

EXPLANATORY STATEMENT

Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021

Issued by Authority of the Assistant Minister for Electoral Matters, Parliamentary Secretary
to the Minister for Finance

*Commonwealth Electoral Act 1918, Referendum (Machinery Provisions) Act 1984, and
Electronic Transactions Act 1999*

Legislative Authority

Section 395 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides that the Governor-General may make regulations prescribing all matters which by the Electoral Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Electoral Act.

Section 144 of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Referendum Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Referendum Act.

Section 16 of the *Electronic Transactions Act 1999* (the Electronic Transactions Act) provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Electronic Transactions 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

On 1 December 2020, the *Electoral Legislation Amendment (Miscellaneous Measures) Act 2020* (the Miscellaneous Measures Act) (C2020A00095) amended:

- Part XVB of the Electoral Act and Part IVB of the Referendum Act to broaden the categories of voters entitled to access electronically assisted voting to include Antarctic voters; and
- the Electoral Act to repeal Form E in Schedule 1 to the Electoral Act, and substituting the current version of the Senate ballot paper form.

The *Electoral Legislation Amendment (Miscellaneous Measures) Regulations 2021* (the Regulations) amends the *Electoral and Referendum Regulation 2016* (the Electoral Regulations) and the *Electronic Transactions Regulations 2020* (the Electronic Transactions Regulations) to reflect the amendments made by the Miscellaneous Measures Act.

The Regulations expand the electronically assisted voting methods, which are currently only available to blind and low vision voters, to Australians working in Antarctica. This replaces the special arrangements for Antarctic electors in the Electoral Act and the Referendum Act. The amendments to Part XVB of the Electoral Act and Part IVB of the Referendum Act will broaden the categories of voters entitled to access electronically assisted voting to include Antarctic voters.

Extending the existing electronically assisted voting mechanisms to Antarctic electors streamlines voting processes which currently involve transcribing votes. It will also improve the secrecy of the ballot for Antarctic electors. It allows individual Antarctic electors to directly phone through their vote to an existing authorised call centre rather than require another person at the station to transmit the votes to the Australian Electoral Commission.

The Regulations repeal the Senate ballot paper (Form E) in Schedule 3 of the Electoral Regulations. The Senate ballot paper was inserted in the Electoral Regulations on 8 March 2019 by the *Electoral and Referendum Amendment (Modernisation) Regulations 2019* (F2019L00266) to replace Form E in Schedule 1 to the Electoral Act and correct errors in the formatting and footnotes in Form E left behind by the Senate voting reforms in 2016. The Miscellaneous Measures Act repealed Form E in the Electoral Act, substituting in the current version of the Senate ballot paper form. As a consequence, the Senate ballot paper template is no longer required in the Electoral Regulations.

Additionally, the Regulations make consequential amendments to the *Electronic Transactions Regulations 2020* to reflect the amendments to the Electoral Act made by the Miscellaneous Measures Act, which repealed Part XVII of the Electoral Act and Part V of the Referendum Act. These provisions are prescribed in the Electronic Transactions Regulations as being exempt from the application of certain provisions of the Electronic Transactions Act.

The Electronic Transactions Act ensures that a transaction under a Commonwealth law will not be invalid simply because the transaction was conducted through electronic communication. Commonwealth laws listed in Schedule 1 to the Electronic Transactions Regulations are exempt from the general application of the Electronic Transactions Act.

Further details on the Regulations are set out in [**Attachment A**](#).

Consultation

Consultation on the Regulations was undertaken with the Australian Electoral Commission, and the Attorney-General's Department (being the portfolio responsible for the Electronic Transactions Act and associated Regulations).

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has advised that a regulatory impact statement is not required.

OBPR ID Number: 43236

Statement of Compatibility with Human Rights

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

Electoral and Referendum Amendment (Miscellaneous Measures) Regulations 2021

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 (Miscellaneous Measures) Regulations 2021* (the Regulations) amends the *Electoral and Referendum Regulation 2016* (the Electoral Regulations) to:

- expand the electronically assisted voting methods, which are currently only available to blind and low vision voters, to include Australians working in Antarctica; and
- repeal the Senate ballot paper (Form E) in Schedule 3, with the current form included in the *Commonwealth Electoral Act 1918* (the Electoral Act) following an amendment to the Electoral Act by the *Electoral Legislation Amendment (Miscellaneous Measures) Act 2020* (the Miscellaneous Measures Act).

The Regulations also makes consequential amendments to the *Electronic Transactions Regulations 2020* (Electronic Transactions Regulations) to reflect the amendments to the Electoral Act made by the Miscellaneous Measures Act, which repealed Part XVII of the Electoral Act and Part V of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act).

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are is compatible with human rights as it does not raise any human rights issues.

The Hon Ben Morton
Assistant Minister for Electoral Matters
Parliamentary Secretary to the Minister for Finance

Details of the Electoral and Referendum Amendment (Miscellaneous Measures) Regulations 2021 (the Regulations)

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Electoral and Referendum Amendment (Miscellaneous) Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence the day after this instrument is registered.

Section 3 - Authority

This section provides that the Regulations are made under:

- (a) the *Commonwealth Electoral Act 1918*;
- (b) the *Referendum (Machinery Provisions) Act 1984*; and
- (c) the *Electronic Transactions Act 1999*.

