



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

**Act No. 44 of 1984 as amended**

This compilation was prepared on 1 July 2007  
taking into account amendments up to Act No. 22 of 2007

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act relating to the submission to the electors of proposed laws for the alteration of the Constitution

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Referendum (Machinery Provisions) Act 1984*.

### 2 Commencement [see Note 1]

This Act shall come into operation on a day to be fixed by Proclamation.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***absent voter*** means an elector voting or desiring to vote pursuant to section 46 other than at a polling place appointed for the Division for which the elector is enrolled.

***absent voting*** means voting as an absent voter pursuant to section 46.

***Antarctica*** means the Australian Antarctic Territory and includes:

- (a) the Territory of Heard Island and McDonald Islands; and
- (b) Macquarie Island.

***Antarctic elector*** means an elector who is entitled to vote at a referendum in accordance with Part V.

***Antarctic Returning Officer***, in relation to a station, means the person appointed under section 247 of the *Commonwealth Electoral Act 1918* to be the Antarctic Returning Officer for that station, or a person acting as the Antarctic Returning Officer for that station.

***approved*** means approved by the Electoral Commission by notice published in the *Gazette*.

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***Assistant Antarctic Returning Officer***, in relation to a station, means the person appointed under section 247 of the *Commonwealth Electoral Act 1918* to be the Assistant Antarctic Returning Officer for that station, or a person acting as the Assistant Antarctic Returning Officer for that station.

***Assistant Divisional Returning Officer*** means an Assistant Divisional Returning Officer appointed under section 34 of the *Commonwealth Electoral Act 1918*.

***Assistant Returning Officer*** means a person appointed to be an Assistant Returning Officer under section 6 of this Act or, where the voting day for a referendum is the same as that fixed for the polling at an election, under section 33 of the *Commonwealth Electoral Act 1918*.

***Australia*** includes:

- (a) Norfolk Island; and
- (b) the Territory of Cocos (Keeling) Islands; and
- (c) the Territory of Christmas Island.

***Australian Capital Territory*** includes the Jervis Bay Territory.

***Australian Electoral Officer*** means:

- (a) an Australian Electoral Officer for a State; or
- (b) the Australian Electoral Officer for the Australian Capital Territory; or
- (c) the Australian Electoral Officer for the Northern Territory.

***Australian Electoral Officer for a State*** means an Australian Electoral Officer for a State referred to in section 20 of the *Commonwealth Electoral Act 1918*.

***Australian Electoral Officer for a Territory*** means an Australian Electoral Officer for a Territory appointed under section 5 of this Act or, where the voting day for a referendum is the same as that fixed for the polling at an election, under section 30 of the *Commonwealth Electoral Act 1918*.

***Australian Electoral Officer for the Australian Capital Territory*** means the Australian Electoral Officer for the Australian Capital Territory appointed under:

- (a) section 5 of this Act; or

- (b) if the voting day for a referendum is the same as that fixed for the polling at an election—section 30 of the *Commonwealth Electoral Act 1918*.

***Australian Electoral Officer for the Northern Territory*** means an Australian Electoral Officer for the Northern Territory referred to in section 20 of the *Commonwealth Electoral Act 1918*.

***authorized witness***, in relation to any act or thing done by a person for the purposes of voting at a referendum, means:

- (a) in a case to which paragraph (b) does not apply—an elector; or
- (b) in the case of an act or thing done outside Australia:
- (i) an elector;
  - (ii) an officer of the Defence Force or of the naval, military or air forces of a Commonwealth country;
  - (iii) a member of the civil or public service of a State or Territory or of a Commonwealth country;
  - (iiiia) a person appointed or engaged under the *Public Service Act 1999*; or
  - (iv) a justice of the peace for, or a minister of religion or medical practitioner resident in, a State or Territory or a Commonwealth country; or
  - (v) an Australian citizen.

For the purposes of this definition, ***Commonwealth country*** means a political entity, or part of a political entity, that is a member of the international organisation known as the Commonwealth of Nations.

***capital city office*** of the Electoral Commission has the meaning given by subsection 90A(3) of the *Commonwealth Electoral Act 1918*.

***certified list of voters***, in respect of a Division, means a list prepared and certified under subsection 22(1).

***constable*** means a member or a special member of the Australian Federal Police or a member of the Police Force of a State or Territory.

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***Controller-General of Prisons***, in relation to a State or Territory, means the official having control of the prisons of the State or Territory.

***courier service*** means a service that provides for the collection, at the request of a person using the service, of an article from a place specified by or on behalf of that person and the delivery of the article to another place so specified, being a service approved by an Australian Electoral Officer or by the Electoral Commissioner.

***declaration vote*** means:

- (a) a postal vote;
- (b) a pre-poll vote;
- (c) an absent vote; or
- (d) a provisional vote.

***Deputy Electoral Commissioner*** means the Deputy Electoral Commissioner referred to in section 19 of the *Commonwealth Electoral Act 1918*.

***Division*** means an Electoral Division created pursuant to the *Commonwealth Electoral Act 1918* for the election of a member of the House of Representatives.

***Divisional Returning Officer*** means a Divisional Returning Officer referred to in section 32 of the *Commonwealth Electoral Act 1918*.

***DRO*** means Divisional Returning Officer.

***election*** means an election of a Member of the House of Representatives or an election of Senators for a State or Territory.

***elector*** means a person whose name appears on a Roll as an elector.

***Electoral Commission*** means the Australian Electoral Commission established by section 6 of the *Commonwealth Electoral Act 1918*.

***Electoral Commissioner*** means the Electoral Commissioner referred to in section 18 of the *Commonwealth Electoral Act 1918*.

***electoral visitor*** means an electoral visitor appointed under section 49 or 49A.

***eligible overseas elector*** means an elector who is entitled under the *Commonwealth Electoral Act 1918* to be treated as an eligible overseas elector for the purposes of that Act.

***hospital*** includes a convalescent home or an institution similar to a hospital or to a convalescent home.

***itinerant elector*** means an elector who is entitled under section 96 of the *Commonwealth Electoral Act 1918* to be treated as an itinerant elector for the purposes of that Act.

***mobile polling team leader*** means a mobile polling team leader appointed under section 51.

***mobile polling team member*** means a mobile polling team member appointed under section 51.

***Northern Territory*** includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

***officer*** includes the Electoral Commissioner, the Deputy Electoral Commissioner, the Australian Electoral Officer for a State or Territory, a Divisional Returning Officer, an Assistant Returning Officer, an Assistant Divisional Returning Officer, an Antarctic Returning Officer, an Assistant Antarctic Returning Officer, a presiding officer, a deputy presiding officer, a substitute presiding officer, an assistant presiding officer, a pre-poll voting officer, an electoral visitor, a mobile polling team leader and a mobile polling team member.

***polling booth*** means a building, structure, vehicle or enclosure, or a part of a building, structure, vehicle or enclosure, provided at a polling place for the purpose of taking votes at a referendum.

***polling official*** means a deputy presiding officer or an assistant presiding officer.

***polling place*** means a place appointed as a polling place pursuant to paragraph 80(1)(a) of the *Commonwealth Electoral Act 1918*.

***postal voting*** means voting pursuant to Part IV.

***pre-poll voting office*** for a referendum means a place declared by the Electoral Commission under subsection 73AA(1) to be a pre-poll voting office for the referendum.

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***provisionally enrolled*** has the meaning given by subsection (1A).

***referendum*** means the submission to the electors of a proposed law for the alteration of the Constitution.

***referendum period***, in relation to a referendum, means the period commencing on the day of the issue of the writ for the referendum and ending at the latest time on the voting day for the referendum at which an elector in Australia could enter a polling booth for the purpose of voting at the referendum.

***registered medical practitioner*** means a person registered or licensed as a medical practitioner under the law of a State or Territory, being a law that provides for the registration or licensing of medical practitioners.

***research personnel*** means personnel who are to be, or have been, engaged in the work of a research station in Antarctica operated, whether continuously or otherwise, by the Commonwealth.

***Roll*** means a roll of electors kept pursuant to the *Commonwealth Electoral Act 1918*.

***special hospital*** means a special hospital within the meaning of section 49 and, where section 52 applies, includes a special hospital within the meaning of section 225 of the *Commonwealth Electoral Act 1918*.

***station*** means:

- (a) a research station in Antarctica that is operated by the Commonwealth and has been declared by the Electoral Commissioner to be a permanent research station; or
- (b) in relation to a particular referendum, a ship that has been declared by the Electoral Commissioner to be a station for the purposes of this Act in relation to that referendum.

***substitute presiding officer*** means a person holding an appointment under section 18.

***Subdivision*** means a Subdivision of a Division referred to in paragraph 79(1)(a) of the *Commonwealth Electoral Act 1918*.

***Territory*** means the Australian Capital Territory or the Northern Territory.

**video recording** includes a video recording that is recorded on means other than a videotape.

**voting day**, in relation to a referendum, means the day fixed for the taking of the votes for the purposes of the referendum.

- (1A) A person is **provisionally enrolled** if:
- (a) the person is provisionally enrolled under section 99B of the *Commonwealth Electoral Act 1918*; or
  - (b) the person is provisionally enrolled under section 38 of this Act.
- (2) In this Act, unless the contrary intention appears:
- (a) a reference to a Division shall be read as including a reference to the Northern Territory; and
  - (b) a reference to a Subdivision shall be read as including a reference to a District of that Territory.
- (3) This Act extends to:
- (a) Norfolk Island; and
  - (b) the Territory of Cocos (Keeling) Islands; and
  - (c) the Territory of Christmas Island.
- (4) In relation to a matter concerning an elector or any other matter arising under this Act, a provision of this Act that includes the expression “the Australian Electoral Officer” without words relating the expression to a particular State or Territory shall be read as referring to the Australian Electoral Officer for the State or Territory for which the elector is enrolled or in which the matter arises, as the case requires.
- (5) In relation to a matter concerning an elector or any other matter arising under this Act, a provision of this Act that includes the expression “the Divisional Returning Officer” without words relating the expression to a particular Division shall be read as referring to the Divisional Returning Officer for the Division for which the elector is enrolled or in which the matter arises, as the case requires.
- (6) The Electoral Commissioner shall not make a declaration under paragraph (b) of the definition of **station** in subsection (1) in relation to a ship unless the Commissioner is satisfied that, on

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voting day in the referendum, the ship is likely to be at sea transporting research personnel to or from Antarctica.

(7) Where:

- (a) the voting day for a referendum is the same as that fixed for the polling at an election; and
- (b) in relation to the election, a ship has been declared a station for the purposes of Part XVII of the *Commonwealth Electoral Act 1918*;

the ship shall be regarded as a station for the purposes of this Act in relation to the referendum.

**3A Extraterritorial operation of Act**

This Act extends to officers outside Australia.

**3B Application to Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

**3C Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**4 Electors entitled to vote at a referendum**

- (1) An elector is entitled to vote at a referendum where, if the referendum were an election, the elector would be entitled to vote at the election.
- (2) For the purposes of voting at a referendum:
  - (a) claims for enrolment under section 101 of the *Commonwealth Electoral Act 1918* (other than claims that are taken, by subsection 99B(6) of that Act, to be made under section 101 of that Act) that are received during the period:



- (i) beginning at 8 pm on the day of the issue of the writ for a referendum; and
    - (ii) ending on the close of voting at the referendum;must not be considered until after the end of the period; and
  - (aa) claims for transfer of enrolment under section 101 of the *Commonwealth Electoral Act 1918*, and claims that are taken, by subsection 99B(6) of that Act, to be made under section 101 of that Act, that are received during the period:
    - (i) beginning at 8 pm on the day for which the Rolls for a referendum close; and
    - (ii) ending on the close of voting at the referendum;must not be considered until after the end of the period; and
  - (b) a name shall not be removed from a roll under subsection 118(1) of the *Commonwealth Electoral Act 1918* after the day of the issue of the writ for a referendum and before the close of voting at the referendum.
- (3) A claim that is taken, by subsection 100(2) of the *Commonwealth Electoral Act 1918*, to be made under section 101 of that Act:
- (a) is to be treated in accordance with paragraph (2)(aa) if the claim is made by a person who will turn 18 years old during the period:
    - (i) beginning at 8 pm on the day of the issue of the writ for a referendum; and
    - (ii) ending at the end of the voting day for the referendum; and
  - (b) otherwise—is to be treated in accordance with paragraph (2)(a).

## **5 Australian Electoral Officer for the Australian Capital Territory**

- (1) The Electoral Commission must, for the purposes of each referendum, appoint an Australian Electoral Officer for the Australian Capital Territory and such an appointment terminates upon the completion of the referendum.
- (2) The Electoral Commission may appoint a person to act as Australian Electoral Officer for the Australian Capital Territory during any period, or during all periods, when the Australian Electoral Officer for the Australian Capital Territory is absent from

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duty or from Australia or is, for any other reason, unable to perform the functions of the office.

- (3) The appointment of a person to act as Australian Electoral Officer for the Australian Capital Territory ceases to have effect if the person delivers to the Electoral Commission a signed notice of resignation.
- (4) A person acting as Australian Electoral Officer for the Australian Capital Territory has, and may exercise, all the powers, and is to perform all the functions, of the Australian Electoral Officer for the Australian Capital Territory.
- (5) The validity of anything done by or in relation to a person purporting to act under subsection (1) must not be called in question merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there is a defect or irregularity in or in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had passed.

**6 Assistant Returning Officers and Assistant Divisional Returning Officers**

- (1) The Electoral Commission may, for the purposes of a referendum, appoint a person to be an Assistant Returning Officer:
  - (a) for a portion of a Division; or
  - (b) at a place outside Australia;and any such appointment shall terminate upon completion of the referendum.
- (2) A person appointed under subsection (1) to be an Assistant Returning Officer for a portion of a Division may, subject to the control of the relevant Divisional Returning Officer, perform the functions and exercise the powers of the Divisional Returning Officer (other than those relating to postal voting) in, or in relation to, that portion of the Division.
- (3) A person appointed under subsection (1) to be an Assistant Returning Officer at a place outside Australia may, subject to the

control of the Electoral Commissioner, perform such functions and exercise such powers as are conferred on the person by this Act.

- (4) An Assistant Divisional Returning Officer for a Subdivision may, subject to the directions of the Divisional Returning Officer for the Division in which the Subdivision is situated, perform the functions and exercise the powers of the Divisional Returning Officer in relation to that Subdivision.

## **Part II—Writ for a referendum**

### **7 Writ for a referendum**

Whenever a proposed law for the alteration of the Constitution is to be submitted to the electors, the Governor-General may issue a writ for the submission of the proposed law to the electors.

### **8 Form of writ**

- (1) A writ issued under section 7 may be in accordance with Form A in Schedule 1, shall be signed by the Governor-General and shall appoint:
  - (a) the day for the close of the Rolls;
  - (b) the day, being a Saturday, for taking the votes of electors; and
  - (c) the day for the return of the writ.
- (1A) The date fixed for the return of the writ must not be more than 100 days after the issue of the writ.
- (2) The Governor-General shall cause to be attached to the writ a copy of the proposed law, or a copy of a statement setting out:
  - (a) the text of the proposed law; and
  - (b) the text of the particular provisions (if any) of the Constitution proposed to be textually altered by the proposed law, and the textual alterations proposed to be made therein.
- (3) For the purposes of this Act, a writ shall be deemed to have been issued at 6 o'clock in the afternoon of the day on which the writ was issued.

### **9 Day for close of Rolls and voting day**

- (1) The day fixed for the close of the Rolls shall be 3 working days after the issue of the writ.
- (2) The day fixed for taking the votes of electors at a referendum shall be not less than 33 days and not more than 58 days after the issue of the writ.

(3) In this section:

*working day* means any day except:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday in any State or Territory.

### **10 Extension of time**

- (1) In spite of any other provision of this Act, the Governor-General may, before the voting day for a referendum, by notice published in the *Gazette*, fix a later day for the taking of votes of electors, either generally or for a specified Division.
- (2) The Electoral Commissioner shall, as soon as possible, give such notice of the fixing of the new day as he or she thinks necessary.
- (3) Where the voting day for a referendum is the same as the day fixed for the polling at an election and the time for holding the election is extended under section 286 of the *Commonwealth Electoral Act 1918*:
  - (a) where the extension of time for holding the election relates only to a specified Division—the day on which the election is to be held in that Division shall be taken to be the voting day for the referendum in that Division; and
  - (b) in any other case—the day on which the election is to be held shall be taken to be the voting day for the referendum.
- (4) In spite of any other provision of this Act, the Governor-General may, before or after the voting day for a referendum, by notice published in the *Gazette*, postpone the day appointed under subsection 8(1) for the return of the writ.
- (5) A day to which the taking of votes or the return of the writ is postponed under this section shall, for the purposes of other provisions of this Act, be regarded as having been appointed under subsection 8(1).

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**11 Distribution to electors of arguments for and against proposed law**

(1) Where:

- (a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of both Houses of the Parliament, is to be submitted to the electors; and
- (b) within 4 weeks after the passage of that proposed law through both Houses of the Parliament, there is forwarded to the Electoral Commissioner:
  - (i) an argument in favour of the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument; or
  - (ii) an argument against the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted against the proposed law and desire to forward such an argument;

the Electoral Commissioner shall, unless the Minister informs the Electoral Commissioner that the referendum is not to be held, not later than 14 days before the voting day for the referendum, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

(2) Where:

- (a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of one House of the Parliament only, is to be submitted to the electors; and
- (b) within 4 weeks after the second passage of that proposed law through that House of the Parliament, there is forwarded to the Electoral Commissioner:
  - (i) an argument in favour of the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument; or
  - (ii) an argument against the proposed law, consisting of not more than 2,000 words, authorized by a majority of

those members of the Parliament who voted against the proposed law and desire to forward such an argument; the Electoral Commissioner shall, unless the Minister informs the Electoral Commissioner that the referendum is not to be held, not later than 14 days before the voting day for the referendum, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

- (3) When there are to be referendums upon more than one proposed law on the same day:
- (a) the arguments in relation to all the proposed laws shall be printed in one pamphlet;
  - (b) the argument in favour of any proposed law may exceed 2,000 words if the arguments in favour of all the proposed laws do not average more than 2,000 words each and the argument against any proposed law may exceed 2,000 words if the arguments against all the proposed laws do not average more than 2,000 words each; and
  - (c) there may be one statement setting out all the alterations and additions proposed to be made to the Constitution by all the proposed laws, with marginal notes identifying the proposed law by which each alteration or addition is proposed to be made.
- (4) The Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law except in relation to:
- (a) the preparation, printing and posting, in accordance with this section, of the pamphlets referred to in this section;
  - (aa) the preparation, by or on behalf of the Electoral Commission, of translations into other languages of material contained in those pamphlets;
  - (ab) the preparation, by or on behalf of the Electoral Commission, of presentations of material contained in those pamphlets in forms suitable for the visually impaired;
  - (ac) the distribution or publication, by or on behalf of the Electoral Commission, of those pamphlets, translations or presentations (including publication on the Internet);
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- (b) the provision by the Electoral Commission of other information relating to, or relating to the effect of, the proposed law; or
- (c) the salaries and allowances of members of the Parliament, of members of the staff of members of the Parliament or of persons who are appointed or engaged under the *Public Service Act 1999*.

**12 Governor-General to deal with writ**

The Governor-General shall, immediately after the issue of a writ for a referendum:

- (a) cause a copy of the writ and a copy of the proposed law or of the statement (if any) attached to the writ to be forwarded to the Governors of the several States, to the Chief Minister for the Australian Capital Territory and to the Administrator of the Northern Territory; and
- (b) forward the original writ and a copy of the proposed law or of the statement (if any) attached to the writ to the Electoral Commissioner.

**13 Action by Electoral Commissioner**

The Electoral Commissioner shall, immediately after receiving a writ for a referendum:

- (a) advise each Australian Electoral Officer of the particulars of the writ; and
- (b) cause to be published in the *Gazette* a notice setting out the particulars of the writ and a copy of the proposed law or of the statement (if any) attached to the writ.

**14 Action by Electoral Officers**

- (1) The Australian Electoral Officer for each State and Territory shall, immediately after receiving advice of the particulars of a writ for a referendum:
  - (a) cause copies of a statement setting out the text of the proposed law and the text of the particular provisions (if any) of the Constitution proposed to be altered by the proposed law to be made available at offices of the Electoral



Commission in that State or Territory and at such other places as the Electoral Commissioner directs;

- (b) cause a notice setting out:
  - (i) the particulars of the writ; and
  - (ii) a copy of the proposed law or of the statement (if any) attached to the writ; and
  - (iii) the places at which copies of the statement referred to in paragraph (a) are available;to be inserted in:
  - (iv) not less than 2 newspapers circulating generally in the State or Territory; or
  - (v) if there is only one newspaper circulating generally in the State or Territory—that newspaper; and
- (c) advise each Divisional Returning Officer in that State or Territory of the particulars of the writ.

- (2) The Divisional Returning Officers of the States and the Territories shall, subject to this Act and to the directions of the Electoral Commissioner and the Australian Electoral Officers of their respective States and Territories, immediately after receiving advice of the particulars of a writ for a referendum, take all action that is necessary to be taken to carry the writ into effect.

## **Part III—Voting at a referendum**

### **Division 1—General**

#### **15 Voting on same day throughout Australia**

Subject to sections 42 and 43, the voting at a referendum shall be taken throughout Australia on the day appointed by the writ for the referendum for taking the votes of the electors.

#### **16 Polling places**

- (1) The polling places appointed pursuant to paragraph 80(1)(a) of the *Commonwealth Electoral Act 1918* shall in addition be polling places for the purposes of a referendum.
- (2) The Electoral Commission shall, on at least one occasion after the issue of a writ for a referendum but before the day fixed for taking the votes at the referendum, if it is practicable to do so, in respect of each Division cause to be published in a newspaper circulating in that Division a notice:
  - (a) setting out all polling places in that Division; and
  - (b) setting out all places that were, at the time of the last referendum or at the time of the last election for which a poll was taken in that Division, whichever last occurred, polling places for that Division but that have been abolished since that time.
- (3) Where the voting day for a referendum is the same as that fixed for the polling at an election, the publication by the Electoral Commission of a notice in respect of a Division under subsection 80(3) of the *Commonwealth Electoral Act 1918* shall be deemed to be a publication under subsection (2) of this section.

#### **16A Undertaking by officers and scrutineers**

- (1) An officer to whom this subsection applies shall not begin the performance of his or her duties in relation to a referendum, other than a referendum held on the same day as an election, unless the

officer has signed an undertaking in the approved form relating to that referendum.

- (2) Subsection (1) applies to the following officers:
  - (a) a Divisional Returning Officer;
  - (b) an Assistant Returning Officer;
  - (c) an Assistant Divisional Returning Officer;
  - (d) a presiding officer;
  - (e) a deputy presiding officer;
  - (f) an assistant presiding officer;
  - (g) a substitute presiding officer;
  - (h) an Antarctic Returning Officer;
  - (j) an Assistant Antarctic Returning Officer;
  - (k) an electoral visitor;
  - (m) a mobile polling team leader;
  - (n) a mobile polling team member;
  - (o) a pre-poll voting officer.
- (3) A scrutineer shall not begin the performance of his or her duties unless the scrutineer has signed an undertaking in the approved form.
- (4) A person employed by the Electoral Commission to perform duties in connection with the conduct of a referendum not held on the same day as an election shall not begin the performance of his or her duties unless the person has signed an undertaking in the approved form.
- (5) The failure of a person to sign an undertaking is not a ground for setting aside the result of a referendum.

## **17 Arrangements for voting**

- (1) Each Divisional Returning Officer shall, for the purposes of a referendum:
  - (a) provide and equip proper polling booths and provide ballot-boxes; and
  - (b) provide ballot-papers and all necessary certified lists of voters.

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- (2) The Electoral Commission shall, for the purposes of a referendum, appoint a presiding officer to preside at each polling place and all necessary deputy presiding officers and assistant presiding officers, and such appointments shall terminate upon the completion of the referendum.
- (3) In any emergency on the voting day for a referendum due to the absence of any deputy presiding officer or assistant presiding officer, or to any unforeseen and continued pressure at the voting that cannot be met by the duly appointed officers, a presiding officer may appoint any person to act as deputy presiding officer or assistant presiding officer, and a person so appointed shall, if the Electoral Commission afterwards ratifies the appointment, be deemed to have been duly appointed.
- (4) A person who is under the age of 18 years shall not be appointed to be a presiding officer, deputy presiding officer or assistant presiding officer.
- (5) A deputy presiding officer or assistant presiding officer may, subject to the directions of the presiding officer, exercise all or any of the powers of the presiding officer, and shall, in respect of the exercise of those powers, be deemed to be the presiding officer.
- (7) The polling booths and ballot-boxes provided for the purposes of a referendum may be used for the purposes of an election held on the same day, but the ballot-papers for the election and the referendum shall be distinctively coloured.

**18 Substitute for presiding officer**

- (1) During a temporary absence of a presiding officer, the duties of the presiding officer may be performed by a person appointed for the purpose by the presiding officer.
- (2) A person so appointed has all the powers of the presiding officer.

