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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ELECTORAL AND REFERENDUM AMENDMENT (IMPROVING
ELECTORAL PROCEDURE) BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Special Minister of State,
the Hon Gary Gray AO MP)

ELECTORAL AND REFERENDUM AMENDMENT (IMPROVING ELECTORAL PROCEDURE) BILL 2012

OUTLINE

The Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (the Bill) amends the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act).

Following the inquiry into the conduct of the 2010 federal election, the Joint Standing Committee on Electoral Matters (JSCEM) tabled a report entitled *The 2010 Federal Election: Report on the conduct of the election and related matters* (JSCEM Report). The Bill implements the Government response to Recommendations 12, 31 and 32 of the JSCEM Report as well as making a number of technical and minor amendments.

The Bill contains provisions that will:

- remove the prescription relating to how postal votes are processed currently set out in the Electoral Act and the Referendum Act. The amendments will also seek to allow for technological developments over time;
- increase the sum to be deposited by or on behalf of a person nominated as a Senator from \$1000 to \$2000;
- increase the sum to be deposited by or on behalf of a person nominated as a Member of the House of Representatives from \$500 to \$1000;
- increase the number of nominators required by a candidate for the Senate or the House of Representatives who has not been nominated by a registered political party from 50 to 100 electors;
- require unendorsed candidates for the Senate who have made a request to be grouped to each be nominated by 100 unique electors; and
- make a number of minor and technical amendments.

FINANCIAL IMPACT STATEMENT

The costs associated with implementation of the measures contained in this Bill will be absorbed by the Australian Electoral Commission from existing resourcing.

Statement of Compatibility with Human Rights

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

Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012

This Bill 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 Bill

The Bill implements the Government response to Recommendations 12, 31 and 32 made by the Joint Standing Committee on Electoral Matters in its report entitled *The 2010 Federal Election: Report on the conduct of the election and related matters*. The Bill also makes a number of technical and minor amendments.

Postal Voting

The *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* provide the option for electors to submit their votes by post if specified grounds apply to the elector. These grounds include such matters distance from a polling place, illness, infirmity, religious beliefs and imprisonment.

The Bill provides for an improved manner of processing postal vote applications and issuing postal vote ballot papers. In addition to improving the processing time of applications, the amendments will also facilitate the application of future changes in technology.

At the 2010 election, the AEC received over 800,000 postal vote applications. Amendments to the Electoral Act and the Referendum Act in 2010 have also opened the way for voters to make an application for a postal vote online. It could be expected that these amendments will facilitate more postal vote applications at future elections.

The amendments in the Bill are being made to ensure that postal voting is available, in any new technological environment, to the increasing number of electors who wish to vote that way. The amendments promote the right to take part in public affairs and elections by providing for the expansion in the range of ways in which postal voting may occur.

Changes in deposit requirements and number of nominators

The Electoral Act requires a deposit to be paid upon nomination for all candidates and sets out a number of requirements in relation to how a candidate is nominated. There are different rules that apply if a person is nominated by a registered political party or if the person is not endorsed by a registered political party. The amendments increase the amount of the deposit that must be paid to the Australian Electoral Commission upon nomination for all candidates. The amendments also increase the number of electors who must nominate a candidate for election who is not endorsed by a registered political party.

Standing as a candidate for public office is accepted as a serious matter; hence many legislatures apply deposit and nomination requirements and set time limits in which

nominations must be received. These rules contribute to establishing a workable and timely electoral environment, while still allowing all citizens to choose to participate in the electoral process.

These amendments seek to address two main concerns arising from the increasingly large number of Senate groups contesting elections. The first of these is the impact on formality due to a ballot paper that is growing in complexity in a voting system that requires every box to be numbered below the line. The second concern is practical issues associated with printing the ballot paper. The Senate ballot paper for New South Wales is already the maximum size that can be printed in Australia (1020 mm) and is quite unwieldy. If more Senate groups contest the next election than in 2010, the font of the ballot paper must be further reduced in size.

The amendments to increase the required nomination deposit and to increase the number of nominators required for unendorsed candidates seek to strike the right balance between providing the opportunity for all citizens to take part in elections while at the same time putting in place some reasonable thresholds that candidates must meet.

The Senate election in New South Wales in 2010 provides some context for these amendments. In this election there were 84 candidates distributed across 33 columns. Of the 84 candidates, 42 candidates received fewer than 200 first preference votes or less than 0.005% of the total formal vote. The total of the formal votes polled by these 42 candidates was 2,697 or 0.06% of the total formal vote overall. None of them came from a group which had a candidate elected and all lost their nomination deposits.

