

EXPLANATORY STATEMENT

Issued by the Authority of the Special Minister of State

Commonwealth Electoral Act 1918

Electoral and Referendum Regulation 2016

Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023

Legislative Authority

The *Commonwealth Electoral Act 1918* (Electoral Act) provides for the administration and conduct of the House of Representatives and Senate elections and by-elections.

Section 395 of the Electoral Act provides that the Governor-General may make regulations, not inconsistent with the Electoral Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Electoral Act.

Section 98AA of the Electoral Act prescribes the evidence of identity documents required to support a person's application for enrolment. Paragraph 98AA(2)(d) of the Electoral Act enables any other evidence of a person's identity to be prescribed by regulations.

Subsection 382(7) of the Electoral Act allows regulations to be made to provide that enrolment-related claims and notices do not have to be signed if a person satisfies the requirements as prescribed by those regulations.

The *Electoral and Referendum Regulation 2016* (Principal Regulations) prescribes matters relating to the permitted use of electoral roll information, enrolment, assisted voting, and compulsory voting.

Outline

The Electoral Act currently limits identity documentation for enrolment to a driver's licence issued under the law of a State or Territory, an Australian passport or an attestation by an enrolled person. The Principal Regulations currently do not expand the documentary identity evidence requirements to support electoral enrolment.

The purpose of the *Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023* (the Regulations) is to amend the Principal Regulations to enable voters to submit a broader range of identity requirements to support an application for enrolment under sections 94A, 95, 96, 98 and 99A of the Electoral Act.

The Regulations prescribe new additional evidence of identity documents that could be accepted by the Australian Electoral Commissioner to support an application for enrolment. These expanded identity documents are:

- a notice evidencing the person's Australian citizenship that is given under section 37 of the *Australian Citizenship Act 2007*; and

- a person's medicare number if they are covered by a medicare card under the *National Health Act 1953*.

This expanded list of identity documents will allow those individuals who have previously faced barriers to enrolment as a result of not having the required evidence of evidence, to participate in elections and referendums.

The Regulations also modernise processes for enrolment updates by expanding the evidence of identity a voter can provide in addition to their date of birth to satisfy the requirements for an enrolment claim or notice to be signed in subsection 382(7) of the Act. This expands the current provision which allows a voter to provide their driver's licence number, to also allow a voter to provide a passport number, citizenship notice number or medicare number.

The financial impact of the Regulations is expected to be minimal as existing AEC systems and processes will be used to support these measures.

Details of the Regulations are set out at [Attachment A](#).

The Regulations will commence on the day after the Regulations are registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

Consultation has taken place with the Australian Electoral Commission, the Office of Parliamentary Counsel and the Department of Prime Minister and Cabinet.

Regulatory Impact

The Office of Impact Analysis (previously the Office of Best Practice Regulation (OBPR)) has advised that the Regulations are unlikely to have a more than a minor regulatory impact. Accordingly, a regulatory impact assessment is not required.

ID Number: OBPR22-03162.

Details of the Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023

This attachment sets out the details of the *Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023* (the Regulations).

The Regulations will amend the *Electoral and Referendum Regulations 2016* to enable voters to submit a broader range of identity requirements to support an application for enrolment.

Part 1—Preliminary

Section 1 – Name

This section provides that the title of the Regulations is the *Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023*.

Section 2 – Commencement

This section provides that the instrument will commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under the *Commonwealth Electoral Act 1918* (the Electoral Act).

Section 4 – Schedules

This section provides that 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. Any other items in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Item 1

Item 1 amends the *Electoral and Referendum Regulation 2016* and inserts the definitions for ‘medicare card’ and ‘medicare number’ in section 5, both to have the same meaning as in Part VII of the *National Health Act 1953*.

Noting the requirement in section 93 of the Electoral Act that a person must be an Australian citizen in order to enrol or be eligible to enrol, these definitions would apply to persons who hold a ‘green’ medicare card as issued by the Chief Executive Medicare. For the avoidance of doubt, these definitions do not include any card or written authorisation relating to a person’s eligibility for pharmaceutical benefits or an eligible person as per the *Health Insurance Act 1973*.

Item 2

Item 2 amends the *Electoral and Referendum Regulation 2016* and inserts before section 12, section 11A – Additional evidence of identity requirements. This new section prescribes new additional evidence of identity documents that could be accepted by the Australian Electoral Commissioner to support an application for enrolment for the purposes of section 98AA of the Electoral Act.

Section 98AA of the Electoral Act provides that persons making an application or claim under sections 94A, 85, 96, 98 or 99A of the Electoral Act are to provide evidence of identity with their application or claim. The Electoral Act limits identity documentation for enrolment to a driver's licence issued under the law of a State or Territory, an Australian passport or an attestation by an enrolled person. The *Electoral and Referendum Regulation 2016* currently does not expand the documentary identity evidence.

The Regulations prescribe new additional evidence of identity documents that could be accepted by the Australian Electoral Commissioner to support an application or claim under sections 94A, 85, 96, 98 or 99A of the Electoral Act. These two new categories of evidence of identity documents are trusted government-issued identification that are accessible by most Australians, and include:

- a person's Australian citizenship notice number that is given under section 37 of the *Australian Citizenship Act 2007*; and
- if a person is covered by a medicare card, their medicare number under the *National Health Act 1953*.

As at 30 September 2022, an estimated 532,755 eligible Australians were not enrolled (refer www.aec.gov.au). A strong democracy requires all citizens to be able to participate equally. As Australia has a system of compulsory voting, the broadening of eligible categories of evidence of identity documents ensures voting is accessible to all through easy access to enrolment.

Item 3

Item 3 amends section 13 of the *Electoral and Referendum Regulation 2016*.

