



# **Electoral and Referendum Amendment (Improving Electoral Administration) Act 2013**

**No. 26, 2013**

**An Act to amend the law relating to elections,  
referendums and taxation, 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. 26, 2013**

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

*[Assented to 28 March 2013]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Electoral and Referendum  
Amendment (Improving Electoral Administration) Act 2013*.

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*Electoral and Referendum Amendment (Improving Electoral Administration) Act 2013*      No. 26,  
2013      1

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 March 2013
2. Schedule 1, items 1 to 24	The day after this Act receives the Royal Assent.	29 March 2013
3. Schedule 1, item 26	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 2; and</p> <p>(b) immediately after the commencement of item 38 of Schedule 3 to the <i>Electoral and Referendum Amendment (Improving Electoral Procedure) Act 2013</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	29 March 2013
4. Schedule 1, items 27 to 48	The day after this Act receives the Royal Assent.	29 March 2013

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, item 50	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 2; and</p> <p>(b) immediately after the commencement of item 45 of Schedule 3 to the <i>Electoral and Referendum Amendment (Improving Electoral Procedure) Act 2013</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	29 March 2013
6. Schedule 1, items 51 to 54	The day after this Act receives the Royal Assent.	29 March 2013
7. Schedule 2	1 January 2014.	1 January 2014

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 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—Main amendments

### Part 1—Amendments

#### *Commonwealth Electoral Act 1918*

##### **1 Subsection 72(2)**

Omit “and any further objections”.

##### **2 Subparagraph 72(12)(d)(i)**

Omit “may forthwith”, substitute “may, before the end of the period of 7 days beginning on the day of the announcement,”.

##### **3 Paragraph 72(13)(a)**

Omit “forthwith upon the making of the public announcement, lodge with the Electoral Commission a written further objection;”, substitute “before the end of the period of 7 days beginning on the day of the announcement, lodge with the Electoral Commission a written further objection; and”.

##### **4 After paragraph 72(13)(b)**

Insert:

- (ba) the augmented Electoral Commission must complete its inquiry into a further objection as soon as is practicable and, in any event, before the end of the period of 14 days after the end of the period referred to in paragraph (a); and

##### **5 Paragraph 185(3)(b)**

Omit “except in the case of an elector whose address has been excluded from the Roll under section 104—”.

##### **6 Subsection 200D(4)**

Omit “second”, substitute “fourth”.

##### **7 Subsection 200D(5)**

After “earlier than the”, insert “fourth”.

##### **8 Section 200DC (definition of *issuing officer*)**

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Repeal the definition.

**9 Paragraph 200DG(2)(a)**

Repeal the paragraph.

**10 Paragraph 200DG(2)(c)**

Omit “the issuing officer” (first occurring), substitute “a voting officer”.

**11 Subparagraph 200DG(2)(c)(ii)**

Omit “issuing officer”, substitute “voting officer”.

**12 Section 200DH**

Repeal the section.

**13 Subsection 200DI(1)**

Omit “The issuing officer”, substitute “A voting officer”.

**14 Subsection 200DI(2)**

Omit “issuing officer”, substitute “voting officer”.

**15 Subsection 200DJ(1)**

Omit “the issuing officer”, substitute “a voting officer”.

**16 Subsections 200DJ(2) and (3)**

Omit “issuing officer”, substitute “voting officer”.

**17 Paragraphs 200DL(1)(a), (b) and (c)**

Repeal the paragraphs.

**18 Subsection 200DL(1) (note)**

Repeal the note.

**19 Section 200DM**

Omit “sections 200DH and 200DJ, been given a pre-poll vote certificate for ordinary voting and”, substitute “section 200DJ, been given”.

**20 Paragraph 200DM(a)**

Omit “the certificate or”.

**21 Section 230**

Omit “the issuing officer”, substitute “a voting officer”.

**22 Subsection 238(1)**

Omit “the issuing officer”, substitute “a voting officer”.

**23 Subsection 238(1)**

Omit “issuing officer” (last occurring), substitute “voting officer”.

**24 Before section 239**

Insert:

**238B Ballot-boxes opened before close of poll**

- (1) This section applies if, in relation to an election, an officer becomes aware that a ballot-box containing ballot papers for the election (including ballot papers enclosed in envelopes) has been opened before the close of the poll other than in accordance with this Act.
- (2) An officer (the *reporting officer*) must:
  - (a) place the ballot papers, or envelopes containing the ballot papers, in a parcel; and
  - (b) seal the parcel; and
  - (c) write on the parcel an indication of the type of ballot papers enclosed and that the ballot-box has been prematurely opened; and
  - (d) sign the parcel.

*Report*

- (3) The reporting officer must prepare a report about the circumstances in which the ballot-box was opened before the close of the poll other than in accordance with this Act (including details of any witnesses).