The current requirement of 50 nominators for unendorsed candidates has been in place since 1998 and the deposit amounts were last changed in 2006. Since then, both the Australian population and Average Weekly Earnings have increased. Therefore it is timely to increase the figures at this stage to continue to balance a workable and timely electoral environment against the rights of individuals to take part in elections.

Minor and technical amendments

The amendments in Schedule 3 to the Bill are largely technical in nature, the majority of which raise no human rights issues. To note is the repeal of the expression 'unsound mind' from the disqualification for being enrolled. The amendments now provide a disqualification from enrolment if in the opinion of a qualified person the potential elector does not understand the nature and significance of enrolment and voting. The definition of 'qualified person' is adopted from the *Freedom of Information Act 1988* and includes a medical practitioner and a social worker.

Conclusion

The Bill engages Article 25 (right to take part in public affairs and elections) of the International Covenant on Civil and Political Rights (ICCPR). The Bill contributes to the realisation of Article 25 of the ICCPR by facilitating on-line postal vote applications and the use of new technologies over time. The Bill does impose deposit and nominator thresholds that must be met by candidates, but these are reasonable and are balanced against the need to provide a ballot paper that is easy to use and readable.

The Hon Gary Gray AO MP, Special Minister of State

NOTES ON CLAUSES

Clause 1 – Short title

1. This clause provides for the Act to be cited as the *Electoral and Referendum Amendment (Improving Electoral Procedure) Act 2012*.

Clause 2 – Commencement

2. This clause provides that the Act commences on the day this Act receives the Royal Assent.

Clause 3 – Schedule(s)

3. This clause specifies that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 – Postal Voting

Part 1 - Amendments

Commonwealth Electoral Act 1918

Item 1 – Subsection 4(1) (definition of *officer*)

4. This item is consequential to item 2 which amends section 28. Section 28 allows the Electoral Commissioner to delegate his functions and powers under the Act. The reference to subsection 28(2) in the definition of ‘officer’ in subsection 4(1) must be amended to reflect the amended form of section 28 created by item 2.

Item 2 – Section 28

5. This item broadens the range of powers and functions which may be delegated by the Electoral Commissioner and clarifies the drafting of the provision at the same time. Other than powers or functions in relation to redistributions, item 2 provides that the Electoral Commissioner may delegate all or any of his or her powers under the Electoral Act. The change to the delegation power is necessary due to the amendments made by subsequent items in Schedule 1 which make the Electoral Commissioner primarily responsible for the receipt and processing of postal vote applications. These amendments are consistent with amendments made in 2010 which made the Electoral Commissioner primarily responsible for enrolment matters.

Item 3 – Subsection 182(1) (definition of *appropriate DRO*)

Item 4 – Subsection 182(2)

6. Section 182 is an interpretive provision governing Part XV – Postal Voting. These items amend section 182 as a consequence of the amendments made in subsequent items. The definition of ‘appropriate DRO’ is repealed by item 3 as subsequent items make the Electoral Commissioner, and not a DRO, responsible for the receipt and processing of postal vote applications. Item 4 broadens the meaning of

‘Division’ for Part XV and Schedule 2 to ensure that the amended provisions apply to all possible postal vote applicants.

Item 5 – Section 183

7. This item substitutes a new provision to provide that a ‘person’ may apply for a postal vote. Before the substitution, the section provided that ‘an elector’ may apply for a postal vote. An ‘elector’ is defined in subsection 4(1) as somebody whose name appears on the electoral Roll.

8. This amendment is one of the key changes to the postal voting provisions. It will facilitate the timely processing of postal vote applications and the dispatch of postal vote packages by allowing the Australian Electoral Commission (AEC) to dispatch postal vote packages to all applicants. It will not mean that all applicants who return ballot papers will have those ballot papers counted as the person will still have to meet eligibility requirements to have the ballot papers admitted to further scrutiny.

Item 6- Subsection 184(1)

9. This item repeals the reference to “an elector” as it is no longer consistent with section 183 following the amendment made by item 5.

Item 7 – Subsections 184(2) and (3)

Item 8 – Subsection 184(5)

Item 9– Subsection 184(6)

10. These items amend section 184 to generally substitute references to a Divisional Returning Officer (DRO) with references to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or an Assistant Returning Officer. The Electoral Commissioner may also delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to provide the capacity to centralise the receipt of the majority of postal vote applications while enhancing the flexibility to delegate processing tasks to a greater range of officers.

Item 10 – At the end of section 184

11. This item requires that the Electoral Commissioner must allocate a number to each application for a postal vote. The numbers allocated to applications are subsequently matched to returned postal vote certificates containing the ballot papers.