**19 Ballot-boxes**

- (1) Each polling booth shall be provided with the necessary ballot-boxes.
- (2) Each ballot-box shall be capable of being securely fastened.

## **20 Separate voting compartments**

Polling booths shall have separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot-papers, and each voting compartment shall be furnished with a pencil for the use of voters.

## **21 Use of licensed premises as polling booth**

Premises licensed for the sale of intoxicating liquor may be used for the purpose of a polling booth if, and only if, the Electoral Commissioner declares, in writing, that he or she is satisfied that, during the hours of voting at a referendum:

- (a) intoxicating liquor will not be available for sale or consumption on the part of the premises proposed for use for the purpose of a polling booth; and
- (b) the part of the premises proposed for use for the purpose of a polling booth will be segregated from the part of the premises where intoxicating liquor will be available for sale or consumption; and
- (c) access to the part of the premises proposed for use for the purpose of a polling booth will not involve passing through the part of the premises where intoxicating liquor will be available for sale or consumption.

## **22 Certified lists of voters**

- (1) The Electoral Commissioner must arrange for the preparation of a list of voters for each Division and must certify the list.
- (2) The list must include the name of each person who:
  - (a) is on the Roll for the Division; and
  - (b) will be at least 18 years old on voting day.
- (2A) The list must also include the sex and date of birth of each person whose name is included in the list.
- (3) The Electoral Commissioner must arrange for the delivery to the presiding officer at each polling place, before the start of voting, of a copy of the certified list of voters for the Division for which the polling place is appointed.

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**23 Election and referendum on the same day**

Where the voting day for a referendum is the same as that fixed for the polling at an election:

- (a) a person appointed to be an Australian Electoral Officer for a Territory or a presiding officer, deputy presiding officer, substitute presiding officer or assistant presiding officer for the purposes of the polling at the election shall be deemed to be an Australian Electoral Officer for that Territory or a presiding officer, deputy presiding officer, substitute presiding officer or assistant presiding officer, as the case may be, for the purposes of the referendum;
- (b) the same polling booths and ballot-boxes may be used for the purposes of both the election and the referendum, but if the same ballot-boxes are used, the ballot-papers for the referendum shall be of a different colour to the ballot-papers for the election; and
- (c) the same certified lists of voters may be used for the purposes of both the election and the referendum.

**24 Manner of voting**

The voting at a referendum shall be by ballot and each elector shall indicate his or her vote:

- (a) if the elector approves the proposed law—by writing the word “Yes” in the space provided on the ballot-paper; or
- (b) if the elector does not approve the proposed law—by writing the word “No” in the space so provided.

**25 Forms of ballot-paper**

- (1) Subject to this section, the ballot-papers to be used in a referendum shall:
  - (a) be in accordance with Form B in Schedule 1; and
  - (b) have a buff background colour.
- (2) Subject to subsection (3A), where 2 or more referendums are held on the same day, the ballot-papers for each referendum shall be printed on one piece of paper and shall be in accordance with Form C in Schedule 1.

- (3) Where 2 or more ballot-papers are printed on one piece of paper as mentioned in subsection (2):
- (a) it is not necessary for the initials of an officer to appear more than once on the piece of paper;
  - (b) the presence of any mark or writing on the piece of paper by which a voter can be identified invalidates all the ballot-papers and all the votes on the piece of paper; and
  - (c) a ground of informality (other than the ground referred to in paragraph (b)) applies only to the particular ballot-paper and vote to which it relates, and does not affect the validity of any other ballot-paper or vote.
- (3A) If:
- (a) the Minister gives a written notice to the Electoral Commissioner that identifies 2 or more proposed laws; and
  - (b) referendums are to be held on the same day (the *referendum day*) in relation to 2 or more of the proposed laws identified in the notice; and
  - (c) the notice under paragraph (a) is given to the Electoral Commissioner at least 28 days before the issue of the writs for those referendums;
- then:
- (d) the ballot papers for each referendum held on the referendum day must be printed on separate pieces of paper; and
  - (e) for each of those referendums, the ballot papers must be of a different colour, chosen by the Electoral Commissioner.
- (4) The ballot-papers to be used for postal voting shall have the words “Postal Ballot-paper” or “Postal Ballot-papers” as a heading and shall contain the following directions: “Fold the ballot-paper, place it in the envelope on which the postal vote certificate is printed and fasten the envelope”.
- (5) Before issuing a ballot-paper for use at a referendum, an officer shall, if the name of the State or Territory printed on the ballot-paper is not the name of the State or Territory in which the referendum is to be held, strike out that name and insert the name of the State or Territory in which the referendum is to be held.
- (6) Before issuing a ballot-paper that is to be used for postal voting, a DRO or Assistant Returning Officer shall ensure that the words

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and directions required by subsection (4) are printed or written on the ballot-paper.

**25A Official mark**

The official mark for the authentication of ballot-papers is either:

- (a) a water mark consisting of a representation of a shield having within it the letters “CA” intertwined; or
- (b) an overprinting of the paper in a particular manner, and using words, a design or a logo, approved by the Electoral Commission.

**26 Ballot-papers to be initialled**

- (1) Each presiding officer shall place his or her initials on the top of the front of each ballot-paper before handing the ballot-paper to a person claiming to vote.
- (2) Each presiding officer shall cause to be kept an exact account of all ballot-papers so initialled.
- (3) To avoid doubt, this section also applies to a ballot-paper that is a photocopy of an original ballot-paper.

**27 Appointment of scrutineers**

- (1) The Governor-General, or a person authorized by him or her to act under this subsection, may appoint one person to act as a scrutineer during voting at a referendum at each place in Australia where voting is being conducted.
- (2) The Governor of a State, or a person authorized by him or her to act under this subsection, may appoint one person to act as a scrutineer during the voting at a referendum at each place in that State where voting is being conducted.
- (2A) The Chief Minister for the Australian Capital Territory, or a person authorised by him or her to act under this subsection, may appoint one person to act as a scrutineer during the voting at a referendum at each place in the Territory where voting is being conducted.
- (3) The Administrator of the Northern Territory, or a person authorized by him or her to act under this subsection, may appoint



one person to act as a scrutineer during the voting at a referendum at each place in the Northern Territory where voting is being conducted.

- (4) The registered officer of a registered political party may appoint persons to act as scrutineers during voting at a referendum at each place in Australia where voting is being conducted, but not more than one scrutineer for each party shall be allowed at each polling booth at any one time.

- (5) In this section:

*registered officer*, in relation to a registered political party, has the same meaning as the expression has in Part XIV of the *Commonwealth Electoral Act 1918* by virtue of section 4C of that Act.

*registered political party* has the same meaning as in the *Commonwealth Electoral Act 1918*.

## **28 Provisions relating to scrutineers**

- (1) A scrutineer appointed under section 27 shall not:
- (a) interfere with or attempt to influence any elector within a polling booth; or
  - (b) communicate with any person in a polling booth except so far as is necessary in the discharge of his or her functions.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) A scrutineer appointed under section 27 shall not be prevented from entering or leaving a polling booth during the voting at a referendum.
- (2A) A person who is in a polling booth in the capacity of a scrutineer shall wear a badge, supplied by the Electoral Commission, that identifies the person as a scrutineer.
- (3) A scrutineer appointed under section 27 who commits any breach of this section, or who is guilty of misconduct at a polling booth, or who fails at a polling booth to obey the lawful directions of the presiding officer at the polling booth, may be removed from the polling booth by any constable or by a person authorized by the presiding officer to remove the scrutineer.

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**29 Voting at a referendum**

- (1) The voting at a referendum shall be conducted as follows:
  - (a) before any vote is taken at a polling booth, the presiding officer at that polling booth shall exhibit each ballot-box that is to be used for the referendum empty, and shall then securely fasten its cover;
  - (b) each polling booth shall open at 8 o'clock in the morning on the voting day and shall not close until all the electors who are present in the polling booth at 6 o'clock in the afternoon on the voting day and who desire to vote at the referendum have voted;
  - (c) the doors of each polling booth shall be closed at 6 o'clock in the afternoon on the voting day and no person shall be admitted to the polling booth after that hour for the purpose of voting;
  - (d) except where the scrutiny is to be proceeded with immediately after the close of voting at a polling booth, at the close of the voting each presiding officer at a polling booth shall, in the presence of a polling official and of any scrutineers appointed under section 27 who are at the polling booth, close, fasten, seal and take charge of each ballot-box used for the referendum and with the least possible delay forward the ballot-box for the purpose of scrutiny.
- (2) A ballot-box used for a referendum shall not be opened except in accordance with this Act or, if the ballot-box has been used for both the referendum and an election, in accordance with this Act or the *Commonwealth Electoral Act 1918*.

**30 Questions to be put to voter**

- (1) The presiding officer shall put the following questions to each person attending before the presiding officer and claiming to vote at a referendum or referendums:
  - (a) What is your full name?
  - (b) Where do you live?
  - (c) Have you voted before at this referendum? or Have you voted before at these referendums? (as the case requires).

- (2) In addition to the questions put under subsection (1), the presiding officer shall ask each person claiming to vote as an absent voter to identify the Division for which the person is enrolled.
- (4) If the answers a person (the *claimant*) claiming to vote gives to the questions in paragraphs (1)(a) and (b) do not satisfy the presiding officer that the claimant is a particular person on the certified list of voters, the officer may ask the claimant one or more other questions about matters shown on the list for the particular person, to establish whether the claimant is that particular person.
- (5) Subject to section 37, if a person claiming to vote at a referendum to whom questions are put under this section:
  - (a) refuses to answer fully any question so put; or
  - (c) answers a question specified in paragraph (1)(c) in the affirmative;the person's claim to vote shall be rejected.

### **31 Questions to be put to voter when election and referendum on the same day**

- (1) Where the voting day for a referendum is the same as that fixed for the polling at an election, the answers by a person claiming to vote at the referendum to the questions put under section 229 of the *Commonwealth Electoral Act 1918* for the purposes of the election may, if they are satisfactory as regards the election, be accepted as sufficient to enable the person to vote at the referendum.
- (2) Where a presiding officer accepts, pursuant to subsection (1), the answers by a person to the questions referred to in that subsection as sufficient to enable the person to vote at a referendum, the presiding officer may, if he or she thinks fit, put to the person claiming to vote the following question, namely, Have you already voted, either here or elsewhere, at this referendum (or these referendums, as the case requires)?
- (3) If a person claiming to vote at a referendum when the question referred to in subsection (2) is put does not answer the question or answers that question in the affirmative, the person's claim to vote shall be rejected.

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**32 Errors not to forfeit vote**

- (1) The claim of a person to vote at a referendum shall not be rejected by reason only:
  - (a) that the person's Christian or given name has been omitted from the Roll or from a certified list of voters; or
  - (b) of the entry in the Roll or in a certified list of voters of a wrong Christian or given name, a wrong sex, a wrong date of birth, a wrong address or of a wrongly spelt surname;if, in the opinion of the presiding officer, the person is sufficiently identified.
- (2) The claim of a female elector to vote at a referendum shall not be rejected by reason only that she has changed her surname by reason of marriage and that that change has not been reflected in the Roll.

**33 Right of elector to receive ballot-paper**

- (1) Subject to section 37, the presiding officer or a polling official at each polling booth shall hand to each person claiming to vote at a referendum a ballot-paper duly initialled by the presiding officer if:
  - (a) the name under which the person claims to vote is on the certified list of voters used at the polling booth, and the person's answers to the questions referred to in sections 30 and 31 show that he or she is entitled to vote; or
  - (b) the person claims to vote pursuant to provisions of this Act relating to absent voting and complies with those provisions.
- (2) A presiding officer shall, at the request of a scrutineer appointed under section 27, note any objection by the scrutineer to the right of any person to vote at a referendum, and shall keep a record of all objections.

**34 List of voters to be marked when ballot-paper issued**

- (1) If the name of a person claiming to vote at a referendum appears on the certified list of voters at the polling booth at which the person claims to vote, the presiding officer or a polling official at the polling booth shall, immediately after handing to the person a ballot-paper, place a mark against the person's name on the certified list of voters.

- (2) The presiding officer at a polling place shall make a record of the name of each elector who casts a declaration vote at the polling place and, in the case of an absent voter, of the Division for which the elector declares under subsection 46(1) or (1A) that he or she is enrolled, and shall, at the close of the voting at the referendum, forward the record, duly certified by the presiding officer, in accordance with section 46A.
- (3) Where the voting day for a referendum is the same as that fixed for the polling at an election, subsection (1) of this section does not require the placing of more than one mark against a person's name on a certified list of voters, and a presiding officer shall be deemed to have complied with subsection (2) of this section if he or she has complied with subsection 232(2) of the *Commonwealth Electoral Act 1918*.

### **35 Vote to be marked in private**

Except as otherwise prescribed, a person voting at a polling booth at a referendum shall, upon receipt of a ballot-paper:

- (a) retire alone to an unoccupied voting compartment at the polling booth and mark, in private, his or her vote on the ballot-paper;
- (b) fold the ballot-paper so as to conceal his or her vote and place it in the ballot-box; and
- (c) leave the booth.

### **36 Assistance to certain voters**

- (1) If any voter satisfies the presiding officer at a polling booth that his or her sight is so impaired or that the voter is so illiterate or physically incapacitated as to be unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an unoccupied voting compartment of the booth with the voter, and mark, fold and deposit the voter's ballot-paper.
- (1A) A presiding officer who is visiting a patient under section 48 or 49 for the purpose of taking the patient's vote must explain to the patient the effect of subsection (1) of this section.
- (2) If a voter referred to in subsection (1) fails to appoint a person pursuant to subsection (1), the presiding officer, in the presence of such scrutineers appointed under section 27 as are present, or, if

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there are no scrutineers appointed under that section present, in the presence of:

- (a) a polling official;
  - (b) if the voter so desires, a person appointed by the voter;
- shall mark, fold and deposit the voter's ballot-paper.
- (3) Without limiting the generality of subsection (2), a voter to whom that subsection applies may indicate to the presiding officer the manner in which the voter wishes the presiding officer to mark the ballot-paper for the voter by presenting to the presiding officer a statement in writing (which may be, or include, a how-to-vote card) that specifies the manner in which the ballot-paper is to be marked.
  - (4) Where subsection (1) applies in relation to a provisional or absent voter, the presiding officer shall:
    - (a) fill in the declaration referred to in subsection 37(2) or 46(1) or (1A) with the required particulars as given by the voter;
    - (b) read the declaration to the voter;
    - (c) complete and attest the declaration; and
    - (d) cause the declaration to be witnessed by a scrutineer or, if no scrutineer is present, by a polling official.

**36A Certain voters may vote outside polling place**

- (1) If the presiding officer at a polling place is satisfied that a voter is unable to enter the polling place because of physical disability, illness, advanced pregnancy or other condition, the presiding officer may allow the voter to vote outside the polling place, in close proximity to the polling place.
- (2) Before allowing the voter to vote outside the polling place, the presiding officer must:
  - (a) inform any scrutineers at the polling place that the voter is to vote outside the polling place; and
  - (b) allow scrutineers to be present when the voter votes.
- (3) Subject to subsection (5), the voter:
  - (a) must mark his or her vote on the ballot-paper in the presence of a polling official; and

- (b) must fold the ballot-paper so as to conceal his or her vote, and hand the ballot-paper to the polling official.
- (4) The polling official must ensure that the folded ballot-paper is immediately returned to the polling place and put in the ballot-box in the presence of any scrutineers who were present when the voter voted.
- (5) If the voter also satisfies the presiding officer that he or she is unable to vote without assistance, the presiding officer may, with the voter's consent, allow a polling official to mark and fold the voter's ballot-paper.
- (6) The voter must indicate to the polling official how the voter wishes the polling official to mark the voter's ballot-paper.
- (7) Without limiting the methods by which the voter may indicate, for the purposes of subsection (6), how the voter wishes to vote, the voter may present to the polling official a statement in writing (which may be, or include, a how-to-vote card) specifying how the ballot-paper is to be marked.
- (8) If subsection (5) applies to an absent or provisional voter, the polling official must:
  - (a) fill in the declaration referred to in subsection 37(2) or 46(1) or (1A) with the required particulars as requested by the voter; and
  - (b) read the declaration to the voter; and
  - (c) complete and attest the declaration; and
  - (d) cause the declaration to be witnessed by a scrutineer, or, if no scrutineer is present, by a polling official.

### **37 Provisional votes**

- (1) This section applies to a person claiming to vote if:
  - (a) the person's name cannot be found on the certified list of voters for the Division for which the person claims to vote; or
  - (b) the person's name is on the certified list of voters for a Division but his or her address does not appear on the list; or
  - (c) the presiding officer has asked the person one or more questions under subsection 30(4) about matters shown on the

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certified list of voters for a particular person to establish whether the person is that particular person and one of the following applies:

- (i) the person's answers do not accord with the relevant information shown for that particular person on the list;
- (ii) the person's answers accord with the relevant information shown for that particular person on the list but the officer is not satisfied that the person is that particular person;
- (iii) the person refused to answer fully; or
- (d) a mark on the certified list of voters used at the polling place indicates that the person has already voted at that polling place; or
- (e) the person is provisionally enrolled.

(1A) In this Part (other than section 45) and in Schedule 4:

- (a) a reference to an elector includes a reference to a person who has cast a provisional vote under paragraph (1)(e); and
- (b) a reference to the Division in which an elector is enrolled includes a reference to the Division in which the elector is provisionally enrolled.

(1B) A person to whom this section applies (other than a person to whom subsection 104(4) of the *Commonwealth Electoral Act 1918* applies) may cast a provisional vote on the voting day for a referendum if the person provides the evidence of the person's identity that is required by the regulations either:

- (a) at the time the person casts the provisional vote; or
- (b) by the first Friday following the voting day.

Note: The regulations are made under subsection (9).

- (2) A person to whom this section applies may cast a provisional vote if the person signs a declaration in the approved form on an envelope addressed to the DRO for the Division for which the voter is, or claims to be, enrolled.
- (3) The person shall sign the declaration in the presence of a polling official.
- (4) The polling official shall then sign the declaration as witness, adding the date.



- (5) Before issuing a ballot-paper to the person, a polling official shall give the person a statement in writing in the approved form explaining the effect of this section and indicating the steps that will be taken if the person cast a provisional vote.
- (6) A person who casts a provisional vote shall fold the ballot-paper and hand it to the polling official who issued it.
- (7) The polling official shall, in the presence of the voter, without unfolding the ballot-paper, place it in the envelope bearing the voter's declaration, fasten the envelope and place the envelope in the ballot-box.
- (8) The Assistant Returning Officer who opens the ballot-box shall deal with the envelope according to section 46A.

*Regulations*

- (9) If regulations are made to implement a requirement of subsection (1B) in relation to identification for provisional voting, the regulations must require the person claiming to vote to provide documentary evidence of the person's name by showing either of the following to an officer:
  - (a) the person's driver's licence;
  - (b) a prescribed kind of document that identifies the person.
- (10) The regulations may impose additional requirements in relation to identification for provisional voting.

**38 Provisional enrolment by applicant for citizenship** [see Note 2]

*Application by those about to become Australian citizens*

- (1) A person may apply to a Divisional Returning Officer for provisional enrolment for a Subdivision if, at the time of making the application:
  - (a) either:
    - (i) a public announcement has been made of the proposed voting day for a referendum; or
    - (ii) a writ for a referendum has been issued; and
  - (b) the voting day for the referendum is not the same as that fixed for the polling at an election; and

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- (c) the person has been notified by the Immigration Department that the person will be granted a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948* between:
  - (i) the day of the issue of writ; and
  - (ii) the voting day for the referendum; and
- (d) the person is not enrolled; and
- (e) the person is not qualified for enrolment, but would be so qualified if he or she were an Australian citizen.

Note 1: A person who is provisionally enrolled under this section is not immediately added to a Roll but can cast a postal, pre-poll, absent or provisional vote. However, the vote is excluded from further scrutiny if the person does not provide evidence of citizenship by the first Friday following the voting day (see paragraph 6 of Schedule 4).

Note 2: A person may make a similar application under section 99B of the *Commonwealth Electoral Act 1918* if the voting day for the referendum is the same as that fixed for the polling at an election.

*Requirements for application*

- (2) An application must:
  - (a) be in the approved form; and
  - (b) be signed by the person (but see subsection (3)); and
  - (c) be made between the following times:
    - (i) the earlier of the public announcement of the proposed voting day for the referendum and the day of the issue of the writ;
    - (ii) 8 pm on the day of the close of the Rolls for the referendum; and
  - (d) in accordance with subsection (4), be supported by evidence of the Immigration Department's notification.
- (3) A person may fill out and sign an application under this section, on behalf of another person (the *applicant*), in accordance with the directions of the applicant if:
  - (a) the applicant wishes to make the application; and
  - (b) a registered medical practitioner has certified, in writing, that the applicant is so physically incapacitated that the applicant cannot sign the application.

- (4) For the purposes of paragraph (2)(d), an application is supported by evidence of the Immigration Department's notification if:
- (a) all of the following apply:
    - (i) the original notification is shown to an officer;
    - (ii) the officer attests that he or she has sighted the notification;
    - (iii) the officer attests that he or she is satisfied that the notification relates to the person making the application;  
or
  - (b) all of the following apply:
    - (i) the original or a copy of the notification is shown to an elector in a prescribed class of electors;
    - (ii) the elector attests that he or she has sighted the notification;
    - (iii) the elector attests that he or she is satisfied that the notification relates to the person making the application.

*Divisional Returning Officer to keep records*

- (5) If a person makes an application in accordance with this section, then:
- (a) the person is provisionally enrolled under this section for the Subdivision for which the person would be provisionally enrolled if he or she had made an application under section 99B of the *Commonwealth Electoral Act 1918*; and
  - (b) the Divisional Returning Officer for the relevant Division must keep a record of the details of the application.

*Confirmation of citizenship*

- (6) If, by the first Friday following the voting day for the referendum, the person provides an officer with the original certificate of Australian citizenship granted to the person, or a copy of the certificate that has been attested to by an elector in a prescribed class of electors, then:
- (a) the provisional enrolment ceases; and
  - (b) the application is taken to be a claim under the *Commonwealth Electoral Act 1918* for enrolment for the Subdivision mentioned in paragraph (5)(a); and

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- (c) sections 102, 103 and 104 of the *Commonwealth Electoral Act 1918* apply to the application as if it were a claim made under section 101 of that Act.
- (7) Otherwise, the Divisional Returning Officer for the relevant Division must notify the person, in writing, that the person's provisional enrolment has ceased.

**40 Election and referendum on the same day**

Where the voting day for a referendum is the same as that fixed for the polling at an election:

- (a) a declaration made for the purposes of the election under section 235 of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration made under subsection 37(2) of this Act; and
- (b) a ballot-paper containing the vote of a person claiming to vote pursuant to section 37 of this Act may be enclosed in the same envelope as that in which the ballot-paper containing the vote of the person under section 235 of the *Commonwealth Electoral Act 1918* is enclosed.

**41 Spoilt ballot-papers**

- (1) If a person voting at a referendum, before depositing a ballot-paper in a ballot-box, satisfies the presiding officer at the polling booth at which the person is voting that the person has spoilt the ballot-paper by mistake or accident, the presiding officer shall provide the person with a new ballot-paper and shall cancel the spoilt ballot-paper.
- (2) If a person voting at a referendum in a manner that will involve a ballot-paper being placed in an envelope satisfies the officer who issued the ballot-paper that, before the ballot-paper was placed in the relevant envelope, he or she spoilt the ballot-paper by mistake or accident, the officer shall provide the person with a new ballot-paper and shall cancel the spoilt ballot-paper.
- (3) An officer who has cancelled a spoilt ballot-paper shall:
  - (a) write "spoilt" on the back of the ballot-paper;

- (b) place the ballot-paper in an envelope, seal the envelope and write on the envelope an indication of the type of ballot-paper enclosed and that it is spoilt; and
  - (c) sign the envelope.
- (4) The envelopes containing spoilt ballot-papers cancelled at a polling place shall be sealed up in a parcel which shall be given to the DRO for the Division after the close of voting.

#### **41A Temporary suspension of polling**

- (1) The presiding officer may temporarily suspend the voting at a referendum for a period if the presiding officer is satisfied that the suspension of voting during that period is justified because of:
- (a) riot or open violence; or
  - (b) the threat of riot or open violence; or
  - (c) storm, tempest, flood or an occurrence of a similar kind; or
  - (d) a health hazard; or
  - (e) a fire or the activation of fire safety equipment (such as sprinklers or alarms); or
  - (f) any other reason related to:
    - (i) the safety of voters; or
    - (ii) difficulties in the physical conduct of the voting.
- (2) If:
- (a) the voting day for a referendum is the same as that fixed for the polling at an election; and
  - (b) the presiding officer at a polling booth temporarily suspends the polling at the polling booth for a period under section 240A of the *Commonwealth Electoral Act 1918*;
- the presiding officer must temporarily suspend the voting at the referendum at the polling booth for the same period.

