

1991

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

ELECTORAL AND REFERENDUM AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Administrative Services,
Senator the Honourable Nick Bolkus)

ELECTORAL AND REFERENDUM AMENDMENT BILL 1991

OUTLINE

In May 1989 the Joint Standing Committee on Electoral Matters (JSC) presented its Report No. 3, which flowed from its Inquiry into the Conduct of the 1987 Federal Election and the 1988 Referendums.

A number of the recommendations made by the JSC in its Report have already been put into effect administratively or by regulation, and some others were enacted in the *Electoral and Referendum Amendment Act 1989*.

This legislation amends the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to give effect to the remaining recommendations made in the JSC's Report No. 3 which have been accepted by the Government. It also includes a number of minor amendments the need for which has become apparent since the Committee reported.

The major provisions of the Bill are designed to:

- enable the streamlined processing of electoral enrolment forms in cases where enrolment is claimed for a Subdivision for which the claimant is already enrolled;
 - provide that the address of a candidate who has a silent enrolment need not be publicly announced at the close of nominations;
 - give Senators and members of the House of Representatives a choice of recording either their enrolled address or place of residence when completing a nomination form;
 - enable the Registered Officer or a Deputy Registered Officer of a registered party to lodge the nominations of all of the party's endorsed House of Representatives candidates in a State or Territory with the Australian Electoral Officer for the State or Territory, up to 48 hours before the close of nominations;
 - provide that a nomination may be made by way of facsimile, provided that the candidate's deposit is received prior to the close of nominations;
 - require certain specified "Officers of the Crown" to resign their positions before nominating;
 - require candidates, when completing a nomination form, to specify how they became Australian citizens (ie by birth, by naturalisation, or by other means to be specified by the candidate);
 - provide that any person who makes a claim in a nomination form which is false or misleading in a material respect shall be guilty of an offence, for which the penalty will be a fine of \$3 000 or imprisonment for 6 months or both;
 - ensure that the addresses of "silent" electors will not be disclosed to persons inspecting postal vote applications;
- enable licensed premises to be used as a polling booth subject to the Electoral Commissioner declaring in writing that he is satisfied that during the hours of polling at the election or referendum;

- no alcohol will be sold or consumed on that part of the premises to be used for polling;
- the part of the premises to be used for polling will be segregated from areas where alcohol is being sold or consumed; and
- voters will have access to the part of the premises to be used for polling, which does not involve passage through an area where alcohol is being sold or consumed.

enable the name of an incumbent Senator who has lodged a voting ticket to be printed above the heavy black line on the Senate ballot paper along with the word "Independent";

provide that persons who live within 20 kilometres of a specified place at which mobile polling will be conducted will no longer be eligible to register as general postal voters on the basis of the distance of their place of residence from a polling place;

provide for the conduct of a second preliminary scrutiny of all declaration votes which are rejected at the first preliminary scrutiny;

clarify the provisions relating to the scrutiny of Senate votes;

introduce an infringement notice system for the enforcement of compulsory voting at elections and referendums, under which apparent non-voters will be given the option of paying a penalty, showing cause why they should not be prosecuted, or having the matter dealt with in court;

- require the authorisation of electoral material distributed by video;
- require newspaper advertisements appearing as double page advertisements to carry authorisation details on both pages, unless the advertisement is contained within a box or is printed across the seam of the two pages, in which case only one authorisation will have to be printed;

modify section 351 of the *Commonwealth Electoral Act 1918* so as to enhance its enforceability;

provide for the supply of certified lists of voters to Senators, members of the House of Representatives, and House of Representatives candidates;

provide for a redistribution of electoral boundaries to commence in the Australian Capital Territory if the Territory's representation entitlement in the House of Representatives changes; and

require the Governor-General's authority for the holding of a poll under a law of the Australian Capital Territory on the polling day for a federal election or referendum.

FINANCIAL IMPACT STATEMENT

The Australian Electoral Commission estimates that the requirement to provide certified lists of voters to Senators and members of the House of Representatives will cost \$205 000 at each general election for the House of Representatives and separate half Senate election. The requirement to provide certified lists to House of Representatives candidates will cost \$30 000 at each general election. The remaining provisions of the Bill will give rise neither to costs nor to savings.

NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1 – Short Title

1. This clause provides for the Act to be cited as the *Electoral and Referendum Amendment Act 1991*.

Clause 2 – Commencement

2. This clause provides that provisions relating to:

- Short Title;
- Commencement;
- Definition of "Principal Act" in Parts 2, 3 and 4

will commence on the day on which the Act receives Royal Assent. In addition, the amendments made to the *Electoral and Referendum Amendment Act 1989* by section 40 will be taken to have commenced on 30 September 1990. The remaining provisions will commence on a day or days to be fixed by proclamation, with the proviso that any provisions that have not commenced within a period of 6 months beginning on the day of Royal Assent will commence on the first day after the end of that period.