Item 11 – Subsection 186(1)

12. This item amends subsection 186(1) to make some drafting improvements and substitute references to a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or a delegate.

Item 12 – Before subsection 188(1)

13. This item inserts the first of three new headings into section 188 to improve readability.

Item 13 – Subsection 188(1)

14. This item amends subsection 188(1) to substitute a reference to a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or an Assistant Returning Officer. The Electoral Commissioner may also delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance the flexibility to delegate processing tasks to a greater range of officers

Item 14 – Subsection 188(1)

15. This item makes a drafting improvement.

Item 15 – Subparagraphs 188(1)(c)(i) and (ii)

16. This item omits ‘declares that he or she’ from the subparagraphs as the postal vote ballot papers will be provided to the applicant on the basis of the applicant’s enrolled address, not for the Division for which the applicant declares that he or she is enrolled. This amendment supports existing practice.

Item 16 – After subsection 188(1)

17. This item inserts two new headings into the section as well as a new subsection. The headings are to improve readability while the new subsection sets out a process requiring the numbering of certificates and ballot papers. The new subsection incorporates procedures currently set out in subsections 189(1) and (2), and section 190.

Item 17 – Subsection 188(2), (3) and (4)

18. This item amends subsections 188(2), (3) and (4) to substitute references to ‘the DRO’ with references to the Electoral Commissioner. These amendments are consequential to the amendment made by item 7.

Item 18 - After section 188

19. This item inserts a new section 188A. This section sets out rules that apply to the process for dealing with applications for postal votes. Some of this procedure was previously set out at subsection 189(1). This item makes drafting improvements.

Item 19 – Section 189

20. This item amends section 189 to make drafting improvements. It allows for public inspection of applications for a postal vote. It updates these arrangements to set out that the list of applications may be kept in electronic form and applies the same qualification with respect to access that is applied to the roll in subsection 90A(5). That is, the right of inspection does not include the right to copy or record by electronic means the list of applications.

21. New subsection 189(2) specifies that the only information that may be inspected is an applicant's full name and address, unless the address is suppressed under section 104 of the Electoral Act. This new provision will ensure that additional personal information on a postal vote application is not unnecessarily disclosed to balance the privacy of an applicant against the openness and transparency of the electoral process.

22. The Electoral Commissioner may determine the list contains other particulars and new subsection 189(5) provides that such a determination is not a legislative instrument. New subsection 189(5) merely clarifies the law, it does not seek to change the nature of the determination.

Item 20 – Subsections 189A(1) and (2)

23. Consistent with the amendments made elsewhere to Part XV by Schedule 1 to make the Electoral Commissioner responsible for the majority of matters to do with postal voting, this item substitutes references to 'Electoral Commission' with 'Electoral Commissioner'.

Item 21 – Subsection 189A(3)

24. This item makes drafting improvements. It is not intended to change the policy.

Item 22 – Subsections 189A(4)

25. Consistent with the amendments made elsewhere to Part XV by Schedule 1 to make the Electoral Commissioner responsible for the majority of matters to do with postal voting, this item substitutes references to 'Electoral Commission' with 'Electoral Commissioner'.

Item 23 – Paragraphs 189B(1)(a), 2(b) and (3)(b)

Item 24 – Subsections 189B(4) and (5)

26. These items substitute references to the 'Electoral Commission' with 'Electoral Commissioner' as a consequence of the amendments made by items 20 and 22.

Item 25 – Section 190

27. This item repeals section 190 and is consequent upon the redrafting done by item 10 and item 16.

Item 26– Paragraph 194(1)(a)

28. This item replaces the term "the elector shall" with the term, "the person voting must." As well as updating language, the item is also consequential to the amendment made by item 5.

Item 27 – Paragraph 194(1)(b)

29. This item substitutes "a person" for "an elector" as a consequence to the amendment made by item 5.

Item 28 – Paragraphs 194(1)(b) and (d)

30. This item replaces the term “the elector shall” with the term “the person must.” As well as updating language, the item is also consequential to the amendment made by item 5

Item 29 – Paragraphs 194(1)(da)

31. This item substitutes “the person must” for “the elector must” as a consequence to the amendment made by item 5.

Item 30 – Paragraph 194(1)(e) and (f)

32. As item 3 repealed the definition of ‘appropriate DRO’, item 30 substitutes “appropriate DRO” in paragraph 194(1)(e) with the more specific description which is “the DRO for the Division for which the person is enrolled”. This item also makes drafting improvements to existing paragraph 194(1)(f).