#### **42 Adjournment of voting**

- (1) The presiding officer at a polling booth may adjourn the voting at a referendum at that polling booth from day to day if the voting is interrupted by:
- (a) riot or open violence; or
  - (b) the threat of riot or open violence; or

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- (c) storm, tempest, flood or an occurrence of a similar kind; or
  - (d) a health hazard; or
  - (e) a fire or the activation of fire safety equipment (such as sprinklers or alarms); or
  - (f) anything else related to:
    - (i) the safety of voters; or
    - (ii) difficulties in the physical conduct of the voting.
- (2) If from any cause any polling booth at a polling place is not opened on the voting day at a referendum the presiding officer at the polling booth may adjourn the voting for a period not exceeding 21 days, and shall forthwith give public notice of the adjournment.

**43 Adjournment at both referendum and election**

Where:

- (a) the voting day for a referendum is the same as that fixed for the polling at an election; and
- (b) the presiding officer at a polling booth adjourns the polling at the election to a particular day pursuant to section 241 or 242 of the *Commonwealth Electoral Act 1918*;

the presiding officer shall adjourn the voting at the referendum to the same day.

**44 Adjourned voting**

Where the voting at a referendum is adjourned at a polling place, only those electors:

- (a) who are enrolled for the Subdivision for which the polling place is appointed; or
- (b) who are, by virtue of section 37, entitled to vote as electors of that Subdivision;

and who have not already voted, are entitled to vote during the adjourned voting at that polling place.

**45 Compulsory voting**

- (1) It is the duty of every elector to vote at a referendum.
- (2) The Electoral Commissioner must, after the voting day at a referendum, being a referendum the voting day for which was not

the same as that fixed for the polling at a Senate election or a general election of members of the House of Representatives, prepare for each Division a list of the names and addresses of the electors who appear to have failed to vote at the referendum.

- (3) Subject to subsection (4), within the period of 3 months after the voting day at a referendum, each DRO must:
  - (a) send a penalty notice by post; or
  - (b) arrange for a penalty notice to be delivered by other means; to the latest known address of each elector whose name appears on the list prepared under subsection (2).
- (4) The DRO is not required to send or deliver a penalty notice if he or she is satisfied that the elector:
  - (a) is dead; or
  - (b) was absent from Australia on the voting day for the referendum; or
  - (c) was ineligible to vote at the referendum; or
  - (d) had a valid and sufficient reason for failing to vote.
- (5) A penalty notice is a notice in an approved form notifying the elector that:
  - (a) the elector appears to have failed to vote at the referendum; and
  - (b) it is an offence to fail to vote at a referendum without a valid and sufficient reason for the failure; and
  - (c) if the elector does not wish to have the apparent failure to vote dealt with by a court, the elector may, within the prescribed time:
    - (i) if the elector did vote as required by this Act—give the DRO particulars of the circumstances of the elector's voting; or
    - (ii) if the elector failed to vote—give the DRO a valid and sufficient reason for the failure; or
    - (iii) pay to the DRO a penalty of \$20.
- (6) If an elector does not respond to a penalty notice in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii), within the prescribed time, the DRO must send by post or deliver to the elector, at his or her latest known address, a second penalty notice, having, subject to subsection (7), the same form as the first such

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notice but bearing a notation to the effect that a previous notice in the same terms was sent to the elector but that a response in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii) was not received.

- (7) The provisions of this section, other than subsection (6), apply in relation to a second penalty notice:
- (a) as if it were a penalty notice issued under subsection (3); and
  - (b) as if, in the provisions of this section as so applied, references to paragraphs and subparagraphs of subsection (5) included references to those paragraphs and subparagraphs as applied by this section.
- (8) If, within the prescribed time:
- (a) an elector responds to a penalty notice in the manner indicated in subparagraph (5)(c)(i) or (ii) and the DRO to whom the response has been given is satisfied:
    - (i) in the case of a response of the kind referred to in subparagraph (5)(c)(i)—that the elector did vote as required by this Act; or
    - (ii) in the case of a response of the kind referred to in subparagraph (5)(c)(ii)—that the reason for the failure to vote is a valid and sufficient reason; or
  - (b) an elector responds to a penalty notice by paying the penalty of \$20;
- proceedings against the elector for a contravention of subsection (14) are prohibited.
- (9) If the DRO to whom a response to a penalty notice has been given under subparagraph (5)(c)(i) or (ii) within the prescribed time is not satisfied:
- (a) in the case of a response of the kind referred to in subparagraph (5)(c)(i)—that the elector voted as required by this Act; or
  - (b) in the case of a response of the kind referred to in subparagraph (5)(c)(ii)—that the reason for the failure to vote is a valid and sufficient reason;
- the DRO must send by post or deliver to the elector, at his or her latest known address, a notice in an approved form, notifying the elector that:
- (c) the DRO is not so satisfied; and



- (d) if the elector does not wish to have the apparent failure to vote without a valid and sufficient reason for such failure dealt with by a court, he or she may, within the prescribed time, pay to the DRO a penalty of \$20.
- (10) If, in response to a notice under subsection (9), the penalty of \$20 is paid to the DRO within the prescribed time, proceedings against the elector for a contravention of subsection (14) are prohibited.
- (11) If an elector is unable, by reason of absence from his or her place of living or physical incapacity, to respond to a penalty notice or to a notice under subsection (9) within the prescribed time, any other elector who has a personal knowledge of the facts may, subject to the regulations, respond to the notice within that time, and such response is to be treated as compliance by the first-mentioned elector with the notice.
- (12) The DRO must prepare a list of all electors to whom a penalty notice has been sent or delivered and note on that list in relation to each elector:
- (a) whether there has been a response to the notice; and
  - (b) if there has been a response:
    - (i) whether the DRO is satisfied that the elector did in fact vote or that there was a valid and sufficient reason for the elector's failure to vote; or
    - (ii) whether the penalty has been paid.
- (13) The DRO must note on the list prepared under subsection (12) in relation to each elector to whom a notice under subsection (9) has been sent or delivered:
- (a) the fact that a notice has been sent or delivered under subsection (9); and
  - (b) whether there has been a response to the notice; and
  - (c) if there has been a response—whether the penalty has been paid.
- (13A) Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote.

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**Division 1** General

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- (14) An elector is guilty of an offence if the elector fails to vote at a referendum.

Penalty: \$50.

- (14A) Strict liability applies to an offence against subsection (14).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (14B) Subsection (14) does not apply if the elector has a valid and sufficient reason for the failure.

Note: A defendant bears an evidential burden in relation to the matter in subsection (14B) (see subsection 13.3(3) of the *Criminal Code*).

- (14C) An elector who makes a statement in response to a penalty notice or to a notice under subsection (9) that is, to his or her knowledge, false or misleading in a material particular is guilty of an offence.

Penalty: \$50.

- (15) Proceedings for an offence against this section may be instituted only by the Electoral Commissioner or an officer authorised, in writing, for the purpose by the Electoral Commissioner.

- (16) In this section, *elector* does not include:

- (a) an Antarctic elector; or
- (b) an eligible overseas elector; or
- (c) an itinerant elector.

- (17) In this section, a reference to the prescribed time for a response to a penalty notice or a notice under subsection (9) is a reference to the time for response specified in the notice.

**46 Where electors may vote, and absent voting**

- (1) On the voting day for a referendum, an elector is entitled:

- (a) to vote at any polling place appointed for the Division for which he or she is enrolled; or
- (b) to vote as an absent voter, after making a declaration in an approved form, at any other polling place within the State or Territory for which he or she is enrolled at which a polling booth is open.

- (1A) On voting day for a referendum, a person who is provisionally enrolled is entitled to vote as an absent voter, after making a

declaration in an approved form, at any polling place within the State or Territory for which he or she is provisionally enrolled at which a polling booth is open (other than a polling place for the Division for which he or she is provisionally enrolled).

- (1B) In this Part (other than section 45) and in Schedule 4:
- (a) a reference to an elector includes a reference to a person who has cast an absent vote under subsection (1A); and
  - (b) a reference to the Division in which an elector is enrolled includes a reference to the Division in which the person is provisionally enrolled.
- (2) Notwithstanding subsections (1) and (1A), where a hospital is a polling place, an elector is not entitled to vote at that polling place otherwise than under section 48 unless an appropriate person on the staff of the hospital has agreed to permit electors generally to vote at that polling place or unless the elector:
- (a) is attending the hospital as a patient or as a genuine visitor of a patient; or
  - (b) performs functions or duties in the hospital.
- (3) A declaration made by an absent voter under subsection (1) or (1A) shall be printed on, or securely attached to, an envelope addressed to the Divisional Returning Officer for the Division for which the elector declares that he or she is enrolled.
- (4) An elector who votes as an absent voter shall mark and fold the ballot-paper in the manner prescribed by this Act and return it so folded to the presiding officer.
- (5) The presiding officer shall thereupon, in the presence of the elector, and without unfolding the ballot-paper enclose it in the envelope referred to in subsection (3) of this section and shall forthwith securely fasten the envelope and deposit it in the ballot-box.
- (9) Where the voting day for a referendum is the same as that fixed for the polling at an election:
- (a) a declaration made for the purposes of the election under subsection 222(1) or (1A) of the *Commonwealth Electoral Act 1918* shall be deemed to be a declaration made under subsection (1) or (1A) (as the case requires) of this section;

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- (b) the agreement of an appropriate person on the staff of a hospital under subsection 222(2) of the *Commonwealth Electoral Act 1918* shall be deemed to be agreement under subsection (2) of this section; and
- (c) a ballot-paper containing the vote of a person voting as an absent voter under this section may be enclosed in the same envelope as that in which the ballot-paper containing the vote of that person voting as an absent voter under section 222 of the *Commonwealth Electoral Act 1918* is enclosed.

**46A Forwarding of declaration votes**

- (1) A presiding officer at a polling place shall forward to the Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer any ballot-boxes containing envelopes bearing certificates or declarations made by persons who have cast declaration votes and which purport to contain the ballot-papers of such voters, together with records that the presiding officer has made in accordance with paragraph 67(2)(e) and subsection 34(2).
- (1A) A pre-poll voting officer who:
  - (a) receives an envelope bearing a postal vote certificate and purporting to contain a postal ballot-paper; or
  - (b) places a ballot-paper in an envelope under subsection 73D(7);shall forward the envelope, together with the record made under paragraph 67(2)(e) or subsection 73F(2), as the case may be, in relation to the receipt or issue of the envelope, to the Divisional Returning Officer for the Division for which the pre-poll voting officer is appointed.
- (1B) Envelopes and records required to be forwarded under subsection (1A) shall be so forwarded according to the instructions of the Divisional Returning Officer.
- (2) An Assistant Returning Officer to whom a ballot-box is forwarded under subsection (1) or subsection 49(8), 49A(7) or 51(10) shall:
  - (a) compare the particulars on the envelopes with the particulars appearing in the relevant records forwarded to the Assistant Returning Officer under this Act, note the number of

- envelopes and report any discrepancy to the Divisional Returning Officer;
- (b) place in a parcel all the envelopes contained in such ballot-boxes, endorse on the parcel the number of envelopes contained in the parcel, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the Divisional Returning Officer; and
  - (c) forward to the Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the parcel delivered or to be delivered to the Divisional Returning Officer.
- (3) Each Divisional Returning Officer shall:
- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received from each Assistant Returning Officer and pre-poll voting officer;
  - (b) until they are dealt with under other provisions of this Act, keep the envelopes received from Assistant Returning Officers and pre-poll voting officers in one or more securely fastened ballot-boxes; and
  - (c) compare the record referred to in paragraph (a) with the envelopes received and note any discrepancy.
- (3A) Each DRO to whom ballot-boxes are forwarded, or by whom ballot-boxes are collected, as mentioned in paragraph 67(6)(b):
- (a) must compare the records forwarded to or collected by the DRO as mentioned in paragraph 67(6)(d) with the envelopes in the ballot-boxes and note any discrepancy; and
  - (b) except as necessary for the purposes of paragraph (a), keep the envelopes in one or more securely-fastened ballot-boxes until the envelopes are dealt with under other provisions of this Act.
- (4) A Divisional Returning Officer shall:
- (a) place in a parcel all the envelopes bearing certificates or declarations and relating to a particular Division and records relating to that Division, endorse on the parcel the number of the envelopes, seal up the parcel and forthwith deliver it, or cause it to be delivered, to the Divisional Returning Officer for that Division or, with the approval of the Australian Electoral Officer for the State or Territory that includes that

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Division, to another person to be dealt with in accordance with subsection (5); and

- (b) forward to the last-mentioned Divisional Returning Officer advice in writing of the total number of envelopes bearing certificates or declarations enclosed in the parcel delivered or to be delivered to that Divisional Returning Officer.
- (5) Each Divisional Returning Officer shall:
- (a) maintain a record of the particulars of the advices, and of the number of envelopes bearing certificates or declarations, received from other Divisional Returning Officers or from persons referred to in subsection (7) or (9);
  - (b) maintain a locked and sealed ballot-box labelled so as to identify it as a declaration vote ballot-box; and
  - (c) keep in that ballot-box, until the scrutiny, all envelopes bearing a certificate or declaration and purporting to contain a ballot-paper recording a declaration vote in relation to his or her Division that, in accordance with subsection (5A), are received within sufficient time to be taken into account in the scrutiny.
- (5A) An envelope referred to in paragraph (5)(c) is received by a DRO within sufficient time to be taken into account in the scrutiny if it is received by the DRO within 13 days after the close of the poll (whether directly from the voter or from another DRO or a person referred to in subsection (7) or (9)).
- (6) Before placing in the ballot-box maintained under subsection (5) an envelope purporting to contain a postal ballot-paper and delivered to a Divisional Returning Officer which is received after the close of the poll and which does not bear evidence sufficient to satisfy the Divisional Returning Officer that the vote contained in the envelope was recorded before the close of the poll, the Divisional Returning Officer shall endorse on the envelope the date of its receipt and shall initial the endorsement.
- (7) Where envelopes bearing certificates or declarations, or records, relating to a particular Division are, with the approval of the Australian Electoral Officer for the State or Territory that includes that Division, delivered to a person other than the Divisional Returning Officer for that Division, that person shall, as soon as

practicable, deliver them, or cause them to be delivered, to that Divisional Returning Officer.

- (8) An Assistant Returning Officer at a place outside Australia shall forward envelopes bearing certificates or declarations, together with the relevant records made by the officer under paragraph 67(2)(e) or subsection 73F(2), to such person as is specified in a written direction given to that Assistant Returning Officer by the Electoral Commissioner.
- (9) Where envelopes and records relating to a particular Division are forwarded under subsection (8) to a person other than the Divisional Returning Officer for that Division, that person shall, as soon as practicable, deliver them, or cause them to be delivered, to that Divisional Returning Officer.

## **Division 2—Mobile booths**

### **47 Interpretation**

In sections 48, 49 and 50, *patient*, in relation to a hospital, does not include a person attending the hospital as an out-patient.

### **48 Mobile booths—hospitals that are polling places**

- (1) In this section, *hospital* means a hospital that is a polling place.
- (2) Where:
  - (a) a patient in a hospital is an elector for the State or Territory in which the hospital is situated; and
  - (b) the patient wishes to vote at the hospital;the presiding officer shall visit the patient for the purpose of taking the patient's vote.
- (3) When visiting the patient, the presiding officer shall:
  - (a) take to the patient a ballot-box, a ballot-paper, and anything else necessary to enable the patient to vote; and
  - (b) be accompanied by a polling official and such scrutineers (if any) as wish to attend.
- (4) A visit to a patient shall be made between 8 a.m. and 6 p.m. on voting day or a day to which voting is adjourned.
- (5) While the presiding officer is in the same room, ward or other place as the patient, this Act applies in relation to the taking of the vote of the patient as if the room, ward or place were part of a polling booth at a polling place.
- (6) A polling booth at a hospital shall be attended by a polling official at all times when the presiding officer is absent from the booth for the purpose of visiting a patient.

### **49 Mobile booths—other hospitals**

- (1) The Electoral Commission may, by notice published in the *Gazette*, at any time, declare the whole or a specified part of a



hospital, not being a hospital that is a polling place, to be a special hospital for the purposes of this section.

- (2) The Electoral Commission may appoint electoral visitors in relation to a specified referendum.
- (3) Where:
  - (a) a patient at a special hospital wishes to vote at the hospital; and
  - (b) the patient is an elector for the State or Territory in which the hospital is situated;an electoral visitor shall visit the patient for the purpose of taking the patient's vote.
- (4) When visiting the patient, the electoral visitor shall:
  - (a) take to the patient a ballot-box, a ballot-paper, and anything else necessary to enable the patient to vote; and
  - (b) be accompanied by a polling official and such scrutineers (if any) as wish to attend.
- (4A) While the electoral visitor is in the same room, ward or other place as the patient, this Act applies in relation to the taking of the patient's vote as if the room, ward or place were part of a polling booth at a polling place.
- (5) A visit or visits to a special hospital shall be made at such time or times between 8 o'clock in the morning and 6 o'clock in the afternoon, and on such day or days, being any of the 5 days preceding voting day, voting day, or a day to which the voting is adjourned, as are determined by the Electoral Commission in relation to the special hospital.
- (6) At any time when an electoral visitor is visiting a special hospital for the purposes of this section, the special hospital shall, for the purposes of, and in connection with, the taking of votes under this section, be deemed to be a polling booth at a polling place and the electoral visitor shall, for those purposes, be deemed to be the presiding officer at that booth.
- (7) Paragraph 29(1)(a) does not apply to an electoral visitor after the first visit made by the visitor for the purposes of this section.

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- (8) At the end of the last visit made by an electoral visitor for the purposes of this section, the visitor shall, in the presence of a polling official and any scrutineers appointed under section 27 who may be in attendance, publicly close, fasten, seal and take charge of each ballot-box used by the visitor for the purposes of this section and, with the least possible delay, forward it for the purposes of scrutiny to the appropriate Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer.

**49A Mobile booths—prisons**

- (1) The Electoral Commission may make arrangements with the Controller-General of Prisons for a State or Territory for the taking of the votes of persons confined in prisons in the State or Territory who are entitled to vote in a referendum.
- (2) The Electoral Commission may appoint electoral visitors for the purposes of this section in relation to a specified referendum.
- (3) If arrangements in force under subsection (1) are applicable to a prison, an electoral visitor must visit the prison for the purpose of taking the votes of persons who:
- (a) are confined in the prison; and
  - (b) are entitled to vote in the referendum; and
  - (c) are electors for the State or Territory in which the prison is situated.
- (4) When visiting a prison, an electoral visitor shall:
- (a) take to the prison a ballot-box, ballot-papers and anything else necessary for the taking of votes at the prison; and
  - (b) subject to subsection (5), be accompanied by a polling official and such scrutineers (if any) as wish to attend.
- (5) A visit to a prison shall be made:
- (a) on such day;
  - (b) at such time; and
  - (c) in accordance with such conditions;
- as are fixed by or under the arrangements applicable to the prison.
- (6) In spite of arrangements in force under subsection (1), a visit to a prison may not be made if the electoral visitor is informed by the

officer in charge of the prison or a member of the staff of the prison that the visit is forbidden by the officer in charge because of circumstances related to the security of the prison.

- (7) At the end of a visit by an electoral visitor to a prison, the visitor shall, in the presence of the polling official and any scrutineers who are in attendance at the prison, close, fasten, seal and take charge of each ballot-box used in the visit and, without delay, forward it to the Assistant Returning Officer designated for the purposes of this subsection by the DRO.
- (8) An electoral visitor who visits a prison may, at the request of an elector confined in the prison, give the elector literature relating to the referendum.

#### **50 Provisions related to sections 48 and 49**

- (1) Notwithstanding any arrangement in force under section 48 or 49, a visit under that section to a patient in a hospital shall not be made if the presiding officer or electoral visitor, as the case may be, is informed by a registered medical practitioner or a member of the staff of the hospital that such a visit is forbidden, on medical grounds, by a registered medical practitioner.
- (2) Literature relating to a referendum may be supplied to the general office of a hospital to which section 48 or 49 applies, and any literature so supplied shall be made available on request to patients entitled to vote under that section.
- (2A) A presiding officer or electoral visitor who visits a patient under section 48 or 49 may, at the request of the patient, give the patient literature relating to the referendum.
- (3) So far as is practicable, a vote under section 48 or 49 shall be taken as if it were taken under the other provisions of this Act (including the provisions relating to absent voting) and, in particular, in the application of this Act for the purposes of subsection 48(5) or 49(4A), this Act has effect as if:
  - (a) a person who, with the approval of an appropriate person on the staff of the hospital, enters or remains in a room, ward or other place in the hospital at a time when, under that subsection, it is to be treated as if it were a part of a polling

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- booth were, for the purposes of section 135, doing so by permission of the presiding officer there present;
- (b) paragraph 35(a) were omitted and the following paragraph were substituted:
- “(a) mark his or her vote on the ballot-paper in a manner that ensures the secrecy of the vote;”;
- (c) paragraph 35(c) were omitted; and
- (d) the words “enter an unoccupied compartment of the booth with the voter, and” were omitted from subsection 36(1).
- (4) Subsection 131(1) applies in relation to a hospital that is a polling place and in relation to a special hospital within the meaning of section 49 as if:
- (a) the reference in that subsection to voting day and to all days to which the voting is adjourned were a reference to the period commencing on the day of the issue of the writ for the referendum and ending at the expiration of voting day or, if the voting is adjourned, the expiration of the last day to which the voting is adjourned; and
- (b) the references in that subsection to a polling booth were references to the hospital or special hospital, as the case may be.
- (5) Where an elector has voted under section 48 or 49 at a referendum, any postal ballot-paper received by the Divisional Returning Officer that is, or that purports to be, a postal ballot-paper of the elector shall not be admitted in the scrutiny in relation to the referendum.
- (6) The DRO for a Division shall, not later than 4 p.m. on the day before voting day, display prominently in his or her office a notice specifying the hospitals in the Division that are polling places and indicating the periods during which votes will be taken under section 48 at each hospital.
- (6A) The DRO for a Division shall, at least 7 days before the day, or the first day, on which votes are to be taken under section 49 at a hospital in the Division, display prominently in his or her office a notice specifying:
- (a) the hospitals in the Division at which votes are to be taken under section 49; and

- (b) the days on which, and the times at which, votes will be taken at each of those hospitals.
- (6B) Where it is not practicable for votes to be taken under section 49 on a day, or at a time, specified in a notice under subsection (6A), the electoral visitor shall inform the Divisional Returning Officer accordingly.
- (6C) On being so informed, the Divisional Returning Officer shall take such steps as he or she thinks fit to give public notice of another day on which, or another time at which, the votes will be taken.
- (7) As far as is reasonably practicable, votes taken under section 48 or 49 shall be taken on the day or days and at the time or times specified in the relevant notice under subsection (6), (6A) or (6C), but any failure to take those votes in that manner does not invalidate the result of the referendum.

### **51 Mobile booths—Remote Divisions**

- (1) In this section:

*leader* means a person appointed under this section to be the leader of a team.

*station* means a place at which a visit is being made by a team under this section.

*team* means a mobile polling team appointed under this section.

- (2) The Electoral Commission may appoint persons to be members of mobile polling teams for the purposes of this section and, in respect of each team, a person to be the leader.
- (3) In relation to a Division declared under subsection 227(3) of the *Commonwealth Electoral Act 1918*, the following provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act.
- (4) The Electoral Commission:
- (a) may, by notice published in the *Gazette*, determine the places that teams will visit for the purposes of this section; and
  - (b) must take such steps as it thinks fit to give public notice of:
    - (i) the places determined under paragraph (a); and

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- (ii) the days and times when teams will visit for the purposes of this section.
- (5) A day notified under paragraph (4)(b) shall be any of the 12 days preceding voting day, voting day, or a day to which the voting is adjourned.
- (6) A team shall make a visit or visits as notified under paragraph (4)(b), but, if, for reasonable cause, the team is unable, or the leader considers it inappropriate, to make such a visit, the leader may substitute another place, day or time for the visit and, in that event, shall:
- (a) take such steps as he or she thinks fit to give public notice of the substituted place, day or time; and
  - (b) inform the appropriate Divisional Returning Officer.
- (7) Any failure by a team to make a visit in accordance with this section does not invalidate the result of the referendum.
- (8) At any time when a team is at a station for the purposes of taking votes under this section at a referendum:
- (a) the team shall have ballot-boxes, ballot-papers and such other things as are necessary for the votes of electors to be taken at the station;
  - (b) every person at the station who is an elector for the State or Territory in which the station is situated is entitled to have his or her vote taken under this section;
  - (c) for purposes of, and in connection with, the taking of votes under this section:
    - (i) the station shall be deemed to be a polling place;
    - (ii) the building, structure, vehicle or enclosure used by the leader for the purposes of taking votes under this section shall be deemed to be a polling booth; and
    - (iii) the leader shall be deemed to be the presiding officer at that polling booth;
  - (d) so far as is practicable, a vote under this section shall be taken as if it were taken under the other provisions of this Act (other than sections 48 and 49) including such of those provisions as relate to absent voting;
  - (da) section 29 applies as if, for paragraph 29(b), there were substituted the following paragraph:

- “(b) the voting may be conducted:
- (i) at any time on a day before voting day; and
  - (ii) on polling day, until all electors present in the polling booth at 6 p.m. and desiring to vote have voted; and”;
- (e) section 131 applies as if:
- (i) the reference in subsection 131(1) to voting day and to all days to which the voting is adjourned were a reference to the time of the visit; and
  - (ii) the reference in subsection 131(2) to the hours on which the polling booth is open were a reference to that time.
- (9) Paragraph 29(1)(a) does not apply to a leader after the first visit made by the leader for the purposes of this section.
- (10) At the end of the last visit made by a leader for the purposes of this section, the leader shall, in the presence of a member of his or her team and any scrutineers appointed under section 27 who may be in attendance, publicly close, fasten, seal and take charge of each ballot-box used by the leader for the purposes of this section and, with the least possible delay, forward it for the purposes of scrutiny to the appropriate Assistant Returning Officer designated for the purposes of this subsection by the Divisional Returning Officer.
- (11) Where an elector has voted under this section at a referendum, any postal ballot-paper received by a Divisional Returning Officer that is, or that purports to be, a postal ballot-paper of the voter shall not be admitted in the scrutiny in relation to the referendum.

