



# Electoral and Referendum Amendment Regulations 2007 (No. 3)<sup>1</sup>

**Select Legislative Instrument 2007 No. 270**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

Dated 6 September 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

GARY NAIRN  
Special Minister of State

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**1 Name of Regulations**

These Regulations are the *Electoral and Referendum Amendment Regulations 2007 (No. 3)*.

**2 Commencement**

These Regulations are taken to have commenced on 1 August 2007.

**3 Amendment of *Electoral and Referendum Regulations 1940***

Schedule 1 amends the *Electoral and Referendum Regulations 1940*.

**Schedule 1 Amendment**

(regulation 3)

**[1] After regulation 40**

*insert*

**Division 2 Trial of electronically assisted voting — sight-impaired people**

**41 Definitions for Division 2**

In this Division:

*declaration envelope* means an envelope bearing a declaration in accordance with subsection 202AD (2) of the Act and subsection 73P (2) of the Referendum (Machinery Provisions) Act.

*electronically assisted vote* means a vote cast using the electronically assisted voting method.

*electronically assisted voting* means the casting of an electronically assisted vote.

*electronically assisted voting method* means the method determined by regulation 47.

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*electronic voting machine* means an electronic device that is used to:

- (a) facilitate the casting of an electronically assisted vote; and
- (b) cause a vote record to be printed.

*issuing officer* means an officer assisting an elector under regulation 45.

**42 Application of Division 2 (subsection 202AB (1) of the Act and subsections 73M (1) and (2) of the Referendum (Machinery Provisions) Act)**

Subject to subregulation 44 (2), an elector who is a sight-impaired person may:

- (a) cast an electronically assisted vote at:
  - (i) the first general election; and
  - (ii) the first Senate election;held after the commencement of section 202AB of the Act; and
- (b) cast an electronically assisted vote at the first referendum held:
  - (i) after the commencement of section 73M of the Referendum (Machinery Provisions) Act; and
  - (ii) on the same day as an election mentioned in paragraph (a).

**43 Availability of electronically assisted voting**

For subparagraph 202AB (2) (a) (iii) of the Act and subparagraph 73M (3) (a) (iii) of the Referendum (Machinery Provisions) Act, the Electoral Commissioner may, by notice in the *Gazette*, determine:

- (a) the polling places or pre-poll voting offices at which electronically assisted voting is available; and
- (b) specific days, and hours, of operation for electronically assisted voting.

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**44 Use by sight-impaired person of electronically assisted voting method (subparagraph 202AB (2) (a) (iv) of the Act and subparagraph 73M (3) (a) (iv) of the Referendum (Machinery Provisions) Act)**

- (1) On arrival at a polling place or pre-poll voting office at which electronically assisted voting is available, an elector may ask an officer to assist him or her to cast a vote by using the electronic voting machine.
- (2) If the officer is satisfied that the elector is a sight-impaired person, the officer (the *issuing officer*) must assist the elector in accordance with subregulations 45 (1) and (2).
- (3) The Electoral Commissioner may give directions to presiding officers in relation to requests to use the electronically assisted voting method.

**45 Officer to assist elector with electronically assisted voting (subparagraph 202AB (2) (a) (ii) of the Act and subparagraph 73M (3) (a) (ii) of the Referendum (Machinery Provisions) Act)**

- (1) For subregulation 44 (2), the assistance that must be given to an elector includes:
  - (a) explaining the declaration required by regulation 47 to the elector; and
  - (b) explaining the electronically assisted voting method to the elector; and
  - (c) preparing the electronic voting machine to enable the elector to vote in the Division for which the elector is enrolled.
- (2) The issuing officer must advise the elector that, at any time before the printed vote record or records have been sealed in a declaration envelope under regulation 48, the elector may choose to vote by completing the printed ballot papers according to Part XVA or XVI of the Act, or Part III or IVA of the Referendum (Machinery Provisions) Act.

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- (3) The issuing officer may assist the elector by conducting a practice session of the electronic voting machine with the elector.

**46      Electronically assisted voting to be cast in private (subparagraph 202AB (2) (a) (ii) of the Act and subparagraph 73M (3) (a) (ii) of the Referendum (Machinery Provisions) Act)**

The elector must cast his or her vote in private, unless subregulation 47 (5) applies to the elector.

