



Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011

No. 29, 2011

**An Act to amend the law relating to elections and
referendums, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 29, 2011

**An Act to amend the law relating to elections and
referendums, and for related purposes**

[Assented to 25 May 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Electoral and Referendum
Amendment (Enrolment and Prisoner Voting) Act 2011*.

Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011 No. 29,
2011 1

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to close of Rolls

Part 1—Amendments

Commonwealth Electoral Act 1918

1 After subsection 4(7)

Insert:

- (7A) Unless the contrary intention appears, a reference in this Act to an election or poll in, for or in relation to, a Division or Subdivision, includes a reference to a Senate election, or a poll for a Senate election, for the State or Territory that includes the Division or Subdivision.

2 Subsection 94A(4)

Repeal the subsection, substitute:

- (4) If:
- (a) the application is received by the Electoral Commissioner after 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
 - (b) the application relates to a Subdivision of that Division; the person's name must not be added to the Roll for the Subdivision until after the close of the poll for that election.

3 Subsection 95(4)

Repeal the subsection, substitute:

- (4) If:
- (a) an application under this section is received by the Electoral Commissioner after 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
 - (b) the application relates to a Subdivision of that Division; the person's name must not be added to the Roll for the Subdivision, and the annotation of the Roll under subsection (1) in

relation to the person must not be made, until after the close of the poll for that election.

4 Subsection 96(4)

Repeal the subsection, substitute:

- (4) If:
- (a) an application under this section is received by the Electoral Commissioner after 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
 - (b) the application relates to a Subdivision of that Division; the person's name must not be added to the Roll for the Subdivision, and the annotation of the Roll under subsection (2B) in relation to the person must not be made, until after the close of the poll for that election.

5 Section 102

Repeal the section, substitute:

102 Action on receipt of claim

- (1) Subject to subsection (4), if, pursuant to section 101, the Electoral Commissioner receives a claim for enrolment, or transfer of enrolment, the Electoral Commissioner must:
- (a) note on the claim the date of its receipt; and
 - (b) if the claim is in order and the Electoral Commissioner is satisfied that the claimant is entitled, in respect of residence at an address, to be enrolled for a Subdivision, without delay:
 - (i) enter on the Roll for the Subdivision the name of the claimant and the other particulars required by section 83; and
 - (ii) notify the claimant in writing that he or she has been enrolled for that Subdivision; and
 - (iii) in the case of a claim for transfer of an enrolment from the Roll for another Subdivision—delete the name of the claimant from the Roll for that other Subdivision; and
 - (c) if the claim is in order but the Electoral Commissioner is satisfied that the claimant is already properly enrolled in respect of residence at the address in the Subdivision for

- which he or she is entitled to be enrolled—notify the claimant, in writing, that he or she has been enrolled for that Subdivision; and
- (d) if the claim is not in order or the Electoral Commissioner is not satisfied that the claimant is entitled, in respect of residence at an address, to be enrolled for a Subdivision—notify the claimant in writing that the claim has been rejected.
- (2) Before dealing with a claim under paragraph (1)(b), (c) or (d), the Electoral Commissioner may make any inquiries that he or she thinks necessary.
- (3) Notice of a decision given to a claimant by the Electoral Commissioner under paragraph (1)(d) must include:
- (a) a statement of the reasons for the decision; and
 - (b) a statement setting out the rights of the claimant to have the decision reviewed under Part X.
- (4) Subject to subsection (5), if:
- (a) a claim under section 101 is received by the Electoral Commissioner during the period (the *suspension period*):
 - (i) starting at 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
 - (ii) ending on the close of the poll for the election; and
 - (b) the claim relates to a Subdivision of that Division;
- the claim must not be considered until after the end of the suspension period.
- (5) If:
- (a) a claim under section 101 is received by the Electoral Commissioner during the suspension period; and
 - (b) the Australian Postal Corporation has notified the Electoral Commission in writing that:
 - (i) the delivery of mail identified in the notification was delayed by an industrial dispute affecting a specified post office or mail exchange; and
 - (ii) but for the industrial dispute, that mail would, in the ordinary course of post, have been delivered before the start of the suspension period; and
 - (c) the claim is included in the mail identified in the notification;

then, despite subsection (4):

- (d) the claim must be regarded as having been received before the start of the suspension period; and
 - (e) if the claimant's name is entered on the Roll in accordance with the claim, the enrolment must, in relation to any vote recorded by the claimant in an election, be regarded as having been effected before the start of the suspension period.
- (6) A name may, at any time, be removed from a Roll pursuant to a notice of transfer of enrolment.

6 Subsection 118(5)

Repeal the subsection, substitute:

- (5) During the period:
- (a) starting at 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
 - (b) ending on the close of the poll for the election;
- the Electoral Commissioner must not remove an elector's name from the Roll for a Subdivision of that Division under subsection (3) or (4A).

7 Section 155

Repeal the section, substitute:

155 Date for close of Rolls

The date fixed for the close of the Rolls is the seventh day after the date of the writ.

8 Subparagraphs 10(a) and 11(a) of Schedule 3

Omit "102(4A)", substitute "102(5)".