*Material to be given to DRO*

- (4) The reporting officer must give the report, parcel, ballot-box and any other thing the reporting officer considers appropriate to the DRO for the Division as soon as practicable.

*Role of DRO*

- (5) The DRO for the Division must examine the report, parcel, ballot-box and any other thing given to the DRO under subsection (4) and then give them to the Australian Electoral Officer (the *AEO*) for the State or Territory concerned.

*Role of AEO*

- (6) The AEO must:
- (a) open the parcel and examine the ballot papers not enclosed in envelopes, the envelopes, the report, the ballot-box and any other thing given to the AEO under subsection (5); and
  - (b) for each ballot paper not enclosed in an envelope—decide whether the ballot paper is to be included in the scrutiny under Part XVIII (see subsections (7) and (8)); and
  - (c) for each envelope—decide whether the envelope is to be included in the preliminary scrutiny conducted in accordance with Schedule 3 (see subsections (9) and (10)).
- (7) The AEO must decide that a ballot paper is to be included in the scrutiny under Part XVIII unless the AEO is satisfied that the ballot paper has been fraudulently altered or otherwise interfered with so as not to reflect the voter's intention.
- (8) If the AEO decides that a ballot paper is not to be included in the scrutiny under Part XVIII, the ballot paper is to be excluded from that scrutiny.
- (9) The AEO must decide that an envelope is to be included in the preliminary scrutiny conducted in accordance with Schedule 3 unless the AEO is satisfied that the envelope has been fraudulently altered.
- (10) If the AEO decides that an envelope is not to be included in the preliminary scrutiny conducted in accordance with Schedule 3, the envelope is to be excluded from that scrutiny.
- (11) The AEO must, after examining all the ballot papers and envelopes:
- (a) place in a parcel the ballot papers that are to be included in the scrutiny under Part XVIII; and

- (b) place in another parcel the ballot papers that are to be excluded from the scrutiny under Part XVIII; and
  - (c) place in another parcel the envelopes that are to be included in the preliminary scrutiny conducted in accordance with Schedule 3; and
  - (d) place in another parcel the envelopes that are to be excluded from the preliminary scrutiny conducted in accordance with Schedule 3; and
  - (e) seal each parcel; and
  - (f) write on each parcel an indication of the type of ballot papers or envelopes enclosed and that the ballot-box has been prematurely opened; and
  - (g) sign each parcel.
- (12) The AEO must give the parcels referred to in paragraphs (11)(a) and (c) to the DRO for the Division, and the ballot papers or envelopes in the parcels are to be included in the scrutiny under Part XVIII or in the preliminary scrutiny conducted in accordance with Schedule 3, as the case requires.
- (13) Before the declaration of the poll in the election, the AEO must advise the Electoral Commissioner and the candidates concerned of the following:
  - (a) a ballot-box was opened before the close of the poll other than in accordance with this Act;
  - (b) the number of ballot papers the AEO examined;
  - (c) the number of ballot papers that were excluded from the scrutiny under Part XVIII because the AEO was satisfied that they had been fraudulently altered or otherwise interfered with so as not to reflect the voter's intention;
  - (d) the number of envelopes the AEO examined;
  - (e) the number of envelopes that were excluded from the preliminary scrutiny conducted in accordance with Schedule 3 because the AEO was satisfied that they had been fraudulently altered.

*Preservation of material*

- (14) The AEO is responsible for the safe custody, in accordance with the directions of the Electoral Commissioner, of the parcels referred to in paragraphs (11)(b) and (d), the ballot-box and the
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report and any other thing given to the AEO under subsection (5) until they are destroyed.

- (15) Subject to Part XXII, the Electoral Commissioner may direct that the things referred to in subsection (14) be destroyed if:
- (a) not less than 6 months have elapsed since the declaration of the poll in the election in which the things were used; and
  - (b) the things are no longer required by the Electoral Commission for the performance of its functions.

**26 At the end of subsection 248(2)**

Add:

- ; and (c) for section 238A—a reference in paragraph 238A(3)(b) to the Divisional Returning Officer for the Division is taken to be a reference to the Electoral Commission.

**27 Paragraph 268(1)(a)**

Omit “the issuing officer”, substitute “a voting officer”.

**27A Subsections 328B(2) and (3)**

Repeal the subsections.

**27B Paragraph 328B(4)(d)**

Omit “subsections (1) and (2)”, substitute “subsection (1)”.

**27C After section 339**

Insert:

**339A Officers not to interfere with etc. ballot-boxes or ballot papers**

An officer commits an offence if:

- (a) the officer does an act; and
- (b) the act results in the unlawful destruction of, taking of, opening of, or interference with, a ballot-box or a ballot paper.

Penalty: Imprisonment for 6 months.