PART 2 – AMENDMENTS OF THE COMMONWEALTH ELECTORAL ACT 1918

Clause 3 – Principal Act

3. Formal.

Clause 4 – Interpretation

4. This clause amends subsection 4(1) of the Principal Act to insert definitions of "facsimile", "Officer of the Crown" and "video recording".

Clause 5 – Times at which redistributions are to commence

5. This clause deals with the commencement of redistributions of electoral boundaries in the Australian Capital Territory. Subclause (1) amends subsection 59(7) of the Principal Act to provide that a redistribution shall be directed in the Australian Capital Territory forthwith after the making of a determination under subsection 48(1) of the Principal Act which results in an alteration of the number of members of the House of Representatives to be chosen in the Territory at a general election. It also amends paragraph 59(5)(a) of the Principal Act as a consequence of an amendment made to section 46 of the Principal Act by section 44 of the *Commonwealth Electoral Amendment Act 1987*.

6. Subclause (1) also inserts in section 59 of the Principal Act new subsections (9A) and (9B). These new subsections are equivalent to provisions already in place for State and Northern Territory redistributions.

New subsection 59(9A) provides that if in the period between the first meeting of a House of Representatives and the making of a determination of State and Territory

representation entitlements under subsection 48(1) of the Principal Act, the Electoral Commission forms the view that the determination will result in an alteration in the number of members to be chosen in the Australian Capital Territory at a general election, it can, by *Gazette* notice, suspend the operation of subsection 59(7) of the Principal Act (thus deferring any redistributions) until after the determination. The purpose of the provision is to prevent the initiation of a redistribution on the basis of a particular representation entitlement where that entitlement is likely to change, giving rise to the need for a further redistribution.

New subsection 59(9B) provides that where a redistribution is directed in the Australian Capital Territory because of a change in its representation entitlement, any redistribution already underway in the Territory is terminated.

Clause 6 – Provision of Rolls and habitation indexes to political parties etc.

7. This clause inserts a new subsection (10A) in section 91 of the Principal Act to make it clear that the requirement of the Electoral Commission to provide copies of the latest print of the rolls under section 91 is not affected by the new requirements to provide copies of certified lists of voters to candidates, members and Senators.

Clause 7 – Insertion of new sections

8. This clause inserts new sections 91C, 91D, and 91E in the Principal Act. New section 91C requires the Electoral Commission, as soon as practicable after the close of rolls, to give each House of Representatives candidate a copy of the certified list of voters for the Division which he or she is contesting.

9. New section 91D deals with the provision of certified lists of voters to members of the House of Representatives.

New subsection 91D(1) provides that as soon as practicable after any House of Representatives election in a Division, the Electoral Commission must give the elected member for the Division 3 copies of the certified list of voters for the Division.

New subsection 91D(2) provides that as soon as practicable after a Senate election in a State or Territory, the Electoral Commission must give to each member of the House of Representatives from the State or Territory 3 copies of the certified list of voters relating to his or her Division produced for the election.

New subsection 91D(3) provides that members will be entitled only to 3 certified lists, not 6, if a Senate and a House of Representatives election are held concurrently.

10. New section 91E deals with the provision of certified lists of voters to Senators.

New subsection 91E(1) provides that as soon as practicable after any Senate election in a State or Territory, the Electoral Commission must give each Senator for the State or Territory 3 copies of the certified list of voters for each Division in the State or Territory.

New subsection 91E(2) provides that as soon as practicable after any House of Representatives election in a Division, the Electoral Commission must give to each Senator who represents the State or Territory in which the Division is located 3 copies of the certified list of voters for the Division.

New subsection 91D(3) provides that Senators will be entitled only to 3 certified lists for a Division, not 6, if a Senate and a House of Representatives election are held concurrently.

Clause 8 – Claims for age 17 enrolment

11. This clause recasts subsection 100(1) of the Principal Act, which enables 17 year olds to enrol but not to vote, so as to clarify its intent. The amendment does not change the provision's effect.

Clause 9 – Action on receipt of claim

12. This clause amends section 102 of the Principal Act to provide that where a person claims enrolment for a Subdivision for which he or she is already correctly enrolled, a standard acknowledgement of enrolment will be sent to the person, rather than a special notification stating that the person is already correctly enrolled. This will streamline the processing of electoral enrolment forms.

Clause 10 – Insertion of new section

13. This clause inserts a new section 164A in the Principal Act, which provides that "Officers of the Crown" are incapable of being nominated for election to the Senate or the House of Representatives. This will to some extent clarify the position of persons who in the past have been unsure whether or not they may have been disqualified from nomination by section 44 of the Constitution.

