



# Electoral and Referendum Amendment Act 1992

No. 219 of 1992

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**An Act to amend the *Commonwealth Electoral Act 1918*  
and the *Referendum (Machinery Provisions) Act 1984*, and  
to amend the *Freedom of Information Act 1982* for related  
purposes**

[Assented to 24 December 1992]

The Parliament of Australia enacts:

## PART 1—PRELIMINARY

### Short title

5     **1.** This Act may be cited as the *Electoral and Referendum  
Amendment Act 1992*.

**Commencement**

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Section 15 commences on a date to be fixed by Proclamation.

(3) If section 15 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

**PART 2—AMENDMENTS OF THE COMMONWEALTH  
ELECTORAL ACT 1918** 10

**Principal Act**

3. In this Part, “Principal Act” means the *Commonwealth Electoral Act 1918*<sup>1</sup>.

**Interpretation**

4. Section 5 of the Principal Act is amended: 15

- (a) by omitting the definitions of “Chief Judge” and “Judge”;
- (b) by omitting the definition of “eligible Judge” and substituting the following definition:

“‘eligible Judge’ means:

- (a) a Judge, other than the Chief Judge, of the Federal Court of Australia who has been a Judge of that Court for a period of at least 3 years; or 20
- (b) a former Judge of that Court who was such a Judge for a period of at least 3 years;”.

**Functions and Powers of Commission** 25

5. Section 7 of the Principal Act is amended by inserting after paragraph (1)(f) the following paragraph:

“(fa) to provide, in cases approved by the Minister for Foreign Affairs and Trade, assistance in matters relating to elections and referendums (including the secondment of personnel and the supply or loan of materiel) to authorities of foreign countries or to foreign organisations; and”.

6. After section 7 of the Principal Act, the following sections are inserted:

**Commission may provide other services related to its functions** 35

“7A.(1) Subject to this section, the Commission may provide goods or services to other organisations or to individuals.

“(2) The Commission may provide goods and services only to the extent that it can do so by using:

- (a) information or materiel in its possession for; or
  - (b) the expertise that it has acquired in;
- the performance of its functions under section 7.

**Commission may charge fees**

- 5 “7B. Unless otherwise provided by or under this Act or another Act, the Commission may charge fair and reasonable fees for the goods and services that it provides.”.

**Tenure and terms of office**

- 10 7. Section 8 of the Principal Act is amended by omitting subsection (2).

**Remuneration**

8. Section 14A of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:

“(1A) This section applies to:

- 15 (a) a person who is acting as Chairperson or as the non-judicial appointee; or
- (b) the Chairperson, if he or she is a former Judge of the Federal Court of Australia.”;

- 20 (b) by omitting from subsection (1) “A person acting as Chairperson or as the non-judicial appointee shall” and substituting “A person to whom this section applies is to”.

**Reports by the Commission**

9. Section 17 of the Principal Act is amended by inserting in subsection (2A) “, 305A(1)” after “subsection 305(1)”.

25 **Employment of additional staff, consultants etc.**

10. Section 35 of the Principal Act is amended by omitting paragraph (1)(a) and substituting the following paragraph:

“(a) such temporary staff as the Commission thinks necessary for the purposes of:

- 30 (i) the conduct of an election, referendum, ballot or habitation review; or
- (ii) the conduct of education and information programs referred to in paragraph 7(1)(c); and”.

**New Rolls on creation of new Divisions etc.**

- 35 11. Section 86 of the Principal Act is amended by omitting from paragraph (3)(b) all words from and including “officer” and substituting: “officer:

- (i) must cause a notice of that transfer to be delivered to the address of each elector affected by the transfer; and

- (ii) may cause a notice of that transfer to be delivered to other addresses.”.