## **52 Election and referendum on same day**

Where the voting day for a referendum is the same as that fixed for the polling at an election, any arrangements, declarations, appointments or determinations made under section 224, 225 or 227 of the *Commonwealth Electoral Act 1918* for the purposes of the election shall be deemed to have also been made under section 48, 49 or 51, as the case may be, of this Act for the purposes of the referendum.

## Part IV—Postal voting

### 53 Interpretation

- (1) In this Part:

*appropriate DRO*, in relation to an application or anything to be done by an elector, means the DRO for the Division for which the elector is enrolled.

*registered general postal voter* means an elector who is registered as a general postal voter under section 185 of the *Commonwealth Electoral Act 1918*.

- (2) In this Part and in Schedule 4:

- (a) a reference to an elector includes a reference to a person who has applied for a postal vote under subsection 54(2); and
- (b) a reference to the Division in which an elector is enrolled includes a reference to the Division in which the person is provisionally enrolled.

### 54 Grounds of application for postal vote

- (1) An elector may apply for a postal vote on any of the grounds set out in Schedule 3.
- (2) A person who is provisionally enrolled may apply for a postal vote.

### 55 Application for postal vote

- (1) An application shall be in writing in the approved form and shall:
  - (a) contain a declaration by the applicant that he or she is an elector entitled to apply for a postal vote; and
  - (b) be signed by the applicant in the presence of an authorised witness (but see subsection (3A)).
- (2) An application made in Australia shall be made to a DRO.
- (3) An application made outside Australia shall be made to an Assistant Returning Officer or a DRO.



- (3A) An application made outside Australia that does not meet the requirement in paragraph (1)(b) is taken to meet that requirement for the purposes of this Act if:
- (a) the application is accompanied by a signed statement by the applicant setting out why the applicant was unable to meet the requirement; and
  - (b) the Assistant Returning Officer or DRO is satisfied that the applicant made reasonable efforts to comply with the requirement; and
  - (c) the application is accompanied by a photocopy, that is certified by the applicant to be a true copy, of a part of the applicant's passport that includes:
    - (i) the country and date of issue and the number of the passport; and
    - (ii) the applicant's name, date of birth and signature; and
    - (iii) a photograph of the applicant.
- (4) An application for a postal vote may not be made until after the issue of the writ for the referendum in relation to which a postal vote is sought or the public announcement of the proposed date for the voting, whichever is the earlier.
- (5) An application for a postal vote fails to meet the deadline if it is not received by the DRO or Assistant Returning Officer to whom it is directed until after 6 pm on the Thursday that is 2 days before voting day in the referendum.
- (6) If an application for a postal vote fails to meet the deadline, the DRO or Assistant Returning Officer to whom the application was directed must make, or arrange for the making of, reasonable efforts to advise the applicant that his or her application for a postal vote failed to meet the deadline, and that the applicant will have to vote by other means.

## **56 Application forms for postal votes**

- (1) An application form for a postal vote may be physically attached to, or form part of, other written material issued by any person or organisation.
- (2) For the purposes of the *Copyright Act 1968*, if a person other than the owner of the copyright in the application form for a postal vote

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reproduces the application form, the person is not taken to have infringed the copyright in the application form.

**58 Dispatch of postal voting papers to registered general postal voters**

- (1) As soon as practicable after the issue of the writ for a referendum, or the public announcement of the proposed date for the voting, whichever is the earlier, the DRO for a Division shall send or arrange for the delivery of, postal voting papers to each registered general postal voter for the Division.
- (2) In this section:

*postal voting papers* means:

- (a) a postal vote certificate printed on an envelope; and
- (b) a postal ballot-paper; and
- (c) if the envelope on which the postal vote certificate is printed is not itself addressed to the DRO for the Division for which the general postal voter is registered—an envelope addressed to that DRO.

**59 Election and referendum on the same day**

Where the voting day for a referendum is the same as the polling day for an election:

- (a) an application for a postal vote in the election shall also have effect as an application for a postal vote in the referendum;
- (b) section 58 does not apply for the purposes of the referendum;
- (c) a person who is entitled to receive a postal ballot-paper under section 186 of the *Commonwealth Electoral Act 1918* for the purposes of the election is also entitled to receive, in the same manner, a postal ballot-paper for the purposes of the referendum;
- (d) a postal vote certificate for the purposes of the election also has effect as a postal vote certificate for the purposes of the referendum;
- (e) a reference in an application or certificate to the election shall be regarded as including a reference to the referendum; and
- (f) a ballot-paper bearing the postal vote of an elector in the referendum may be enclosed in the same envelope as the

postal ballot-paper bearing the elector's postal vote in the election.

### **60 Duty of witness**

- (1) A person shall not witness the signature of another person (in this section called the *elector*) on an application for a postal vote unless:
- (a) the person is satisfied of the identity of the elector;
  - (b) the person has seen the elector sign the application; and
  - (c) either:
    - (i) the person knows that the statements in the application are true; or
    - (ii) the person is satisfied, on the basis of inquiries of the elector or otherwise, that the statements in the application are true.

Penalty: \$500.

- (2) The person who witnesses the signature of the elector to the application shall sign the application in his or her own handwriting and write on the application the date of signature.

### **61 Issue of certificate and ballot-papers**

- (1) A DRO or Assistant Returning Officer who receives an application, properly signed and witnessed, for a postal vote must (unless the application fails to meet the deadline as mentioned in subsection 55(5)) send, or arrange for the sending, to the applicant in accordance with whichever of subsections (2), (2A) and (2B) of this section applies:
- (a) a postal vote certificate printed on an envelope addressed:
    - (i) if the application is provided to an Assistant Returning Officer outside Australia—to the Assistant Returning Officer or to the DRO for the Division for which the applicant declares that he or she is enrolled; or
    - (ii) otherwise—to the DRO for the Division for which the applicant declares that he or she is enrolled; and
  - (b) a postal ballot-paper.

Note: An application may be taken to be properly witnessed because of subsection 55(3A).

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(2) Subject to subsection (2A), if the DRO or Assistant Returning Officer receives the application for a postal vote at or before 6 pm on the Friday that is 8 days before voting day in the referendum, the material required by subsection (1) must be sent to the applicant by post or by another means (not being an electronic means, such as fax or email).

(2A) If:

- (a) the DRO or Assistant Returning Officer receives the application for a postal vote at or before 6 pm on the Friday that is 8 days before voting day in the referendum; and
- (b) in accordance with the approved form referred to in subsection 55(1), the applicant has requested a particular means of delivery (not being an electronic means such as fax or email); and
- (c) the DRO or Assistant Returning Officer considers that that means is reasonable and practicable in the circumstances;

the material required by subsection (1) must be sent to the applicant by that means.

(2B) If the DRO or Assistant Returning Officer receives the application for a postal vote after 6 pm on the Friday that is 8 days before voting day in the referendum and at or before 6 pm on the Thursday that is 2 days before voting day in the referendum, the material required by subsection (1) must be sent to the applicant by the means (not being an electronic means such as fax or email) that the DRO or Assistant Returning Officer considers is the most reasonable and practicable in the circumstances.

Note: If the application is received after 6 pm on the Thursday that is 2 days before voting day in the referendum, it fails to meet the deadline (see subsection 55(5)), and therefore no material is required by subsection (1) to be sent to the applicant.

(3) A postal vote certificate shall be in the approved form.

## 62 Inspection of applications

- (1) A DRO who issues a postal vote certificate and postal ballot-paper shall:
  - (a) write on the application the date of issue of the certificate and ballot-paper; and

- (b) if the DRO is not the appropriate DRO, send the application to the appropriate DRO.
- (2) An Assistant Returning Officer who issues a postal vote certificate and postal ballot-paper shall:
  - (a) write on the application the date of issue of the certificate and ballot-paper; and
  - (b) deal with the application in accordance with subsection 46A(8).
- (3) Subject to subsection (4), all applications for postal votes in relation to which a DRO is the appropriate DRO shall be open to public inspection at the office of the DRO during ordinary office hours from and including the third day after polling day until the referendum can no longer be questioned.
- (4) A DRO, before making applications for postal votes available for public inspection, must remove from any application by a person whose address has been removed from the Roll under section 104 of the *Commonwealth Electoral Act 1918* all information other than the person's name.

#### **62A Access to electronic list of postal vote applicants**

- (1) This section only applies to postal vote applications in respect of a referendum if the voting day for the referendum is not the same as the polling day for an election.

Note: If those days are the same, a person may be able to request a list of postal vote applicants under section 189A of the *Commonwealth Electoral Act 1918*.

- (2) A request for a list, in electronic form, of the postal vote applicants may be made to the Electoral Commission by:
  - (a) a Senator for a State or Territory if the postal vote applications are in respect of any Division in that State or Territory; or
  - (b) a member of the House of Representatives if the postal vote applications are in respect of the Division for which he or she is a member of the House of Representatives; or
  - (c) a registered political party if the postal vote applications are in respect of a Division in a State or Territory on the basis of which a branch or division of the party is organised.

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The request may be made on or after the third day after polling day and before the referendum can no longer be questioned.

- (3) The Electoral Commission must, as soon as practicable, comply with such a request.
- (4) The list may include the name and date of birth of a postal vote applicant and the address in respect of which the applicant claims to be enrolled.
- (5) However, before providing the list to a person or party, the Electoral Commission must remove from it all information concerning a person whose address has been excluded from the Roll under section 104 of the *Commonwealth Electoral Act 1918*, other than the person's name.

**62B Restriction on use or disclosure of information**

*Use of information*

- (1) A person is guilty of an offence if the person:
  - (a) uses information obtained from an electronic list of postal vote applicants provided by the Electoral Commission; and
  - (b) the use of the information is not for a permitted purpose (see subsections (4) and (5)).

Maximum penalty: 100 penalty units.

*Disclosure of information*

- (2) A person is guilty of an offence if:
  - (a) the person discloses information; and
  - (b) the person knows that, or is reckless as to whether, the information has been obtained from an electronic list of postal vote applicants provided by the Electoral Commission; and
  - (c) the disclosure would not be a use of the information for a permitted purpose (see subsections (4) and (5)).

Maximum penalty: 1,000 penalty units.

*Use of information for a commercial purpose*

- (3) A person is guilty of an offence if:
- (a) the person uses information for a commercial purpose; and
  - (b) the person knows that, or is reckless as to whether, the information has been obtained from an electronic list of postal vote applicants provided by the Electoral Commission.

Maximum penalty: 1,000 penalty units.

*Permitted purposes*

- (4) If the list was provided by the Electoral Commission to a Senator or member of the House of Representatives, the ***permitted purposes*** are:
- (a) any purpose connected with an election or referendum; and
  - (b) research about electoral matters; and
  - (c) the monitoring of the accuracy of information contained in a Roll; and
  - (d) the performance by the Senator or member of his or her functions as a Senator or member in relation to a person included in the list.
- (5) If the list was provided by the Electoral Commission to a registered political party, the ***permitted purposes*** are:
- (a) any purpose connected with an election or referendum; and
  - (b) research about electoral matters; and
  - (c) the monitoring of the accuracy of information contained in a Roll; and
  - (d) the performance by a Senator or member of the House of Representatives, who is a member of the party, of his or her functions as a Senator or member in relation to a person included in the list.

*Definitions*

- (6) In this section:
- election***, as well as having the meaning given by subsection 3(1), also includes:
- (a) a State or Territory election; and
  - (b) a local government election.

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*referendum*, as well as having the meaning given by subsection 3(1), also includes a referendum conducted under a law of a State or Territory.

**63 Numbering of applications and certificates**

- (1) A DRO or Assistant Returning Officer shall allocate a number to each application for a postal vote and shall number each postal vote certificate with a number corresponding to the number of the application.
- (2) The DRO or Assistant Returning Officer who issues a ballot-paper shall initial the top of the front of the paper.

**65 Postal voting**

- (1) The following requirements for postal voting shall be substantially observed:
  - (a) the elector shall show the unsigned postal vote certificate and the unmarked postal ballot-paper to an authorised witness;
  - (b) the elector shall sign the postal vote certificate in the presence of the authorised witness;
  - (c) the authorised witness shall sign the certificate as witness, adding the date and an indication of the capacity in which the witness acts;
  - (d) the elector shall then, in the presence of the authorised witness but so that the witness cannot see the vote, mark his or her vote on the ballot-paper, fold the ballot-paper, place it in the envelope on which the postal vote certificate is printed and fasten the envelope;
  - (e) the elector shall post or deliver the envelope to the appropriate DRO;
  - (f) if the elector cannot read or is so disabled as to be unable to vote without assistance, a person chosen by the elector may, according to the directions of the elector, do for the elector any act required by paragraph (d) or (e);
  - (g) directions under paragraph (f) may be given by reference to a how-to-vote card.
- (1A) A postal vote by an elector outside Australia that does not meet the requirements in subsection (1) concerning an authorised witness is,



despite that subsection, taken to meet those requirements for the purposes of this Act if:

- (a) the postal vote is accompanied by a signed statement by the elector setting out why the elector was unable to comply with those requirements; and
  - (b) the DRO or officer dealing with the postal vote under section 67 is satisfied that the elector made reasonable efforts to comply with those requirements; and
  - (c) the postal vote is accompanied by a photocopy, that is certified by the elector to be a true copy, of a part of the elector's passport that includes:
    - (i) the country and date of issue and the number of the passport; and
    - (ii) the elector's name, date of birth and signature; and
    - (iii) a photograph of the elector.
- (2) In spite of paragraph (1)(e), where:
- (a) a ballot-paper, if posted before the close of voting, would be unlikely to reach the appropriate DRO within 13 days after voting day; or
  - (b) a ballot-paper, if it were to be delivered to the appropriate DRO, would be unlikely to reach the DRO before the close of voting;
- the envelope containing the ballot-paper may:
- (c) before the close of voting be addressed to, and posted or delivered to, any other DRO or to an Assistant Returning Officer at a place outside Australia; or
  - (d) be handed to a pre-poll voting officer; or
  - (e) be delivered, on voting day and before the close of voting, to a presiding officer (other than an electoral visitor or mobile polling team leader who is deemed to be a presiding officer); or
  - (f) be handed to an electoral visitor when the electoral visitor:
    - (i) is visiting a special hospital for the purpose of taking votes under section 49; or
    - (ii) is visiting a prison for the purpose of taking votes under section 49A; or
  - (g) be handed to a mobile polling team leader when the team is at a station for the purpose of taking votes under section 51; or

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- (h) be handed, before the close of the poll, to a person who is at a capital city office of the Electoral Commission and who is:
  - (i) the holder of a particular office provided for by Division 3 or 4 of Part II of the *Commonwealth Electoral Act 1918* or by section 5 or 6 of this Act; or
  - (ii) a member of the staff of the Electoral Commission (not being the holder of a particular office referred to in subparagraph (i)) who is engaged under the *Public Service Act 1999* as an ongoing APS employee within the meaning of that Act, or who is employed under paragraph 35(1)(b) of the *Commonwealth Electoral Act 1918*.
- (3) A person to whom an envelope containing a ballot-paper is posted, delivered or handed under subsection (2) shall deal with the envelope and ballot-paper according to section 67.

**66 Duty of authorised witnesses etc.**

Except at the request of the elector, a person shall not:

- (a) interfere with an elector in relation to the marking of a postal ballot-paper; or
- (b) do anything that would enable the person or any other person to find out how an elector marked a postal ballot-paper.

Penalty: \$1,000.

**67 Procedure for dealing with postal vote certificates etc.**

- (1) In this section:

*officer* means:

- (a) a pre-poll voting officer; or
- (b) a presiding officer; or
- (c) the holder of a particular office (other than a DRO) provided for by Division 3 or 4 of Part II of the *Commonwealth Electoral Act 1918* or by section 5 or 6 of this Act; or
- (d) an electoral visitor; or
- (e) a mobile polling team leader; or
- (f) a member of the staff of the Electoral Commission referred to in subparagraph 65(2)(h)(ii).

*presiding officer* does not include an electoral visitor or mobile polling team leader who is deemed to be a presiding officer.

(2) Where:

(a) a DRO receives an envelope bearing a postal vote certificate and purporting to contain a postal ballot-paper issued in respect of a Division other than the Division for which the DRO is appointed; or

(b) an officer receives an envelope bearing a postal vote certificate and purporting to contain a postal ballot-paper;

the DRO or officer shall:

(c) endorse on the envelope “Received by me” and the date and time of receipt;

(d) sign the endorsement, adding the appropriate designation (see subsection (3));

(e) make a record of the name of the voter and the name of the Division as shown in the postal vote certificate;

(f) deal with the envelope in accordance with whichever of subsections (4), (5) and (6) applies.

(3) For the purposes of paragraph (2)(d), the appropriate designation is as set out in the following table.

<b>Item</b>	<b>If the person signing the endorsement is ...</b>	<b>the appropriate designation is ...</b>
1	a DRO	the words “Divisional Returning Officer”.
2	a pre-poll voting officer	the words “Pre-poll Voting Officer”.
3	a presiding officer	the words “Presiding Officer”.
4	an electoral visitor	the words “Electoral Visitor”.
5	a mobile polling team leader	the words “Mobile Polling Team Leader”.
6	the holder of any other office provided for by Division 3 or 4 of Part II of the <i>Commonwealth Electoral Act 1918</i> or by section 5 or 6 of this Act	the title of the office.
7	a member of the staff of the Electoral Commission referred to in subparagraph 65(2)(h)(ii)	the words “Member of the Staff of the Electoral Commission”.

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- (4) If an envelope purporting to bear a postal vote is received as mentioned in subsection (2) by a DRO, or by an officer who is:
  - (a) a pre-poll voting officer; or
  - (b) a presiding officer; or
  - (c) an Assistant Returning Officer who is outside Australia;the DRO or officer must (after complying with the other requirements of subsection (2)):
  - (d) place the envelope in a ballot-box; and
  - (e) keep the envelope in the ballot-box until the envelope is dealt with in accordance with section 46A.
- (5) If an envelope purporting to bear a postal vote is received as mentioned in subsection (2) by an officer who is an electoral visitor or a mobile polling team leader, the officer must (after complying with the other requirements of subsection (2)):
  - (a) place the envelope in a ballot-box; and
  - (b) keep the envelope in the ballot-box until the ballot-box is forwarded to the designated Assistant Returning Officer as required by whichever of subsections 49(8), 49A(7) and 51(10) is applicable; and
  - (c) when so forwarding the ballot-box to the designated Assistant Returning Officer, also forward to that Assistant Returning Officer the record made by the electoral visitor or mobile polling team leader under paragraph (2)(e).
- (6) If an envelope purporting to bear a postal vote is received as mentioned in subsection (2) by an officer (other than an officer referred to in subsection (4) or (5)) who is at a capital city office of the Electoral Commission:
  - (a) the officer must (after complying with subsection (2)) place the envelope in a ballot-box made available for the purpose by the DRO for the Division in which the capital city office is located; and
  - (b) the ballot-box containing the envelope must be forwarded to the DRO, or made available to be collected by the DRO, in accordance with instructions of the DRO; and
  - (c) until the ballot-box is so forwarded or collected, the envelope must be kept in the ballot-box; and

- (d) the record made by the officer under paragraph (2)(e) must be forwarded to the DRO, or made available to be collected by the DRO, in accordance with instructions of the DRO.
- (7) Instructions referred to in paragraphs (6)(b) and (d) are not legislative instruments.

### **68 Opening of postal ballot-paper**

- (1) A person other than:
- (a) the DRO for the Division in respect of which a postal ballot-paper has been issued; or
  - (b) an officer acting at the direction of the DRO;
- shall not open an envelope that purports to contain a postal ballot-paper on which a vote has been recorded.

Penalty: \$500.

- (2) Strict liability applies to an offence against subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **69 Failure to post or deliver postal vote application etc.**

A person to whom an elector entrusts:

- (a) an application for a postal vote; or
  - (b) an envelope apparently containing a postal ballot-paper;
- for posting or delivery to an officer shall post or deliver the application or envelope, as the case may be, as soon as practicable.

Penalty: \$1,000.

### **70 Inducing elector to hand over marked ballot-paper**

A person shall not induce an elector to hand over to the person a postal ballot-paper on which a vote has been recorded.

Penalty: \$1,000.

### **71 Correction of formal errors**

If an officer who receives:

- (a) an application for a postal vote; or

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(b) a postal vote certificate;  
is satisfied that the application or certificate contains a formal error, the officer may amend the application or certificate to correct the error.

## **Part IVA—Pre-poll voting**

### **72 Grounds of application for pre-poll vote**

- (1) An elector may apply for a pre-poll vote on any of the grounds set out in Schedule 3.
- (2) A person who is provisionally enrolled may apply for a pre-poll vote.
- (3) In this Part and in Schedule 4:
  - (a) a reference to an elector includes a reference to a person who has applied for a pre-poll vote under subsection (2); and
  - (b) a reference to the Division in which an elector is enrolled includes a reference to the Division in which the person is provisionally enrolled.

### **73 Pre-poll voting officers**

- (1) The Electoral Commission may appoint a person to be a pre-poll voting officer for the purposes of this Act.
- (2) A person who is a pre-poll voting officer for the purposes of the *Commonwealth Electoral Act 1918* is also a pre-poll voting officer for the purposes of this Act.

### **73AA Pre-poll voting offices**

- (1) The Electoral Commission may declare, in writing, for a referendum:
  - (a) a specified place to be a pre-poll voting office; and
  - (b) the day or days on which, and the hours during which, applications for pre-poll votes may be made to a pre-poll voting officer at that place.
- (2) If the Electoral Commission makes a declaration under subsection (1), the Electoral Commission must:
  - (a) unless paragraph (b) applies, cause a copy of the declaration to be published in the *Gazette* before the first day (the *first*

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- pre-poll voting day*) specified in the declaration under paragraph (1)(b); or
- (b) if, because of exceptional circumstances, the declaration is made on the first pre-poll voting day, or so close to the first pre-poll voting day that the Electoral Commission is not able to cause a copy of the declaration to be published in the *Gazette* before that day:
    - (i) comply with subsection (3); and
    - (ii) cause a copy of the declaration to be published in the *Gazette* as soon as practicable after making the declaration.
- (3) For the purposes of subparagraph (2)(b)(i), the Electoral Commission must, as soon as practicable after making the declaration:
- (a) take all reasonable steps to inform each registered political party that the Electoral Commission considers it appropriate to inform, of the place, the day or days, and the hours specified in the declaration; and
  - (b) if it considers it appropriate to do so, publish in a newspaper circulating in the Division in which the place specified in the declaration is located a notice stating:
    - (i) that the place has been declared to be a pre-poll voting office; and
    - (ii) the day or days on which, and the hours during which, applications for pre-poll votes may be made to a pre-poll voting officer at that place.
- (4) A declaration made under subsection (1) is not a legislative instrument.
- (5) In this section:

*registered political party* has the same meaning as in the *Commonwealth Electoral Act 1918*.

**73A Application for pre-poll vote**

- (1) An application for a pre-poll vote may be made to:
- (a) a Divisional Returning Officer;
  - (b) a pre-poll voting officer; or
  - (c) an Assistant Returning Officer at a place outside Australia.
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- (2) The application must be made by the elector in person.
- (3) The elector making the application shall inform the officer to whom the application is made of:
  - (a) the Division for which the elector is enrolled; and
  - (b) any matters prescribed by the regulations.

### **73B Place and time of application**

- (1) An application to a DRO shall be made at the office of the DRO during ordinary office hours or during the hours of voting on voting day.
- (2) An application to a pre-poll voting officer must be made:
  - (a) at a pre-poll voting office; and
  - (b) on a day, and during the hours, specified in the declaration made under subsection 73AA(1) for making such applications at that office.
- (3) An application to an Assistant Returning Officer must be made:
  - (a) at the office of the Assistant Returning Officer; and
  - (b) during ordinary office hours or during such other hours as the Assistant Returning Officer fixes.
- (4) Subject to subsection (5), where the voting day for a referendum is the same as the polling day for a House of Representatives election in a Division, an application by an elector cannot be made before the day after the day on which nominations for the election are declared under subsection 176(2) of the *Commonwealth Electoral Act 1918*.
- (5) Where the voting day for a referendum is the same as the polling day for a Senate election to be held in a State or Territory, an application by an elector cannot be made before the second day after the day on which nominations for the election are declared under subsection 176(1) of the *Commonwealth Electoral Act 1918*.
- (6) An elector may not make an application after the close of voting in the State or Territory in which the elector is making the application.