Clause 11 – Mode of nomination

14. This clause inserts new subsections (1A) and (1B) in section 166 of the Principal Act, to provide that a Senator or member of the House of Representatives who has enrolled under subsection 99(4) of the Principal Act for a Subdivision other than the one in which he or she lives may choose to set out in his or her nomination either his or her place of living or his or her enrolled address.

Clause 12 – Repeal of section and substitution of new section

15. This clause repeals section 167 of the Principal Act, which specifies to whom nominations are to be made, and substitutes a new section 167. The effect of the amendment is to provide a new mode of nomination for House of Representatives candidates who have been endorsed by a registered political party: new subsection 167(3) provides that the registered officer of a registered party may lodge with the Australian Electoral Officer for a State or Territory the nominations of all House of Representatives candidates endorsed by the party in the relevant State or Territory.

16. New subsection 167(4) provides that where candidates are so nominated, the Australian Electoral Officer must:

- as soon as practicable before the hour of nomination deliver to the Divisional Returning Officer for any Division for which a candidate has been so nominated a facsimile of the relevant nomination paper;
- advise that Divisional Returning Officer of the receipt of the candidate's deposit; and
- deliver that deposit to the Divisional Returning Officer.

Clause 13 – Repeal of section and substitution of new section

17. This clause repeals section 170 of the Principal Act, dealing with requisites for nomination, and substitutes a new section 170. The effect of the present section 170 is changed in the following respects.

- New paragraph 170(1)(c) imposes a new requirement on a candidate to state in his or her nomination whether he or she became an Australian citizen by birth, by naturalization or by other means; and further requires the candidate in each case to supply relevant particulars.

New paragraph 170(2)(a):

- explicitly provides for nominations to be lodged by facsimile; and
- provides that nominations of House of Representatives candidates endorsed by a registered party, made to the Australian Electoral Officer by the party's registered officer, must be received at least 48 hours before the close of nominations in order to be valid.

New paragraph 170(2)(c) provides that where a nomination has been made by facsimile, it will not be valid unless the required deposit is lodged with the officer to whom the nomination was made, before the relevant time limit for the receipt of the nomination.

Clause 14 – Repeal of section and substitution of new section

18. This clause repeals section 176 of the Principal Act, dealing with the declaration of nominations, and substitutes a new section 176. The effect of the present section 176 is changed in the following respects.

New subsections 176(1) and (2) provide that where a Senator or member of the House of Representatives has under new subsection 166(1A) or (1B) of the Principal Act set out in his or her nomination his or her enrolled address rather than his or her place of residence, it is that enrolled address which will be publicly declared after the close of nominations.

New subsection 176(3) provides that if a candidate has a "silent" enrolment under section 104 of the Principal Act, neither his or her place of residence nor his or her enrolled address is to be publicly declared after the close of nominations.

Clause 15 – Application for registration as a general postal voter

19. This clause amends subsection 184A(2) of the Principal Act to provide that persons who live within 20 kilometres of any specified place at which mobile polling will be conducted will no longer be eligible to register as general postal voters on the basis of the distance of their place of residence from a polling place.

Clause 16 – Inspection of applications

20. This clause amends section 189 of the Principal Act, which requires postal vote applications to be made available for public inspection. A new subsection 189(4) is inserted, requiring the Divisional Returning Officer to remove from the applications, prior to their being made publicly available, the address of any person who has a "silent" enrolment.

Clause 17 – Repeal of sections 191 and 200H

21. This clause repeals sections 191 and 200H of the Principal Act. The effect is to eliminate the requirements that:

the issue of postal and pre-poll votes be noted on the certified lists used for polling;
and

if such notations are not made, steps be taken to inform presiding officers of the issue of postal and pre-poll votes.

Clause 18 – Repeal of section and substitution of new section

22. This clause repeals section 205 of the Principal Act, dealing with the use of licensed premises as polling booths, and substitutes a new section 205. Under the new section 205, licensed premises will be able to be used as a polling booth subject to the Electoral Commissioner declaring in writing that he is satisfied that during the hours of polling at the election:

- no alcohol will be sold or consumed on that part of the premises to be used for polling;
- the part of the premises to be used for polling will be segregated from areas where alcohol is being sold or consumed; and
- voters will have access to the part of the premises to be used for polling, which does not involve passage through an area where alcohol is being sold or consumed.

Clause 19 – Printing of Senate ballot-papers

23. This clause amends section 210 of the Principal Act to provide that where grouped Senate candidates have not specified the order in which their names are to appear within the group on the ballot paper, that order is to be determined by the "double randomization" draw mechanism specified in section 213 of the Principal Act.