**Provision of Rolls and habitation indexes to political parties etc.**

12. Section 91 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “tape or disk”; 5
- (b) by inserting in subsection (1) the following definition:

“**‘supplement’** means, in relation to a Roll, a record of the changes to the Roll during a period of time;”;

- (c) by omitting from subsection (3) all words from and including “may” and substituting “must, if the party or person so requests, provide a copy of the Roll on tape or disk”; 10
- (d) by omitting from subsection (4) “tape or disk of the Roll” and substituting “copy of the Roll on tape or disk”;
- (e) by inserting after subsection (4) the following subsection:

“(4A) In addition to any tapes or disks provided under subsection (3) or (4), the Electoral Commission: 15

- (a) must, on request, and as far as practicable, provide to a registered political party a member of which is a Senator or a member of the House of Representatives a copy on tape or disk of any Roll or of any supplement to a Roll; and 20
- (b) must, on request, and as far as practicable, provide to any other registered political party a copy on tape or disk of any Roll or of any supplement to a Roll; and
- (c) must, on request, and as far as practicable, provide to a Senator for a State or Territory a copy on tape or disk of the Roll for any Division in that State or Territory or of any supplement to that Roll; and 25
- (d) must, on request, and as far as practicable, provide to a member of the House of Representatives a copy on tape or disk of the Roll for: 30
  - (i) the Division for which the member was elected; or
  - (ii) if the member was elected for a Division that has been affected by a redistribution—any Division that after the redistribution includes the Division, or a part of the Division, for which the member was elected; 35

or of any supplement to that Roll or Rolls;

- (e) may, on request, if it considers it appropriate, and subject to conditions (if any) determined by the Commission, provide to any person or organisation a copy on tape or disk of any Roll or of any supplement to a Roll.”; 40

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(f) by omitting from subsection (5) “a tape” and substituting “a copy on tape”;

(g) by inserting after subsection (5) the following subsection:

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“(5A) In addition to any tapes or disks provided under subsection (5), the Electoral Commission must, on request, and as far as practicable, provide to a registered political party a copy on tape or disk of any habitation index.”;

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(h) by omitting from subsection (6) “copy” and “this section” and substituting “print” and “subsection (2), (3), (4) or (5)” respectively;

(i) by inserting after subsection (6) the following subsections:

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“(6A) A tape or disk provided to a party, Senator or member under paragraph (4A)(a), (c) or (d) is to be provided without charge.

“(6B) If the Commission provides a tape or disk under paragraph (4A)(b) or (e) or subsection (5A), it may charge a fee that covers the cost to the Commission of providing the tape or disk.”;

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(j) by omitting subsection (7) and substituting the following subsection:

“(7) In spite of subsections (2), (4A), (5) and (5A), the Electoral Commission is not required by those subsections to provide a registered political party with:

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(a) a copy of the latest print of the Roll for a State or Territory; or

(b) a copy on tape or disk of the Roll for a State or Territory; or

(c) a copy on tape or disk of the habitation index for a Division in a State or Territory;

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unless a branch or division of the party is organised on the basis of that State or Territory.”;

(k) by inserting in subsection (8) “or (5A)” after “subsection (5)”.

**Use of information from Roll and habitation index**

13. Section 91A of the Principal Act is amended:

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(a) by omitting subsection (1) and substituting the following subsections:

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“(1) If a tape or disk has been provided under subsection 91(3), (4), (4A), (5) or (5A), a person must not use information obtained by means of the tape or disk except for a purpose that is a permitted purpose in relation to the person or organisation to which the tape or disk was provided.

Penalty: \$1,000.

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“(1A) The permitted purposes in relation to a Senator or member of the House of Representatives are:

(a) any purpose in connection with an election or referendum; and

(b) monitoring the accuracy of information contained in a Roll; and 5

(c) the performance by the Senator or member of his or her functions as a Senator or member in relation to a person or persons enrolled for the Division, State or Territory to which the tape or disk relates.”; 10

(b) by omitting from paragraph (2)(c) “to which the index” and substituting “. State or Territory to which the tape or disk”;

(c) by inserting after subsection (2) the following subsection:

“(2A) The permitted purposes in relation to a person or organisation other than a Senator, member of the House of Representatives or political party are: 15

(a) any purpose in connection with an election or referendum; and

(b) monitoring the accuracy of information contained in a Roll; and 20

(c) any other purpose that is prescribed.”;

(d) by omitting from subsection (3) “subsection (2)” and substituting “this section”.