Section 4 – Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Electoral and Referendum Regulation 2016 (the Electoral Regulations)

Section 5 – Definitions

1. The Regulations amend section 5 ‘Definitions’ of the Electoral Regulations to clarify the application and purpose of the amendments to extend the ***electronically assisted voting method*** to enable ***registered electronically assisted voters*** to vote electronically. Previously the ***electronically assisted voting method*** was only available to sight-impaired persons. The Regulations amends the definition of ***registered electronically assisted voter*** to extend to Antarctic electors and eligible unenrolled persons working in Antarctica, who meet the respective prescribed registration requirements.
2. The Miscellaneous Measures Act amended subsection 4(1) (Interpretation) of the Electoral Act to include definitions of ***Antarctica*** and ***Antarctic elector***. The definition of ***sight-impaired person*** has the meaning given by Part XVB (Electronically assisted voting) section 202AA (Definitions) of the Electoral Act. Further, the definitions of ***electronically assisted vote*** and ***electronically assisted voting*** are provided in section 5 of the Electoral Regulations.

3. **Item 1** amends the definition of *electronically assisted voting method* in section 5 to apply to a *registered electronically assisted voter* which is defined by **Item 2** of the Regulations.
4. **Item 2** inserts the definition of *registered electronically assisted voter* in section 5 to clarify that a sight-impaired person or an Antarctic elector, who is registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote, is a *registered electronically assisted voter*.
5. **Item 3** repeals the definition of *registered sight-impaired voter* as **Item 2** inserts a new definition in section 5. The definition of *registered electronically assisted voter* includes sight-impaired persons and extends to include Antarctic electors, who are registered with the Electoral Commissioner for the purpose of voting by an electronically assisted vote.

Part 4 – Voting matters

6. **Item 4** repeals Division 1A (Senate ballot paper (Form E)) from the Electoral Regulations. The Miscellaneous Measures Act inserts an updated Senate ballot paper (Form E) into Schedule 1 of the Electoral Act, rendering the Senate ballot paper in the Electoral Regulations redundant.
7. **Item 5** amends the Part 4, Division 1 heading ‘Electronically assisted voting’ to omit reference to sight-impaired people to clarify the application of the Division is expanded.

Section 15 – Authorised call centres

8. **Items 6 to 9** amend subsection 15(1), paragraph 15(2)(a) and (b), and the subsection 15(2) example to clarify that section 15 (Authorised call centres) is applicable to sight-impaired persons and Antarctic electors to register to vote by an electronically assisted vote, or cast an electronically assisted vote in an electoral event.
9. A sight-impaired person or an Antarctic elector is not a *registered electronically assisted voter* until the person is registered in accordance with section 16 (Registration) of the Electoral Regulations.

Section 16 – Registration

10. **Items 10 to 14** amend paragraphs 16(1)(a) and 16(1)(b), and subsections 16(1)(note), 16(2), 16(3) and 16(4) to clarify that a sight-impaired person or an Antarctic elector may register as a *registered electronically assisted voter* under the prescribed process in section 16 (Registration).

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

11. **Items 15 to 18** amend subsections 17(1), paragraphs 17(2)(c) and 17(3)(b), and subparagraph 17(3)(i)(i) to clarify that section 17 is applicable to *registered electronically assisted voters*, which includes both sight-impaired persons and Antarctic electors registered in accordance with section 16 (Registration).

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

12. **Items 19 and 20** amend subsections 18(1) and (2) to clarify that the call centre operator must be satisfied that the person is a ***registered electronically assisted voter***, and the ***registered electronically assisted voter*** must be asked an appropriate question relevant to the electoral event occurring.

Section 19 – Enabling registered electronically assisted voter to vote

13. **Item 21** amends the heading to ‘Enabling registered electronically assisted voter to vote’, to clarify ***registered electronically assisted voters*** are enabled to vote under the procedures prescribed in section 19 of the Electoral Regulations.
14. **Item 22** amends subsections 19(1) and (2) to clarify application of section 19 to ***registered electronically assisted voters***, which includes both sight-impaired persons and Antarctic electors registered in accordance with section 16 (Registration).

Section 24 – Scrutiny of ballot paper

15. **Item 23** amends paragraphs 24(2)(d) and (3)(d) to clarify that ballot papers in federal electoral events will be subject to scrutiny with the modifications necessary to ensure that is irrelevant that the vote can be identified as being an electronically assisted vote cast by a sight-impaired person or Antarctic elector. This means the ballot is taken to be a pre-poll ordinary vote for the purposes of scrutiny (counting of ballots) in Part XVIII (The scrutiny) of the Electoral Act and Part VI (Scrutiny of a referendum) of the Referendum Act.

Schedule 3 – Senate ballot paper (Form E)

16. **Item 24** repeals Schedule 3 to remove the Senate ballot paper (Form E) from the Regulations. The Senate ballot paper is replaced by the Miscellaneous Measures Act, which inserts an updated Senate ballot paper (Form E) into Schedule 1 of the Electoral Act, rendering the version of the Senate ballot paper in the Electoral Regulations redundant.

Electronic Transactions Regulations 2020 (the Electronic Transactions Regulations)

Schedule 1 – Clause 1 – Laws of the Commonwealth to which certain provisions of the Act do not apply

17. **Items 25 and 26** amend table item 19 of the Electronic Transactions Regulations to remove reference to Part XVII of the Electoral Act which was repealed by the Miscellaneous Measures Act, rendering reference to the part redundant.
18. **Item 27** amends table item 78 of the Electronic Transactions Regulations to remove reference to Part V of the Referendum Act which was repealed by the Miscellaneous Measures Act, rendering reference to the part redundant.