Item 31 – Paragraph 194(1A)

33. This item replaces the term “an elector” with the term “a person” as a consequence to the amendment made by item 5.

Item 32 – Paragraph 194(1A)

34. This item replaces the terms “the elector” with the terms “the person” as a consequence to the amendment made by item 5.

Item 33– Paragraph 194(1A)

35. This item replaces the terms “the elector’s” with the terms “the person’s” as a consequence to the amendment made by item 5.

Item 34– Paragraphs 194(2)(a) and (b)

36. As item 3 repealed the definition of ‘appropriate DRO’, this item substitutes the more specific description the “DRO for the Division for which the person is enrolled”.

Item 35– Section 195

37. This item substitutes “a person voting (the elector)” for “the elector” as a consequence to the amendment made by item 5.

Item 36 – Paragraphs 195(a) and (b)

38. This item substitutes “the elector” for “an elector” as a consequence of the amendment made by item 35.

Item 37– Section 197

39. This item substitutes “another person” for “an elector” as a consequence to the amendment made by item 5.

Item 38 – Section 198 (heading)

Item 39 – Section 198

40. These items substitute “person” for “elector” in the heading to section 198 and amend the section to replace the term “an elector” with “another person”. These items are a consequence to the amendment made by item 5.

Item 40 – Subsection 209(8)

41. This item replaces the term “a DRO or Assistant Returning Officer shall” with “an officer must” to recognise that a much wider range of people might be associated with the issuing of postal ballot papers following the commencement of the Bill.

Item 41 – Paragraph 1 of Schedule 2

Item 42- Paragraph 2 of Schedule 2

Item 43- Paragraphs 2, 3 and 3A of Schedule 2

Item 44 – Paragraph 4 of Schedule 2

Item 45- Paragraph 4 of Schedule 2

Item 46 – Paragraphs 5 and 6 of Schedule 2

Item 47 – Paragraph 7A of Schedule 2

Item 48 – Paragraph 8 of Schedule 2

Item 49 – Paragraphs 8 and 9 of Schedule 2

Item 50 – Paragraph 10 of Schedule 2

Item 51 – Paragraph 11 of Schedule 2

42. These items make drafting improvements by replacing the terms “an elector” with “a person” or “the elector” with “the person” or “the elector’s” with “the person’s”.

Referendum (Machinery Provisions) Act 1984

Item 52 – Subsection (3)(1) (definition of “officer”)

43. This item is consequential to item 55 which amends section 138. Section 138 allows the Electoral Commissioner to delegate his functions and powers under the Act. The reference in the definition of “officer” in subsection 3(1) to subsection 138(2) must be amended to reflect the amended form of section 138 created by item 55.

Item 53 - Subsection 25(6)

44. This item replaces the term “a DRO or Assistant Returning Officer shall” with “an officer must”.

Item 54 – Subsection 53(1) (definition of appropriate DRO)

Item 55 – Subsection 53(2)

45. Section 53 is an interpretive provision governing Part IV – Postal Voting. These items amend section 53 as a consequence of the amendments made in subsequent items.

Item 56 – Section 54

46. This item describes who may apply for a postal vote.

Item 57 – Subsection 55(1)

47. This item omits “an elector” as a consequence of item 56.

Item 58– Subsections 55(2) and (3)

48. This item amends subsections 55(2) and (3) to replace the reference to a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or his delegate. The Electoral Commissioner may delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance flexibility in having this work done by increasing the range of officers available.

Item 59 – Subsection 55(5)

Item 60 – Subsection 55(6)

49. These items amend subsections 55(5) and (6) and replace references to the Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner (or the Electoral Commissioner or the Assistant Returning Officer) in the subsections. This allows the work to be done by either the Electoral Commissioner or an Assistant Returning Officer. The Electoral Commissioner may also delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance flexibility in having this work done by increasing the range of officers available.

Item 61 – At the end of section 55

50. This item adds a fresh subsection which requires the Electoral Commissioner to number each application for a postal vote.

Item 62 – Subsection 58(1)

51. This item amends subsection 58(1) to replace the reference to a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or his delegate. The Electoral Commissioner may delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance flexibility in having this work done by increasing the range of officers available.

Item 63 – Subsection 58(1)

52. This item makes a drafting improvement.

Item 64 – Before subsection 61(1)

53. This item inserts a heading to subsection 61(1).

Item 65 – Subsection 61(1)

54. This item amends subsection 61(1) to replace the reference to a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner or an Assistant Returning Officer. This allows the work to be done by either the Electoral Commissioner or an Assistant Returning Officer. The Electoral Commissioner may also delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance flexibility in having this work done by increasing the range of officers available.