**Prohibition of disclosure or commercial use of Roll or habitation index**

**14.** Section 91B of the Principal Act is amended: 25

(a) by omitting from subsection (1) “subsection 91(5)” and substituting “section 91”;

(b) by omitting subsection (2) and substituting the following subsection:

“(2) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 91A. 30

Penalty: \$1,000.”.

**15.** After section 99 of the Principal Act, the following section is inserted: 35

**Provisional claim for enrolment by applicant for citizenship**

“99A.(1) A person who:

(a) applies for a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948*; and

(b) would, if he or she were an Australian citizen, be entitled to enrolment for a subdivision; 40

may make a provisional claim for enrolment for that subdivision.

“(2) If a person who has made a provisional claim for enrolment for a subdivision, either under subsection (1) or under this subsection:

- (a) is living in another subdivision; and
- 5 (b) has lived in that subdivision for the period of one month last past;

the person may make a provisional claim for enrolment for that other subdivision.

10 “(3) If a person makes a provisional claim for enrolment under subsection (2), any previous provisional claim for enrolment by that person has no effect.

“(4) A claim must be:

- (a) in the approved form; and
- (b) subject to subsection (5), signed by the claimant; and
- 15 (c) attested to by an elector or a person entitled to enrolment, who must sign the claim as witness in his or her own handwriting; and
- (d) lodged:
  - 20 (i) if the claim is made under subsection (1)—together with the claimant’s application for a certificate of Australian citizenship; or
  - (ii) if the claim is made under subsection (2)—with any Australian Electoral Officer or DRO.

“(5) If:

- 25 (a) a person wishes to make a provisional claim for enrolment; and
- (b) a registered medical practitioner has certified, in writing, that the person is so physically incapacitated that the person cannot sign the claim;

30 another person may, on behalf of the person, fill out and sign the claim in accordance with the directions of the first-mentioned person.

“(6) The Secretary of the Department of Immigration, Local Government and Ethnic Affairs must:

- 35 (a) send to the Electoral Commissioner, as soon as practicable, any provisional claim for enrolment lodged by a person under subparagraph (4)(d)(i); and
- (b) inform the Electoral Commissioner, as soon as practicable, whether or not a certificate of Australian citizenship has been granted to the person.

40 “(7) If a person who has made a provisional claim for enrolment for a subdivision is granted a certificate of Australian citizenship, the provisional claim is taken to be a claim for enrolment for the subdivision, made by the person on the day on which the person is granted the certificate of citizenship.

“(8) If a person who has made a provisional claim for enrolment is refused a certificate of Australian citizenship, the provisional claim has no effect.”.

**Request for address not to be shown on Roll**

**16.** Section 104 of the Principal Act is amended: 5

(a) by inserting in subsection (1) “(including a provisional claim for enrolment)” after “claim for enrolment”;

(b) by omitting from subsection (7) all words from and including “and, upon completion”;

(c) by adding at the end the following subsections: 10

“(8) If, after such a review, the DRO is not satisfied that the personal safety of a elector whose address is not shown on the Roll, or of the elector’s family, would be at risk if the elector’s address were shown on the Roll, the DRO must notify the elector in writing that the DRO has decided that the elector’s address should be entered on the Roll. 15

“(9) If:

(a) the decision that the elector’s address should be entered on the Roll has not been set aside under subsection 120(3), or by the Administrative Appeals Tribunal or a court; and 20

(b) it is no longer possible for the decision to be so set aside; the DRO must enter the elector’s address on the Roll.”.