Clause 20 – Individual voting tickets

24. This clause amends section 211A of the Principal Act so as to enable the name of an incumbent Senator who has lodged a voting ticket to be printed above the heavy black line on the Senate ballot paper along with the word "Independent".

Clause 21 – Mobile booths – Remote Divisions

25. This clause amends subsection 227(4) of the Principal Act so as to empower the Electoral Commission to determine at any time, by notice published in the *Gazette*, the places to be visited for the purposes of mobile polling in remote Divisions. This will enable those places to be continuously determined for the purpose of the registration of general postal voter provisions as amended by clause 15.

Clause 22 – Compulsory voting

26. This clause amends section 245 of the Principal Act to introduce an infringement notice system for the enforcement of compulsory voting, under which apparent non-voters will be given the option of paying a penalty, showing cause why they should not be prosecuted, or having the matter dealt with in court. Recipients of penalty notices will not be obliged to respond to them.

- New subsection 245(2) requires the Electoral Commissioner, after polling day at an election, to prepare a list of apparent non-voters for each Division.

New subsections 245(3) and (4) require each Divisional Returning Officer to send a penalty notice to each elector on the list, except where he or she is satisfied that a particular elector is dead, was absent from Australia on polling day, or was ineligible to vote at the election.

New subsection 245(5) specifies the matters to be covered in the penalty notice.

New subsection 245(6) requires a second penalty notice to be sent where no response has been received to the first penalty notice within the time specified therein.

New subsection 245(8) provides that if in response to a penalty notice, an elector pays a penalty of \$20, satisfies the Divisional Returning Officer that he or she in fact voted, or provides the Divisional Returning Officer with a reason for failing to vote which is deemed valid and sufficient, the elector is not to be prosecuted for failing to vote.

New subsection 245(9) provides that if the Divisional Returning Officer does not accept an elector's claim that he or she voted, or alternatively does not regard a reason proffered for failure to vote as valid and sufficient, the elector is to be sent a further notice, giving him or her the option of paying a \$20 penalty or having the matter dealt with in Court.

New subsection 245(10) provides that if in response to a notice sent under new subsection 245(9) an elector pays a penalty of \$20, the elector is not to be prosecuted for failing to vote.

New subsection 245(11) makes special provision in relation to responses to penalty notices sent to electors who are absent from their places of living, or who are physically incapacitated.

New subsections 245(12) and (13) provide for record keeping by the Divisional Returning Officer in the course of the process.

New subsection 245(14) provides that without prejudice to other valid and sufficient reasons, 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 failing to vote.

New subsection 245(15) creates offences of failing to vote without a valid and sufficient reason for such failure, and of making a knowingly false or misleading statement in response to a penalty notice. The maximum specified penalty is \$50.

New subsection 245(16) provides that proceedings for an offence against the section may only be instituted by the Electoral Commissioner or an officer authorised by him or her.

New subsection 245(17) excuses Antarctic electors, eligible overseas electors and itinerant electors from compulsory voting.

Clause 23 – Scrutiny of votes in Senate elections

27. This clause amends section 273 of the Principal Act, which provides for the scrutiny of votes at Senate elections.

- Subsection 273(13) is replaced by new subsections (13) and (13AA), and subsection 273(28) is amended. The effect of the amendments is to clarify that during the exclusion of a candidate or candidates from a Senate scrutiny, all ballot papers received by the excluded candidate or candidates at a transfer value of 1 are to be distributed at a single count. This was the intention of the 1987 legislation which introduced the "combined transfer values" scheme, and that intention reflected the views expressed by the Joint Select Committee on Electoral Reform at paragraphs 7.55, 7.56 and 7.60 of its Report on The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation.

Subsection 273(15) is recast so as to clarify that a bulk exclusion may be conducted in lieu of a single exclusion at any time during the Senate count, provided that the

conditions laid down in subsection 273(13A) are satisfied. This was the intention of the 1987 legislation which introduced the bulk exclusion scheme, and that intention reflected the views expressed by the Joint Select Committee on Electoral Reform at paragraphs 7.58 and 7.60 of its Report on The Operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation.

Clause 24 – Declaration of poll and return of writs for House of Representatives

28. This clause amends section 284 of the Principal Act, which provides for the declaration of the poll and the return of the writs at House of Representatives elections, so as to:

- provide that the writ for the House of Representatives elections in a State or Territory may be returned even where there has been a tied election in one of the Divisions in the State or Territory; and
- provide that the pre-condition for the return of the writ will be that the poll (in the case of a by-election) or all polls other than a tied poll (in the case of a general election) have been declared.

Clause 25 – Printing and publication of electoral advertisements, notices etc.