Item 66 – Subsection 61(1)

55. This item makes a drafting improvement.

Item 67 – Subparagraphs 61(1)(a)(i) and (ii)

56. This item makes a drafting improvement.

Item 68 – After subsection 61(1)

57. This item inserts a new subsection. It sets out a process requiring the numbering of certificates and ballot papers.

Item 69 – Subsections 61(2), (2A) and (2B)

58. This item amends subsections 61(2), (2A) and (2B) to replace the reference a Divisional Returning Officer (DRO) with a reference to the Electoral Commissioner. This allows the work to be done by either the Electoral Commissioner or his delegate. The Electoral Commissioner may delegate his powers and functions that relate to this section to a broad range of officers. The effect of these amendments is to enhance flexibility in having this work done by increasing the range of officers available.

Item 70- After section 61

59. This item inserts a new section 61A. This section sets out rules that apply to the process for dealing with applications for postal votes. Some of this work was previously set out at section 62. This item makes drafting improvements.

Item 71 – Section 62

60. This item amends section 62 to make drafting improvements. It allows for public inspection of applications for a postal vote. It updates these arrangements to set out that the list of applications may be kept in electronic form and applies the same qualification with respect to access that is applied to the roll in subsection 90A(5) of the *Commonwealth Electoral Act 1901*. The right of inspection does not include the right to copy or record by electronic means the list of applications.

Item 72– Subsections 62A(2) and (3)

61. This item substitutes references to the ‘Electoral Commission’ with ‘Electoral Commissioner’ in line with amendments made to other provisions in Part IV.

Item 73 – Subsection 62A(4)

62. This item makes a drafting improvement.

Item 74 – Subsection 62A(5)

Item 75 – Paragraphs 62B(1)(a), (2)(b) and (3)(b)

Item 76– Subsections 62B(4) and (5)

63. These items substitute references to the ‘Electoral Commission’ with ‘Electoral Commissioner’ in line with amendments made to other provisions in Part IV.

Item 77 – Section 63

64. This item repeals section 63 and is consequent upon the redrafting done by item 68.

Item 78 – Paragraph 65(1)(a)

65. This item makes a drafting improvement.

Item 79 – Paragraphs 65(1)(b) and (d)

Item 80 – Paragraph 65(1)(da)

66. These items make drafting improvements.

Item 81– Paragraph 65(1)(e) and (f)

67. This item clarifies paragraph 65(1)(e) by replacing the term “appropriate DRO” with the more specific description, which is “the DRO for the Division for which the person is enrolled”. This item also makes drafting improvements to existing paragraph 65(1)(f).

Item 82– Subsection 65(1A)

Item 83 – Subsection 65(1A)

Item 84 – Subsection 65(1A)

68. These items make drafting improvements by replacing the terms “an elector” with “a person” or “the elector” with “the person” or “the elector’s” with “the person’s”.

Item 85 – Paragraphs 65(2)(a) and (b)

69. This item clarifies these paragraphs by replacing the term, “appropriate DRO” with the more specific description, which is the “DRO for the Division for which the person is enrolled”.

Item 86 – Section 66

70. This item makes a drafting improvement.

Item 87 – Paragraphs 66(a) and (b)

71. This item makes a drafting improvement.

Item 88 – Section 69

72. This item makes a drafting improvement.

Item 89 – Section 70 (heading)

Item 90– Section 70

73. These items replace the heading and amend the section to replace the term, “an elector” with “another person”.

Item 91– Section 138

74. This item amends the range of powers and functions which may be delegated by the Electoral Commissioner and clarifies the drafting of the provision at the same time.

Item 92 – Paragraph 1 of Schedule 3

Item 93 – Paragraph 2 of Schedule 3

Item 94 – Paragraphs 2, 3 and 3A of Schedule 3

Item 95 – Paragraph 4 of Schedule 3

Item 96 – Paragraph 4 of Schedule 3

Item 97 – Paragraphs 5 and 6 of Schedule 3

Item 98 – Paragraph 7A of Schedule 3

Item 99 – Paragraph 8 of Schedule 3

Item 100 – Paragraphs 8 and 9 of Schedule 3

Item 101 – Paragraph 10 of Schedule 3

Item 102 – Paragraph 11 of Schedule 3

75. These items make drafting improvements by replacing the terms “an elector” with “a person” or “the elector” with “the person” or “the elector’s” with “the person’s”.

Part 2 – Application and savings provisions

Item 103 – Application of amendments

76. This item provides that the amendments will apply to elections and referendums for which the writs are issued after Schedule 1 commences, which is upon Royal Assent.

Item 104 – Savings provisions

77. This item deems that a delegation in force before the delegations provisions were amended continues to have effect as if it were a delegation under the amended provision.