**47      Electronically assisted voting method (subparagraph 202AB (2) (a) (i) of the Act and subparagraph 73M (3) (a) (i) of the Referendum (Machinery Provisions) Act)**

- (1) The issuing officer must issue the elector with a declaration envelope.
- (2) Subject to subregulation (5), the elector must complete and sign the declaration envelope in the presence of the issuing officer.
- (3) The issuing officer must then sign the declaration envelope as witness, adding the date.
- (4) Subject to subregulations (5) and (7), the elector must:
- (a) cast his or her vote or votes using the electronic voting machine by entering the vote using a keyboard or keypad, and following audio prompts, onscreen prompts or the instructions of an officer; and
  - (b) remove from the printer connected to the electronic voting machine the printed vote record for as many of the following as are applicable:
    - (i) the Senate;
    - (ii) the House of Representatives;
    - (iii) the referendum; and
  - (c) return each printed vote record to the issuing officer.

- (5) A person, including an officer, who is chosen by the elector, may, in accordance with the directions of the elector, do any of the following:
  - (a) complete the declaration envelope;
  - (b) read the declaration envelope to the elector;
  - (c) assist the elector to sign the declaration envelope;
  - (d) cast the elector's vote or votes using the electronic voting machine by entering the vote using a keyboard or keypad, and following voice prompts, onscreen prompts or the instructions of an officer;
  - (e) remove from the printer connected to the electronic voting machine the printed vote record for each of the following, as applicable:
    - (i) the Senate;
    - (ii) the House of Representatives;
    - (iii) the referendum;
  - (f) return each printed vote record to the issuing officer.
- (6) Directions under subregulation (5) may be given by reference to 1 or more how-to-vote cards.
- (7) At any time before the printed vote record or records are sealed in the declaration envelope, the elector may decide not to vote by casting an electronically assisted vote.
- (8) If, before the printed vote record or records are sealed in the declaration envelope, the elector decides not to vote using the electronically assisted voting method:
  - (a) the elector must complete printed ballot papers in accordance with Part XVA or XVI of the Act, or Part III or IVA of the Referendum (Machinery Provisions) Act, as appropriate; and
  - (b) an officer must destroy any printed vote record or records in relation to the elector.

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**48 What is done after a person uses the electronically assisted voting method (subsection 202AD (2) of the Act and subsection 73P (2) of the Referendum (Machinery Provisions) Act)**

The issuing officer must immediately place the printed vote record or records in the declaration envelope, seal the envelope, and place the envelope in a ballot-box.

**49 Record of each person who has voted using the electronically assisted voting method (section 202AC of the Act and section 73N of the Referendum (Machinery Provisions) Act)**

- (1) The Electoral Commission must make a record of each person who has voted using the electronically assisted voting method.
- (2) The record must contain:
  - (a) the name of the person who has voted using the electronically assisted voting method; and
  - (b) the name of the Division for which the person is enrolled; and
  - (c) the date on which the person's vote was cast.

**50 Printed vote record (subsection 202AD (1) of the Act and subsection 73P (1) of the Referendum (Machinery Provisions) Act)**

- (1) For each vote cast by a person using the electronically assisted voting method, the electronic voting machine must print a record of the vote the person has cast.
- (2) The printed vote record:
  - (a) must consist of a barcode; and
  - (b) must not contain any means of identifying the person who cast the vote.
- (3) Subject to subregulation (4), when a declaration envelope containing a printed vote record or records is opened in accordance with Part XVIII of the Act or Part VI of the Referendum (Machinery Provisions) Act, the printed vote

record or records must be decoded at the place at which the declaration envelope is opened.

- (4) If a printed vote record cannot be decoded at the place at which the declaration envelopes containing the records are opened, the printed vote record must be dealt with as follows:
  - (a) the officer in charge of the count must secure the printed vote records in an envelope or box with seals and send the records to the office of the DRO;
  - (b) the officer in charge of the count must record the number of printed vote records being sent to the DRO;
  - (c) the DRO who receives an envelope or box containing a printed vote record or records must confirm the number of printed vote records received;
  - (d) the DRO must then decode the printed vote records;
  - (e) the DRO must then secure the printed vote records and the decoded printouts of the records in an envelope or box with seals and send the envelope or box to the place from which the records were originally sent;
  - (f) the DRO must then record the number of printed vote records sent;
  - (g) after receiving the printed vote records in accordance with paragraph (e), the officer in charge of the count must confirm that the correct number of printed vote records and corresponding decoded printouts have been returned;
  - (h) after receiving the printed vote records, the officer in charge must include the decoded printouts of the vote records in the count.
- (5) Each printed vote record must be attached to its decoded printout, and treated as a pre-poll ballot paper for the purposes of Part XVIII of the Act or Part VI of the Referendum (Machinery Provisions) Act.