29. This clause amends section 328 of the Principal Act, to:

- require video recordings containing electoral matter to be authorised; and
- provide that an electoral advertisement which extends over two pages of a newspaper must carry an authorisation on each page; unless its text is contained within a border, or within lines at the top or sides or both, or is printed across the seam of the two pages – in which case the authorisation need only appear at the end of the advertisement.

Clause 26 – Repeal of section and substitution of new section

30. This clause repeals section 331 of the Principal Act, which deals with headings to electoral advertisements, and substitutes a new section 331. The effect is to extend the operation of current section 331 so that in addition to its current requirements it will provide that a paid article or paragraph in a newspaper which contains electoral matter must, if it extends over two pages, have the heading "advertisement" printed on each page; unless its text is contained within a border, or within lines at the top or sides or both, or is printed across the seam of the two pages – in which case the heading need only be printed on one page.

Clause 27 – Other offences relating to ballot-papers etc.

31. This clause creates a new offence relating to the provision of false or misleading information in nomination forms. Subclause (1) inserts in section 339 of the Principal Act new subsections (3), (4) and (5).

- New subsection 339(3) prohibits a candidate, knowingly or otherwise, from:
 - making in his or her nomination a statement that is false or misleading in a material particular; or
 - omitting from a statement in his or her nomination form any matter or thing without which the statement is misleading in a material particular.

The prescribed penalty is imprisonment for up to 6 months.

New subsection 339(4) provides for there to be a defence to a prosecution for a breach of new subsection 339(2) where the candidate did not know, and could not reasonably be expected to have known, that the statement to which the prosecution relates was false or misleading.

New subsection 339(5) provides that in section 339, a reference to a nomination paper is to include a reference to a facsimile of a nomination paper.

32. Subclause (2) is a transitional provision to ensure that any prosecutions under paragraph 339(1)(k) underway at the time the clause commences will not be affected by its commencement.

Clause 28 – Publication of matter regarding candidates

33. This clause amends section 351 of the Principal Act. A new subsection 351(5) is inserted to provide that for the purposes of the section, a person whose name is printed on any matter as its authoriser will be deemed to have published it, in the absence of evidence to the contrary. This closes a loophole in the current provision, under which the authorisation details shown on the matter are, for the purposes of a prosecution for an offence against section 351, regarded as no more than documentary hearsay – thereby rendering the provision unenforceable.

Clause 29 – Immaterial errors not to vitiate election

34. This clause amends section 365 of the Principal Act to ensure that an election cannot be declared void on the basis of any delay in the provision of certified lists of voters to candidates.

Clause 30 – Repeal of section and substitution of new section

35. This clause repeals section 369 of the Principal Act, which provides for copies of petitions lodged with and orders made by the Court of Disputed Returns to be sent to the House affected, and substitutes a new section 369. The effect is to impose a new requirement on the Registrar of the High Court, after the trial of a petition relating to a House of Representatives election, to provide to the issuer of the writ (the Governor-General or the Speaker, as the case requires) a copy of the order made by the Court in relation to the petition.

Clause 31 – No State referendum or vote to be held on polling day

36. This clause amends section 394 of the Principal Act so that in future the Governor-General's authority will be required for the holding of a poll under a law of the Australian Capital Territory on the polling day for a federal election or referendum.

Clause 32 – Amendments of Schedule 3

37. This clause amends Schedule 3 of the Principal Act, which specifies the rules for the conduct of a preliminary scrutiny of declaration votes. The amendments made by paragraphs (a) and (c) to (h) of the clause are designed to provide for the conduct of a second preliminary scrutiny of declaration votes which are rejected at the first preliminary scrutiny. The amendments made by paragraph (b) of the clause are designed to ensure that a pre-poll vote which has not been witnessed by the issuing officer as required by section 200E of the Principal Act can still be counted if a record was made of the its issue under section 200G of the Principal Act, or failing that, if the Divisional Returning Officer is satisfied that it was properly issued.

Clause 33 – Minor amendments

38. This clause provides for the minor amendments set out in Schedule 1 to be made to the Principal Act.

PART 3 – AMENDMENTS OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984

Clause 34 – Principal Act

39. Formal.

Clause 35 – Interpretation

40. This clause amends subsection 3(1) of the Principal Act to insert a definition of "video recording".

Clause 36 – Repeal of section and substitution of new section

41. This clause repeals section 21 of the Principal Act, dealing with the use of licensed premises as polling booths, and substitutes a new section 21. Under the new section 21, licensed premises will be able to be used as a polling booth subject to the Electoral Commissioner declaring in writing that he is satisfied that during the hours of voting at the referendum:

- no alcohol will be sold or consumed on that part of the premises to be used for polling;
- the part of the premises to be used for polling will be segregated from areas where alcohol is being sold or consumed; and
- voters will have access to the part of the premises to be used for polling, which does not involve passage through an area where alcohol is being sold or consumed.