Schedule 2 – Nominations for election

Part 1 - Amendments

Commonwealth Electoral Act 1918

Part 1 – Amendments

Item 1– Subsection 166(1)

78. This item replaces the subsection and introduces two further subsections. The effect of new subsection 166(1) is twofold. First, the number of persons who are required to nominate an unendorsed candidate for the Senate or the House of Representatives is increased from 50 electors to 100 electors. Second, in the case of unendorsed Senate candidates who wish to make a requested to be grouped, each nomination must be supported by 100 electors. Currently 50 electors may nominate all candidates who have made a request to be grouped.

79. New subsection 166(1AAAA) ensures that in cases where unendorsed Senate candidates have made a request to be grouped, each candidate must have 100 separate nominators. If the same person nominates more than one candidate for that group then that person cannot be counted as a nominator.

Item 2- Subsection 166(1C)

Item 3- Subsection 166(1C)

80. These items are consequential to the amendments made by item 1 to ensure that all unendorsed candidates are nominated by 100 electors.

Item 4- Paragraph 170(3)(a)

81. This item increases the deposit that a candidate as a Senator must provide to \$2000.

Item 5- Paragraph 170(3)(b)

82. This item increases the deposit that a candidate as a Member of the House of Representatives must provide to \$1000.

Item 6 - Form CB in Schedule 1

83. This item omits form CB from Schedule 1. This Form allowed candidates who had made a request to be grouped to be nominated by 50 electors and is not consistent with the amendments made by item 1.

Part 2 – Application Provision

Item 7

84. This item provides that the revised nomination rules and increases to the nomination deposit will apply to elections the writs for which are issued after the provisions commence which is upon Royal Assent.

Schedule 3 – Other amendments

Part 1 – Amendments

Commonwealth Electoral Act 1918

Item 1- Subsection 4(1) (definition of pre-poll voting office)

85. This item corrects a reference by substituting “Electoral Commissioner” for “Electoral Commission”.

Item 2- Section 33

86. This item updates the drafting of existing section 33. It is more appropriate for appointments to be made by the Electoral Commissioner, rather than the Electoral Commission. It also provides for Assistant Returning Officers to be appointed ‘at large’ rather than for a portion of a Division in Australia.

Item 3 - Paragraph 93(8)(a)

87. There are few exceptions to the system of compulsory enrolment in Australia. One of these exceptions is set out in paragraph 93(8)(a) of the Electoral Act. This paragraph provides that a person who, by reason of unsound mind, is incapable of understanding the nature and significance of enrolment and voting is not entitled to have his or her name placed on or retained on any Roll or to vote at any Senate election or House of Representatives election.

88. The inclusion of the words ‘unsound mind’ in paragraph 93(8)(a) generates considerable angst in the community. General practitioners advise that they are not qualified to say whether somebody is or is not of ‘unsound mind’. Parents of a child with a disability object to such a pejorative term.

89. This item replaces the phrase “by reason of being of unsound mind” with “in the opinion of a qualified person”.

Item 4 - At the end of section 93

90. This amendment I slinked to item 3. Item 4 inserts a definition of “qualified person” for the purposes of paragraph 93(8)(a). The list of occupations which a “qualified person” may hold is drawn from a similar provision in the *Freedom of Information Act 1982*.

Item 5 - Paragraph 98(2)(a)

91. This item clarifies that, due to the arrangements with state and territory electoral commissions, there is more than one approved form.

Item 6 - Paragraph 98(4)

92. This item is consequent upon the amendment made by the previous item.

Item 7- Paragraph 100(1)(a)

93. This item clarifies that a person who is 16 or 17 years old may enrol.

Item 8 - Subsection 104(1)

94. Section 104 of the Electoral Act provides that if the personal safety of a person or a person's family would be placed at risk if their enrolled address was disclosed on the electoral Roll, they can request to have their address suppressed. A new request has to be made every time the person changes address.

95. This item amends subsection 104(1) to provide that a person only needs to make one request to suppress the enrolled address. If they change address they do not need to repeat their request. The AEC will manage requests made under section 104 through a regular review under subsection 104(7).

Item 9 - After subsection 104(4)

96. This item inserts a new subsection which complements the previous item, by clarifying that in the case where a person whose name is not shown on the Roll because of an application under subsection 104(1), if they change address their new address must not be shown on the Roll.