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**73C Election and referendum on the same day**

Where the voting day for a referendum is the same as the polling day for an election:

- (a) a place declared by the Electoral Commission under subsection 200BA(1) of the *Commonwealth Electoral Act 1918* for the purposes of the election shall be regarded as having been declared under subsection 73AA(1) of this Act for the purposes of the referendum;
- (b) an application for a pre-poll vote in the election also has effect as an application for a pre-poll vote in the referendum;
- (c) a pre-poll vote certificate for the purposes of the election also has effect as a pre-poll vote certificate for the purposes of the referendum;
- (d) a reference in such an application or certificate to the election shall be regarded as including a reference to the referendum; and
- (e) a ballot-paper bearing the pre-poll vote of an elector in the referendum may be enclosed in the same envelope as the ballot-paper bearing the elector's pre-poll vote in the election.

**73CA Appointment of scrutineers**

- (1) The Governor-General, or a person authorised by him or her to act under this subsection, may appoint one person to act as a scrutineer during voting at a referendum at each pre-poll voting office for the referendum.
- (2) The Governor of a State, or a person authorised by him or her to act under this subsection, may appoint one person to act as a scrutineer during the voting at a referendum at each pre-poll voting office for the referendum in that State.
- (3) The Chief Minister for the Australian Capital Territory, or a person authorised by him or her to act under this subsection, may appoint one person to act as a scrutineer during the voting at a referendum at each pre-poll voting office for the referendum in the Australian Capital Territory.
- (4) The Administrator of the Northern Territory, or a person authorised by him or her to act under this subsection, may appoint one person

to act as a scrutineer during the voting at a referendum at each pre-poll voting office for the referendum in the Northern Territory.

- (5) The registered officer of a registered political party may appoint persons to act as scrutineers during voting at a referendum at pre-poll voting offices for the referendum, but not more than one scrutineer for each party is allowed at each pre-poll voting office at any one time.
- (6) In this section:

*registered officer*, in relation to a registered political party, has the same meaning as in Part XIV of the *Commonwealth Electoral Act 1918*.

*registered political party* has the same meaning as in the *Commonwealth Electoral Act 1918*.

### **73CB Provisions relating to scrutineers**

- (1) A person is guilty of an offence if the person:
- (a) is a scrutineer appointed under section 73CA; and
  - (b) interferes with or attempts to influence any elector within a pre-poll voting office.

Penalty: Imprisonment for 6 months.

- (2) A person is guilty of an offence if:
- (a) the person is a scrutineer appointed under section 73CA; and
  - (b) the person communicates with someone else in a pre-poll voting office; and
  - (c) the communication is not reasonably necessary for the discharge of the person's functions as a scrutineer.

Penalty: Imprisonment for 6 months.

- (3) A scrutineer appointed under section 73CA must not be prevented from entering or leaving a pre-poll voting office on a day, and during the hours, declared under paragraph 73AA(1)(b).
- (4) A person who is in a pre-poll voting office in the capacity of a scrutineer must wear a badge, supplied by the Electoral Commission, that identifies the person as a scrutineer.

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- (5) A scrutineer appointed under section 73CA who:
- (a) commits any breach of this section; or
  - (b) is guilty of misconduct at a pre-poll voting office; or
  - (c) fails at a pre-poll voting office to obey the lawful directions of a pre-poll voting officer;
- may be removed from the polling booth by a constable.

**73D Pre-poll voting**

- (1) The officer to whom an application for a pre-poll vote is made (in this section called *the issuing officer*) shall issue to the elector a pre-poll vote certificate and a ballot-paper.
- (2) Before issuing the ballot-paper, the officer shall initial the top of the front of the paper.
- (3) The elector shall sign the pre-poll vote certificate in the presence of the issuing officer.
- (4) The issuing officer shall then sign the pre-poll vote certificate as witness, adding the date.
- (5) The elector shall then, in the presence of the issuing officer but so that the officer cannot see the vote, mark his or her vote on the ballot-paper, fold the ballot-paper and return it to the issuing officer.
- (6) The issuing officer shall immediately place the ballot-paper in the envelope bearing the pre-poll vote certificate, fasten the envelope and, until the envelope is dealt with under section 46A, keep the envelope in a ballot-box.
- (7) If the elector satisfies the officer that the elector cannot read or is so disabled as to be unable to vote without assistance, a person chosen by the elector may, according to the directions of the elector, do any of the following acts:
  - (a) fill in the pre-poll vote certificate with the required particulars;
  - (b) read the certificate to the voter;
  - (c) complete the certificate;
  - (d) mark the elector's vote on the ballot-paper;
  - (e) fold the ballot-paper and return it to the officer.

- (8) Directions under subsection (7) may be given by reference to a how-to-vote card.
- (9) An elector to whom a pre-poll vote certificate and ballot-paper have been issued is not entitled:
  - (a) to vote at a polling booth; or
  - (b) to remove the certificate or ballot-paper from the office of the officer who issued it.

**73E Form of pre-poll vote certificate**

A pre-poll vote certificate shall:

- (a) be in the approved form;
- (b) carry a distinguishing number that is the same as the number allocated to the record of the application for the certificate; and
- (c) be printed on an envelope addressed to the DRO for the Division for which the elector declares that he or she is enrolled.

**73F Record of issue of pre-poll voting papers**

- (1) Where the DRO for a Division issues a pre-poll vote certificate and ballot-paper to a person enrolled for the Division, the DRO shall make a record of the date of issue of the certificate and ballot-paper and the name of the person and shall allocate a number to the record.
- (2) Where:
  - (a) any other DRO;
  - (b) a pre-poll voting officer; or
  - (c) an Assistant Returning Officer at a place outside Australia;issues a pre-poll vote certificate and ballot-paper, he or she shall:
  - (d) make a record of the date of issue of the certificate and ballot-paper, the name of the person to whom the certificate and ballot-paper were issued and the name of the Division for which the person is enrolled and shall allocate a number to the record; and
  - (e) deal with the record of the issue of the certificate and ballot-paper in accordance with section 46A.

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- (3) Records made by a DRO under subsection (1) and records forwarded to the DRO under section 46A shall be open to public inspection at the office of the DRO during ordinary office hours from and including the third day after voting day until the referendum can no longer be questioned.

**73H Opening of pre-poll voting envelope**

- (1) A person other than:
  - (a) the DRO for the Division in respect of which a pre-poll vote ballot-paper has been issued; or
  - (b) an officer acting at the direction of the DRO;shall not open an envelope purporting to contain a ballot-paper given to an officer under subsection 73D(5) or (7).

Penalty: \$500.

- (2) Strict liability applies to an offence against subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**73J Obligations of persons present when pre-poll vote cast**

A person who is present when an elector signs a pre-poll vote certificate or marks a ballot-paper in the presence of an officer:

- (a) shall obey all directions of the officer; and
- (b) except at the request of the elector:
  - (i) shall not make any communication to the elector in relation to the elector's vote;
  - (ii) shall not assist the elector or in any way interfere with the elector in relation to the elector's vote; and
  - (iii) shall not do anything that would enable the person to find out how the elector marked the ballot-paper.

Penalty: \$1,000.

**73K Correction of formal errors**

If an officer who receives a pre-poll vote certificate under subsection 73D(5) is satisfied that the certificate has a formal error, the officer may amend the certificate to rectify the defect or correct the error.

## **Part IVB—Trials of electronic voting methods**

### **Division 1—Trial of electronically assisted voting for sight-impaired people**

#### **73L Definitions**

In this Division:

*sight-impaired person* means a person whose sight is impaired to the extent that he or she is unable to vote without assistance.

*vote record* has the meaning given by subsection 73P(1).

#### **73M Regulations may provide for voting by an electronically assisted voting method**

- (1) Subject to subsection (2), the regulations may provide for sight-impaired people to vote by an electronically assisted voting method at the first referendum held after the commencement of this section.
- (2) The regulations must provide that a person may vote by an electronically assisted voting method at the referendum referred to in subsection (1) only if the referendum is held on the same day as an election at which sight-impaired people are able to vote by an electronically assisted voting method under regulations that have effect for the purposes of Division 1 of Part XVB of the *Commonwealth Electoral Act 1918*.
- (3) Without limiting the generality of subsection (1), the regulations may:
  - (a) determine, or provide for the determination of, the following:
    - (i) the electronically assisted voting method;
    - (ii) matters related to the voting using the electronically assisted voting method, including the provision of assistance to persons using the method, what has to be done after a person has used the method, and matters of privacy and secrecy;

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- (iii) the number of places where the electronically assisted voting method is to be available, where those places are, and the days and hours when the method is to be available;
    - (iv) which persons may use the electronically assisted voting method, including a process of applying to use the method; and
  - (b) allow the electronically assisted voting method to be used in a particular period before voting day, as well as on voting day; and
  - (c) provide for other matters related to the integrity of the use of the electronically assisted voting method.
- (4) The electronically assisted voting method must be such that a person using the method at the referendum referred to in subsection (1):
  - (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot-paper for the referendum that the person would be given if he or she were instead voting under Part III; and
  - (b) is able to indicate his or her vote in a way that, if he or she were instead marking a ballot-paper, would satisfy the requirements of section 24.
- (5) The regulations may provide for offences in relation to the electronically assisted voting method, and may prescribe penalties for those offences. A prescribed penalty must not exceed 50 penalty units.
- (6) Nothing in this Division or in regulations made for the purposes of this Division authorises any person to vote more than once at a referendum.

**73N There must be a record of who has voted using the electronically assisted voting method**

The regulations must require the making of a record of each person who has voted using the electronically assisted voting method. The regulations may specify the information that is to be included in the record.



**73P There must be a printed record of the vote**

- (1) The regulations must provide, in relation to each vote cast by a person using the electronically assisted voting method, for the production of a printed record (a *vote record*) of the vote the person has cast. The vote record must not contain any means of identifying the person who cast the vote.
- (2) The regulations must provide for each vote record to be placed, by a DRO or a pre-poll voting officer, in an envelope that bears a declaration in the approved form. The regulations may specify other requirements relating to the envelope or the declaration.

**73Q How this Act applies in relation to voting using the electronically assisted voting method**

- (1) This Act (other than Part IVA and Schedule 3) applies in relation to a vote cast using the electronically assisted voting method as if the vote were a pre-poll vote.

Note: Pre-poll votes are a kind of declaration vote. This Act will therefore apply to votes cast using the electronically assisted voting method as if they were that kind of declaration vote.

- (2) For the purposes of this Act as it applies because of subsection (1):
  - (a) a vote record is to be treated as if it were a pre-poll vote ballot-paper; and
  - (b) the placing of a vote record in an envelope as mentioned in subsection 73P(2) is to be treated as if it were the placing of a ballot-paper in an envelope under subsection 73D(6); and
  - (c) a declaration on an envelope as mentioned in subsection 73P(2) is to be treated as if it were a pre-poll vote certificate; and
  - (d) a record made as mentioned in section 73N is to be treated as if it were a record made under subsection 73F(2).
- (3) If a person casts a vote using the electronically assisted voting method, the requirements of this Act relating to the person's right to receive a ballot-paper are taken to have been satisfied.
- (4) The regulations may make additional provisions relating to how this Act applies in relation to votes cast using the electronically assisted voting method.

## **Division 2—Trial of remote electronic voting for defence personnel serving outside Australia**

### **73R Definitions**

In this Division:

*defence civilian* has the same meaning as in the *Defence Force Discipline Act 1982*.

*defence member* has the same meaning as in the *Defence Force Discipline Act 1982*.

*electronic vote record* has the meaning given by subsection 73U(1).

*printed vote record* has the meaning given by subsection 73U(2).

*registered remote electronic voter* means a defence member or defence civilian who is registered as a remote electronic voter under regulations that have effect for the purposes of section 202AI of the *Commonwealth Electoral Act 1918*.

### **73S Regulations may provide for remote electronic voting by defence personnel serving outside Australia**

- (1) Subject to subsection (2), the regulations may provide for defence members and defence civilians who:
  - (a) are registered remote electronic voters; and
  - (b) are serving outside Australia at the time of the first referendum held after the commencement of this section;to vote by a remote electronic voting method at that referendum.
- (2) The regulations must provide that a person who is a registered remote electronic voter may vote by a remote electronic voting method at the referendum referred to in subsection (1) only if the referendum is held on the same day as an election at which that person is able to vote by a remote electronic voting method under regulations that have effect for the purposes of Division 2 of Part XVB of the *Commonwealth Electoral Act 1918*.

- (3) Without limiting the generality of subsection (1), the regulations may:
- (a) determine, or provide for the determination of, the following:
    - (i) the remote electronic voting method;
    - (ii) a method for verifying the identity of persons using the remote electronic voting method;
    - (iii) matters relating to the voting using the remote electronic voting method, including what has to be done after a person has used the method, and matters of privacy and secrecy;
    - (iv) the number of places where the remote electronic voting method is to be available, where those places are, and the days and hours when the method is to be available; and
  - (b) allow the remote electronic voting method to be used in a particular period before voting day, as well as on voting day; and
  - (c) provide for any other matters related to the integrity of the use of the remote electronic voting method.
- (4) The remote electronic voting method must be such that a person using the method at the referendum referred to in subsection (1):
- (a) receives the same information (in the same order), and has the same voting options, as would appear in the ballot-paper for the referendum that the person would be given if he or she were instead voting under Part III; and
  - (b) is able to indicate his or her vote in a way that, if he or she were instead marking a ballot-paper, would satisfy the requirements of section 24.
- (5) The regulations may provide for offences in relation to the remote electronic voting method, and may prescribe penalties for those offences. A prescribed penalty must not exceed 50 penalty units.
- (6) Nothing in this Division or in regulations made for the purposes of this Division authorises any person to vote more than once at a referendum.

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**73T There must be a record of who has voted using the remote electronic voting method**

The regulations must require the making of a record of each person who has voted using the remote electronic voting method. The regulations may specify the information that is to be included in the record.

**73U Transmission of electronic votes to the Electoral Commission and scrutiny of votes**

- (1) The regulations must provide, in relation to each vote cast by a person using the remote electronic voting method:
  - (a) for the secure transmission of an electronic record of the vote (an *electronic vote record*) to the Electoral Commission; and
  - (b) for the secure keeping of the electronic vote record until it is so transmitted.
- (2) The regulations must provide for the production, for the purposes of the scrutiny, of a printed record (a *printed vote record*) of each electronic vote record transmitted to the Electoral Commission. The printed vote record must not contain any means of identifying the person who cast the vote.
- (3) The regulations may specify other requirements relating to any of the following:
  - (a) the secure keeping and secure transmission of electronic vote records;
  - (b) printed vote records;
  - (c) the scrutiny of votes cast using the remote electronic voting method.

**73V How this Act applies in relation to voting using the remote electronic voting method**

- (1) This Act applies to a printed vote record in the same way as it would apply if that vote record were a ballot-paper.
- (2) If a person casts a vote using the remote electronic voting method, the requirements of this Act relating to the person's right to receive a ballot-paper are taken to have been satisfied.

- (3) The regulations may make additional provisions relating to how this Act applies in relation to votes cast using the remote electronic voting method.

## **Part V—Special provisions relating to voting in Antarctica at a referendum**

### **74 Interpretation**

- (1) In this Part, *transmit* includes transmit by radio-telephone or telex.
- (2) An elector is entitled to vote at a referendum in accordance with this Part if he or she has, before the expiration of 11 days after the issue of the writ for the referendum or, where the voting day for the referendum is the same as that fixed for the polling at an election and the day fixed for the nomination for the election is later than 11 days after the issue of the writ for the election, the day fixed for the nomination for the election, given to a Divisional Returning Officer a notice under subsection 249(1) of the *Commonwealth Electoral Act 1918*.

### **75 Application of Part III to voting in Antarctica**

- (1) Except as provided by this Part, the provisions of Part III (other than sections 23, 24, 35, 36 and 41) do not apply to voting at a referendum in Antarctica.
- (2) In the application, by virtue of this Part, of a provision of Part III to voting at a referendum in Antarctica:
  - (a) a reference in that provision to the presiding officer in relation to a polling place shall be read as a reference to the Antarctic Returning Officer in relation to a station; and
  - (b) a reference in that provision to a polling official in relation to a polling place shall be read as a reference to the Assistant Antarctic Returning Officer in relation to a station.

### **76 Arrangements for voting in Antarctica**

- (1) If there is an Antarctic elector on the Roll for a State, the Australian Electoral Officer for the State shall, before the voting day for a referendum, cause to be transmitted to the Antarctic Returning Officer at whose station the elector is based:

- (a) directions for the preparation by the Antarctic Returning Officer of ballot-papers for use in the referendum; and
  - (b) the name of the elector and the particulars relating to the elector that are entered on the Roll for the State.
- (2) Where information is transmitted by an Australian Electoral Officer to an Antarctic Returning Officer pursuant to this section, both the Australian Electoral Officer and the Antarctic Returning Officer shall, immediately after the transmission, cause a statement in writing of the information transmitted to be prepared.
- (3) Section 25 applies in relation to ballot-papers prepared under this section.

### **77 Ballot-papers to be initialled**

Section 26 applies to the voting at a referendum at a station in Antarctica as if references in that section to the presiding officer were references to the Antarctic Returning Officer for that station.

### **78 The voting at a referendum in Antarctica**

- (1) The voting at a referendum at a station in Antarctica shall be conducted as follows:
- (a) before any vote is taken, the Antarctic Returning Officer for the station shall exhibit the ballot-box empty, and shall then securely fasten its cover;
  - (b) subject to subsection (2), the voting shall be conducted during such hours on such days as the Antarctic Returning Officer directs;
  - (c) the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall, at all times when voting is being conducted, be present in that part of the station at which the voting is taking place.
- (2) The voting at a referendum at a station shall not continue beyond 6 o'clock in the afternoon by standard time in the Australian Capital Territory on the voting day for the referendum.

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**79 Entitlement of Antarctic electors to vote at referendum**

An Antarctic elector whose name has been transmitted to the Antarctic Returning Officer for a station pursuant to paragraph 76(1)(b) is entitled to vote at a referendum at the station during any period when voting at the referendum is being conducted at the station.

**80 Questions to be put to voter at Antarctic station**

- (1) The Antarctic Returning Officer for a station shall put to each person claiming to vote at the station such questions as the officer thinks necessary to enable the person's identity and place of living to be established.
- (2) If a person claiming to vote refuses to answer fully a question put to him or her under this section, the person's claim to vote at the station shall be rejected.

**81 Right of Antarctic elector to receive ballot-paper**

The Antarctic Returning Officer or the Assistant Antarctic Returning Officer for a station shall give to each person claiming to vote at a referendum at the station a ballot-paper for the State for which the person is enrolled, duly initialled by the Antarctic Returning Officer, if the name under which the person claims to vote has been transmitted to the Antarctic Returning Officer pursuant to paragraph 76(1)(b) and the person's claim to vote is not rejected.

**82 List of Antarctic electors to be marked**

Immediately upon giving a ballot-paper to the person claiming to vote at a referendum, the Antarctic Returning Officer or the Assistant Antarctic Returning Officer shall record on the statement prepared by the Officer under subsection 76(2) the fact that the ballot-paper has been given to that person.

**83 Application of sections 35 and 36**

Sections 35 and 36 apply to the polling at a station as if:



- (a) each reference in those sections to an unoccupied compartment of the booth were a reference to an unoccupied part of the station; and
- (b) paragraph 35(c) were omitted.

#### **84 Proceedings by Antarctic Returning Officer upon close of poll**

At the close of the voting at a referendum, the Antarctic Returning Officer shall, in the presence of the Assistant Antarctic Returning Officer:

- (a) open the ballot-box;
- (b) transmit to the Australian Electoral Officer designated by the Electoral Commissioner, for the purpose of this paragraph:
  - (i) particulars of each such elector who has so voted;
  - (ii) unless subparagraph (iii) applies—particulars of the marking of each ballot-paper; and
  - (iii) if the Antarctic Returning Officer is unable clearly to read or understand the particulars referred to in subparagraph (ii)—a statement to that effect together with such information relating to those particulars as the Antarctic Returning Officer thinks sufficient to explain that inability; and
- (c) cause a statement in writing of the information transmitted to be prepared.

#### **85 Result of the polling in Antarctica**

- (1) Upon receipt of the particulars referred to in subparagraph 84(b)(ii), an Australian Electoral Officer shall forthwith:
  - (a) initial the top of the front of a ballot-paper appropriate for the State for which the vote was cast;
  - (b) cause those particulars to be transcribed onto the ballot-paper;
  - (c) seal the ballot-paper in an envelope;
  - (d) sign the envelope; and
  - (e) cause to be sent to the Divisional Returning Officer for the Division to which the elector is enrolled the envelope containing the ballot-paper.

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- (2) An officer shall not mark a ballot-paper under this section in a manner that is likely to enable the ballot-paper to be identified as representing the vote of an Antarctic elector.
- (3) Upon receipt of information under subsection (1), an Australian Electoral Officer shall, forthwith:
  - (a) cause a statement in writing of that information to be prepared; and
  - (b) cause to be sent to each Divisional Returning Officer for a Division particulars of the Antarctic electors (if any) enrolled for that Division who have voted at the referendum.
- (4) A reference in Part VI to scrutiny:
  - (a) includes a reference to scrutiny of any act or thing done pursuant to paragraphs (1)(a) to (d) (inclusive); and
  - (b) does not include a reference to scrutiny of:
    - (i) any act or thing done in Antarctica; or
    - (ii) the transmission of any information to or from Antarctica.

**86 Preservation of ballot-papers etc.**

- (1) As soon as practicable after the close of the voting at a referendum, the Antarctic Returning Officer for each station shall forward to the Electoral Commission a copy of the statements prepared by the Officer under subsection 76(2) and paragraph 84(c) and the ballot-papers used for voting at the station.
- (2) The documents to which this subsection applies that are used at or in connection with a referendum shall be preserved in accordance with directions of the Commission for the purposes of this subsection until:
  - (a) the referendum can no longer be questioned; or
  - (b) the expiration of the period of 6 months commencing on the date of the return of the writ;whichever last occurs.
- (3) Subsection (2) applies to the following documents:
  - (a) the statements referred to in subsection 76(2), paragraph 84(c) and paragraph 85(3)(a);
  - (b) the ballot-papers referred to in paragraph 85(1)(b); and

- (c) the ballot-papers prepared by an Antarctic Returning Officer and used for voting in Antarctica.

### **87 Application of Part**

This Part applies in relation to a Territory as if a reference in this Part to a State were a reference to a Territory.

### **88 Election and referendum on same day**

Where the voting day for a referendum is the same as that fixed for the polling at an election:

- (a) any statement in writing relating to the referendum that is required to be prepared under this Part may be recorded on the piece of paper on which is recorded the corresponding statement under Part XVII of the *Commonwealth Electoral Act 1918*;
- (b) the same ballot-boxes may be used for voting in Antarctica for the purposes of both the election and the referendum; and
- (c) the same envelope may be used for the purposes of sending ballot-papers used for both the referendum and the election to a Divisional Returning Officer.

## Part VI—Scrutiny of a referendum

### 89 Ascertainment of result of referendum

- (1) The result of a referendum shall be ascertained by scrutiny.
- (2) The Governor-General, or a person authorized by the Governor-General to act under this subsection, may appoint one person to act as a scrutineer during the scrutiny at each counting centre.
- (3) The Governor of a State, or a person authorized by the Governor to act under this subsection, may appoint one person to act as a scrutineer during the scrutiny at each counting centre in that State.
- (3A) The Chief Minister for the Australian Capital Territory, or a person authorised by him or her to act under this subsection, may appoint one person to act as a scrutineer during the scrutiny at each counting centre in the Territory.
- (4) The Administrator of the Northern Territory, or a person authorized by the Administrator to act under this section, may appoint one person to act as a scrutineer during the scrutiny at each counting centre in the Northern Territory.
- (4A) The registered officer of a registered political party may appoint persons to act as scrutineers during the scrutiny at each counting centre, but the number of scrutineers for each party shall not exceed the number of officers who are engaged in the scrutiny at each counting centre.
- (5) In this section:

**counting centre** means any premises at which a scrutiny or counting of ballot-papers for a referendum is to be, or is being, conducted.

**registered officer**, in relation to a registered political party, has the same meaning as the expression has in Part XIV of the *Commonwealth Electoral Act 1918* by virtue of section 4C of that Act.

*registered political party* has the same meaning as in the *Commonwealth Electoral Act 1918*.

### **89A Preliminary scrutiny of declaration votes**

- (1) At any time on or after the last Monday before the close of voting in a Division, the DRO shall conduct such preliminary scrutinies as he or she considers necessary until:
  - (a) all written applications for postal votes have been produced;
  - (b) all envelopes received by the DRO before the end of 13 days after the close of voting and purporting to contain postal ballot-papers have been dealt with under this section; and
  - (c) all other envelopes received by officers prior to the close of the poll and purporting to contain ballot-papers bearing declaration votes have been dealt with under this section.
- (2) The DRO shall give notice of the commencement of a preliminary scrutiny as follows:
  - (a) a notice specifying the date, time and place of commencement shall be displayed in a prominent place in the DRO's office;
  - (b) the notice shall be displayed not later than 4 p.m. on the day before the day of commencement.
- (3) A preliminary scrutiny for a Division shall be conducted according to the rules set out in Schedule 4.
- (4) The DRO may, from time to time, adjourn a preliminary scrutiny to a specified day, time and place.
- (5) For the purposes of this Part, anything done under this section in relation to a referendum shall be taken to be part of the scrutiny in relation to the referendum.

