

EXPLANATORY STATEMENT

Electoral and Referendum Amendment (ASADA) Regulations 2017

Issued by Authority of the Minister for Finance

Commonwealth Electoral Act 1918

Legislative Authority

Section 395 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides 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 when are necessary or convenient to be prescribed for giving effect to the Electoral Act.

Background

The purpose of the *Electoral and Referendum Amendment (ASADA) Regulations 2017* (the Regulation) is to amend the *Electoral and Referendum Regulation 2016* to include the Australian Sports Anti-Doping Authority (ASADA) to the list of prescribed authorities for the purposes of the Electoral Act. As a prescribed authority listed in Schedule 1, the Electoral Commission may give ASADA Commonwealth electoral Roll information for the purposes as described in the table in clause 1 to Schedule 1 to the Regulation, namely for the purposes of the administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

Purpose and operation

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

The definition of ‘prescribed authority’ in section 4, and circumstances specified in item 4 of the table in subsection 90B(4) of the Electoral Act establish a scheme where the Australian Electoral Commission (AEC) can provide Roll information to Commonwealth government agencies specified in the regulations. The Regulation will now provide for the provision of Roll information to ASADA and specify the purposes for which the Roll information may be used, specifically for the administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

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

Consultation

Consultation was undertaken for the amendments to the Regulation between the Special Minister of State, the Minister for Health and Sport, the Minister for Finance, ASADA and the Australian Electoral Commission. This extensive consultation resulted in agreement on the addition of ASADA to the Regulation and that Commonwealth electoral Roll information may be provided to ASADA for the prescribed purpose of administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

Statement of compatibility with Human Rights

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

Electoral and Referendum Amendment (ASADA) Regulations 2017

This Regulation is compatible with the 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 disallowable Legislative Instrument

Section 395 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides 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.

The *Electoral and Referendum Amendment (ASADA) Regulations 2017* (the Regulation) amends the *Electoral and Referendum Regulation 2016* to include the Australian Sports Anti-Doping Authority (ASADA) to the list of prescribed authorities for the purposes of the Electoral Act. As a prescribed authority listed in Schedule 1, the Electoral Commission may give ASADA Commonwealth electoral Roll information for the purposes as described in the table in clause 1 to Schedule 1 to the Regulation, namely for the purposes of administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

Human rights implications

The Regulation engages the following human rights:

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) provides, that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. It further sets out that everyone has the right to the protection of the law against such interference or attacks.

Australia accepts the principles stated in Article 17, to the right to enact and administer laws which, insofar as they authorise action which impinges on a person's privacy, family, home or correspondence, are necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the protection of public health or morals, or the protection of the rights and freedoms of others.

The amendment to the Regulation adds ASADA to the list of prescribed authorities for the purposes of the Electoral Act. As a prescribed authority listed in Schedule 1, the Electoral Commission may give ASADA Commonwealth electoral Roll information for the purposes as described in the table in clause 1 to Schedule 1 to the Regulation, namely for the purposes of administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).

Providing an elector's information to prescribed authorities in the prescribed circumstances assists with law enforcement and compliance with Commonwealth laws. Currently ASADA

is not a listed prescribed authority for receiving Commonwealth electoral Roll information for the prescribed purpose.

The disclosure of information from the Commonwealth electoral Roll to ASADA is a permissible limitation, as it is necessary in the interests of public safety and for the protection of public health.

The disclosure of such information is protected in the first instance by the discretion of the Electoral Commission who can decide when and how to give this information, to the prescribed authority. Information is only given for a specific purpose.

The prescribed authorities at Schedule 1 to the Regulation are related to law enforcement agencies and compliance work within other government departments. Having such access to Roll information will assist the work of ASADA in investigating violations under the National Anti-Doping scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*). ASADA are at the forefront of international efforts to tackle doping in sport. Providing access to the Commonwealth electoral Roll to ASADA for the purpose of administering the National Anti-Doping scheme, it would be particularly beneficial:

- for identifying persons who are subject to tip-offs;
- for locating athletes for testing purposes;
- for establishing additional information to facilitate additional records checks;
- for establishing the identity of co-habitants and associations of interest;
- for linking seizures of Performance and Imaging Enhancing Drugs to the occupants of the intended destination addresses; and
- for maintaining the confidentiality of ASADA enquiries.

As such, any use of elector's information from the Commonwealth electoral Roll, is a permissible limitation as it reasonable, necessary and sufficiently precise to ensure that it addresses only those matters it is intended to capture under the *Australian Sports Anti-Doping Authority Act 2006*.

Conclusion

The Regulation is compatible with human rights as it seeks to enforce the right to take part in public affairs and elections. The Regulation is also compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Attachment

Details of the proposed *Electoral and Referendum Amendment (ASADA) Regulations 2017*

Section 1 - Name of Regulation

This section would provide that the title of the Regulation is the *Electoral and Referendum Amendment (ASADA) Regulations 2017*.

Section 2 - Commencement

This section would provide for the Regulations to commence the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section would provide that the *Electoral and Referendum Amendment (ASADA) Regulations 2017* is made under the *Commonwealth Electoral Act 1918*.

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.

Schedule 1 – Amendments

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.

This item inserts new item 9A to the table at clause 1 of Schedule 1. New item 9A inserts the Australian Sports Anti-Doping Authority as a prescribed Commonwealth agency which the Electoral Commission may provide Roll information to. It also inserts the purpose for which the information may be used as for the administration of the National Anti-Doping Scheme (within the meaning of the *Australian Sports Anti-Doping Authority Act 2006*).