

# COMMONWEALTH ELECTORAL.

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**No. 19 of 1940.**

An Act to amend the *Commonwealth Electoral Act* 1918-1934.

[Assented to 29th May, 1940.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title  
and citation.

1.—(1.) This Act may be cited as the *Commonwealth Electoral Act* 1940.

(2.) The *Commonwealth Electoral Act* 1918-1934\* is in this Act referred to as the Principal Act.

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\* Act No. 27, 1918, as amended by No. 31, 1919 ; No. 14, 1921 ; No. 14, 1922 ; No. 10, 1924 ; No. 20, 1925 ; No. 17, 1928 ; No. 2, 1929 ; and No. 9, 1934.

(3.) The Principal Act, as amended by this Act, may be cited as the *Commonwealth Electoral Act 1918-1940*.

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

3. Section nine of the Principal Act is amended—

- (a) by inserting in sub-section (2.), after the word "election" (first occurring), the words "or a referendum"; and
  - (b) by adding at the end of that sub-section the words "or referendum".
- Assistant  
Returning  
Officers.

4. Section twenty-six of the Principal Act is amended by adding at the end thereof the following sub-section :— Subdivisions.

"(2.) The Minister may, on the recommendation of the Chief Electoral Officer, by notice in the *Gazette*, declare any Subdivision to be a remote Subdivision for the purposes of this Act."

5. Section thirty-six of the Principal Act is amended by omitting from sub-section (2.) the words "be prepared, and wherever practicable printed, immediately previous to a Senate Election or a General Election for the House of Representatives" and inserting in their stead the words "where necessary, be prepared and printed immediately after the issue of the writ for an election or a referendum". Printing of  
Rolls.

6. Section forty-seven of the Principal Act is amended by omitting the second proviso to paragraph (h) of sub-section (1.). Alteration of  
Rolls.

7. After section seventy-two A of the Principal Act the following section is inserted :—

"72B. Candidates nominated for election to the Senate whose names are included in a group in accordance with the provisions of section seventy-two A of this Act may notify the Commonwealth Electoral Officer for the State of the order in which it is desired the names of the candidates in the group shall appear in the ballot-papers, and where a notification in pursuance of this section is received by the Commonwealth Electoral Officer from each of the candidates whose names are included in the group not later than twelve o'clock noon on the day of nomination and the names of the candidates in the group are set out in all the notifications in the same order, the names of the candidates in the group shall appear in the ballot-papers in that order."

Order of names  
in group.

8. Section eighty-five of the Principal Act is amended—

- (a) by inserting in sub-section (2.), after the word "after". the words "the tenth day prior to";
  - (b) by inserting in that sub-section, after the word "election" (third occurring), the words "or to the Registrar for the Subdivision, if the applicant is enrolled for a Subdivision declared to be a remote Subdivision in pursuance of sub-section (2.) of section twenty-six of this Act";
- Application for  
postal vote  
certificate and  
postal  
ballot-paper.

(c) by inserting in the proviso to that sub-section, after the word "Officer", the words "or Registrar"; and

(d) by adding at the end thereof the following sub-section:—

"(4.) The word 'elector' in sub-section (2.) of this section, and in section eighty-seven of this Act, includes any person whose name appears on the roll of electors kept in pursuance of regulations made under the *Advisory Council Ordinance* 1936-1938 of the Australian Capital Territory or on the roll of electors for the Northern Territory."

Issue of  
certificate and  
ballot-paper.

9. Section eighty-eight of the Principal Act is amended by inserting in sub-section (1.), after the word "Officer" (first and last occurring), the words "or Registrar".

Inspection of  
applications.

10. Section eighty-nine of the Principal Act is amended by inserting after sub-section (1.) the following sub-section:—

"(1A.) All applications for postal vote certificates and postal ballot-papers received by a Registrar, shall, after being indorsed by him with the date of the issue of the postal vote certificate and postal ballot-paper, forthwith be sent by him to the Divisional Returning Officer for the Division of which his Subdivision forms part."