Item 10 – Paragraph 116(4)(b)

Item 11- Subsection 118(4)

97. These items are consequent on the amendments made by item 3 and 4. "Qualified persons" may now provide a statement.

Item 12 – Subsection 120(2) (after table item 1)

Item 13 – Subsection 120(2) (after table item 2)

98. At present the Electoral Commissioner has capacity to delegate his or her powers under section 94A and section 96 to Divisional Returning Officers (DRO) but section 120 of the Electoral Act does not provide for an internal review of a decision made by a DRO in relation to these matters. These items will provide for that internal review of a decision of a DRO.

Item 14 – Paragraph 123(3)(b)

99. Section 123 is an interpretation section for use in Part XI, which deals with the registration of political parties. Currently, paragraph 123(3)(b) provides that a member of a political party is both a member and entitled to enrolment under the Electoral Act.

100. To register as a political party, under paragraph 126(2)(ca), the application has to include a list of 500 members. If these members are only 'entitled to enrolment' then it is very difficult for the AEC to check. Item 14 will amend paragraph 123(3)(b) to provide that a member of a political party must be an elector. Subsection 4(1) of the Electoral Act provides that "an elector" is somebody whose name appears on the electoral Roll. The AEC will be able to check the status of a member much easier and accordingly process applications in a more efficient manner.

Item 15 – Subsection 132(1)

101. This item omits a reference to publication in the Commonwealth *Gazette*. Publication must now be by way of relevant newspapers, on the Electoral Commission’s website or in some other way that the Commissioner considers appropriate. This will enhance ease of communication.

Item 16 – Subsection 132(2)(b)

Item 17 – Subsection 132(7)(b)

102. These items omit a reference to publication in the Commonwealth *Gazette*, wherever it occurs. The items replace that with a reference to publication on the Electoral Commission’s website. This will enhance ease of communication.

Item 18 - Paragraph 133(1)(c)

Item 19 - Subsection 133(1)(d)

Item 20 – After subsection 133(1)

103. These items replace the *Gazette* publication requirement at former paragraph 133(1)(d) with a new subsection which requires publication on the Electoral Commissioner’s website or in any other way that the Commissioner considers appropriate. This will enhance ease of communication.

Item 21 – Paragraph 134(6)(d)

Item 22- Paragraph 134(6)(e)

Item 23 – After subsection 134(6)

104. These items replace the *Gazette* publication requirement at former paragraph 134(6)(e) with a new subsection which requires publication on the Electoral Commissioner’s website or in any other way that the Commissioner considers appropriate. This will enhance ease of communication.

Item 24- Paragraph 136(1A)(b)

Item 25 – Paragraph 136(1A)(c)

Item 26 – After subsection 136(1A)

105. These items replace the *Gazette* publication requirement at former paragraph 136(1A)(c) with a new subsection which requires publication on the Electoral Commissioner’s website or in any other way that the Commissioner considers appropriate. This will enhance ease of communication.

Item 27 – Subsection 137(1)

106. This item makes drafting improvements as a consequence to amendments made by items 29, 30 and 31.

Item 28 – After subsection 137(1)

107. This item inserts a fresh subsection which makes drafting improvements to the work done at the former paragraph 137(1)(e). The item also omits a reference to the Commonwealth *Gazette*.

Item 29 – Subsections 137(2) and (4)

108. This item is consequent on the amendment made in the previous item.

Item 30 – Subsection 137(4)

109. This item omits a reference to the Commonwealth Gazette.

Item 31- Subsection 137(5)

110. This item is consequent on the amendment made in item 28.

Item 32 - Paragraph 137(6)(b)

Item 33 – Paragraph 137(6)(c)

Item 34 - After subsection 137(6)

111. These items replace the *Gazette* publication requirement at former paragraph 137(6)(c) with a new subsection which requires publication on the Electoral Commissioner’s website or in any other way that the Commissioner considers appropriate. This will enhance ease of communication.

Item 35 – Subsection 174(2)

112. Traditionally Divisional Returning Officers have had an office within the Division for which they are responsible. There has been a move over the last ten years to co-locate offices and to establish larger work units to provide, amongst other benefits, efficiencies in enrolment processing and opportunities for staff. The repeal of the word “therein” reflects the trend towards consolidation of offices.

Item 36 – Paragraph 184A(2)(a)

113. Subparagraph 184A(2)(a)(ii) of the Electoral Act provides that a person may register as a General Postal Voter if the applicant’s real place of living is more than 20 kilometres from a place where mobile polling will be conducted. Prior to amendments made to the mobile polling provisions in 2010, there was low risk that a mobile polling team came within 20 kilometres of a General Postal Voter as mobile polling was primarily conducted in remote divisions.

