Schedule 1—Prescribed authorities and permitted purposes for use of information**

#### **Clause 1 – Prescribed authorities and permitted purposes for use of information**

Clause 1 of Schedule 1 sets out all the Commonwealth agencies which the Electoral Commission may provide with roll information and the purposes for which that information may be used.

The list of Commonwealth agencies and permitted purposes set out in Schedule 1 to the Regulation is substantially the same as set out in Schedule 1 to the 1940 Regulations. The key difference is that some agencies are now described by reference to a Department administered by a Minister administering a specified Act. This will mean that fewer amendments will be required in the future following Machinery of Government changes.

The Regulation also lists the new name of the Australian Financial Security Authority rather than the Insolvency and Trustee Service of Australia.

## **Schedule 2—Prescribed electors**

### **Clause 1- Prescribed elector**

Clause 1 of Schedule sets out the classes of electors which may attest to the notification from the Department of Immigration and Border Protection that a person will become an Australian citizen.

The classes of electors set out in Schedule 2 to the Regulation are substantially the same as set out in Schedule 2 to the 1940 Regulations. Some classes were omitted as they could no longer be identified with sufficient clarity or because the class was covered off in the catch all provision in item 16. Item 16 provides that one class of electors is the very broad ‘A person who is not described in a preceding item in this Schedule before whom statutory declarations may be made under a law of the Commonwealth, a State or a Territory’. Some names were changed to reflect the new name of professional organisations.