Numbering of  
applications.

11. Section ninety of the Principal Act is amended by inserting, after the word "Officer" (wherever occurring), the words "or Registrar".

Authorized  
witnesses.

12. Section ninety-one B of the Principal Act is amended by inserting in paragraph (a) of sub-section (1.), after the words "Quarantine Stations; ", the words "all Secretaries of Hospitals; ".

Directions for  
postal voting.

13. Section ninety-two of the Principal Act is amended by omitting from sub-section (2.) all words from and including the words "or delivered as" to and including the words "to vote," and inserting in their stead the words "prior to the close of the poll, as provided in paragraph (e) or paragraph (f) of sub-section (1.) of this section, would not reach the Divisional Returning Officer for the Division in respect of which the elector claims to vote, before the end of the period of seven days immediately succeeding the close of the poll, or, if delivered as provided in paragraph (e) or paragraph (f) of that sub-section, would not reach that Divisional Returning Officer".

Unlawfully  
opening postal  
ballot-paper.

14. Section ninety-three B of the Principal Act is amended—

(a) by inserting after the word and letter "paragraph (e)" the words "or paragraph (f) of sub-section (1.)"; and

(b) by omitting the words "in accordance with the provisions of that paragraph" and inserting in their stead the words "or a person appointed by the elector in accordance with the provisions of whichever of those paragraphs is applicable to the case".

15. Section ninety-four of the Principal Act is amended by inserting after the words "Divisional Returning Officer" the words " , a Registrar ".

Penalty for failure to post or deliver application or postal ballot-paper.

16. Section ninety-six of the Principal Act is amended—

(a) by inserting after the word "to" (first occurring) the words "the end of the period of seven days immediately succeeding";

Preliminary scrutiny of postal ballot-papers.

(b) by inserting, after the word "or" (first occurring), the words "received up to the close of the poll"; and

(c) by inserting in paragraph (b), after the word "witness," the words "and that the envelope bearing the certificate was posted or delivered prior to the close of the poll,".

17. Section one hundred and five A of the Principal Act is amended—

Printing of Senate ballot-papers.

(a) by omitting paragraph (b) and inserting in its stead the following paragraph :—

"(b) subject to the provisions of section seventy-two B of this Act, the order of the names of the candidates whose names are included in a group shall be determined in the same manner, *mutatis mutandis*, as the order of the several groups in the ballot-papers;";

(b) by omitting sub-paragraphs (i), (ii), (iii), (iv) and (v) of paragraph (c) and inserting in their stead the following sub-paragraphs :—

"(i) The Commonwealth Electoral Officer shall, at the place of nomination, immediately after the close of nominations and before all persons present, make out in respect of each group a slip bearing the names of the candidates in the group, enclose the respective slips in separate blank envelopes of exact similarity and deposit the several envelopes in a locked ballot-box;

(ii) The Commonwealth Electoral Officer shall then shake and rotate the ballot-box and shall permit any other person present, if he so desires, to do the same;

(iii) The ballot-box shall then be unlocked and an officer of the Commonwealth Public Service, other than the Commonwealth Electoral Officer, shall take out and open the envelopes therefrom one by one; and

(iv) The group comprising the candidates whose names appear on the slip enclosed in the envelope first taken from the ballot-box shall be placed first on the ballot-papers, the group comprising the candidates whose names appear on the slip enclosed in the envelope next taken from the ballot-box shall be placed next on the ballot-papers and so on until the placing of all the groups has been determined ;” ; and

(e) by omitting paragraphs (e) and (f) and inserting in their stead the following paragraph :—

“ (e) the order of the names of the candidates whose names are not included in any group shall be determined in the same manner, *mutatis mutandis*, as the order of the several groups in the ballot-papers ;”.

Informal  
ballot-papers.