Section 382 of the Electoral Act provides for certain enrolment related claims to be processed by the Electoral Commissioner without the need for the receipt of a hard copy document containing a signature.

Subsection 382(7) of the Electoral Act allows regulations to be made to provide that enrolment-related claims or notices do not have to be signed if a person satisfies the requirements as prescribed by those regulations. This relates to claims and notices where the:

- claim/notice is required to be signed by a person;
- person is already enrolled;
- person's name remains the same as per their enrolment; and
- claim/notice is not an enrolment-related claim/notice specified in subsection 382(8) of the Electoral Act.

Section 13 of the *Electoral and Referendum Regulation 2016* currently provides that if a person includes their date of birth and their driver's licence number on the enrolment claim or notice, then the requirement for the claim or notice to be signed is satisfied.

Item 3 will expand the categories of authenticating information that can be provided if an elector seeks to update their address details on the electoral Roll without providing a signature. This will enable enrolled voters to provide electronic information to the AEC that can be used to update the electoral Roll using the most expansive categories of identity prescribed in Item 2 above.

Item 3 will allow the requirement for an enrolment-related claim or notice to be signed to be satisfied if a person provides their date of birth and their driver's licence number, passport number, citizenship notice number or medicare number.

The expanded categories remain trusted forms of identity to ensure the ongoing integrity and accuracy of the Commonwealth electoral Roll. Consistent with current requirements, a person must provide their date of birth and evidence of identity as authenticating verification information before the Electoral Commissioner can act on the electronic communication.

This amendment is consequential to the expansion of evidence of identity at Item 2 and supports ongoing modernisation of the AEC to ensure electoral best practice.

Section 121 of the Electoral Act prescribes when independent review by the Administrative Appeals Tribunal may apply. The activities provided by the Regulations that relate to sections 98A or 102 or subsections 94A(1), 95(1) or 96(1) are included as reviewable decisions under section 121 of the Electoral Act. As such, any decision relating to the enrolment of a person would be subject to independent merits review by the Administrative Appeals Tribunal.

Independent merits review is not considered suitable for decisions made in connection with item 3 of the Regulations as such decisions are automatic or mandatory in nature as the nature of such decisions arise as a direct consequence of a person providing an enrolment-related claim or notice with the relevant information meeting the statutory requirements as set out in the Electoral Act and the Regulations.

The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.11 of the guide, *What decisions should be subject to merit review?*).

Consultation on the Regulations was undertaken with the AEC, the Office of Parliamentary Counsel and the Department of the Prime Minister and Cabinet.

Broader consultation on the Regulations is not considered appropriate, nor necessary, as the Electoral Act is technical in nature and prescribes the administration and conduct of general elections, Senate elections, and by-elections. Additionally, the proposed Regulations will have a significant positive impact on eligible individuals seeking to apply to enrol and remove any unnecessary regulatory red-tape.

The financial impact of the Regulations is expected to be minimal as existing AEC systems and processes will be used.

The Regulations do not restrict the implied freedom of political communication, as the Regulations support the rights of Australian voters to participate in federal electoral events by increasing individual's opportunities to enrol to vote.

Statement of Compatibility with Human Rights

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

Electoral and Referendum Amendment (Enrolment Enfranchisement) Regulations 2023

This disallowable 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 (Enrolment Enfranchisement) Regulations 2023* (the Regulations) will amend the *Electoral and Referendum Regulation 2016* to enable voters to submit a broader range of identity requirements to support an application for enrolment under sections 94A, 95, 96, 98 and 99A of the *Commonwealth Electoral Act 1918* (Electoral Act).

The Regulations prescribe new additional evidence of identity documents that could be accepted by the Australian Electoral Commissioner to support an application for enrolment. These expanded identity documents are:

- a person's Australian citizenship notice number that is given under section 37 of the *Australian Citizenship Act 2007*; and
- if a person is covered by a medicare card, their medicare number.

This expanded list of identity documents will allow those individuals who have previously been ineligible to enrol on the electoral roll due to not having the required identity evidence, to enrol and participate in House of Representatives and Senate elections, by-elections and referendums.

The Regulations also modernise processes for enrolment updates by expanding the evidence of identity a voter can provide in addition to their date of birth to satisfy the requirements for an enrolment claim or notice to be signed in subsection 382(7) of the Act. This expands the current provision which allows a voter to provide their driver's licence number, to also allow a voter to provide a passport number, citizenship notice number or medicare number.

This will mean any person who has a medicare card and access to the internet can enrol to vote or update their enrolment easily online, regardless of their location. This is one of a range of measures being pursued by the Australian Electoral Commission to help close the gap between Indigenous and non-Indigenous enrolment.

Human rights implications

This Regulations engage the following right under the *International Covenant on Civil and Political Rights* (ICCPR):

- the right to political participation under Article 25.

Article 25 – Right to political participation

The Regulations will engage the right of citizens to take part in public affairs and elections under Article 25 of the ICCPR, because it enables Australian citizens who previously were ineligible for enrolment due to not having the required forms of identity documents, to be able to participate in Australian electoral processes.

The expansion of the types of identity documents required to accompany an application for enrolment will allow those individuals who previously were unable to provide the required identity documents to enrol on the electoral roll and participate in general elections, by-elections and referendums.

General Comment 25 on the right to participate in public affairs, voting rights and the right of equal access to public service recognises that States must ensure that all persons entitled to vote are able to exercise that right and obstacles to registration to vote should not be imposed. The Regulations are compatible with human rights as they provide a further method for eligible voters to participate in political and public life by being able to enrol more easily.

The Regulations support and protect the right of citizens to take part in public affairs and elections under Article 25 of the ICCPR.

Conclusion

The Regulations are compatible with human rights because the Regulations promote the protection of human rights.

**Senator the Hon Don Farrell
Special Minister of State**