Clause 37 – Compulsory voting

42. This clause amends section 45 of the Principal Act to introduce an infringement notice system for the enforcement of compulsory voting, under which apparent non-voters will be given the option of paying a penalty, showing cause why they should not be prosecuted, or having the matter dealt with in court. Recipients of penalty notices will not be obliged to respond to them.

- New subsection 45(2) requires the Electoral Commissioner, after voting day at a referendum, to prepare a list of apparent non-voters for each Division.
- New subsections 45(3) and (4) require each Divisional Returning Officer to send a penalty notice to each elector on the list, except where he or she is satisfied that a particular elector is dead, was absent from Australian on voting day, or was ineligible to vote at the referendum.
- New subsection 45(5) specifies the matters to be covered in the penalty notice.

New subsection 45(6) requires a second penalty notice to be sent where no response has been received to the first penalty notice within the time specified therein.

New subsection 45(8) provides that if in response to a penalty notice, an elector pays a penalty of \$20, satisfies the Divisional Returning Officer that he or she in fact voted, or provides the Divisional Returning Officer with a reason for failing to vote which is deemed valid and sufficient, the elector is not to be prosecuted for failing to vote.

New subsection 45(9) provides that if the Divisional Returning Officer does not accept an elector's claim that he or she voted, or alternatively does not regard a reason proffered for failure to vote as valid and sufficient, the elector is to be sent a further notice, giving him or her the option of paying a \$20 penalty or having the matter dealt with in Court.

New subsection 45(10) provides that if in response to a notice sent under new subsection 45(9) an elector pays a penalty of \$20, the elector is not to be prosecuted for failing to vote.

New subsection 45(11) makes special provision in relation to responses to penalty notices sent to electors who are absent from their places of living, or who are physically incapacitated.

New subsections 45(12) and (13) provide for record keeping by the Divisional Returning Officer in the course of the process.

New subsection 45(14) creates offences of failing to vote without a valid and sufficient reason for such failure, and of making a knowingly false or misleading statement in response to a penalty notice. The maximum specified penalty is \$50.

New subsection 45(15) provides that proceedings for an offence against the section may only be instituted by the Electoral Commissioner or an officer authorised by him or her.

New subsection 45(16) excuses Antarctic electors, eligible overseas electors and itinerant electors from compulsory voting.

Clause 38 – Inspection of applications

43. This clause amends section 62 of the Principal Act, which requires postal vote applications to be made available for public inspection. A new subsection 62(4) is inserted, requiring the Divisional Returning Officer to remove from the applications, prior to their being made publicly available, the address of any person who has a "silent" enrolment.

Clause 39 – Repeal of sections 64 and 73G

44. This clause repeals sections 64 and 73G of the Principal Act. The effect is to eliminate the requirements that:

the issue of postal and pre-poll votes be noted on the certified lists used for voting; and

if such notations are not made, steps be taken to inform presiding officers of the issue of postal and pre-poll votes.

Clause 40 – Printing and publication of advertisements, notices etc.

45. This clause amends section 121 of the Principal Act, to:

- require video recordings containing matter relating to a referendum and intended or calculated to affect the result of the referendum, to be authorised; and

provide that an advertisement relating to a referendum and intended or calculated to affect the result of the referendum, which extends over two pages of a newspaper, must carry an authorisation on each page; unless its text is contained within a border, or within lines at the top or sides or both, or is printed across the seam of the two pages - in which case the authorisation need only appear at the end of the advertisement.

Clause 41 - Repeal of section and substitution of new section

46. This clause repeals section 124 of the Principal Act, which deals with headings to advertisements, and substitutes a new section 124. The effect is to extend the operation of current section 124 so that in addition to its current requirements it will provide that a paid article or paragraph in a newspaper which contains matter intended or calculated to affect the result of a referendum must, if it extends over two pages, have the heading "advertisement" printed on each page; unless its text is contained within a border, or within lines at the top or sides or both, or is printed across the seam of the two pages - in which case the heading need only be printed on one page.

Clause 42 - Insertion of new section

47. This clause inserts a new section 140A in the Principal Act, providing that in proceedings for an offence against section 45, an averment by the prosecutor is to be *prima facie* evidence of the matter averred. This provision is required in order to enable the enforcement of compulsory voting.