**28 Paragraph 393A(1)(f)**

Omit “(both for ordinary voting and for declaration voting)”, substitute “for declaration voting”.

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

#### **29 Subsection 32(1)**

Omit “the issuing officer”, substitute “a voting officer”.

#### **30 Subsection 41(1)**

Omit “the issuing officer”, substitute “a voting officer”.

#### **31 Subsection 41(1)**

Omit “issuing officer” (last occurring), substitute “voting officer”.

#### **32 Before section 41A**

Insert:

#### **41AB Ballot-boxes opened before close of voting**

- (1) This section applies if, in relation to a referendum, an officer becomes aware that a ballot-box containing ballot-papers for the referendum (including ballot-papers enclosed in envelopes) has been opened before the close of voting other than as mentioned in subsection 29(2).
- (2) An officer (the *reporting officer*) must:
  - (a) place the ballot-papers, or envelopes containing the ballot-papers, in a parcel; and
  - (b) seal the parcel; and
  - (c) write on the parcel an indication of the type of ballot-papers enclosed and that the ballot-box has been prematurely opened; and
  - (d) sign the parcel.

#### *Report*

- (3) The reporting officer must prepare a report about the circumstances in which the ballot-box was opened before the close of voting other than as mentioned in subsection 29(2) (including details of any witnesses).

*Material to be given to DRO*

- (4) The reporting officer must give the report, parcel, ballot-box and any other thing the reporting officer considers appropriate to the DRO for the Division as soon as practicable.

### Role of DRO

- (5) The DRO for the Division must examine the report, parcel, ballot-box and any other thing given to the DRO under subsection (4) and then give them to the Australian Electoral Officer (the **AEO**) for the State or Territory concerned.

### *Role of AEO*

- (6) The AEO must:
  - (a) open the parcel and examine the ballot-papers not enclosed in envelopes, the envelopes, the report, the ballot-box and any other thing given to the AEO under subsection (5); and
  - (b) for each ballot-paper not enclosed in an envelope—decide whether the ballot-paper is to be included in the scrutiny under Part VI (see subsections (7) and (8)); and
  - (c) for each envelope—decide whether the envelope is to be included in the preliminary scrutiny conducted in accordance with Schedule 4 (see subsections (9) and (10)).
- (7) The AEO must decide that a ballot-paper is to be included in the scrutiny under Part VI unless the AEO is satisfied that the ballot-paper has been fraudulently altered or otherwise interfered with so as not to reflect the voter's intention.
- (8) If the AEO decides that a ballot-paper is not to be included in the scrutiny under Part VI, the ballot-paper is to be excluded from that scrutiny.
- (9) The AEO must decide that an envelope is to be included in the preliminary scrutiny conducted in accordance with Schedule 4 unless the AEO is satisfied that the envelope has been fraudulently altered.
- (10) If the AEO decides that an envelope is not to be included in the preliminary scrutiny conducted in accordance with Schedule 4, the envelope is to be excluded from that scrutiny.

- (11) The AEO must, after examining all the ballot-papers and envelopes:
- (a) place in a parcel the ballot-papers that are to be included in the scrutiny under Part VI; and
  - (b) place in another parcel the ballot-papers that are to be excluded from the scrutiny under Part VI; and
  - (c) place in another parcel the envelopes that are to be included in the preliminary scrutiny conducted in accordance with Schedule 4; and
  - (d) place in another parcel the envelopes that are to be excluded from the preliminary scrutiny conducted in accordance with Schedule 4; and
  - (e) seal each parcel; and
  - (f) write on each parcel an indication of the type of ballot-papers or envelopes enclosed and that the ballot-box has been prematurely opened; and
  - (g) sign each parcel.
- (12) The AEO must give the parcels referred to in paragraphs (11)(a) and (c) to the DRO for the Division, and the ballot-papers or envelopes in the parcels are to be included in the scrutiny under Part VI or in the preliminary scrutiny conducted in accordance with Schedule 4, as the case requires.
- (13) Before publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum, the AEO must advise the Electoral Commissioner of the following:
- (a) a ballot-box was opened before the close of voting other than as mentioned in subsection 29(2);
  - (b) the number of ballot-papers the AEO examined;
  - (c) the number of ballot-papers that were excluded from the scrutiny under Part VI because the AEO was satisfied that they had been fraudulently altered or otherwise interfered with so as not to reflect the voter's intention;
  - (d) the number of envelopes the AEO examined;
  - (e) the number of envelopes that were excluded from the preliminary scrutiny conducted in accordance with Schedule 4 because the AEO was satisfied that they had been fraudulently altered.