**Review by Australian Electoral Officer**

**17.** Section 120 of the Principal Act is amended: 25

(a) by inserting after paragraph (3)(b) the following paragraph:

“(ba) notifies a person under subsection 104(8) that the Divisional Returning Officer has decided that the person’s address should be entered on the Roll; or”;

(b) by inserting after paragraph (3)(f) the following paragraph: 30

“(fa) the decision by the Divisional Returning Officer under subsection 104(8) that the person’s address should be entered on the Roll; or”;

(c) by inserting after paragraph (4)(d) the following paragraph:

“(da) a written statement of the reasons for the decision under subsection 104(8) that the person’s address should be entered on the Roll; and”;

(d) by omitting from paragraph (4)(e) “113” and substituting “114”;

(e) by omitting from subsection (5) “in relation to a claim, objection, application or request or in relation to the cancellation of registration under subsection 185C(1)”;

(f) by adding at the end of subsection (5) “to which the request relates”.

**Variation of application**

5 18. Section 131 of the Principal Act is amended by adding at the end the following subsection:

“(4) If a request is made under subsection (3) to vary an application, the application as varied is to be treated for the purposes of this section as if it were a new application.”.

**Procedure for dealing with application**

10 19. Section 132 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) If:

(a) an application for registration is lodged with the Commission; and

15 (b) the Commission does not give a notice under subsection 131(1) in respect of that application;

the Commission must, as soon as practicable, publish in the *Gazette* and in each State and Territory in a newspaper circulating generally in that State or Territory a notice of the application.”.

20 **Deregistration of party failing to endorse candidates or ceasing to be a Parliamentary party**

20. Section 136 of the Principal Act is amended by inserting before paragraph (1)(a) the following paragraph:

25 “(aa) the party has been registered for more than 4 years and during that time has not endorsed a candidate for any election; or”.

**Mode of nomination**

21. Section 166 of the Principal Act is amended by adding at the end the following subsections:

30 “(6) Nothing in this Act is to be taken as requiring a person:

(a) who is a candidate or the nominator of a candidate; and

(b) whose address is not shown on the Roll because of section 104; to set out his or her address on a nomination paper.

35 “(7) A candidate who does not set out his or her address on a nomination form must provide the Divisional Returning Officer or Australian Electoral Officer, as the case may be, with an address for correspondence.”.

**Verification of party endorsement**

22. Section 169B of the Principal Act is amended:

- (a) by inserting in subsection (1) “, subject to subsection (2)” after “purposes of this Act”;
- (b) by omitting subsection (2) and substituting the following subsection: 5

“(2) For the purposes of section 214, if a person would, apart from this subsection, be taken to have been endorsed as a candidate in an election by more than one registered political party, the person is taken to have been endorsed: 10

- (a) if the person is nominated by the registered officer of one, and only one, of the parties—by that party; or
- (b) if paragraph (a) does not apply and a request is made under section 169 by the registered officer of one, and only one, of the parties—by that party; or 15
- (c) if neither paragraph (a) nor (b) applies and the person specifies one, and only one, of the parties, in a written notice given to the Australian Electoral Officer or Divisional Returning Officer, as the case requires—by that party; or 20
- (d) if none of paragraph (a), (b) or (c) applies—by the party that the Electoral Commission decides, after making such enquiries as it thinks appropriate of the registered officers of the parties or otherwise, is the appropriate party.”.

**Arrangements for polling** 25

23. Section 203 of the Principal Act is amended by omitting subsection (6).

**Compulsory voting**

24. Section 245 of the Principal Act is amended by adding at the end of subsection (4) the following word and paragraph: 30

“; or (d) had a valid and sufficient reason for failing to vote.”.

**Scrutiny, how conducted**

25. Section 265 of the Principal Act is amended by adding at the end the following subsection:

“(2) During a scrutiny, the scrutineers must be allowed to inspect, 35  
in addition to the preference votes being counted in the scrutiny, any other preference vote given for a candidate unless, in the opinion of the assistant Returning Officer or DRO, as the case may be, this would unreasonably delay the scrutiny.”.