### **90 Conduct of scrutiny**

- (1) The scrutiny of votes at a referendum shall be conducted in accordance with the following provisions:
  - (a) it shall commence as soon as practicable after the close of voting at the referendum;

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- (b) the scrutineers appointed under section 89 and any persons approved by the officer conducting the scrutiny may be present;
  - (c) the scrutineers may inspect all the proceedings at the scrutiny;
  - (d) the scrutiny may, if necessary, be adjourned from time to time until the counting of the votes is completed;
  - (e) each Assistant Returning Officer shall, in the presence of a polling official and any scrutineers who attend:
    - (i) exhibit for the inspection of the scrutineers each ballot-box received from a presiding officer, electoral visitor or mobile polling team leader;
    - (ii) record the condition of the ballot-box;
    - (iii) check the accuracy of the statement forwarded with the ballot-box by the presiding officer or electoral visitor by:
      - (A) removing the ballot-papers from the box;
      - (B) counting, but not inspecting, them; and
      - (C) recording the number of ballot-papers removed from the box;
  - (f) ballot-boxes not opened by an Assistant Returning Officer shall be opened by a Divisional Returning Officer.
- (2) A person who is present at the scrutiny in the capacity of a scrutineer shall wear a badge, supplied by the Electoral Commission, that identifies the person as a scrutineer.

**91 Action at scrutiny**

- (1) At the scrutiny, the following things shall be done:
- (a) the ballot-papers shall be taken out of the ballot-boxes, examined and either allowed or rejected as informal;
  - (b) the number of informal ballot-papers shall be recorded;
  - (c) the votes on the formal ballot-papers shall be counted and a record of them taken;
  - (d) when the counting is completed, all the ballot-papers shall be made up into separate sealed parcels for all the informal ballot-papers, all the ballot-papers containing a vote in favour of the proposed law, and all the ballot-papers containing a vote not in favour of the proposed law respectively or, if

- more than one referendum was held on the same day, into such parcels as the Electoral Commissioner directs;
- (e) each Divisional Returning Officer shall, forthwith after completing the scrutiny of the ballot-papers taken from the ballot-boxes opened by the Officer and making those ballot-papers into sealed parcels, prepare a statement showing, in relation to those ballot-papers:
    - (i) the number of votes given in favour of the proposed law;
    - (ii) the number of votes given not in favour of the proposed law; and
    - (iii) the number of ballot-papers rejected as informal;
  - (f) each Assistant Returning Officer shall, forthwith after completing the scrutiny of the ballot-papers taken from the ballot-boxes opened by the Officer, send to the relevant Divisional Returning Officer the sealed parcels of ballot-papers together with a statement showing, in relation to those ballot-papers:
    - (i) the number of votes given in favour of the proposed law;
    - (ii) the number of votes given not in favour of the proposed law; and
    - (iii) the number of ballot-papers rejected as informal;
  - (g) the Divisional Returning Officer:
    - (i) shall open the sealed parcels of ballot-papers received from the Assistant Returning Officers in or for the Division; and
    - (ii) shall make a fresh scrutiny of the ballot-papers contained in the parcels, and, for the purpose of that scrutiny, shall have the same powers as if it were the original scrutiny, and may reverse any decision given by an Assistant Returning Officer in relation to the original scrutiny.
- (2) Ballot-papers used for absent voting pursuant to section 46 shall be dealt with as provided by this Act.
- (3) Ballot-papers used for voting pursuant to Part IV shall be dealt with as provided by that Part and the regulations.

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- (4) Ballot-papers used for voting pursuant to sections 37, 38, 39 and 65 shall be dealt with as provided by those sections and the regulations.

**92 Action on objection to ballot-papers**

- (1) If, at the scrutiny, a scrutineer appointed under section 89 objects to a ballot-paper as being informal, the officer conducting the scrutiny shall mark the ballot-paper “allowed” or “rejected” according to his or her decision to allow or reject the ballot-paper.
- (2) Nothing in this section prevents an officer conducting the scrutiny from rejecting any ballot-paper as being informal although it is not objected to.

**93 Informal ballot-papers**

- (1) A ballot-paper is informal if:
  - (a) subject to subsection (3), it is not authenticated by the initials of a presiding officer or by the presence of the official mark;
  - (b) it has no vote marked on it or the voter’s intention is not clear;
  - (c) it has more than one vote marked on it; or
  - (d) it has upon it any mark or writing (not authorized by this Act or by the regulations to be put upon it) by which, in the opinion of a Divisional Returning Officer, the voter can be identified.
- (3) A ballot-paper to which paragraph (1)(a) applies shall not be informal by virtue of that paragraph if the Divisional Returning Officer responsible for considering the question of the formality of the ballot-paper is satisfied that it is an authentic ballot-paper on which a voter has marked his or her vote.
- (4) Paragraph (1)(d) does not apply to any mark or writing placed upon a ballot-paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot-paper is a contravention of this Act.
- (7) Except as authorized by this Act or the regulations, an officer shall not place upon any ballot-paper any mark or writing which would enable any person to identify the voter by whom it is used.



Penalty: \$1,000.

- (8) Effect shall be given to a ballot-paper of a voter according to the voter's intention, so far as that intention is clear.

#### **94 Return of result of submission by Divisional Returning Officers**

The Divisional Returning Officer for each Division shall, immediately after the completion of the scrutiny in that Division, prepare a written statement certifying:

- (a) the number of votes given in favour of the proposed law;
- (b) the number of votes given not in favour of the proposed law;
- and
- (c) the number of ballot-papers rejected as informal;

and shall send the statement to the Australian Electoral Officer for the State or Territory in which that Division is situated.

#### **95 Recount**

- (1) At any time before preparing a statement pursuant to section 97, the Australian Electoral Officer for a State or Territory may, and shall, if directed to do so by the Electoral Commissioner, direct the Divisional Returning Officer for a Division of that State or that Territory to make a recount of the ballot-papers contained in any parcel relating to that Division.
- (2) The Electoral Commissioner may, if requested to do so by the Governor-General, the Governor of a State, the Chief Minister for the Australian Capital Territory or the Administrator of the Northern Territory, or of his or her own motion, direct a recount of any ballot-papers.
- (3) The officer conducting a recount shall have the same powers as if the recount were the scrutiny, and may reverse any decision taken at the scrutiny as to the allowance or rejection of any ballot-paper.

#### **95A Notice of re-count**

Before recounting any ballot-papers, a DRO shall give notice of the re-count as follows:

- (a) a notice specifying the date, time and place of the re-count shall be displayed in a prominent place in the DRO's office;

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- (b) the notice shall be so displayed not later than 4 p.m. on the day before the day fixed for the re-count.

**95B Conduct of re-count**

- (1) At the time and place fixed for the re-count and in the presence of any scrutineers who attend and of a person appointed or engaged under the *Public Service Act 1999*, the DRO shall open every sealed parcel of ballot-papers to be re-counted and count the votes in the parcel.
- (2) A parcel containing ballot-papers to be re-counted shall be opened without destroying or rendering illegible any writing on the parcel and the contents of the parcel shall not be allowed to become mixed with ballot-papers from any other parcel.
- (3) After the votes in a parcel have been counted, the DRO shall replace the ballot-papers in their original cover, reseal and refasten the cover, place the resealed parcel in a new cover, and seal and fasten the new cover.
- (4) The DRO shall write on the new cover a statement of the fact and date of the re-count of the votes in the cover and, along with such of the persons present who choose to add their signatures, shall sign the statement.
- (5) The DRO shall place any ballot-papers reserved for the decision of the Australian Electoral Officer in a sealed and fastened parcel bearing the signatures of the DRO and the scrutineers who choose to add their signatures and a note of the number of ballot-papers in the parcel, the name of the Division and the date.
- (6) The DRO shall place the parcel in a sealed and fastened outer cover addressed to the Australian Electoral Officer and, without delay, send the parcel to the Australian Electoral Officer by hand, registered post or courier service.
- (7) The Australian Electoral Officer shall open the parcel in the presence of a person appointed or engaged under the *Public Service Act 1999* and of any scrutineer who attends and shall:
  - (a) scrutinise the ballot-papers; and
  - (b) mark each ballot-paper “admitted” or “rejected” according to his or her decision.

- (8) After scrutinising all the ballot-papers, the Australian Electoral Officer shall restore them to their original cover, refasten and reseal the cover, and write on the cover:
  - (a) the number of ballot-papers contained in the cover; and
  - (b) a statement that all ballot-papers have been the subject of decisions by him or her.
- (9) The Australian Electoral Officer shall sign the cover, along with such other persons present when the ballot-papers were scrutinised as choose to add their signatures.
- (10) The Australian Electoral Officer shall then enclose the parcel in a new cover, fasten and seal the cover and send the parcel to the DRO by hand, registered post or courier service.
- (11) The Australian Electoral Officer shall inform the DRO in writing of the numbers of ballot-papers admitted or rejected by him or her, and the DRO shall complete the re-count on the basis of the Australian Electoral Officer's decision.
- (12) The receipt of a parcel of ballot-papers by the DRO or the Australian Electoral Officer shall be acknowledged in writing.

#### **96 Reservation of disputed ballot-papers**

- (1) At any recount of votes cast at a referendum, the officer conducting the recount may, and at the request of any scrutineer shall, reserve any ballot-paper for the decision of the relevant Australian Electoral Officer.
- (2) The Australian Electoral Officer shall decide whether any ballot-paper reserved under this section is to be allowed and admitted or disallowed and rejected.
- (3) In the event of the validity of a referendum being disputed, the High Court may consider any ballot-papers which were reserved for the decision of an officer referred to in subsection (1) but shall not order a recount of the whole or any part of the ballot-papers in connection with the referendum unless it is satisfied that such a recount is justified.

## Part VII—Return of the writ

### 97 Statement by Australian Electoral Officers

Each Australian Electoral Officer for a State or Territory shall:

- (a) prepare a written statement showing, in relation to the State or Territory, as the case may be:
  - (i) the number of votes given in favour of the proposed law;
  - (ii) the number of votes given not in favour of the proposed law; and
  - (iii) the number of ballot-papers rejected as informal;
- (b) sign the statement; and
- (c) send the statement to the Electoral Commissioner.

### 98 Return of the writ

- (1) The Electoral Commissioner must, immediately after receiving the statements sent under section 97:
  - (a) certify, in relation to each State, in relation to the Australian Capital Territory, in relation to the Northern Territory and in relation to the whole Commonwealth:
    - (i) the number of votes given in favour of the proposed law; and
    - (ii) the number of votes given not in favour of the proposed law; and
    - (iii) the number of ballot-papers rejected as informal; and attach the certificate to the original writ; and
  - (b) return the writ and the certificate to the Governor-General.
- (2) The Electoral Commissioner must publish a copy of the certificate referred to in paragraph (1)(a) in the *Gazette*, and a copy of such a certificate so published is, subject to Part VIII, conclusive evidence of the result of the referendum to which it relates.

**98A Norfolk Islanders**

For the purposes of sections 97 and 98, if a person is on the Roll for a Territory because of subsection 95AA(3) of the *Commonwealth Electoral Act 1918*, his or her vote or ballot paper is taken to be in relation to that Territory.

**99 Copies of statement to Governors of the States etc.**

The Electoral Commissioner shall forward copies of the certificate attached to the writ to the Governors of the several States, to the Chief Minister for the Australian Capital Territory and to the Administrator of the Northern Territory.

## Part VIII—Disputed returns

### 100 Disputing validity of submission or return

The validity of any referendum or of any return or statement showing the voting at a referendum may be disputed by the Commonwealth, by any State, by the Australian Capital Territory or by the Northern Territory by petition addressed to the High Court.

### 101 Requisites of petition

- (1) A petition disputing the validity of a referendum or of a return or statement showing the voting at a referendum shall:
  - (a) set out the facts relied on to invalidate the referendum, return or statement, as the case may be;
  - (aa) set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;
  - (b) contain a request asking for the relief to which the petitioner claims to be entitled;
  - (c) subject to subsection 102(2), be signed by the Attorney-General of the Commonwealth for and on behalf of the Commonwealth, the Attorney-General of a State for and on behalf of the State, the Attorney-General of the Australian Capital Territory for and on behalf of the Territory or the Attorney-General of the Northern Territory for and on behalf of the Northern Territory, as the case requires; and
  - (d) be filed in the Registry of the High Court within 40 days after the publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum.
- (2) The Court may, at any time after the filing of a petition and on such terms (if any) as it thinks fit, relieve the petitioner wholly or in part from compliance with paragraph (1)(aa).

- (3) The Court shall not grant relief under subsection (2) unless it is satisfied that:
  - (a) in spite of the failure of the petition to comply with paragraph (1)(aa), the petition sufficiently identifies the specific matters on which the petitioner relies; and
  - (b) the grant of relief would not unreasonably prejudice the interests of another party to the petition.

### **102 Petition by Electoral Commission**

- (1) The Electoral Commission is entitled to file a petition disputing the validity of a referendum.
- (2) A petition filed by the Electoral Commission shall be signed by the Electoral Commissioner for and on behalf of the Electoral Commission.

### **103 Jurisdiction and powers of High Court**

- (1) The High Court has jurisdiction with respect to matters arising under this Part.
- (2) Following the hearing of a petition in relation to a referendum, the High Court may:
  - (a) declare the referendum to be void;
  - (b) uphold the petition in whole or in part; or
  - (c) dismiss the petition.
- (3) The High Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.
- (4) Without limiting the generality of this section, the High Court may exercise its powers to declare a referendum void on the ground that contraventions of this Act or the regulations were engaged in in connection with the referendum.

### **104 Inquiries by High Court**

- (1) In hearing a matter arising under this Part, the High Court may inquire into the identity of persons, and whether or not the votes of persons were improperly admitted or rejected, but the High Court shall not inquire into the correctness of any Roll.

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- (2) Where the High Court makes inquiries in relation to ballot-papers marked in Antarctica pursuant to Part V, a statement of the particulars of the marking of the ballot-papers prepared by an Australian Electoral Officer under subsection 85(3) is, unless the High Court otherwise orders, conclusive evidence of the particulars stated.

**105 Notice of petition**

- (1) Where a petition of the kind referred to in section 100 is filed by the Commonwealth, the Attorney-General of the Commonwealth shall notify the Attorneys-General of the several States, the Attorney-General of the Australian Capital Territory, the Attorney-General of the Northern Territory and the Electoral Commission of the filing of the petition.
- (2) Where a petition of the kind referred to in section 100 is filed by a State, the Attorney-General of that State shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the other States, the Attorney-General of the Australian Capital Territory, the Attorney-General of the Northern Territory and the Electoral Commission of the filing of the petition.
- (2A) Where a petition of the kind referred to in section 100 is filed by the Australian Capital Territory, the Attorney-General of the Territory must notify the Attorney-General of the Commonwealth, the Attorneys-General of the several States, the Attorney-General of the Northern Territory and the Electoral Commission of the filing of the petition.
- (3) Where a petition of the kind referred to in section 100 is filed by the Northern Territory, the Attorney-General of the Northern Territory shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the several States, the Attorney-General of the Australian Capital Territory and the Electoral Commission of the filing of the petition.
- (4) Where a petition of the kind referred to in section 102 is filed by the Electoral Commission, the Electoral Commissioner shall notify the Attorney-General of the Commonwealth, the Attorneys-General of the several States, the Attorney-General of the Australian Capital Territory and the Attorney-General of the Northern Territory of the filing of the petition.



**106 Joinder of parties**

The High Court may, on the application of the Commonwealth, of any State, of the Australian Capital Territory, of the Northern Territory or of the Electoral Commission, order it to be joined as a party petitioning or responding as the case may be.

**107 Procedure on petition**

The procedure in relation to a petition disputing the validity of a referendum or of a return or statement shall, subject to this Act, be as prescribed by Rules of Court or, in default of Rules of Court, as directed by the High Court.

**107AA Court must make decision quickly**

The Court must make its decision on a petition as quickly as is reasonable in the circumstances.

**107A Provision for Court to have regard to certain rejected ballot-papers**

In making its decision on a petition, the Court may:

- (a) have regard to postal ballot-papers rejected at the preliminary scrutiny because of paragraph 7 of Schedule 4 if the Court is satisfied that the votes marked on the ballot-papers were recorded prior to the close of voting; and
- (b) have regard to any declaration vote ballot-papers (including postal ballot-papers) rejected at the preliminary scrutiny if the Court is of the opinion that the ballot-papers should not have been rejected.

**108 Immaterial errors not to invalidate referendum**

- (1) A referendum or a return or statement showing the voting at a referendum shall not be declared void on account of:
  - (a) any delay in relation to:
    - (i) the taking of the votes of the electors; or
    - (ii) the making of any statement or return; or
  - (b) the absence of any officer or any error of, or omission by, an officer;

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that did not affect the result of the referendum.

- (2) Where any elector was, on account of the absence of any officer, or error of, or omission by, any officer, prevented from voting at a referendum, the High Court shall not, for the purpose of determining whether the absence, error or omission did or did not affect the result of the referendum, admit any evidence of the way in which the elector intended to vote.

**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.

**108A Certain other matters not to invalidate referendum**

A referendum, or a return or statement showing the voting at a referendum, must not be declared void on the ground that someone has contravened the *Broadcasting Services Act 1992* or the *Radiocommunications Act 1992*.

**109 Evidence that person not permitted to vote**

On the trial of any petition the High Court shall not admit the evidence of any witness that he or she was not permitted to vote in a referendum during the hours of voting on the voting day for the referendum unless the witness satisfies the High Court:

- (a) that the witness claimed to vote at the referendum pursuant to the provision of this Act under which he or she was entitled or might be permitted to vote; and
- (b) that he or she complied with the requirements of this Act and the regulations relating to voting by electors in so far as he or she was permitted so to do.

**109A Right of Electoral Commission to have access to documents**

Unless the Court orders otherwise, the filing of a petition does not deprive the Electoral Commission of any right to have access to a document for the purposes of the performance of its functions.

## Part X—Offences

### 116 Officers and scrutineers to observe secrecy

A person who is, or has been, an officer or a scrutineer shall not, except for the purposes of Part V, either directly or indirectly, divulge or communicate any information with respect to the vote of an elector at a referendum acquired by the person in the performance of functions or in the exercise of powers under this Act or the regulations in a manner that is likely to enable the identification of the elector.

Penalty: \$1,000 or imprisonment for 6 months, or both.

### 117 Officers not to contravene Act etc.

A person who, being an officer, contravenes:

- (a) a provision of this Act for which no other penalty is provided; or
- (b) a direction given to him or her under this Act;

is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

### 118 Officers not to influence vote

- (1) A person who, being an officer other than an Antarctic officer, does any act or thing with the intention of influencing the vote of another person at a referendum, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.
- (2) A person who, being an Antarctic officer, during the referendum period in relation to a referendum, does any act or thing with the intention of influencing the vote of another person is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.
- (3) In this section, *Antarctic officer* means an Antarctic Returning Officer or an Assistant Antarctic Returning Officer.

**118A Influencing votes of hospital patients etc.**

- (1) A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home shall not do anything with the intention of influencing the vote of a patient in, or resident at, the hospital or nursing home.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) The reference in subsection (1) to the proprietor of a hospital or nursing home includes a reference to a person who is a member or officer of a body corporate that is the proprietor of a hospital or nursing home.

**119 Bribery**

- (1) A person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind for the person or any other person, on an understanding that any vote of the first-mentioned person at a referendum will, in any manner, be influenced or affected.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) A person shall not give or confer, or promise or offer to give or confer, any property or benefit of any kind to another person:
- (a) with the intention of influencing the vote of any person at a referendum; or
  - (b) with the intention of inducing any person to support or oppose a proposed law for the alteration of the Constitution.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (3) This section does not apply in relation to a declaration of public policy or a promise of public action.

**120 Interference with political liberty**

A person shall not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to a referendum under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

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**121 Printing and publication of advertisements, notices etc.**

- (1) A person shall not print, publish or distribute or cause, permit or authorize to be printed, published or distributed an advertisement, handbill, pamphlet or notice relating to a referendum and intended or calculated to affect the result of the referendum unless:
- (a) the name and address of the person who authorized the advertisement, handbill, pamphlet or notice appears at the end thereof; and
  - (b) in the case of an advertisement, handbill, pamphlet or notice that is printed otherwise than in a newspaper—the name and place of business of the printer appears at the end thereof.
- (1A) A person must not produce, publish or distribute or cause, permit or authorise to be produced, published or distributed a video recording relating to a referendum and intended or calculated to affect the result of the referendum unless the name and address of the person who authorised the video recording appears at the end of it.
- (1AB) Subject to subsection (1AC), a person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an advertisement relating to a referendum and intended or calculated to affect the result of the referendum that takes up the whole or part of each of 2 opposing pages of a newspaper unless, in addition to fulfilling the requirement under paragraph (1)(a) that the name and address of the person who authorised the advertisement appear at the end of it, such name and address also appears on the other page, or the part of the other page, taken up by the advertisement.
- (1AC) Subsection (1AB) does not apply to an advertisement of the kind referred to in that subsection:
- (a) that is contained within:
    - (i) a broken or unbroken border; or
    - (ii) broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
    - (iii) a broken or unbroken line extending along, or partly along, each side of the advertisement; or
  - (b) that is printed so that to read one or more lines of the text of the advertisement it is necessary to read across both pages.

- (2) A person who contravenes subsection (1), (1A) or (1AB) is guilty of an offence punishable on conviction:
- (a) if the offender is a natural person—by a fine not exceeding \$1,000; or
  - (b) if the offender is a body corporate—by a fine not exceeding \$5,000.
- (3) Subsection (1) does not apply in relation to:
- (a) a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon; or
  - (b) an article included in a prescribed class of articles.
- (4) Nothing in paragraph (3)(a) shall be taken, by implication, to limit the generality of regulations that may be made by virtue of paragraph (3)(b).
- (5) In this section:

*address* of a person means an address, including a full street address and suburb or locality, at which the person can usually be contacted during the day. It does not include a post office box.

### **121A Publication of advertisements on the Internet**

- (1) A person commits an offence if:
- (a) either:
    - (i) the person publishes an advertisement relating to a referendum on the Internet; or
    - (ii) the person causes, permits or authorises an advertisement relating to a referendum to be published on the Internet; and
  - (b) the advertisement is intended to affect voting in the referendum; and
  - (c) the advertisement is paid for by the person or another person; and
  - (d) the name and address of the person who authorised the advertisement does not appear at the end of the advertisement.

Penalty: 10 penalty units.

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- (2) Subsection (1) does not apply if the matter published on the Internet forms part of a general commentary on a website.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

- (4) In this section:

**address** of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day. It does not include a post office box.

**122 Misleading or deceptive publications etc.**

- (1) A person shall not, during the referendum period in relation to a referendum, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote at the referendum.

- (4) A person who contravenes subsection (1) is guilty of an offence punishable on conviction:

- (a) if the offender is a natural person—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or  
(b) if the offender is a body corporate—by a fine not exceeding \$5,000.

- (5) In a prosecution of a person for an offence against subsection (4) by virtue of a contravention of subsection (1), it is a defence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the matter or thing was likely to mislead an elector in relation to the casting of a vote.

Note: A defendant bears a legal burden in relation to the defence in subsection (5) (see section 13.4 of the *Criminal Code*).

- (7) In this section, **publish** includes publish by radio or television.



**123 False statements in relation to Rolls**

A person who, on the voting day for a referendum, makes a statement to an elector, either orally or in writing, with respect to the enrolment of the elector that, to the knowledge of the first-mentioned person, is false or misleading in a material respect, is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

**124 Headings to advertisements**

- (1) Subject to subsection (2), where an advertisement in a journal contains matter intended or calculated to affect the result of a referendum (whether or not the advertisement was inserted for consideration) the proprietor of the journal must cause the word “advertisement” (in letters not smaller than 10 point) to be printed as a headline to the advertisement:
- (a) if the advertisement takes up one page or part of one page—on that page; or
  - (b) if the advertisement takes up the whole or part of each of 2 opposing pages—on each page.

Penalty: 5 penalty units.

- (2) Where an advertisement of the kind referred to in subsection (1) that takes up the whole or part of each of 2 opposing pages of a journal:
- (a) is contained within:
    - (i) a broken or unbroken border; or
    - (ii) broken or unbroken lines extending across, or partly across, the top and bottom of the advertisement; or
    - (iii) a broken or unbroken line extending along, or partly along, each side of the advertisement; or
  - (b) is printed so that to read one or more lines of the text of the advertisement it is necessary to read both pages;
- the proprietor of the journal must cause the word “advertisement” to be printed as a headline in letters not smaller than 10 point to the advertisement on one of the pages.

