



Electoral Legislation Amendment (Counting, Scrutiny and Operational Efficiencies) Act 2021

No. 92, 2021

**An Act to amend the law relating to elections in
respect of pre-poll matters, handling and scrutiny
of ballot papers, and the streamlining of
authorisation requirements**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>Commonwealth Electoral Act 1918</i>	3



Electoral Legislation Amendment (Counting, Scrutiny and Operational Efficiencies) Act 2021

No. 92, 2021

**An Act to amend the law relating to elections in
respect of pre-poll matters, handling and scrutiny
of ballot papers, and the streamlining of
authorisation requirements**

[Assented to 2 September 2021]

The Parliament of Australia enacts:

*No. 92, 2021 Electoral Legislation Amendment (Counting, Scrutiny and Operational
Efficiencies) Act 2021 1*

1 Short title

This Act is the *Electoral Legislation Amendment (Counting, Scrutiny and Operational Efficiencies) Act 2021*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	3 September 2021

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Commonwealth Electoral Act 1918

1 Section 188A

Repeal the section.

2 Paragraph 194(1A)(a)

Repeal the paragraph, substitute:

- (a) a signed and dated statement by the person setting out why the person was unable to comply with those requirements:
 - (i) accompanies the postal vote; or
 - (ii) is produced by the person in the approved form; or
 - (iii) is given in writing by the person; and

3 Paragraph 194(1A)(c)

Repeal the paragraph, substitute:

- (c) if subparagraph (a)(i) applies—the postal vote is accompanied by a photocopy, that is certified by the person to be a true copy, of a part of the person’s passport that includes the details set out in subsection (1B); and
- (d) if subparagraph (a)(ii) or (iii) applies—a copy of a part of the person’s passport that includes the details set out in subsection (1B) is produced in the approved form, or given in writing, by the person.

4 After subsection 194(1A)

Insert:

- (1B) For the purposes of paragraphs (1A)(c) and (d), the details of the part of the person’s passport are the following:
 - (a) the country and date of issue; and
 - (b) the number of the passport; and
 - (c) the person’s name, date of birth and signature; and
 - (d) a photograph of the person.

(1C) The following provisions of the *Electronic Transactions Act 1999* apply in relation to subparagraphs (1A)(a)(ii) and (iii) and paragraph (1A)(d) of this section despite any regulations in force for the purposes of subsection 7A(2) of that Act:

- (a) subsection 8(1);
- (b) Division 2 of Part 2;
- (c) sections 14, 14A, 14B and 15.

To avoid doubt, this subsection does not affect the operation of that Act, including as affected by any such regulations, in relation to any other provision of this Act.

5 At the end of section 200

Add:

- (3) A postal vote received in an envelope (an *outer envelope*) that also contains an envelope bearing a postal vote certificate is not to be rejected because the postal vote is not inside the envelope bearing the postal vote certificate.
- (4) For the purposes of this Act, the outer envelope is to be dealt with as if it were an envelope:
 - (a) bearing a postal vote certificate; and
 - (b) purporting to contain a postal ballot paper or postal vote.
- (5) However, despite subsection (4), the following provisions apply only in relation to the envelope bearing the postal vote certificate:
 - (a) paragraphs 195A(2)(c), (d) and (e);
 - (b) section 196;
 - (c) paragraph 6 of Schedule 3.

6 After subsection 200BA(1)

Insert:

- (1AA) The day, or the earliest of the days, declared under paragraph (1)(b) must not be earlier than the day that is 12 days before polling day in the election.
- (1AB) A day or days declared under paragraph (1)(b) must not be a public holiday in the State or Territory in which the place to which the declaration relates is located.

7 Subsections 200D(4) and (5)

Repeal the subsections.

8 Paragraph 200F(b)

Repeal the paragraph.