**Scrutiny of votes in House of Representatives elections**

26. Section 274 of the Principal Act is amended by inserting after subsection (2) the following subsections:

5 “(2A) If, in a House of Representatives election, there are more than 2 candidates for a Division, the Australian Electoral Officer for the State or Territory that includes the Division must, in writing, direct the Assistant Returning Officers for the Division also to count such preference votes (other than first preference votes), on such of the ballot papers, as, in the opinion of the Australian Electoral Officer, will provide an indication of which candidate is most likely to be elected for the Division.

“(2B) An Assistant Returning Officer to whom a direction is given under subsection (2A) must:

- 15 (a) count the preference votes in accordance with the direction; and  
(b) transmit to the Divisional Returning Officer any information required by the direction;  
in the manner specified in the direction.”.

27. After section 329 of the Principal Act, the following section is inserted:

**Encouraging persons to mark ballot papers otherwise than in accordance with Act**

25 “329A.(1) A person must not, during the relevant period in relation to a House of Representatives election under this Act, print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, any matter or thing with the intention of encouraging persons voting at the election to fill in a ballot paper otherwise than in accordance with section 240.

Penalty: Imprisonment for 6 months.

30 “(2) In this section:  
‘publish’ includes publish by radio or television.”.

28. After section 385 of the Principal Act, the following section is inserted:

**Evidence of authorship or authorisation of material**

35 “385A.(1) In proceedings for an offence against this Act:  
(a) an electoral advertisement, handbill, pamphlet, notice or video recording that includes a statement that it was authorised by a specified person is admissible as evidence of that fact; and  
40 (b) a printed electoral advertisement, handbill, pamphlet or notice that 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” containing an article, or part of an article, containing electoral matter that includes a name purporting to be the author’s name is admissible as evidence that the person named is the author of the article.

“(2) In this section: 5

‘article’ means an article, report, letter or other matter to which section 332 applies;

‘electoral advertisement, handbill, pamphlet or notice’ and ‘electoral video recording’ have the same meaning as in section 328.”.

**Repeal of section 386A 10**

29. Section 386A of the Principal Act is repealed.

30. After section 387 of the Principal Act, the following section is inserted:

**Service of process by mail**

“387A. For the purposes of proceedings for an offence under section 245, 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.”. 15

31. After section 390 of the Principal Act, the following section is inserted:

**Claims for enrolment etc. not to be subject to warrants 20**

“390A.(1) A warrant issued under section 10 of the *Crimes Act 1914* does not authorise the seizure of a claim for enrolment or transfer of enrolment in the possession of the Electoral Commission or of an officer.

“(2) In this section: 25

‘claim for enrolment’ includes a provisional claim for enrolment.

‘officer’ includes any person performing duties, or exercising powers or functions, under or in relation to this Act.”.

**PART 3—AMENDMENTS OF THE REFERENDUM  
(MACHINERY PROVISIONS) ACT 1984 30**

**Principal Act**

32. In this Part, “Principal Act” means the *Referendum (Machinery Provisions) Act 1984*<sup>2</sup>.

**Compulsory voting**

33. Section 45 of the Principal Act is amended by adding at the end of subsection (4) the following word and paragraph: 35

“; or (d) had a valid and sufficient reason for failing to vote.”.

34. After section 140A of the Principal Act, the following section is inserted:

**Service of process by mail**

5 “140B. 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.”.

**PART 4—AMENDMENT OF THE FREEDOM OF INFORMATION ACT 1982**

**Principal Act**

10 35. In this Part, “Principal Act” means the *Freedom of Information Act 1982*<sup>3</sup>.

36. After section 47 of the Principal Act, the following section is inserted in Part IV:

**Electoral rolls and related documents**

15 “47A.(1) In this section:

‘Electoral Act’ means the *Commonwealth Electoral Act 1918*;

‘electoral roll’ means:

(a) a Roll of the electors of:

(i) a State or Territory; or

20 (ii) a Division (within the meaning of the Electoral Act); or

(iii) a Subdivision (within the meaning of the Electoral Act);

prepared under the Electoral Act; or

(b) any part of a Roll referred to in paragraph (a).

