



# **Electoral and Referendum Amendment Act (No. 1) 1999**

**Act No. 134 of 1999 as amended**

This compilation was prepared on 27 July 2004

**[This Act was amended by Act No. 115 of 2004]**

**Amendments from Act No. 115 of 2004**

[Schedule 1 (item 103) repealed Items 10–12 of Schedule 1  
Schedule 1 (item 103) commenced on 13 July 2004]

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	1
4	Application of amendments relating to donations.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
	<i>Commonwealth Electoral Act 1918</i>	2
	<i>Referendum (Machinery Provisions) Act 1984</i>	8



---

# **An Act to amend the law relating to elections and referendums**

[Assented to 13 October 1999]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Electoral and Referendum Amendment Act (No. 1) 1999*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 1, 2, 3, 4, 5, 6, 7, 8 and 9 commence on the 28th day after the day on which this Act receives the Royal Assent.
- (3) Items 10, 11 and 12 commence on a date to be fixed by Proclamation.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **4 Application of amendments relating to donations**

The amendment made by item 21 applies to the financial year in which this Act receives the Royal Assent, and to all subsequent financial years.

## Schedule 1—Amendments

### *Commonwealth Electoral Act 1918*

#### **1 After subsection 91(9B)**

Insert:

(9C) A tape or disk containing information that discloses particulars of the dates of birth, or salutations, of electors may be provided by the Electoral Commission to:

- (a) a member of the House of Representatives or a Senator; or
- (b) a registered political party.

#### **2 Subsection 91A(1)**

Omit “or (9B)”, substitute “, (9B) or (9C)”.

#### **3 Subsection 91A(1) (penalty)**

Omit “\$1,000”, substitute “100 penalty units”.

#### **4 Subsection 91A(1AA) (penalty)**

Omit “10 penalty units”, substitute “100 penalty units”.

#### **5 After paragraph 91A(1A)(a)**

Insert:

- (aa) research regarding electoral matters; and

#### **6 At the end of paragraph 91A(2)(a)**

Add “and”.

#### **7 After paragraph 91A(2)(a)**

Insert:

- (aa) research regarding electoral matters; and

**8 Subsection 91B(2) (penalty)**

Omit “\$1,000”, substitute “1,000 penalty units”.

**9 Subsection 91B(3) (penalty)**

Omit “\$1,000”, substitute “1,000 penalty units”.

**13 Subsection 186(1)**

After “must send”, insert “or arrange for the delivery of”.

**14 Subsection 266(1)**

Omit “After the close of the poll”, substitute “At any time on or after the last Monday before the close of the poll”.

**15 Subsection 287(1) (paragraph (b) of the definition of associated entity)**

Repeal the paragraph, substitute:

- (b) operates wholly or to a significant extent for the benefit of one or more registered political parties.

**16 Subsection 305(1)**

Omit “during that disclosure period”, substitute “at any time”.

**17 Paragraph 305(1)(a)**

After “person” (first occurring), insert “during that disclosure period”.

**18 After subsection 305B(3)**

Insert:

(3A) The return must also set out the relevant details of all gifts received by the person at any time, being gifts used to make gifts the whole or part of which were used to make gifts totalling \$1,500 or more in a financial year to the same registered political party or the same State branch of a registered political party and the amount or value of each of which is equal to or exceeds \$1,000.

(3B) Relevant details for the purpose of subsection (3A), in relation to a gift, are:

- (a) the amount or value of the gift; and
- (b) the date on which the gift was made; and
- (c) in the case of a gift made on behalf of the members of an unincorporated association, other than a registered industrial organisation:
  - (i) the name of the association; and
  - (ii) the names and addresses of the members of the executive committee (however described) of the association; and
- (d) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation:
  - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
- (e) in any other case—the name and address of the person who made the gift.

## **19 After section 306**

Insert:

### **306A Certain loans not to be received**

- (1) It is unlawful for a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party to receive a loan of \$1,500 or more from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).
  - (2) It is unlawful for a candidate or a member of a group or a person acting on behalf of a candidate or group to receive a loan of \$1,500 or more from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).
  - (3) The receiver of the loan must keep a record of the following:
    - (a) the terms and conditions of the loan;
    - (b) if the loan was received from a registered industrial organisation other than a financial institution:
-