18. Section one hundred and thirty-three of the Principal Act is amended—

(a) by adding at the end of paragraph (b) of sub-section (1.) the following proviso :—

“ Provided that, where the voter has indicated his first preference for one candidate and his consecutive preferences for all the remaining candidates except one and the square opposite the name of that candidate has been left blank, it shall be deemed that the voter's preference for that candidate is his last and that accordingly he has indicated the order of his preference for all the candidates ;” ; and

(b) by omitting paragraph (c) of sub-section (1.) and inserting in its stead the following paragraph :—

“ (c) in a House of Representatives election, it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and his contingent votes for all the remaining candidates :

Provided that, where the voter has indicated his first preference for one candidate and his contingent votes for all the remaining candidates except one and the square opposite the name of that candidate has been left blank, it shall be deemed that the voter's preference for that candidate is his last and that accordingly he has indicated the order of his preference for all the candidates :

Provided further that, where there are two candidates only and the voter has indicated his vote by placing the figure 1 in the square opposite the name of one candidate and has left the other square blank, the voter shall be deemed to have indicated the order of his preference for all the candidates: or ”.

**19.** After section one hundred and sixty-four of the Principal Act the following section is inserted :—

“ 164A.—(1.) On and after the date of issue and before the return of any writ for the election of a member of the Senate or of the House of Representatives, or for the taking of any referendum vote, a person shall not broadcast, or permit to be broadcast, from any broadcasting station any announcement, statement or other matter commenting upon any candidate, political party or the issues being presented to the electors unless that announcement, statement or other matter includes the true name and address or names and addresses of the author or authors thereof. Matter broadcast.

Penalty : Fifty pounds.

“(2.) Where any announcement, statement or other matter is broadcast in contravention of sub-section (1.) of this section, the person who supplied the announcement, statement or other matter to the broadcasting station for broadcasting shall, unless he proves that the true name and address or names and addresses of the author or authors were included in the announcement, statement or other matter so supplied, be guilty of an offence.

Penalty : Fifty pounds.

“(3.) This section shall not apply to the inclusion in a summary of news of a report of a meeting which contains no comment (other than comment made by a speaker at the meeting) upon any candidate, political party or the issues being submitted to the electors.

“(4.) For the purposes of this section, the expression ‘broadcasting station’ means a station broadcasting messages by means of wireless telephony.”.

**20.** After section one hundred and seventy-one of the Principal Act the following section is inserted :—

“ 171A. Any officer or scrutineer who wears or displays in a polling booth on polling day any badge or emblem of a candidate or political party shall be guilty of an offence. Badges or emblems in polling booths.

Penalty : Twenty-five pounds.”.

**21.** After section one hundred and eighty-one of the Principal Act the following section is inserted :—

“ 181A.—(1.) If, in any matter announced or published by any person, or caused by him to be announced or published, on behalf of any association, league, organization or other body of persons, it is, without the written authority of the candidate (proof whereof shall lie upon that person),— Publication of matter regarding candidates.

- (a) claimed or suggested that a candidate in an election is associated with, or supports the policy or activities of, that association, league, organization or other body of persons ;
- or

(b) expressly or impliedly advocated or suggested—

(i) in the case of an election of Senators for any State—that a voter should place in the square opposite the name of a candidate on a ballot-paper a number not greater than the number of Senators to be elected; or

(ii) in the case of an election of a Member of the House of Representatives—that that candidate is the candidate for whom the first preference vote should be given,

that person shall be guilty of an offence.

Penalty : Fifty pounds or imprisonment for three months.

“(2.) Where any matter, the announcement or publication of which by any person without the written authority of a candidate would be an offence against sub-section (1.) of this section on the part of that person, is announced or published by or on behalf of, or with the support of, any association, league, organization or other body of persons, every person who was an officer thereof at the time of that announcement or publication shall be deemed to be guilty of an offence against sub-section (1.) of this section.