25 “(2) Subject to this section, a document is an exempt document if it is:

(a) an electoral roll; or

(b) a print, or a copy of a print, of an electoral roll; or

(c) a microfiche of an electoral roll; or

(d) a copy on tape or disk of an electoral roll; or

30 (e) a document that:

(i) sets out particulars of only one elector; and

(ii) was used to prepare an electoral roll; or

(f) a document that:

(i) is a copy of a document referred to in paragraph (e); or

35 (ii) contains only copies of documents referred to in paragraph (e); or

(g) a document (including a habitation index within the meaning of the Electoral Act) that:

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- (i) sets out particulars of electors; and
- (ii) was derived from an electoral roll.

“(3) The part of an electoral roll that sets out the particulars of an elector is not an exempt document in relation to the elector.

“(4) Any print, copy of a print, microfiche, tape or disk that sets out or reproduces only the particulars entered on an electoral roll in respect of an elector is not an exempt document in relation to the elector. 5

“(5) A document that sets out only the particulars of one elector and: 10

- (a) is a copy of a document referred to in paragraph (2)(e); or
- (b) is a copy, with deletions, of a document referred to in paragraph (2)(e), (f) or (g);

is not an exempt document in relation to the elector.”.

**PART 5—CONSEQUENTIAL AND MINOR AMENDMENTS 15**

**Consequential and minor amendments**

37. The Acts specified in the Schedule are amended as set out in the Schedule.

**SCHEDULE**

Section 37

**CONSEQUENTIAL AND MINOR AMENDMENTS**

***Commonwealth Electoral Act 1918***

**Paragraphs 7(a), (b), (c), (d) and (e):**

Add at the end “and”.

**Paragraph 102(4A)(b):**

Omit “Postal Commission”, substitute “Postal Corporation”.

**Subsections 104(2), (4), (5) and (7):**

Omit “Divisonal Returning Officer” (wherever occurring), substitute “DRO”.

**Paragraphs 120(3)(a), (b), (e) and (f):**

Add at the end “or”.

**Paragraphs 120(4)(a), (b), (c), (d), (e), (f), (g), (h) and (j):**

Add at the end “and”.

**Sections 390 and 391:**

Insert “(including a provisional claim for enrolment)” after “claim for enrolment” (wherever occurring).

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

**Section 109A in Part IX:**

Re-number as section 109B.

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**NOTES**

1. No. 27, 1918. For previous amendments, see No. 31, 1919; No. 14, 1921; No. 14, 1922; No. 10, 1924; No. 20, 1925; No. 17, 1928; No. 2, 1929; No. 9, 1934; No. 19, 1940; No. 42, 1946; No. 17, 1948; Nos. 10 and 47, 1949; No. 106, 1952, No. 79, 1953; No. 26, 1961; No. 31, 1962; Nos. 48 and 70, 1965; Nos. 32 and 93, 1966; No. 7, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 38, 1974; No. 56, 1975; Nos. 14 and 116, 1977; No. 19, 1979; Nos. 102 and 155, 1980; No. 176, 1981 (as amended by No. 26, 1982); No. 80, 1982; Nos. 39, 84 and 144, 1983; Nos. 45, 46, 120 and 133, 1984; Nos. 67, 166 and 193, 1985; Nos. 35, 141 and 184, 1987; No. 24, 1990; No. 167, 1991; and No. 45, 1992.
2. No. 44, 1984, as amended. For previous amendments, see Nos. 120 and 133, 1984; No. 67, 1985; Nos. 77 and 81, 1988; No. 24, 1990; and No. 167, 1991.
3. No. 3, 1982, as amended. For previous amendments, see Nos. 7 and 81, 1983; No. 63, 1984; No. 187, 1985; Nos. 102 and 111, 1986; Nos. 6, 87, 109, 119,

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**NOTES**—continued

121, 126, 127 and 129, 1988; Nos. 66 and 150, 1989; Nos. 26, 75, 77 and 118, 1990; Nos. 99, 137, 149 and 180, 1991; and No. 118, 1992.

[*Minister's second reading speech made in—  
Senate on 15 October 1992  
House of Representatives on 16 December 1992*]