Penalty: \$500.

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- (3) In this section:

*journal* means a newspaper, magazine or other periodical, whether published for sale or for distribution without charge.

**126 Cards in polling booth**

- (1) A person shall not, except for the purposes of section 36, display or leave at a polling booth a card or paper that contains a recommendation as to how an elector should vote at a referendum or as to the method of voting at a referendum.

Penalty: \$500.

- (2) Subsection (1) does not apply to an instruction as to the method of voting at a referendum displayed at a polling booth by a person authorized to display such an instruction.

**127 Signature to referendum paper**

- (1) Every paper which by this Act or the regulations has to be signed by any person shall be signed by that person in his or her own handwriting.

- (2) Where a person who is unable to sign his or her name in writing makes a mark as his or her signature to a referendum paper, the mark shall be deemed to be his or her personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the referendum paper as such witness.

- (3) Nothing in this section shall authorize any person to sign any referendum paper by a mark or otherwise than in his or her own handwriting in cases where the Act or the regulations require that the referendum paper be signed in the person's own handwriting.

- (4) A person shall not make the signature of any other person on a referendum paper.

Penalty: \$1,000.

- (5) Subsection (4) does not affect the liability of any person to be proceeded against for forgery, but a person is not liable to be punished twice in respect of the same offence.

- (6) In this section, *referendum paper* includes a prescribed form and an approved form.

### **128 Witnessing referendum papers**

- (1) A person shall not:
- (a) sign as witness a blank referendum paper;
  - (b) sign as witness any referendum paper unless it has been signed by the person intended to sign it;
  - (c) sign as witness any referendum paper unless the person has seen the person whose signature he or she is purporting to witness sign it; or
  - (d) write on any referendum paper as his or her own name:
    - (i) the name of another person; or
    - (ii) a name that is not his or her own name.

Penalty: \$1,000.

- (2) In subsection (1), *referendum paper* means any document required to be filled in or signed under this Act or the regulations.

### **129 Marks on ballot-papers**

Except as authorized by this Act, a person shall not make any mark on a ballot-paper that has been issued to another person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

### **130 Other offences relating to ballot-papers etc.**

- (1) A person shall not:
- (a) impersonate another person with the intention of voting in that other person's name; or
  - (aa) impersonate another person with the intention of securing a ballot-paper to which the first-mentioned person is not entitled; or
  - (b) fraudulently do an act that results in the destruction or defacement of a ballot-paper or other document relating to a referendum; or
  - (c) fraudulently put any ballot-paper or other paper into a ballot-box; or

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- (d) fraudulently take any ballot-paper out of a polling booth or a place where the scrutiny is being conducted; or
- (f) supply ballot-papers without authority to do so under this Act or the regulations; or
- (g) do an act that results in the unlawful destruction of, taking of, opening of, or interference with, ballot-boxes or ballot-papers.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (1A) A person is guilty of an offence if the person votes more than once in the same referendum.

Penalty: 10 penalty units.

- (1B) An offence against subsection (1A) is an offence of strict liability.

- (1C) A person is guilty of an offence if the person intentionally votes more than once in the same referendum.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

- (1D) If a person votes more than once in the same referendum, the number of offences the person is guilty of under subsection (1A) or (1C) because of that voting is the number of times the person voted in that referendum less one.

Note: This subsection means that each act of voting (other than the one act of voting that would be legitimate) gives rise to a separate offence but it is not necessary to know which act of voting was the first one and therefore legitimate.

- (2) A person is guilty of an offence if the person:
- (a) does an act; and
  - (b) the act results in the defacement, mutilation, destruction or removal of any notice, list or other document displayed in any place by, or with the authority of, an officer.

Penalty: \$500.

**131 Prohibition of certain behaviour near polling booth**

- (1) A person shall not, on the voting day for a referendum, or on a day to which the taking of votes of the electors at a referendum has been adjourned under section 42 or 43, at the entrance of, or in any

place within 6 metres of the entrance of, a polling booth at which voting at the referendum is taking place:

- (a) induce an elector to vote in a particular way at the referendum;
- (b) induce an elector not to vote at the referendum; or
- (c) exhibit any notice or sign (other than an official notice or sign) that relates to the referendum.

Penalty: \$500.

(1A) A person commits an offence against this subsection if:

- (a) on the voting day for a referendum, or on a day to which the taking of votes of the electors at a referendum has been adjourned under section 42 or 43, the person engages in any of the following activities:
  - (i) inducing an elector to vote in a particular way at the referendum;
  - (ii) inducing an elector not to vote at the referendum; and
- (b) the person engages in that activity 6 metres or more from an entrance of a polling booth; and
- (c) the person uses any of the following to engage in that activity:
  - (i) a loud speaker;
  - (ii) a public address system;
  - (iii) an amplifier (whether fixed or mobile);
  - (iv) a broadcasting van;
  - (v) a sound system;
  - (vi) radio equipment;
  - (vii) any other equipment or device for broadcasting; and
- (d) that activity is audible:
  - (i) within the polling booth; or
  - (ii) at an entrance of the polling booth; or
  - (iii) within 6 metres of an entrance of the polling booth.

Penalty: 5 penalty units.

(1B) Subsection (1A) applies whether the person engages in the activity in a public place or a private place.

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- (2) Where:
- (a) a building used as a polling booth at a referendum is situated in grounds within an enclosure; and
  - (b) the relevant Divisional Returning Officer causes to be displayed at each entrance to those grounds throughout the hours on which the polling booth is open on the voting day for the referendum, or on any day to which the taking of the votes of the electors at the referendum has been adjourned under section 42 or 43, a notice signed by the Divisional Returning Officer stating that those grounds are, for the purposes of this section, part of the polling booth;
- those grounds shall, for the purposes of this section, be deemed to be part of the polling booth.

**132 Badges or emblems in polling booths**

- (1) An officer or scrutineer who wears or displays in a polling booth on the voting day for a referendum any badge or emblem in support of or in opposition to a proposed law for the alteration of the Constitution is guilty of an offence.

Penalty: \$1,000.

- (2) Strict liability applies to an offence against subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**133 Employers to allow employees leave of absence to vote**

- (1) If an employee who is an elector notifies his or her employer before the voting day for a referendum that the employee requires leave of absence to vote at the referendum, the employer shall, if the absence desired is necessary to enable the employee to vote at the referendum, allow the employee leave of absence without any penalty or disproportionate deduction of pay for such reasonable period, not exceeding 2 hours, as is necessary to enable the employee to vote at the referendum.
- (2) An employee shall not obtain leave of absence under subsection (1) unless he or she intends to use the leave of absence to vote at the referendum.

- (3) Subsection (1) does not apply to an employee whose absence might cause danger or substantial loss in respect of the employment in which he or she is engaged.

Penalty:

- (a) if the offender is a natural person—\$500; or  
(b) if the offender is a body corporate—\$2,500.

### **134 Misconduct at public meeting**

- (1) This section applies to any lawful public meeting held in relation to a referendum during the referendum period.
- (2) Any person who, at any public meeting to which this section applies, acts in a disorderly manner with the intention of preventing the transaction of the business for which the meeting is held is guilty of an offence.

Penalty: \$500.

- (3) The chairperson of a meeting to which this section applies:
- (a) may direct a person who, in the opinion of the chairperson, is preventing the transaction of the business for which the meeting is being held, to leave the place in which the meeting is being held; and
- (b) if the person fails or refuses to leave the place in which the meeting is being held, may direct a constable to remove the person from that place;

and the constable may thereupon take such steps as are necessary to remove the person.

- (4) A person who:
- (a) has left a place in which a meeting to which this section applies is being held in accordance with a direction given under paragraph (3)(a); or
- (b) has been removed from a place in which a meeting to which this section applies is being held in accordance with a direction given under paragraph (3)(b);

shall not, without the permission of the chairperson of the meeting, return to that place while the meeting is still in progress.

Penalty for a contravention of subsection (4): \$1,000 or imprisonment for 6 months, or both.

**135 Control of behaviour at polling booths etc.**

- (1) A person shall not:
- (a) commit misconduct in premises to which this section applies;
  - (b) while in such premises, disobey a lawful direction given by the person in charge of the premises; or
  - (c) enter or remain in such premises without the permission of the person in charge of the premises.

Penalty: \$500.

- (2) This section applies to the following premises:
- (a) a polling booth;
  - (b) a counting centre;
  - (c) premises in Australia at which an application may be made for a pre-poll vote.
- (3) Paragraph (1)(c) does not apply to:
- (a) a polling official;
  - (b) a scrutineer who is entitled to be on the premises; or
  - (c) in the case of a polling booth—a voter who enters the booth for the purpose of voting and remains no longer than is reasonably necessary for that purpose.
- (4) The person in charge of premises is:
- (a) in the case of a polling booth—the presiding officer;
  - (b) in the case of a counting centre—the Australian Electoral Officer, DRO or Assistant Returning Officer conducting the scrutiny at the centre; and
  - (c) in the case of premises at which an application may be made for a pre-poll vote:
    - (i) if the premises are the office of a DRO—the DRO;
    - (ii) if the premises are a pre-poll voting office—any pre-poll voting officer at those premises.
- (5) A person who contravenes subsection (1) may be removed from the premises by a police officer or by an authorised person.
- (6) In this section:

***authorised person*** means a person acting at the request of the person in charge of premises.



***counting centre*** means premises being used for the purpose of the preliminary scrutiny of declaration votes or the scrutiny of ballot-papers.

## Part XI—Miscellaneous

### 136A Extension of time for acts by officers

Where:

- (a) an officer is required by a provision of this Act or the regulations to do an act; and
- (b) the officer refuses or fails to do the act at the time, or within the period, required by that provision;

the Electoral Commission may determine that the act may be done within such further time, not exceeding 48 hours, as the Commission fixes.

### 138 Delegation by Electoral Commissioner

- (1) The Electoral Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to the Deputy Electoral Commissioner or an Australian Electoral Officer for a State or Territory all or any of the powers of the Electoral Commissioner under this Act other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Electoral Commissioner.
- (3) A delegation under this section does not prevent the exercise of a power by the Electoral Commissioner.

### 139 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to referendums, the Federal Court of Australia (the *Federal Court*) may, on the application of the Electoral Commission, grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Federal Court it is desirable to do so, requiring that person to do any act or thing.

- (2) Where:
- (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to referendums;
- the Federal Court may, on the application of the Electoral Commission, grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the Federal Court for an injunction under subsection (1), the Federal Court may, if in the opinion of the Federal Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (4) The Federal Court may discharge or vary an injunction granted under subsection (1), (2) or (3).
- (5) Where an application is made to the Federal Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Federal Court to grant the injunction may be exercised:
- (a) if the Federal Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Federal Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) Where an application is made to the Federal Court for the grant of an injunction requiring a person to do a particular act or thing, the power of the Federal Court to grant the injunction may be exercised:
- (a) if the Federal Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the

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Federal Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

- (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Electoral Commission makes an application to the Federal Court for the grant of an injunction under this section, the Federal Court shall not require the Electoral Commission or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (10) The powers conferred on the Federal Court under this section are in addition to, and not in derogation of, any other powers of the Federal Court, whether conferred by this Act or otherwise.

**140 Prosecution of offences**

- (1) Subject to subsection (2), an offence against section 119 is an indictable offence.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against section 119, the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

**140A Effect of averment by prosecutor**

In proceedings for an offence against section 45 of this Act, an averment by the prosecutor contained in the information or complaint is taken to be proof of the matter averred in the absence of evidence to the contrary.

**140AA Evidence of authorship or authorisation of material**

In proceedings for an offence against this Act:

- (a) an advertisement, handbill, pamphlet, notice or video recording that:

- (i) relates to a referendum and is intended or calculated to affect the result of the referendum; and
- (ii) includes a statement that it was authorised by a specified person;

is admissible as evidence of that fact; and

- (b) a printed advertisement, handbill, pamphlet or notice that:

- (i) relates to a referendum and is intended or calculated to affect the result of the referendum; and
- (ii) includes a statement that a specified person or firm was the printer;

is admissible as evidence of that fact; and

- (c) a newspaper, circular, pamphlet or “dodger” that contains an article, or part of an article, that:

- (i) relates to a referendum and is intended or calculated to affect the result of the referendum; and
- (ii) includes a name purporting to be the author’s name;

is admissible as evidence that the person named is the author of the article.

**140B Service of process by mail**

For the purposes of proceedings for an offence under section 45, process is taken to be served on a person if it is delivered by mail to the address of the person recorded on the Roll.

**141 Referendum papers received by post**

Referendum papers posted for transmission to an elector by post and properly addressed shall, in the absence of proof to the contrary, be deemed to have been duly received by the elector at the time when, in the ordinary course of post, they should have been so received.

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**142A Preservation of documents**

- (1) In this section, *referendum documents* includes:
  - (a) ballot-papers; and
  - (b) certified lists of voters; and
  - (c) certified copies of the Roll; and
  - (d) declarations; and
  - (e) postal vote certificates; and
  - (f) pre-poll vote certificates; and
  - (g) lists prepared under section 45.
- (2) The DRO for a Division is responsible for the safe custody, in accordance with the directions of the Electoral Commissioner, of referendum documents used in the Division in connection with a referendum until the documents are destroyed.
- (3) An officer who conducts a scrutiny shall, after the completion of the scrutiny, parcel up and seal all referendum documents dealt with or used in the scrutiny.
- (4) Each Assistant Returning Officer shall send to the DRO, in parcels fastened and sealed, all referendum documents used in connection with a referendum in that portion of the Division for which he or she was appointed.
- (5) A DRO may open a parcel sent to the DRO by an Assistant Returning Officer.
- (6) Material removed from a parcel shall:
  - (a) be retained by the DRO; or
  - (b) be dealt with according to the directions of the Electoral Commissioner.
- (7) When the purpose for which material was removed from a parcel has been satisfied, the DRO shall:
  - (a) as soon as practicable, replace the material in the parcel and refasten and reseal the parcel; and
  - (b) write on the covering of the parcel a notation indicating that the parcel has been opened by the DRO and specifying the purpose for which it was opened.

- (8) A DRO who opens a parcel shall not mark or alter, or permit any other person to mark or alter, a document removed from the parcel.
- (9) Subject to Part VIII, the Electoral Commissioner may direct that referendum documents be destroyed if:
  - (a) not less than 6 months have elapsed since the publication, under subsection 98(2), of a statement relating to the referendum in which the documents were used; and
  - (b) the documents are no longer required by the Electoral Commission for the performance of its functions.

### **143 No referendum or vote of a State or Territory to be held on voting day**

On the voting day for a referendum, no election or referendum or vote of the electors of any State or Territory or part of a State or Territory shall, without the authority of the Governor-General, be held or taken under a law of a State or Territory.

### **144 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and in particular, prescribing the procedure in relation to the imposition and recovery of penalties for offences against the compulsory voting provisions of this Act.

### **145 Repeal**

- (1) The Acts specified in Schedule 2 are repealed.
- (2) Notwithstanding the repeal effected by subsection (1), the regulations that were, immediately before the commencement of this Act, in force under the *Commonwealth Electoral Act 1918* and the *Referendum (Constitution Alteration) Act 1906* shall, in so far as those regulations relate to referendums, continue in force, to the extent to which they are consistent with this Act, as if:
  - (a) those regulations had been made under that first-mentioned Act and under this Act;

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- (b) a reference in those regulations to a State, in relation to a referendum, included a reference to the Australian Capital Territory and the Northern Territory;
  - (c) a reference in those regulations to the Australian Electoral Officer for a State, in relation to a referendum, included a reference to the Australian Electoral Officers for the Territories;
  - (d) a reference in those regulations to a Division, in relation to a referendum, included a reference to an Electoral Division of the Australian Capital Territory and to the Northern Territory; and
  - (e) a reference in those regulations to the *Referendum (Constitution Alteration) Act 1906* or to a particular provision of that Act were a reference to this Act or to the corresponding provision (if any) of this Act, as the case may be.
- (3) Nothing in subsection (2) prevents the making of regulations under this Act or under the *Commonwealth Electoral Act 1918* and under this Act to repeal or amend the regulations that are continued in force by that subsection.



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## Schedule 1—Forms

### FORM A

Commonwealth of Australia

*Writ for a referendum*

To the Electoral Commissioner

I command you to cause a proposed law entitled [*here insert the title of the proposed law*] to be submitted, according to law, in each State and in the Australian Capital Territory and the Northern Territory, to the electors who are qualified to vote at referendums.

I appoint the following dates:

1. For the close of the Rolls: the        day of        20 .
2. For taking the votes of the electors: the        day of        20 .
3. For the return of the writ: the        day of        20 .

[*Here insert Governor-General's title and the date*]

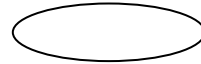
Governor-General

By His Excellency's command

FORM B



Commonwealth of Australia



BALLOT-PAPER

*[Here insert name of State or Territory]*

Referendum on proposed Constitution alteration

**DIRECTIONS TO VOTER**

WRITE "YES" or "NO" in the space provided opposite the question set out below.

*[Here set out the title of the proposed law]*

DO YOU APPROVE THIS PROPOSED ALTERATION?

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FORM C



Commonwealth of Australia



**BALLOT-PAPERS**

*[Here insert name of State or Territory]*

Referendums on proposed Constitution alterations

**DIRECTIONS TO VOTER**

Write "YES" or "NO" in the space provided opposite each of the questions set out below.

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1. *[Here set out the title of the first proposed law]*

DO YOU APPROVE THIS PROPOSED ALTERATION?

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2. *[Here set out the title of the second proposed law]*

DO YOU APPROVE THIS PROPOSED ALTERATION?

## Schedule 2—Repealed Acts

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*Referendum (Constitution Alteration) Act 1906*  
*Referendum (Constitution Alteration) Act 1909*  
*Referendum (Constitution Alteration) Act 1910*  
*Referendum (Constitution Alteration) Act 1912*  
*Referendum (Constitution Alteration) Act 1912 (No. 2)*  
*Referendum (Constitution Alteration) Act 1915*  
*Referendum (Constitution Alteration) Act 1919*  
*Referendum (Constitution Alteration) Act 1926*  
*Referendum (Constitution Alteration) Act 1928*  
*Referendum (Constitution Alteration) Act 1936*  
*Referendum (Constitution Alteration) Act 1965*  
*Referendum (Constitution Alteration) Act (No. 2) 1965*  
*Referendum (Constitution Alteration) Act Modification Act 1977*

## **Schedule 3—Grounds of application for postal or pre-poll vote**

Sections 54 and 72

1. Throughout the hours of voting on voting day, the elector will be absent from the State or Territory for which the elector is enrolled.
2. The elector will not, at any time during the hours of voting on voting day, be within 8 kilometres by the nearest practicable route of any polling booth in the State or Territory for which the elector is enrolled.
3. Throughout the hours of voting on voting day, the elector will be travelling under conditions that will prevent the elector attending a polling booth in the State or Territory for which the elector is enrolled.
4. The elector will be unable to attend a polling booth on voting day because of:
  - (a) serious illness;
  - (b) infirmity; or
  - (c) recent or approaching childbirth.

(In the case of an elector who will be a patient at a hospital on voting day, this paragraph applies regardless of the operation of sections 48 and 49.)

5. On voting day, the elector will be unable to attend a polling booth because the elector will be at a place (other than a hospital) caring for a person who is seriously ill or infirm or who has recently given birth or is expected shortly to do so.
6. Throughout the hours of voting on voting day, the elector will be a patient at a hospital (other than a special hospital) and unable to vote at the hospital.
7. Throughout the hours of voting on voting day, the elector will be a patient at a special hospital but will be unable to have his or her vote taken under section 49.

8. Because of the elector's religious beliefs or membership of a religious order, the elector:
  - (a) is precluded from attending a polling booth; or
  - (b) for the greater part of the hours of voting on voting day, is precluded from attending a polling booth.
9. On voting day, the elector will be serving a sentence of imprisonment or otherwise under detention.
10. The elector's address has been excluded from the Roll under section 104 of the *Commonwealth Electoral Act 1918*.
11. Throughout the hours of voting on voting day, the elector will be engaged in his or her employment or occupation and:
  - (a) if the elector is an employee, the elector is not entitled to leave of absence under section 133; and
  - (b) in any other case, the absence of the elector for the purpose of attending at a polling booth to vote would be likely to cause loss to the elector in his or her occupation.

## **Schedule 4—Rules for the conduct of a preliminary scrutiny of declaration votes** [see Note 2]

Subsection 89A(3)

1. The DRO shall produce unopened all envelopes containing declaration votes of the kind to which the preliminary scrutiny relates received by the DRO:
  - (a) in the case of the first preliminary scrutiny—before the commencement of that scrutiny; and
  - (b) in the case of a subsequent preliminary scrutiny—after the commencement of the last preceding preliminary scrutiny and before the commencement of the subsequent preliminary scrutiny.
2. All written applications for postal votes not already dealt with at a preliminary scrutiny shall be produced at each preliminary scrutiny of postal votes.
3. The DRO shall compare the signature of the elector on each postal vote application with the signature on the relevant postal vote certificate and allow the scrutineers to inspect both signatures.
- 3A. For each postal vote certificate not dealt with under paragraph 3, the DRO must compare the signature of the elector on the postal vote certificate with the signature of the elector on:
  - (a) the elector’s application for registration as a general postal voter under the *Commonwealth Electoral Act 1918*; or
  - (b) the elector’s application for enrolment or transfer of enrolment under the *Commonwealth Electoral Act 1918*;and allow the scrutineers to inspect both signatures.
4. The DRO shall divide the envelopes being dealt with into groups, as follows:
  - (a) in one group, the envelopes that meet the requirements of paragraph 6;

- (b) in another group, the envelopes that do not meet those requirements.
5. The DRO shall, without opening the envelopes, subject to the operation of paragraphs 19 and 20, exclude from further scrutiny the ballot-papers contained in envelopes that do not meet the requirements of paragraph 6.
6. An envelope meets the requirements of this paragraph if the DRO is satisfied:
- (a) in the case of an envelope purporting to contain a postal ballot-paper, other than an envelope sent under section 58 to a registered general postal voter who was registered on the ground specified in paragraph 184A(2)(e) or (f) of the *Commonwealth Electoral Act 1918*, that the signature on the certificate is that of the elector and that:
    - (i) the signature purports to be witnessed by an authorised witness; or
    - (ii) the signature is taken to be witnessed by an authorised witness because of subsection 65(1A); and
  - (b) in the case of an envelope purporting to contain a pre-poll vote ballot-paper, that the certificate has been signed in accordance with section 73D and that the signature purports to be witnessed by the officer who issued the certificate; and
  - (c) in the case of an envelope purporting to contain an absent vote ballot-paper or a provisional vote ballot-paper, that the declaration has been signed in accordance with section 46 or 37, or under subsection 36(4), as the case may be, and that the signature purports to be witnessed in accordance with that section or subsection, as the case requires; and
  - (ca) in the case of an envelope purporting to contain a provisional vote ballot-paper—if the elector (other than an elector to whom subsection 104(4) of the *Commonwealth Electoral Act 1918* applies) did not provide evidence of his or her identity in accordance with section 37 at the time of casting the vote, the elector has provided that evidence by the first Friday following the voting day for that referendum; and
  - (cb) in the case of an envelope purporting to contain a postal ballot-paper, a pre-poll vote ballot-paper, an absent vote ballot-paper or a provisional vote ballot-paper, cast by an elector who is provisionally enrolled—that, by the first



Friday following the polling day for that election, the elector has provided an officer with:

- (i) an original certificate of Australian citizenship granted to the elector under section 13 of the *Australian Citizenship Act 1948*; or
  - (ii) a copy of the certificate of Australian citizenship granted to the elector under section 13 of the *Australian Citizenship Act 1948* that has been attested to by an elector in a prescribed class of electors; and
- (d) in the case of an envelope purporting to contain a ballot-paper recording a vote cast at a station in Antarctica, the envelope is signed in accordance with subsection 85(1); and
- (e) in the case of an envelope purporting to contain a postal ballot-paper, that the vote marked on the ballot-paper was recorded prior to the close of the voting.
- 6A. If the DRO is satisfied that more than one envelope that meets the requirements of paragraph 6 purports to contain a declaration vote by the same elector, the DRO must:
- (a) treat only one of the envelopes, as selected by the DRO, as meeting the requirements of paragraph 6; and
  - (b) exclude from further scrutiny the ballot-papers contained in the other envelope or envelopes, without opening the envelope or envelopes; and
  - (c) seal up in a parcel the envelope or envelopes excluded from further scrutiny by subparagraph (b); and
  - (d) write on the parcel a description of its contents, the name of the Division and the date of the commencement of the preliminary scrutiny.

In applying subparagraph (a), the DRO should, to the extent that it is possible, select the envelope that was received first.