Clause 43 - Amendments of Schedule 4

48. This clause amends Schedule 4 of the Principal Act, which specifies the rules for the conduct of a preliminary scrutiny of declaration votes. The amendments made by paragraphs (a) and (c) to (f) of the clause are designed to provide for the conduct of a second preliminary scrutiny of declaration votes which are rejected at the first preliminary scrutiny. The amendments made by paragraph (b) of the clause are designed to ensure that a pre-poll vote which has not been witnessed by the issuing officer as required by section 73D of the Principal Act can still be counted if a record was made of the its issue under section 73F of the Principal Act, or failing that, if the Divisional Returning Officer is satisfied that it was properly issued.

Clause 44 - Minor amendments

49. This clause provides for the minor amendments set out in Schedule 2 to be made to the Principal Act.

PART 4 - AMENDMENTS OF THE ELECTORAL AND REFERENDUM AMENDMENT ACT 1989

Clause 45 - Principal Act

50. Formal.

Clause 46 - Amendments of Schedule 2

51. This clause provides for the amendments set out in Schedule 3 to be made to Schedule 2 of the Principal Act.

SCHEDULES

Schedule 1 – Minor amendments of the Commonwealth Electoral Act 1918

52. The Principal Act is further amended:

The definition of "Permanent Head" is deleted from subsection 4(1); the term is no longer used in the Act.

Subsection 30(3) is amended to provide that an Australian Electoral Officer for the Australian Capital Territory may resign by delivering notice in writing to the Electoral Commission. The amendment eliminates an unintended consequence of an amendment which was made in the *Electoral and Referendum Amendment Act 1989* solely to remove gender-specific language.

Subsection 44(2A) is amended to correct a typographical error.

Subsection 93(2) is amended to delete an incorrect cross-reference to a deleted provision.

Subsection 96(10) is amended to remove gender-specific language.

Subsection 96A(1) is amended to clarify that section 96A only preserves the enrolment rights of prisoners who are not subject to a disqualifications from enrolment set out in section 93.

Subsection 104(2) is amended to remove gender-specific language.

Subsection 118(5) is amended to clarify that it only applies to the removal of a name from the roll pursuant to an objection.

- Subsection 120(2) is amended to correct an incorrect cross-reference to another provision.

Subsection 120(3) is amended to provide for persons denied registration as general postal voters to have a right of review, and to correct an incorrect cross-reference to another provision.

Paragraph 120(4)(j) is amended to correct an incorrect cross-reference to another provision.

Subparagraph 166(1)(b)(ii) is amended to delete a redundant word.

Subsection 184(3) is amended to ensure that Divisional Returning Officers can process postal vote applications received from overseas.

Paragraphs 188(1)(a) and 200F(c) are amended to ensure that checks as to whether postal or pre-poll voters are enrolled will be required to be made at the time of the preliminary scrutiny of the votes, rather than at the time of issue.

Subsection 229(5) is amended to correct an incorrect cross-reference to another provision.

- Paragraph 235(1)(c) is omitted. This is consequential upon the repeal of sections 191 and 200H.

Subsection 249(1) is amended to delete a redundant word.

Subparagraph 274(7)(d)(ii) is amended to remove gender-specific language.

- Subsection 274(9C) is amended to require Divisional Returning Officers to advise the Electoral Commissioner, rather than the Electoral Commission, of tied House of Representatives elections. This ensures consistency with the new provisions for return of writs inserted by clause 21.
- Section 276 is amended to remove an incorrect cross-reference to other provisions, and to remove gender-specific language.
- Subsection 284(2A) is amended to require Divisional Returning Officers to send advice of the result of a House of Representatives election to the Electoral Commissioner rather than the Electoral Commission. This will make the provision consistent with subsection 284(3).
- Section 317 is amended to correct a mistaken amendment made by the *Electoral and Referendum Amendment Act 1989*.
- Subsections 336(1) and 336(2) are amended to correct a mistaken amendment made by the *Electoral and Referendum Amendment Act 1989*. The mistaken amendment, intended only to eliminate gender-specific language, in fact changed the sense of the provision.
- Paragraphs 339(1)(a) and 339(1)(b) are amended to modernize their wording.
- Subsections 347(3) and 347(4) are amended to remove gender-specific language.
- Paragraph 2 of Schedule 2 is amended to clarify its wording.