9 After subsection 218(2A)

Insert:

(2B) A scrutineer commits an offence if:

- (a) the actions mentioned in subsection 274(2AA) (early opening and sorting of pre-poll ballot papers) are taken, in accordance with that subsection, at a counting centre before the closing of the poll for a House of Representatives election; and
- (b) the scrutineer is present while those actions are taken; and
- (c) the scrutineer discloses or communicates information that relates to those actions to persons outside the counting centre; and
- (d) the disclosure or communication is made before the closing of the poll.

Note: See also section 323 (officers and scrutineers to observe secrecy).

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

10 Subsection 218(3)

After “from the polling booth”, insert “or counting centre (as applicable)”.

11 At the end of section 218

Add:

- (4) In this section, *counting centre* means premises being used for the purposes of the scrutiny of ballot papers.

12 Subsection 227(11)

Repeal the subsection.

13 Subsection 238(4)

Omit “sealed up in a parcel which shall be”, substitute “bundled up and”.

14 Subsection 238A(3)

Repeal the subsection, substitute:

- (3) The envelopes containing discarded ballot papers that have been cancelled under this section must be bundled up and given to the Divisional Returning Officer for the Division after the close of the poll.

15 After subsection 264(2)

Insert:

- (2A) For the purposes of subsection (2), if scrutiny is being conducted at a counting centre by using a computer as mentioned in section 273A (computerised scrutiny of votes in Senate election), the number of officers who are engaged in the scrutiny or counting of ballot papers at the centre is taken to include the number of persons performing the function of second tier data entry operator conducting exception checks at the centre.

16 At the end of paragraph 265(1)(a)

Add “(subject to subsection 274(2AA))”.

17 After paragraph 274(2)(ab)

Insert:

- (ac) for a pre-poll ordinary ballot-box being dealt with before the close of the poll in accordance with subsection (2AA)—
unfold the ballot papers and sort them into groups as follows:
- (i) a group for each candidate for whom a ballot paper indicates a first preference;
 - (ii) a group for informal votes;

18 After subsection 274(2)

Insert:

(2AA) The actions set out in paragraphs (2)(a), (aa), (ab) and (ac) may be taken in relation to a pre-poll ordinary ballot-box after 4 pm on polling day. A scrutineer present while the actions are being taken is not entitled to object to a ballot paper before the closing of the poll, but may after the closing make any objections as if the ballot-box had not been dealt with under this subsection.

Note: The actions set out in paragraphs (2)(a), (aa), (ab) and (ac) do not include counting (see paragraph (2)(b)).

19 Subsection 321D(5) (table item 1, column headed “the following particulars are required ...”)

Repeal paragraphs (c), (d) and (e), substitute:

(c) the name of the natural person responsible for giving effect to the authorisation

20 Subsection 321D(5) (table item 3, column headed “the following particulars are required ...”)

Repeal paragraphs (b), (c) and (d), substitute:

(b) the address of the person

21 Subsection 321D(5) (table item 5, column headed “the following particulars are required ...”)

Repeal paragraphs (b), (c) and (d), substitute:

(b) the address of the entity

22 Subsection 321D(5) (table item 7, column headed “the following particulars are required ...”)

Repeal paragraphs (b), (c) and (d), substitute:

(b) the address of the person

23 Paragraphs 385A(b) and (c)

Repeal the paragraphs, substitute:

(b) a communication of electoral matter that includes a statement that it was authorised by a specified person is admissible as evidence of that fact.

24 Paragraph 17 of Schedule 3

Omit “after the close of the poll for the Division,”.

25 Paragraph 17 of Schedule 3

Omit “unfolding or”.

26 After paragraph 17 of Schedule 3

17A. The DRO:

- (a) may withdraw the ballot papers in accordance with paragraph 17 at any time on or after the day that is 5 days before polling day; and
- (b) if the DRO has not withdrawn the ballot papers in accordance with paragraph 17 by the close of the poll—must do so after the close of the poll.

*[Minister’s second reading speech made in—
House of Representatives on 12 August 2021
Senate on 26 August 2021]*

(100/21)