Referendum (Machinery Provisions) Act 1984

9 Subsections 4(2) and (3)

Repeal the subsections, substitute:

- (2) For the purposes of voting at a referendum:

- (a) applications or claims for enrolment, or transfer of enrolment, under the *Commonwealth Electoral Act 1918* (including applications or claims to which subsection 99B(6) or 100(2) of that Act apply) that are received during the period (the *suspension period*):
 - (i) starting at 8 pm on the day of the close of the Rolls for a referendum; and
 - (ii) ending on the close of voting at the referendum; must not be considered until after the end of the suspension period; and
- (b) a name must not be removed from a roll under section 118 of the *Commonwealth Electoral Act 1918* during the suspension period.

10 Subsection 9(1)

Repeal the subsection, substitute:

- (1) The day fixed for the close of the Rolls is the seventh day after the issue of the writ.

11 Subsection 9(3)

Repeal the subsection.

12 Subparagraph 10(a) of Schedule 4

Omit “102(4A)”, substitute “102(5)”.

Part 2—Application

13 Application

The amendments made by this Schedule apply in relation to elections and referendums the writs for which are issued on or after the commencement of the amendments.

Schedule 2—Amendments relating to prisoner voting

Part 1—Amendments

Commonwealth Electoral Act 1918

1 Subsection 93(2)

Repeal the subsection, substitute:

- (2) Subject to subsections (3), (4), (5) and (8AA), an elector whose name is on the Roll for a Division is entitled to vote at elections of Members of the Senate for the State that includes that Division and at elections of Members of the House of Representatives for that Division.

2 Subsections 93(8) and (8AA)

Repeal the subsections, substitute:

- (8) A person who:
 - (a) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting; or
 - (b) has been convicted of treason or treachery and has not been pardoned;is not entitled to have his or her name placed or retained on any Roll or to vote at any Senate election or House of Representatives election.
- (8AA) A person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at any Senate election or House of Representatives election.

Note: For the definition of *sentence of imprisonment*, see subsection 4(1A).

3 Section 109

Repeal the section, substitute:

109 Lists of persons serving, or ceasing to serve, sentences of imprisonment to be forwarded

- (1) The Controller-General of Prisons of a State must, as soon as practicable after the beginning of each month, forward to the Electoral Commissioner (or to an officer nominated by the Electoral Commissioner) a list of:
 - (a) the names, addresses, occupations and sexes of all persons who began serving a sentence of imprisonment of 3 years or longer in the State; and
 - (b) the names, addresses, occupations and sexes of all persons who ceased to serve a sentence of imprisonment of 3 years or longer in the State;during the preceding month.
- (2) Within 4 days of the day of the close of the Rolls for an election for a Division in a State, the Controller-General of Prisons of the State must forward to the Electoral Commissioner (or to an officer nominated by the Electoral Commissioner) a list of:
 - (a) the names, addresses, occupations and sexes of all persons who began serving a sentence of imprisonment of 3 years or longer in the State; and
 - (b) the names, addresses, occupations and sexes of all persons who ceased to serve a sentence of imprisonment of 3 years or longer in the State;between the time the last list was forwarded by the Controller-General under subsection (1) and the day of the close of the Rolls.

Note 1: For the definition of *sentence of imprisonment*, see subsection 4(1A).

Note 2: In this section, a reference to a State includes a reference to the Australian Capital Territory and the Northern Territory: see section 112.

4 Subsection 208(2)

Repeal the subsection, substitute:

- (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 polling day; and

(c) is not covered by subsection 93(8AA) (sentences of imprisonment).

5 Subsection 221(3)

Repeal the subsection, substitute:

- (3) For the purposes of this section, the electoral Rolls in force at the time of the election are conclusive evidence of the right of each person enrolled on the Rolls, other than:
- (a) a person whose name has been placed on a Roll because of a claim made under section 100 and who will be under 18 on the date fixed for the polling in the election; or
 - (b) a person who is covered by subsection 93(8AA) (sentences of imprisonment);
- to vote as an elector, unless a person shows by his or her answers to the questions prescribed by section 200DI or 229 that he or she is not entitled to vote.

Referendum (Machinery Provisions) Act 1984

6 At the end of subsection 22(2)

Add:

; and (c) is not covered by subsection 93(8AA) of the *Commonwealth Electoral Act 1918* (sentences of imprisonment).

Part 2—Application and transitional

7 Application and transitional

- (1) The amendments made by this Schedule apply in relation to elections and referendums the writs for which are issued on or after the commencement of the amendments.
- (2) Subsection 109(1) of the *Commonwealth Electoral Act 1918*, as amended by this Schedule, applies in relation to months beginning on or after the commencement of this item.
- (3) Subsection 93(8AA) and paragraphs 109(1)(b) and (2)(b) of the *Commonwealth Electoral Act 1918*, as amended by this Schedule, apply to sentences of imprisonment beginning before, on or after the commencement of this item.
- (4) Until the first list is forwarded under subsection 109(1) of the *Commonwealth Electoral Act 1918* as amended by this Schedule, subsection 109(2) of that Act applies as if the reference to the last list forwarded under subsection (1) were a reference to the last list forwarded under section 109 of that Act as in force at any time before the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 24 November 2010
Senate on 3 March 2011]*

(289/10)
¹² *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011*
No. 29, 2011