Schedule 2 – Minor amendments of the Referendum (Machinery Provisions) Act 1984

53. The Principal Act is further amended:

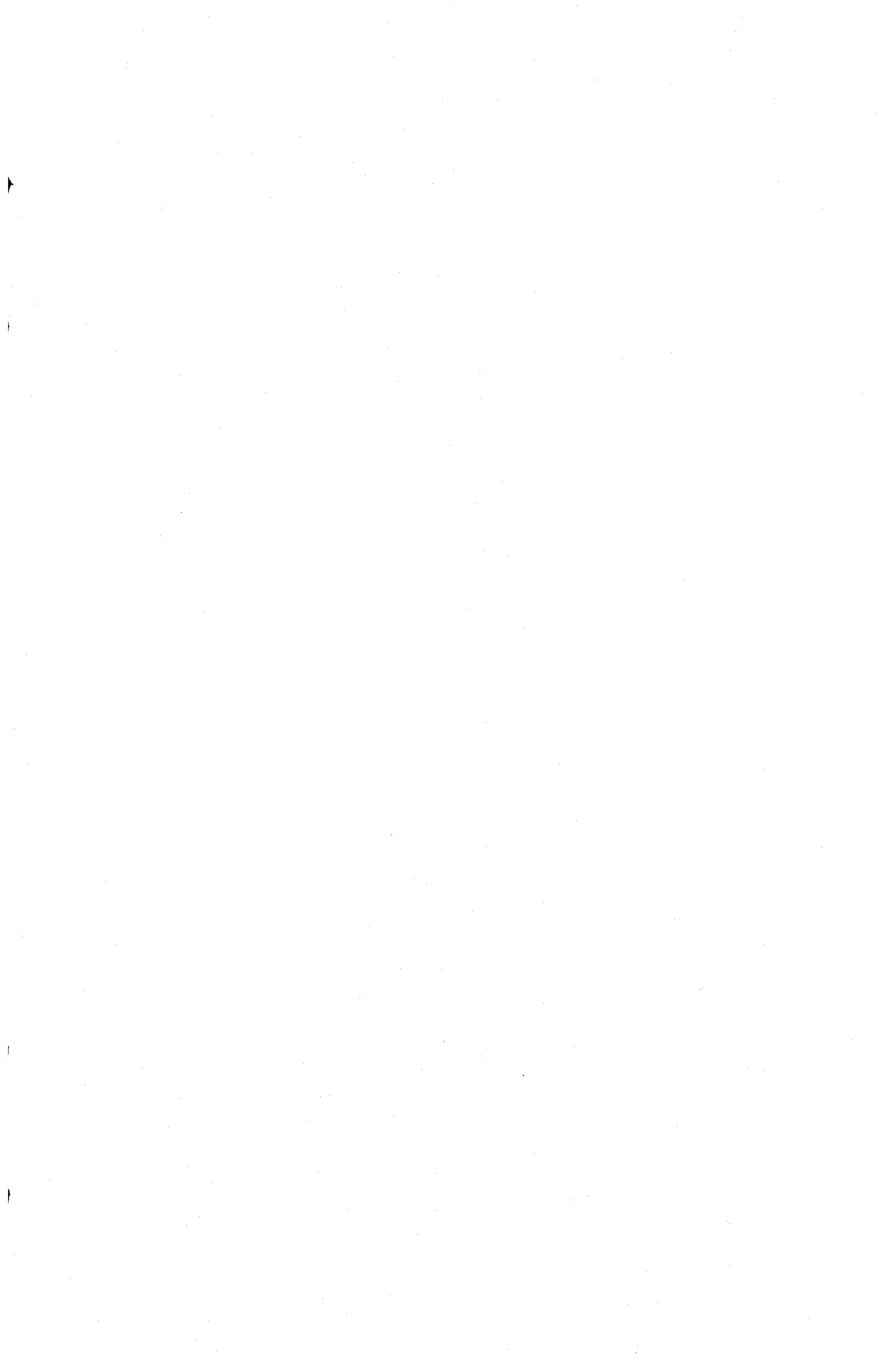
- Subsection 30(5) is amended to correct an incorrect cross-reference to another provision.
- Paragraph 37(1)(c) is omitted. This is consequential upon the repeal of sections 64 and 73G.
- Subsections 46A(1), (1A) and (8) are amended to correct an incorrect cross-reference to another provision.
- Subsection 55(3) is amended to ensure that Divisional Returning Officers can process postal vote applications received from overseas.
- Paragraphs 61(1)(a) and 73E(c) are amended to ensure that checks as to whether postal or pre-poll voters are enrolled will be required to be made at the time of the preliminary scrutiny of the votes, rather than at the time of issue.

Subsections 134(3) and 134(4) are amended to remove gender-specific language.

Paragraph 2 of Schedule 3 is amended to clarify its wording.

Schedule 3 – Amendments of Schedule 2 to the Electoral and Referendum Amendment Act 1989

54. Schedule 2 of the *Electoral and Referendum Amendment Act 1989* contained amendments of various provisions of the *Commonwealth Electoral Act 1918* designed to eliminate gender-specific language. The amendments set out in Schedule 3 correct a number of misdescriptions and errors in those amendments. The amendments set out in Schedule 3 will, pursuant to clause 2, be deemed to have been made on 30 September 1990, the day on which the amendments set out in Schedule 2 of the *Electoral and Referendum Amendment Act 1989* came into effect.





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