

## EXPLANATORY STATEMENT

### ***Electoral and Referendum Amendment (Modernisation) Regulations 2019***

Issued by Authority of the Special Minister of State

*Commonwealth Electoral Act 1918*

#### **Legislative Authority**

Section 392 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides that the Governor-General may make regulations that alter or replace a form in Schedule 1 of the Electoral Act. Under subsection 33(3) of the *Acts Interpretation Act 1901* a power to make an instrument “shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.”

#### **Outline**

The *Electoral and Referendum Amendment (Modernisation) Regulations 2019* (the Regulation) amends the *Electoral and Referendum Regulation 2016* (the Principal Regulation). The purpose of the Regulation is to remove both the voluntary Qualification Checklist from the candidate nomination forms, and the publication provisions related to the voluntary Qualification Checklist from the Principal Regulation.

The Regulation also inserts a new Senate ballot-paper Form E in Schedule 3 to the Principal Regulation, which replaces the Senate ballot-paper Form E in Schedule 1 to the Electoral Act. The purpose of this aspect of the Regulation is to correct errors in the Senate ballot-paper Form E left behind by the Senate voting reforms in 2016.

A person must be qualified under the Constitution and the laws of the Commonwealth to be capable of being chosen or to sit as a Senator or a member of the House of Representatives.

During the 45th Parliament there have been significant disqualification issues under section 44 of the *Constitution*. Changes to the candidate nomination forms were made on 29 May 2018, through the *Electoral and Referendum Amendment (Eligibility) Regulations 2018*. A voluntary Qualification Checklist was added to the candidate nomination forms to highlight the requirements and increase transparency regarding candidates’ eligibility for election under section 44 of the *Constitution*. Completion and publication of the voluntary Qualification Checklist was optional. This was an interim solution to ensure improvements to the candidate nomination forms could be in place for the July 2018 by-elections.

The *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019* amended the Electoral Act to make it compulsory for candidates nominating at the federal election to complete a Qualification Checklist, demonstrating their eligibility under section 44 of the *Constitution*. The mandatory Qualification Checklist and publication requirements in the Electoral Act replace the voluntary Qualification Checklist and publication provisions in the Principal Regulation. This Regulation is a consequential amendment following the commencement of the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019*.

The *Commonwealth Electoral Amendment Act 2016* (Act No 25 of 2016) amended the Electoral Act to implement Senate voting reforms. Following these reforms, the Senate ballot paper Form E in Schedule 1 of the Electoral Act includes a number of formatting errors, which means that it does not reflect the requirements in the Electoral Act relating to Senate voting and the Senate ballot paper. The Regulation addresses these errors, by amending the placement of the footnotes and adding an additional candidate box where required. A new Senate ballot-paper Form E has been designed to address these issues.

Further details on the Regulation are set out in **Attachment A**

### **Consultation**

Consultation on the Regulation was undertaken with the Australian Electoral Commission (AEC) and other relevant stakeholders.

### **Regulatory Impact**

The Office of Best Practice Regulation (OBPR) has advised that the repeal of the voluntary Qualification Checklist is considered to be machinery in nature and the other aspects of the Regulation will have no more than a minor regulatory impact on business, community organisations or individuals. Accordingly a regulatory impact statement is not required.

OBPR ID Number: 24901 and 24984

## **Statement of Compatibility with Human Rights**

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

### ***Electoral and Referendum Amendment (Modernisation) Regulations 2019***

This Legislative Instrument 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 Legislative Instrument**

The *Electoral and Referendum Amendment (Modernisation) Regulations 2019* (the Regulation) amends the *Electoral and Referendum Regulation 2016* to:

- remove both the voluntary Qualification Checklist from the candidate nomination forms, and the publication provisions related to the voluntary Qualification Checklist; and
- insert a new Senate ballot-paper Form E in Schedule 3 to the Principal Regulation, replacing the Form E in Schedule 1 to the *Commonwealth Electoral Act 1918*. This corrects errors in the Senate ballot-paper Form E left behind by the Senate voting reforms in 2016.

### **Human rights implications**

This Regulation does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Regulation is compatible with human rights as it does not raise any human rights issues.

**The Hon Alex Hawke  
Special Minister of State**

**Details of the *Electoral and Referendum Amendment (Modernisation) Regulations 2019* (the Regulation)**

**Section 1 – Name**

1. This Section provides that the title of the Regulation is the *Electoral and Referendum Amendment (Modernisation) Regulations 2019*.

**Section 2 – Commencement**

2. This Section provides that the entire Regulation commences on the later of the start of the day after it is registered on the Federal Register of Legislation and the commencement of Schedule 1 to the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019*. The repeal of the voluntary Qualification Checklist and publication provisions is a consequential amendment following the commencement of the mandatory Qualification Checklist requirements in Schedule 1 to the *Electoral Legislation Amendment (Modernisation and Other Measures) Act 2019*.
3. The note under the commencement table provides by that the table only relates to the Regulation as originally made. The note clarifies that the table will not be amended to deal with any later amendments to the Regulation.
4. Subsection 2(2) allows for the date and details of the commencement of this Regulation to be later inserted in column 3 of the table. Information in Column 3 may be edited in any published version of the Regulation. Subsection 2(2) makes it clear that any information in Column 3 of the table does not form part of the Regulation.

**Section 3 – Authority**

5. This section provides that the Regulation is made under the *Commonwealth Electoral Act 1918* (Electoral Act).
6. Section 392 of the Electoral Act provides that the Governor General may make regulations that alter or replace a form in Schedule 1 of the Electoral Act.
7. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument “shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.”

**Section 4 – Schedules**

8. This section provides that an instrument specified in a Schedule to the Regulation is amended or repealed as set out in the relevant items in the relevant Schedule, and any other item in a Schedule to this Regulation has effect according to its terms.

## Schedule 1 – Amendments

9. Schedule 1 to the Regulation amends the *Electoral and Referendum Regulation 2016* (Principal Regulation).

### Item 1 – Division 1A of Part 4

10. Item 1 repeals Division 1A in Part 4 of the Principal Regulation. This includes the headings and section 13A and section 13B of the Principal Regulation, which established the voluntary Qualification Checklist and option to publish the voluntary Qualification Checklist and any relevant material provided with the nomination.
11. Item 1 also substitutes a new heading for Division 1A and a new section 13A. New section 13A replaces Form E in Schedule 1 of the Electoral Act with the Form E set out in Schedule 3 to the Regulation. New section 13A is made pursuant to section 392(2)(b) of the Electoral Act.

### Item 2 Schedule 3

12. Item 3 repeals Schedule 3 to the Principal Regulations which established a voluntary Qualification Checklist and publication provisions.
13. Item 3 substitutes a new Schedule 3 which sets out the new Senate ballot- paper Form E which replaces the Form E in Schedule 1 to the Electoral Act. This corrects errors in the formatting and footnotes in the Senate ballot-paper Form E left behind by the Senate voting reforms in 2016.
14. The new Senate ballot- paper Form E corrects the following formatting errors:
  - (a) All references to footnote (4) appearing above the line are replaced with references to footnote (2);
  - (b) Two candidate boxes are inserted in the ungrouped column, below the line;
  - (c) Footnote (4) is inserted, and only appears, below the line in the ungrouped column adjacent to the candidate name, opposite the candidate box;
  - (d) Footnote (1) is added opposite the candidate boxes in the ungrouped column above footnote (4);
  - (e) All references to footnote (4) below the line are replaced with references to footnote (3);
  - (f) An additional candidate box is added to Column D below the line; and
  - (g) Footnote (7) is added above the line.