- 6B. Paragraphs 19 and 20 do not apply to envelopes excluded from further scrutiny because of subparagraph 6A(b).
7. Where the envelope purporting to contain a postal ballot-paper bears a postmark that includes a date after voting day, the vote marked on the ballot-paper shall be taken not to have been recorded prior to the close of voting.
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- 7A. A vote marked on a postal ballot-paper must be taken not to have been recorded prior to the close of voting if:
- (a) in the case of a ballot-paper taken to be witnessed because of subsection 65(1A)—the envelope purporting to contain the ballot-paper does not bear a legible postmark; or
  - (b) in any other case—the envelope purporting to contain the ballot-paper does not bear a legible postmark and the signature of the witness bears a date after voting day.
8. An envelope purporting to contain an absent vote ballot-paper, a provisional vote ballot-paper or a pre-poll vote ballot-paper shall not be regarded as failing to meet the requirements of paragraph 6 only because the declaration or certificate, as the case requires, is not witnessed if the voter's name appears on a record made under subsection 34(2) or section 73F, as the case requires, or, if neither of those requirements is met, if the DRO is satisfied that the ballot-paper was properly issued.
9. The DRO shall seal up in a parcel the envelopes that do not meet the requirements of paragraph 6 and shall write on the parcel a description of its contents, the name of the Division and the date of commencement of the preliminary scrutiny.
10. The DRO shall divide the envelopes that meet the requirements of paragraph 6 into groups as follows:
- (a) in one group, the envelopes bearing certificates or declarations by persons who are enrolled for the Division or whose claims for enrolment are claims to which subsection 102(4A) of the *Commonwealth Electoral Act 1918* applies;
  - (b) in another group the envelopes to which paragraph 11 applies;
  - (c) in another group, the envelopes bearing certificates or declarations by persons who are not enrolled for the Division but are enrolled for the State or Territory in which the Division is situated;
  - (d) in another group, the envelopes bearing certificates or declarations by persons who are not enrolled for the Division or for the State or Territory in which the Division is situated.

11. This paragraph applies to an envelope if the DRO is satisfied:
    - (a) that the elector who signed a certificate or declaration on the envelope is not enrolled for the Division; and
    - (b) after making enquiry:
      - (i) that the elector was, at the time of voting, entitled to be enrolled for the Division; and
      - (ii) that the omission of the elector's name from the Roll for the Division was due to an error made by an officer or to a mistake of fact; and
      - (iii) that the omission was not attributable to subsection 118(4A) of the *Commonwealth Electoral Act 1918*.
  12. Subparagraph 11(b) does not apply if:
    - (a) more than one election (excluding the election to which the scrutiny relates) has been held since the error or mistake was made; or
    - (b) where there has been a redistribution of the State or Territory that includes the Division since the last election but one before the election to which the scrutiny relates, the error or mistake was made before the last such redistribution.
  13. In paragraph 12, election means:
    - (a) a general election for the House of Representatives;
    - (b) a Senate election not held concurrently with a general election for the House of Representatives; or
    - (c) a referendum not held concurrently with a general election.
  14. The DRO shall, without opening the envelopes, subject to the operation of paragraphs 19 and 21, exclude from further scrutiny the ballot-papers contained in envelopes referred to in subparagraph 10(d).
  15. The DRO shall seal up in a parcel the envelopes referred to in subparagraph 10(d) and shall write on the parcel a description of the contents, the name of the Division and the date.
  16. The DRO shall, after the close of voting in the Division, without unfolding or inspecting them or allowing any other person to do so, withdraw the ballot-papers from envelopes referred to in paragraph 10 that still remain in the preliminary scrutiny.
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17. Ballot-papers withdrawn from envelopes referred to in subparagraph 10(a) or (b) shall be placed in a ballot-box by themselves for further scrutiny.
18. Where a ballot-paper has been finally excluded from further scrutiny, other than because of subparagraph 6A(b), the DRO shall send to the voter a written statement of the reason for the rejection.
19. In the course of a preliminary scrutiny of declaration votes, the DRO, as soon as practicable after the ballot-papers that are required, under that scrutiny, to be placed in a ballot-box under paragraph 17 are so placed, but not before the close of the poll for the Division, must:
  - (a) open the parcel of envelopes that contains the ballot-papers that are, under paragraph 5 and subject to the operation of this paragraph and paragraph 20, excluded from scrutiny, and deal further with those declaration votes in accordance with paragraph 20; and
  - (b) open the parcel of envelopes that contains the ballot-papers that are, under paragraph 14 and subject to the operation of this paragraph and paragraph 21, excluded from scrutiny, and deal further with those declaration votes in accordance with paragraph 21.
20. For the purpose of dealing further with declaration votes referred to in subparagraph 19(a), paragraphs 3 to 18, inclusive, reapply in relation to those votes as if:
  - (a) the words “subject to the operation of paragraphs 19 and 20,” were omitted from paragraph 5; and
  - (b) the words “subject to the operation of paragraphs 19 and 21,” were omitted from paragraph 14.
21. For the purpose of dealing further with declaration votes referred to in subparagraph 19(b), paragraphs 10 to 18, inclusive, reapply in relation to those votes as if the words “subject to the operation of paragraphs 19 and 21,” were omitted from paragraph 14.

**Table of Acts****Notes to the *Referendum (Machinery Provisions) Act 1984*****Note 1**

The *Referendum (Machinery Provisions) Act 1984* as shown in this compilation comprises Act No. 44, 1984 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 17 September 2001 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Referendum (Machinery Provisions) Act 1984</i>	44, 1984	25 June 1984	3 Sept 1984 (see <i>Gazette</i> 1984, No. S342)	
<i>Christmas Island Administration (Miscellaneous Amendments) Act 1984</i>	120, 1984	18 Oct 1984	Part VIII (ss. 27–31): 1 Oct 1984 Remainder: Royal Assent	—
<i>Electoral and Referendum Amendment Act 1984</i>	133, 1984	25 Oct 1984	25 Oct 1984	—
<i>Broadcasting and Television (Consequential Amendments) Act 1985</i>	67, 1985	5 June 1985	1 Jan 1986	—
<i>Referendum (Machinery Provisions) Amendment Act 1988</i>	77, 1988	24 June 1988	24 June 1988	—
<i>Referendum (Machinery Provisions) Amendment Act (No. 2) 1988</i>	81, 1988	26 Aug 1988	26 Aug 1988	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Electoral and Referendum Amendment Act 1989</i>	24, 1990	23 Jan 1990	Ss. 1–3, 4(d), 5–30, 36, 40, 43, 50 and 177: Royal Assent Ss. 4(b), 31–35, 37, 39, 41, 42, 49, 51–53, 55(a), (b), 56, 59, 60, 62–64, 66–72, 75, 77–79, 80(a)–(d), 81(a)–(d), 82–84, 85(b), (c), 110, 114, 118 and 121–161: 30 Sept 1990 Remainder: 9 Feb 1990 (see <i>Gazette</i> 1990, No. S30)	—
<i>Electoral and Referendum Amendment Act 1991</i>	167, 1991	13 Nov 1991	Ss. 1–3, 33 and 44: Royal Assent S. 45: 30 Sept 1990 Remainder: 13 May 1992	—
<i>Special Broadcasting Service Act 1991</i>	180, 1991	25 Nov 1991	S. 116: 23 Dec 1991 (a)	—
<i>Political Broadcasts and Political Disclosures Act 1991</i>	203, 1991	19 Dec 1991	Part 2 (ss. 4–9): 3 Jan 1992 (see <i>Gazette</i> 1992, No. S2) Parts 4 (ss. 32, 33) and 5 (ss. 34, 35): 19 June 1992 Part 6 (ss. 36–38): 16 Jan 1992 Remainder: Royal Assent	—
<i>Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992</i>	105, 1992	9 July 1992	5 Oct 1992 (see <i>Gazette</i> 1992, No. GN38)	—
<i>Norfolk Island (Electoral and Judicial) Amendment Act 1992</i>	121, 1992	17 Oct 1992	17 Oct 1992	S. 18
<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>	167, 1992	11 Dec 1992	1 July 1993	S. 14(2)
<i>Electoral and Referendum Amendment Act 1992</i>	219, 1992	24 Dec 1992	S. 15: 24 June 1993 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Electoral and Referendum Amendment Act 1995</i>	166, 1995	16 Dec 1995	16 Dec 1995	—
<i>Electoral and Referendum Amendment Act 1998</i>	94, 1998	17 July 1998	Schedule 2: 18 July 1998 (b)	—
<i>Referendum Legislation Amendment Act 1999</i>	22, 1999	19 Apr 1999	19 Apr 1999	—
<i>Electoral and Referendum Amendment Act (No. 1) 1999</i>	134, 1999	13 Oct 1999	Schedule 1 (items 31–37): Royal Assent (c)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 764–768): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<b>as amended by</b>				
<i>Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004</i>	115, 2004	13 July 2004	Schedule 1 (items 104, 105): (e)	—
<i>Electoral and Referendum Amendment Act (No. 1) 2001</i>	34, 2001	28 Apr 2001	16 July 2001 (see <i>Gazette</i> 2001, No. S284)	—
<i>Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001</i>	109, 2001	17 Sept 2001	15 Oct 2001	S. 5 [see Table A]
<i>Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004</i>	78, 2004	23 June 2004	Schedule 1: 21 July 2004 Remainder: Royal Assent	Sch. 1 (item 121) [see Table A]
<i>Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004</i>	115, 2004	13 July 2004	Schedule 1 (items 107, 108): (f) Schedule 1 (items 110–112, 114, 115, 117, 119–132): 10 Aug 2004	S. 2(1) (item 28) (rep. by 123, 2004, Sch. 2 [item 1]) S. 2(1) (item 30) (rep. by 65, 2006, Sch. 1 [item 100])
<b>as amended by</b>				
<i>Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004</i>	123, 2004	16 Aug 2004	Schedule 2: (g)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006</i>	65, 2006	22 June 2006	Schedule 1 (item 100): Royal Assent	—
<i>Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004</i>	123, 2004	16 Aug 2004	Schedule 1 (item 6): (h)	—
<i>Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006</i>	65, 2006	22 June 2006	Schedule 1 (items 102–114, 117–132, 134–139): Royal Assent Schedule 1 (items 115, 116, 133): [see Note 2]	—
<i>Electoral and Referendum Legislation Amendment Act 2007</i>	22, 2007	15 Mar 2007	Schedule 3 (items 1–4): 16 Apr 2007 (see F2007L01001) Remainder: Royal Assent	—



**Act Notes**

- (a) The *Referendum (Machinery Provisions) Act 1984* was amended by section 116 only of the *Special Broadcasting Service Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (b) The *Referendum (Machinery Provisions) Act 1984* was amended by Schedule 2 only of the *Electoral and Referendum Amendment Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day after the day on which it receives the Royal Assent.
- (c) The *Referendum (Machinery Provisions) Act 1984* was amended by Schedule 1 (items 31–37) only of the *Electoral and Referendum Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Referendum (Machinery Provisions) Act 1984* was amended by Schedule 1 (items 764–768) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (e) Subsection 2(1) (item 27) of the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
27. Schedule 1, items 104 and 105	Immediately after the commencement of items 764 and 765 of Schedule 1 to the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> .	5 December 1999

- (f) The proposed amendments of the *Referendum (Machinery Provisions) Act 1984* made by Schedule 1 (items 107 and 108) of the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* were repealed by Schedule 2 (item 2) of the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* before they commenced.
- (g) Subsection 2(1) (item 8) of the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

## Act Notes

Provision(s)	Commencement	Date/Details
8. Schedule 2	Immediately after the <i>Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004</i> received the Royal Assent.	13 July 2004
<p>(h) Subsection 2(1) (item 7) of the <i>Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004</i> provides as follows:</p> <p>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</p>		
Provision(s)	Commencement	Date/Details
7. Schedule 1, item 6	Immediately after the commencement of item 126 of Schedule 1 to the <i>Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004</i> .	10 August 2004

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 3 .....	am. No. 120, 1984; No. 77, 1988; No. 24, 1990; No. 167, 1991; No. 121, 1992; No. 94, 1998; No. 146, 1999; No. 34, 2001; No. 78, 2004; No. 65, 2006; No. 22, 2007
S. 3A .....	ad. No. 77, 1988
S. 3B .....	ad. No. 77, 1988 am. No. 121, 1992
S. 3C .....	ad. No. 109, 2001
S. 4 .....	am. No. 24, 1990; No. 166, 1995; No. 94, 1998; No. 65, 2006
S. 5 .....	am. No. 24, 1990 rs. No. 78, 2004
S. 6 .....	am. No. 24, 1990
<b>Part II</b>	
S. 8 .....	am. No. 24, 1990; No. 78, 2004
S. 9 .....	am. No. 65, 2006
S. 10 .....	rs. No. 77, 1988
S. 11 .....	am. No. 77, 1988; Nos. 22 and 146, 1999
S. 12 .....	am. No. 78, 2004
S. 13 .....	am. No. 24, 1990
S. 14 .....	am. No. 78, 2004
<b>Part III</b>	
<b>Division 1</b>	
S. 16A .....	ad. No. 24, 1990
S. 17 .....	am. No. 24, 1990; No. 78, 2004
S. 18 .....	rs. No. 24, 1990
S. 19 .....	am. No. 24, 1990
S. 21 .....	am. No. 24, 1990 rs. No. 167, 1991
S. 22 .....	am. No. 24, 1990 rs. No. 94, 1998 am. No. 115, 2004
Ss. 23, 24 .....	am. No. 24, 1990
S. 25 .....	am. No. 24, 1990; No. 94, 1998; No. 22, 1999; No. 78, 2004
S. 25A .....	ad. No. 24, 1990 rs. No. 94, 1998
S. 26 .....	am. No. 24, 1990; No. 34, 2001
S. 27 .....	am. No. 81, 1988; No. 24, 1990; No. 78, 2004
Ss. 28, 29 .....	am. No. 24, 1990
S. 30 .....	am. No. 77, 1988; No. 24, 1990; No. 167, 1991; No. 94, 1998; No. 115, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 31 .....	am. No. 24, 1990
S. 32 .....	am. No. 115, 2004
S. 33 .....	am. No. 24, 1990
S. 34 .....	am. No. 77, 1988; No. 24, 1990; No. 65, 2006
S. 35 .....	am. No. 24, 1990
S. 36 .....	am. No. 24, 1990; No. 166, 1995; No. 65, 2006
S. 36A .....	ad. No. 94, 1998 am. No. 22, 1999; No. 78, 2004; No. 65, 2006
S. 37 .....	rs. No. 24, 1990 am. No. 167, 1991; No. 115, 2004; No. 65, 2006
S. 38 .....	rep. No. 24, 1990 ad. No. 65, 2006
S. 39 .....	rep. No. 24, 1990
S. 40 .....	am. No. 24, 1990; No. 94, 1998
S. 41 .....	am. No. 24, 1990
S. 41A .....	ad. No. 78, 2004
S. 42 .....	am. No. 78, 2004
S. 45 .....	am. No. 24, 1990; No. 167, 1991; No. 219, 1992; No. 94, 1998; Nos. 34 and 109, 2001; No. 78, 2004
S. 46 .....	am. No. 77, 1988; No. 24, 1990; No. 65, 2006
S. 46A .....	ad. No. 77, 1988 am. No. 24, 1990; No. 167, 1991; No. 94, 1998; No. 78, 2004; No. 22, 2007
<b>Division 2</b>	
S. 48 .....	am. No. 24, 1990 rs. No. 24, 1990
S. 49 .....	am. No. 24, 1990; No. 94, 1998
S. 49A .....	ad. No. 24, 1990 am. No. 94, 1998; No. 78, 2004
S. 50 .....	am. No. 24, 1990; No. 94, 1998; No. 78, 2004
S. 51 .....	am. No. 24, 1990; No. 166, 1995
<b>Part IV</b>	
Part IV .....	rs. No. 24, 1990
Ss. 53, 54 .....	rs. No. 24, 1990 am. No. 65, 2006
S. 55 .....	rs. No. 24, 1990 am. No. 167, 1991; Nos. 34 and 109, 2001; No. 22, 2007
S. 56 .....	rep. No. 24, 1990 ad. No. 94, 1998
S. 57 .....	rs. No. 24, 1990 rep. No. 166, 1995
Heading to s. 58 .....	am. No. 166, 1995
S. 58 .....	rs. No. 24, 1990 am. No. 166, 1995; No. 94, 1998; No. 134, 1999; No. 78, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 59, 60.....	rs. No. 24, 1990
S. 61 .....	rs. No. 24, 1990 am. No. 167, 1991; No. 94, 1998; No. 78, 2004; No. 22, 2007
Note to s. 61(1) .....	ad. No. 34, 2001
S. 62 .....	rs. No. 24, 1990 am. No. 167, 1991; No. 115, 2004
Ss. 62A, 62B .....	ad. No. 34, 2001
S. 63 .....	rs. No. 24, 1990 am. No. 34, 2001
S. 64 .....	rs. No. 24, 1990 rep. No. 167, 1991
S. 65 .....	rs. No. 24, 1990 am. No. 34, 2001; No. 78, 2004; No. 22, 2007
S. 66 .....	am. No. 77, 1988 rs. No. 24, 1990
S. 67 .....	rs. No. 24, 1990 am. No. 22, 2007
S. 68 .....	rs. No. 24, 1990 am. No. 109, 2001
Ss. 69–71 .....	rs. No. 24, 1990
<b>Part IVA</b>	
Part IVA.....	ad. No. 24, 1990
S. 72 .....	am. No. 77, 1988 rs. No. 24, 1990 am. No. 65, 2006
S. 73 .....	rs. No. 24, 1990
S. 73AA.....	ad. No. 22, 2007
S. 73A .....	ad. No. 24, 1990
S. 73B .....	ad. No. 24, 1990 am. No. 166, 1995; No. 94, 1998; No. 22, 2007
S. 73C.....	ad. No. 24, 1990 am. No. 22, 2007
S. 73CA.....	ad. No. 78, 2004
S. 73CB.....	ad. No. 78, 2004 am. No. 22, 2007
S. 73D.....	ad. No. 24, 1990 am. No. 34, 2001
S. 73E .....	ad. No. 24, 1990 am. No. 167, 1991
S. 73F .....	ad. No. 24, 1990
S. 73G.....	ad. No. 24, 1990 rep. No. 167, 1991
S. 73H.....	ad. No. 24, 1990 am. No. 109, 2001
Ss. 73J, 73K.....	ad. No. 24, 1990

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part IVB</b>	
Part IVB .....	ad. No. 22, 2007
<b>Division 1</b>	
Ss. 73L–73N .....	ad. No. 22, 2007
Ss. 73P, 73Q .....	ad. No. 22, 2007
<b>Division 2</b>	
Ss. 73R–73V .....	ad. No. 22, 2007
<b>Part V</b>	
Ss. 74, 75 .....	am. No. 24, 1990
S. 80 .....	rs. No. 24, 1990
Ss. 81, 82 .....	am. No. 24, 1990
S. 84 .....	am. No. 24, 1990
Ss. 85, 86 .....	am. No. 24, 1990; No. 34, 2001
<b>Part VI</b>	
S. 89 .....	am. No. 81, 1988; No. 24, 1990; No. 78, 2004
S. 89A .....	ad. No. 24, 1990 am. No. 134, 1999
S. 90 .....	am. No. 24, 1990
S. 91 .....	am. No. 24, 1990; No. 78, 2004
S. 92 .....	am. No. 24, 1990
S. 93 .....	am. No. 24, 1990; No. 94, 1998
S. 95 .....	am. No. 24, 1990; No. 78, 2004
S. 95A .....	ad. No. 24, 1990
S. 95B .....	ad. No. 24, 1990 am. No. 146, 1999
S. 96 .....	am. No. 24, 1990
<b>Part VII</b>	
S. 97 .....	am. No. 24, 1990
S. 98 .....	am. No. 24, 1990; No. 94, 1998 rs. No. 78, 2004
S. 98A .....	ad. No. 121, 1992
S. 99 .....	am. No. 78, 2004
<b>Part VIII</b>	
S. 100 .....	am. No. 78, 2004
S. 101 .....	am. No. 24, 1990; No. 78, 2004
S. 105 .....	am. No. 24, 1990; No. 78, 2004
S. 106 .....	am. No. 78, 2004
S. 107AA .....	ad. No. 94, 1998
S. 107A .....	ad. No. 24, 1990
S. 108AA .....	ad. No. 134, 1999
S. 108A .....	ad. No. 203, 1991 am. No. 167, 1992; No. 94, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 109.....	am. No. 24, 1990
S. 109A.....	ad. No. 24, 1990
Heading to Part IX.....	rs. No. 94, 1998 rep. No. 65, 2006
Part IX.....	rep. No. 65, 2006
S. 109A.....	ad. No. 77, 1988
Renumbered s. 109B.....	No. 219, 1992
S. 109B.....	rep. No. 65, 2006
S. 110.....	am. No. 67, 1985; No. 180, 1991; No. 105, 1992 rep. No. 65, 2006
S. 111.....	am. No. 67, 1985; No. 24, 1990; No. 105, 1992 rep. No. 65, 2006
S. 112.....	am. No. 24, 1990; No. 94, 1998 rep. No. 65, 2006
S. 113.....	rep. No. 77, 1988
S. 114.....	am. No. 77, 1988; No. 24, 1990 rep. No. 65, 2006
S. 115.....	rs. No. 24, 1990 rep. No. 65, 2006
<b>Part X</b>	
Ss. 116, 117.....	am. No. 24, 1990
S. 118.....	am. No. 109, 2001
S. 118A.....	ad. No. 24, 1990 am. No. 109, 2001
S. 119.....	am. No. 24, 1990; No. 109, 2001
S. 121.....	am. No. 167, 1991; No. 34, 2001
S. 121A.....	ad. No. 65, 2006
S. 122.....	am. No. 133, 1984; No. 24, 1990; No. 78, 2004
Note to s. 122(5).....	ad. No. 109, 2001
S. 124.....	rs. No. 167, 1991 am. No. 94, 1998; No. 115, 2004
S. 125.....	am. No. 94, 1998 rep. No. 134, 1999
S. 126.....	am. No. 109, 2001
Ss. 127, 128.....	am. No. 24, 1990
S. 130.....	am. No. 24, 1990; No. 94, 1998; No. 109, 2001; No. 115, 2004
S. 131.....	am. No. 24, 1990; No. 78, 2004
S. 132.....	am. No. 109, 2001
S. 133.....	am. No. 24, 1990
S. 134.....	am. No. 167, 1991; No. 109, 2001
S. 135.....	rs. No. 24, 1990 am. No. 22, 2007
S. 136.....	am. No. 77, 1988; No. 109, 2001 rep. No. 65, 2006

## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part XI</b>	
S. 136A .....	ad. No. 77, 1988
S. 137.....	rep. No. 94, 1998
S. 138.....	am. No. 24, 1990
S. 139.....	am. No. 34, 2001; No. 78, 2004
S. 140A .....	ad. No. 167, 1991
S. 140AA.....	ad. No. 78, 2004
S. 140B .....	ad. No. 219, 1992
S. 141.....	am. No. 24, 1990
S. 142.....	rs. No. 24, 1990 rep. No. 94, 1998
S. 142A .....	ad. No. 24, 1990 am. No. 94, 1998
<b>Schedules</b>	
Schedule 1 .....	am. No. 34, 2001; No. 78, 2004
Schedule 3 .....	ad. No. 24, 1990 am. No. 167, 1991; Nos. 115 and 123, 2004
Schedule 4 .....	ad. No. 24, 1990 am. No. 167, 1991; No. 166, 1995; No. 94, 1998; No. 134, 1999; No. 34, 2001; Nos. 78 and 115, 2004; No. 65, 2006



**Note 2**

Paragraph 38(1)(c), subsection 38(6) and Schedule 4 (subparagraph 6(cb))—Schedule 1 (items 115, 116 and 133) of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (No. 65, 2006) provide as follows:

**Schedule 1****115 Paragraph 38(1)(c)**

Omit “be granted a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948*”, substitute “become an Australian citizen under the *Australian Citizenship Act 2005*”.

**116 Subsection 38(6)**

Omit “with the original certificate of Australian citizenship granted to the person, or a copy of the certificate that has been attested to by an elector in a prescribed class of electors”, substitute “with evidence that the person has become an Australian citizen”.

**133 Subparagraph 6(cb) of Schedule 4**

Omit all the words from and including “an officer”, substitute “an officer with evidence that the elector has become an Australian citizen under the *Australian Citizenship Act 2006*”.

Subsection 2(1) (items 15 and 17) of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* provides as follows:

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
15. Schedule 1, items 115 and 116	The later of: (a) immediately after the commencement of item 114 of Schedule 1 to this Act; and (b) the commencement of section 3 of the <i>Australian Citizenship Act 2006</i> .	
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

## Note 2

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Provision(s)	Commencement	Date/Details
17. Schedule 1, item 133	The later of: (a) immediately after the commencement of item 132 of Schedule 1 to this Act; and (b) the commencement of section 3 of the <i>Australian Citizenship Act 2006</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

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The *Australian Citizenship Act 2006* was incorrectly cited and the amendments are not incorporated in this compilation.

**Table A**

**Application, saving or transitional provisions**

*Finance and Administration Legislation Amendment (Application of Criminal Code) Act 2001* (No. 109, 2001)

**5 Application of amendments generally**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004* (No. 78, 2004)

**Schedule 1**

**121 Application—section 140AA of the *Referendum (Machinery Provisions) Act 1984***

Section 140AA of the *Referendum (Machinery Provisions) Act 1984* applies in relation to offences committed after the commencement of this item.