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**51 Role for scrutineers (paragraph 202AB (2) (c) of the Act and paragraph 73M (3) (c) of the Referendum (Machinery Provisions) Act)**

- (1) A scrutineer appointed under section 200DA or 217 of the Act may perform any function authorised by the Act for electronically assisted voting as if the person using the electronically assisted voting method were casting a pre-poll vote or a vote on polling day.
- (2) Subregulation (1) does not apply to a person to whom section 234A of the Act applies.
- (3) A scrutineer appointed under section 27 or 73CA of the Referendum (Machinery Provisions) Act may perform any function authorised by that Act for electronically assisted voting as if a person using the electronically assisted voting method was casting a pre-poll vote or a vote on polling day.
- (4) Subregulation (3) does not apply to a person to whom section 36A of the Referendum (Machinery Provisions) Act applies.

**52 Opening a declaration envelope that contains a printed vote record (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

- (1) A person must not open a declaration envelope that contains a printed vote record.  
Penalty: 5 penalty units.
- (2) Subregulation (1) does not apply to the DRO for the Division in respect of which a printed vote record has been issued, or an officer acting at the direction of the DRO.
- (3) Strict liability applies to an offence against subregulation (1).

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**53      Persons present when electronically assisted vote is cast (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

A person who is present when an elector is casting an electronically assisted vote must obey all directions of an officer.

Penalty: 10 penalty units.

**54      Communication about an elector's vote (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

- (1) A person must not make any communication to an elector in relation to the elector's vote.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to:
- (a) an officer providing assistance to the elector under regulation 45; or
  - (b) an officer or other person assisting the elector, at the request of the elector, under subregulation 47 (5).

**55      Interference with an elector's vote (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

- (1) A person must not interfere with an elector in relation to the elector's vote.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to:
- (a) an officer providing assistance to the elector under regulation 45; or
  - (b) an officer or other person assisting the elector, at the request of the elector, under subregulation 47 (5).

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**56 Knowledge of an elector's vote (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

- (1) A person must not do anything to find out how an elector voted.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to:
- (a) an officer providing assistance to the elector under regulation 45; or
  - (b) an officer or other person assisting the elector, at the request of the elector, under subregulation 47 (5).

**57 Protection of electronic voting hardware or software (subsection 202AB (4) of the Act and subsection 73M (5) of the Referendum (Machinery Provisions) Act)**

- (1) A person commits an offence if he or she destroys or interferes with:

- (a) a computer program; or
- (b) a data file; or
- (c) an electronic device;

that is used, or intended to be used, for or in connection with electronically assisted voting.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply to an officer acting in the course of his or her duties.

### **Division 3 Trial of remote electronic voting for defence personnel serving outside Australia**

#### **58 Definitions for Division 3**

In this Division:

*remote electronic vote* means a vote that has been cast using the remote electronic voting method by a defence civilian or defence member serving outside Australia.

*remote electronic voter* means an elector who is on the Electoral Commission's register for remote electronic voting.

*remote electronic voting* means the casting of a remote electronic vote.

*remote electronic voting machine* means a remote electronic voting device used to:

- (a) facilitate the casting of a remote electronic vote; and
- (b) transmit a remote electronic vote.

*remote electronic voting method* means the method prescribed by subregulation 65 (1).

#### **59 Application of Division 3 (subsection 202AH (1) of the Act and subsections 73S (1) and (2) of the Referendum (Machinery Provisions) Act)**

Subject to subregulation 61 (1), an elector who is a defence civilian or defence member serving outside Australia may:

- (a) cast a remote electronic vote at:
  - (i) the first general election; and
  - (ii) the first Senate election;held after the commencement of section 202AH of the Act; and
- (b) cast a remote electronic vote at the first referendum held:
  - (i) after the commencement of section 73S of the Referendum (Machinery Provisions) Act; and
  - (ii) on the same day as an election mentioned in paragraph (a).