114. However in 2010, section 227 of the Electoral Act was amended to provide much greater flexibility in delivering mobile polling services. Unlike polling places which are appointed under section 80 of the Electoral Act on an ‘on-going’ basis, the places where mobile polling teams will visit are not determined until the writs for an election are issued. Accordingly, there is now a much higher chance that someone who might be a registered General Postal Voter on the basis of subparagraph 184A(2)(a)(ii) will actually live within 20 kilometres of a place where mobile polling will be conducted, however this will not be known until after the writs for an election are issued.

115. This item repeals subparagraph 184A(2)(a)(ii). A person may still apply to be registered as a general postal voter if their real place of living is not within 20 kilometres, by the shortest practicable route of any polling place.

Item 37 – Paragraph 235(1)(d)

116. With the advent of electronic certified lists, it will eventually be possible for the AEC to check if a person appears to have voted before at another polling place. In the case where it appears that someone has voted before at another polling place, the AEC's intention is still to issue that person ballot papers. The ballot papers will, however, be inserted into a declaration envelope. In this way when the AEC checks back to the electoral Roll, the ballot papers can be admitted or rejected as possible multi-votes.

117. The current provisions in the Electoral Act and the Referendum Act require the AEC to issue ordinary ballot papers unless it appears that the person has voted before at the same polling place. The amendments propose recasting the provisions to ensure the AEC could issue a declaration vote to a person where a mark appeared on an approved list of voters at another polling place.

Item 38 – After section 238

118. This item inserts a new provision to assist the AEC deal with instances where a person discards their ballot paper rather than placing it in a ballot box. There are a small number of instances where an elector has been issued with a ballot paper but leaves it in the voting booth or in the vicinity of the voting booth and then leaves the polling station. In such an instance an AEC officer will collect the ballot, write discarded on the back of the ballot and place it in an envelope.

Item 39 – Subsection 248(1)

119. This item makes a consequent amendment following on from the previous item.

Item 40 – After paragraph 7A of Schedule 3, insert Paragraph 7B

120. Schedule 3 sets out the rules for the preliminary scrutiny of declaration votes, including postal votes. This item qualifies the rule set out at paragraphs 7 and 7A. These paragraphs operate to exclude votes from being counted if the date of the signature of the authorised witness or applicant on the certificate is after polling day. There are some instances where the date is clearly wrong, for example, where the date is a year in the future. Even though it seems obvious that that was an error, votes have been excluded from counting. This item introduces a paragraph which will operate to save some of these votes. Votes will be admitted to the scrutiny if the envelope containing the ballot is received before the close of poll and that receipt is verified by an AEC officer noting, "received by me" and dating it.

Referendum (Machinery Provisions) Act 1984

Item 41 – Subsection 3(1) (definition of pre-poll voting office)

121. This item corrects a reference by substituting "Electoral Commissioner" for "Electoral Commission".

Item 42 – Subsections 6(1), (2) and (3)

122. This item updates the drafting of existing section 6. It is more appropriate for appointments to be made by the Electoral Commissioner, rather than the Electoral Commission.

Item 43- Paragraph 37

123. This item amends this paragraph by omitting a superfluous reference and making some drafting improvements.

Item 44- After section 41

124. This item inserts a new provision to assist the AEC deal with instances where a person discards their ballot paper rather than placing it in a ballot box. There are a small number of instances where an elector has been issued with a ballot paper but leaves it in the voting booth or in the vicinity of the voting booth and then leaves the polling station. In such an instance an AEC officer will collect the ballot, write discarded on the back of the ballot and place it in an envelope.

Item 45- Subsection 75(1)

125. This item makes a consequent amendment following on from the previous item.

Item 46- After paragraph 7A of Schedule 4, insert paragraph 7B

126. Schedule 4 sets out the rules for the preliminary scrutiny of declaration votes, including postal votes. This item qualifies the rules set out at paragraph 7 and 7A. These paragraphs operate to exclude votes from being counted if the date of the signature of the authorised witness or applicant on the certificate is after polling day. There are some instances where the date is clearly wrong, for example, where the date is a year in the future. Even though it seems obvious that that was an error, votes have been excluded from counting. This item introduces a paragraph which will operate to save some of these votes. Votes will be admitted to the scrutiny if the envelope containing the ballot is received before the close of poll and that receipt is verified by an AEC officer noting, “received by me” and dating it.

Part 2 – Application provisions

Item 47 - Application of amendments

127. This item provides for the application of some of the amendments in Schedule 3 to the Bill. For all the items specified, with one exception, the amendments apply on or after the commencement of the Schedule. The amendments made by items 12 and 13 do apply to applications made before the commencement of the items, however these items provide for the beneficial internal review of a decision of a Divisional Returning Officer.