*Preservation of material*

- (14) The AEO is responsible for the safe custody, in accordance with the directions of the Electoral Commissioner, of the parcels referred to in paragraphs (11)(b) and (d), the ballot-box and the report and any other thing given to the AEO under subsection (5) until they are destroyed.
- (15) Subject to Part VIII, the Electoral Commissioner may direct that the things referred to in subsection (14) be destroyed if:
  - (a) not less than 6 months have elapsed since the publication in the *Gazette* of the statement by the Electoral Commissioner showing the result of the referendum in which the things were used; and
  - (b) the things are no longer required by the Electoral Commission for the performance of its functions.

**33 Subsection 73B(4)**

After “before the”, insert “fourth”.

**34 Subsection 73B(5)**

Omit “second”, substitute “fourth”.

**35 Paragraph 73C(c)**

Repeal the paragraph.

**36 Section 73CC (definition of *issuing officer*)**

Repeal the definition.

**37 Paragraph 73CG(2)(a)**

Repeal the paragraph.

**38 Paragraph 73CG(2)(c)**

Omit “the issuing officer” (first occurring), substitute “a voting officer”.

**39 Subparagraph 73CG(2)(c)(ii)**

Omit “issuing officer”, substitute “voting officer”.

**40 Section 73CH**

Repeal the section.

**41 Subsection 73CI(1)**

Omit “The issuing officer”, substitute “A voting officer”.

**42 Subsections 73CI(2) and (4)**

Omit “issuing officer”, substitute “voting officer”.

**43 Subsection 73CJ(1)**

Omit “the issuing officer”, substitute “a voting officer”.

**44 Subsections 73CJ(2) and (3)**

Omit “issuing officer”, substitute “voting officer”.

**45 Paragraphs 73CL(1)(a), (b) and (c)**

Repeal the paragraphs.

**46 Subsection 73CL(1) (note)**

Repeal the note.

**47 Section 73CM**

Omit “sections 73CH and 73CJ, been given a pre-poll vote certificate for ordinary voting and”, substitute “section 73CJ, been given”.

**48 Paragraph 73CM(a)**

Omit “the certificate or”.

**50 At the end of subsection 75(2)**

Add:

; and (c) for section 41AA—a reference in paragraph 41AA(3)(b) to the DRO for the Division is taken to be a reference to the Electoral Commission.

**51 Paragraph 93(1)(a)**

Omit “the issuing officer”, substitute “a voting officer”.

**51A After section 130**

Insert:

### 130A Officers not to interfere with etc. ballot-boxes or ballot-papers

An officer commits an offence if:

- (a) the officer does an act; and
- (b) the act results in the unlawful destruction of, taking of, opening of, or interference with, a ballot-box or a ballot-paper.

Penalty: Imprisonment for 6 months.

## 52 Paragraph 142A(1)(f)

Omit “(both for ordinary voting and for declaration voting)”, substitute “for declaration voting”.

## *Taxation Administration Act 1953*

**53 Subsection 355-65(8) in Schedule 1 (after table item 2)**

Insert:

- |    |   |  |
|----|---|--|
| 2A | <p>the Electoral Commissioner<br/>(within the meaning of the<br/><i>Commonwealth Electoral Act</i><br/><i>1918</i>)</p> | <p>(a) is of information disclosed to, or<br/>obtained by, the Commissioner of<br/>Taxation on or after the<br/>commencement of this table item;<br/>and</p> <p>(b) is for the purpose of administering<br/>the <i>Commonwealth Electoral Act</i><br/><i>1918</i> or the <i>Referendum (Machinery</i><br/><i>Provisions) Act 1984</i>.</p> |
|----|---|--|

## Part 2—Application provisions

### 54 Application provisions

- (1) The amendments made by this Schedule (except items 1 to 5 and 53) apply in relation to elections and referendums the writs for which are issued on or after the commencement of this item.
- (2) The amendments made by items 1 to 4 apply in relation to notices published under paragraph 68(1)(c) of the *Commonwealth Electoral Act 1918* on or after the commencement of those items.
- (3) The amendment made by item 5 applies in relation to claims for transfer of enrolment made on or after the commencement of that item.

## **Schedule 2—Amendments commencing on 1 January 2014**

### **Part 1—Amendments**

#### ***Commonwealth Electoral Act 1918***

##### **1 Subsection 184(5)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

##### **2 Subsection 188(4)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

##### **3 Subsection 188(4) (note)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

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

##### **4 Subsection 55(5)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

##### **5 Subsection 61(2B)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

##### **6 Subsection 61(2B) (note)**

Omit “Thursday that is 2 days”, substitute “Wednesday that is 3 days”.

## **Part 2—Application provision**

### **7 Application provision**

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 this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 29 November 2012  
Senate on 14 March 2013]*

(209/12)

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18        *Electoral and Referendum Amendment (Improving Electoral Administration) Act 2013*  
*No. 26, 2013*