- 
- (i) the name of the organisation; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
  - (c) if the loan was received from an unincorporated association:
    - (i) the name of the organisation or association; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the association or organisation;
  - (d) if the loan was paid out of a trust fund or out of the funds of a foundation:
    - (i) the names and addresses of the trustees of the fund or of the foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
  - (e) in any other case—the name and address of the person or organisation.
- (4) For the purpose of subsection (2), a person who is a candidate in an election is taken to remain a candidate for 30 days after the polling day in the election.
- (5) For the purpose of subsection (2), persons who constituted a group in an election are taken to continue to constitute the same group for 30 days after the polling day in the election.
- (6) Where a person receives a loan that, by virtue of this section, it is unlawful for the person to receive, an amount equal to the amount or value of the loan is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
- (a) in the case of a loan to or for the benefit of a political party or a State branch of a political party:
    - (i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or
    - (ii) in any other case—the agent of the party or branch, as the case may be; or

- (b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.
- (7) For the purposes of this section, if credit is provided on a credit card in respect of card transactions, the credit is to be treated as a separate loan for each transaction.
- (8) In this section:

***credit card*** means:

- (a) any article of a kind commonly known as a credit card; or  
(b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

***financial institution*** means an entity which carries on a business that consists of, or includes, the provision of financial services or financial products and which is:

- (a) a bank; or  
(b) a credit union; or  
(c) a building society; or  
(d) any other entity registered under the Australian Financial Institutions Commission Codes as a special service provider;  
or

Note: See section 111AZB of the Corporations Law for the Australian Financial Institutions Commission Codes.

- (e) an entity prescribed by the regulations for the purposes of this paragraph.

***loan*** means any of the following:

- (a) an advance of money;  
(b) a provision of credit or any other form of financial accommodation;  
(c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;

- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

**20 Subsection 314AA(1) (definition of *amount*)**

After “gift”, insert “, loan or”.

**21 Subsection 314AC(2)**

Omit “\$500”, substitute “\$1,500”.

**22 After paragraph 314AC(3)(b)**

Insert:

- (ba) if the sum was received as a result of a loan—the information required to be kept under subsection 306A(3), or the name of the financial institution, as the case requires; or

**23 Paragraph 314AEA(1)(b)**

Omit “, together with the details required by section 314AD”.

**24 Subsection 314AEA(5)**

Omit “, 314AD”.

**25 Subsection 314AEA(5)**

Omit “314AB(1)(a)”, substitute “314AB(2)(a)”.

**26 Section 332**

Repeal the section.

**27 After section 365**

Insert:

**365A Election not affected by failure of delivery arrangement**

- (1) This section applies if a DRO or Assistant Returning Officer, under section 188, arranges for delivery of a certificate and ballot-paper instead of posting them.
- (2) The Court of Disputed Returns must not:

- (a) declare that a person returned as elected was not duly elected;  
or
  - (b) declare an election void;  
on the ground of a failure of the arrangement for delivery.
- (3) This section is not intended to imply anything about the effect of a failed delivery by post.

**28 After paragraph 7 of Schedule 3**

Insert:

7A. Where an envelope purporting to contain a postal ballot-paper does not bear a legible postmark and the signature of the witness bears a date after polling day, the vote marked on the ballot-paper must be taken not to have been recorded prior to the close of the poll.

**29 Paragraph 17 of Schedule 3**

After “shall,”, insert “after the close of the poll for the Division,” .

**30 Paragraph 23 of Schedule 3**

After “are so placed,”, insert “but not before the close of the poll for the Division,” .

***Referendum (Machinery Provisions) Act 1984***

**31 Subsection 58(1)**

After “shall send”, insert “or arrange for the delivery of”.

**32 Subsection 89A(1)**

Omit “After the close of voting in a Division”, substitute “At any time on or after the last Monday before the close of voting in a Division”.

**33 After section 108**

Insert:

**108AA Referendum not affected by failure of delivery arrangement**

- (1) This section applies if a DRO or Assistant Returning Officer, under section 61, arranges for delivery of a certificate and ballot-paper instead of posting them.
- (2) A referendum, or a return or statement showing the voting at a referendum, must not be declared void on account of a failure of the arrangement for delivery.
- (3) This section is not intended to imply anything about the effect of a failed delivery by post.

**34 Section 125**

Repeal the section.

**35 After paragraph 7 of Schedule 4**

Insert:

7A. Where an envelope purporting to contain a postal ballot-paper does not bear a legible postmark and the signature of the witness bears a date after voting day, the vote marked on the ballot-paper must be taken not to have been recorded prior to the close of voting.

**36 Paragraph 16 of Schedule 4**

After “shall,”, insert “after the close of voting in the Division,”.

**37 Paragraph 19 of Schedule 4**

After “are so placed,”, insert “but not before the close of the poll for the Division,” .

---

*[Minister’s second reading speech made in—  
House of Representatives on 26 November 1998  
Senate on 7 December 1998]*

(180/98)

---