“(3.) For the purposes of this section, where any matter purports expressly or impliedly to be announced or published by or on behalf of, or in the interests or with the support of, any association, league, organization or other body of persons, the matter shall, in the absence of proof to the contrary, be deemed to be announced or published by or on behalf, or with the support, of the association, league, organization or other body of persons.

“(4.) Nothing in the foregoing provisions of this section shall apply to or in relation to any announcement or publication made or authorized by any *bona fide* political party or by any *bona fide* branch thereof respecting a candidate who, by public announcement, has declared his candidature to be a candidature on behalf of or in the interests of that party.”.

Method of  
disputing  
elections.

22. Section one hundred and eighty-three of the Principal Act is amended by adding at the end of sub-section (2.) the following words :—

“, and the provisions of this Division shall, so far as applicable, have effect as if that choice or appointment were an election within the meaning of this Division.”.

Requisites for  
petition.

23. Section one hundred and eighty-five of the Principal Act is amended—

(a) by adding at the end of paragraph (c) the words “, or, in the case of the choice or the appointment of a person to hold the place of a Senator under section fifteen of the Constitution, by a person qualified to vote at Senate elections in the State at the date of the choice or appointment:”; and

- (b) by adding at the end of paragraph (e) the words “; or, in the case of the choice or the appointment of a person to hold the place of a Senator under section fifteen of the Constitution, within forty days after the notification of that choice or appointment.”.

**24.** Section two hundred and two of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections :—

Power to make  
Rules of Court.

“(2.) All Rules of Court made in pursuance of this section shall—

- (a) be notified in the *Gazette* ;
- (b) take effect from the date of notification or from a later date specified in the Rules ; and
- (c) be laid before each House of the Parliament within fifteen sitting days of that House after the making of those Rules.

“(3.) If either House of the Parliament passes a resolution, of which notice has been given within fifteen sitting days after the Rules have been laid before the House, disallowing any Rule, that Rule shall thereupon cease to have effect.”.

**25.** Section two hundred and sixteen of the Principal Act is amended by omitting the word “elector” and inserting in its stead the word “person”.

Defendant may  
be called upon  
to give evidence.

**26.** The Schedule to the Principal Act is amended by omitting Form E and inserting in its stead the following Form :—

The Schedule,  
Form E.

“ FORM E.

*Ballot Paper.*

COMMONWEALTH OF AUSTRALIA.

State of [*here insert name of State*].

Election of [*here insert number*] Senators.

*Directions.*—Mark your vote on this ballot-paper by placing the numbers [*here insert 1, 2, and so on, as the case requires*] in the squares immediately to the left of the names of the respective candidates so as to indicate the order of your preference for them.

CANDIDATES.

A <input type="checkbox"/>	B <input type="checkbox"/>	C <input type="checkbox"/>	<input type="checkbox"/>
A <input type="checkbox"/>	B <input type="checkbox"/>	C <input type="checkbox"/>	<input type="checkbox"/>
A <input type="checkbox"/>	B <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOTE.—The letter ‘A’ or ‘B’ or ‘C’ &c., appearing before the square immediately to the left of a candidate’s surname indicates that that candidate and each other candidate who has the same letter appearing before the square immediately to the left of his surname have been grouped by mutual consent.

The fact that no letter appears before the square immediately to the left of a candidate’s surname indicates that the name of that candidate has not been included in any group.”.



The Schedule,  
Form F.

27. The Schedule to the Principal Act is amended by omitting from Form F all words from and including the word "*Directions*" to and including the word "them" and inserting in their stead the words—

"Directions.—Mark your vote on this ballot-paper by placing the numbers (*here insert '1 and 2' where there are two candidates, '1, 2 and 3' where there are three candidates, '1, 2, 3 and 4' where there are four candidates, and so on as the case requires*) in the squares respectively opposite the names of the candidates so as to indicate the order of your preference for them."