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**60 Register for remote electronic voting — defence civilians and defence members (section 202AI of the Act)**

- (1) The Electoral Commission must maintain a register of remote electronic voters.
- (2) The Electoral Commissioner may:
  - (a) determine the form in which the register of remote electronic voters is to be maintained; and
  - (b) issue directions to a DRO in respect of an application made under regulation 61.

**61 Application to register as a remote electronic voter (section 202AI of the Act)**

- (1) A defence civilian or defence member must be registered as a remote electronic voter by the Electoral Commission to cast a remote electronic vote.
- (2) A defence civilian or defence member may apply to register as a remote electronic voter if the civilian or member:
  - (a) is an elector; and
  - (b) is serving, or may serve, outside Australia at the time of:
    - (i) the first general election; and
    - (ii) the first Senate election;held after the commencement of section 202AH of the Act.

**62 Removal of an elector from the register of remote electronic voters (section 202AI of the Act)**

If a DRO becomes aware that an elector, who is registered as a remote electronic voter:

- (a) is in Australia at the time at which the writs for an election are issued; or
  - (b) has returned to Australia on a permanent basis;
- the DRO must cause the elector to be removed from the register of remote electronic voters.

**63 Availability of remote electronic voting**

For subparagraph 202AH (2) (a) (iv) of the Act and subparagraph 70S (3) (a) (iv) of the Referendum (Machinery Provisions) Act, the Electoral Commissioner may, by notice in the *Gazette*, determine the countries where remote electronic voting is to be available.

**64 Remote electronic vote to be cast in private (subparagraph 202AH (2) (a) (iii) of the Act and subparagraph 73S (3) (a) (iii) of the Referendum (Machinery Provisions) Act)**

- (1) Subject to subregulation (2), an elector who is using the remote electronic voting machine to cast his or her vote must do so in private.
- (2) The elector may ask any person to provide any assistance that the elector requires.

**65 Remote electronic voting method (subparagraph 202AH (2) (a) (i) of the Act and subparagraph 73S (3) (a) (i) of the Referendum (Machinery Provisions) Act)**

- (1) To cast a remote electronic vote the elector must:
  - (a) use a login and password provided by the Electoral Commission, following registration as a remote electronic voter; and
  - (b) cast his or her vote using the remote electronic voting machine by entering the vote using a keyboard or mouse, and following the onscreen prompts.
- (2) An elector who is a registered remote electronic voter may decide not to vote by casting a remote electronic vote, at any time before completing the process of casting his or her vote.
- (3) If the elector decides not to vote by the remote electronic voting method:
  - (a) the elector must vote in accordance with Part XV of the Act, or Part IV of the Referendum (Machinery Provisions) Act, as appropriate; and

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- (b) the electronic voting machine must not keep any record of the preferences cast using the remote electronic voting method.

**66 Record of each person who has voted using the remote electronic voting method (subsection 202AK (1) of the Act and section 73U of the Referendum (Machinery Provisions) Act)**

- (1) The Electoral Commission must make a record of each person who has voted using the remote electronic voting method.
- (2) This record must contain:
  - (a) the full name of the person who has voted using the remote electronic voting method; and
  - (b) the name of the Division for which the person is enrolled; and
  - (c) the login allocated by the Electoral Commission to the person after registering as a remote electronic voter; and
  - (d) the person's date of birth.

**67 Storage and transmission of remote electronic vote records (section 202AK of the Act and section 73U of the Referendum (Machinery Provisions) Act)**

- (1) The Electoral Commissioner must ensure that each remote electronic vote record is:
  - (a) securely kept until transmitted; and
  - (b) securely transmitted to the Electoral Commission; and
  - (c) securely stored by the Electoral Commission until printed.
- (2) For each remote electronic vote record transmitted to the Electoral Commission:
  - (a) a printed record of each remote electronic vote must be produced; and
  - (b) the printed record must not contain any means of identifying the person who cast the vote.

- (3) The Electoral Commissioner must also ensure that:
  - (a) remote electronic vote records must be printed and bundled according to the Divisions in which remote electronic voters are enrolled; and
  - (b) the remote electronic vote records for each Division must be sealed in an envelope marked with the name of that Division and the number of printed remote electronic vote records enclosed in the envelope.
- (4) After the remote electronic vote records for each Division have been printed and sealed in envelopes in accordance with subregulation (3), the Electoral Commissioner must ensure that:
  - (a) a list of the names of the people who cast a remote electronic vote is printed for each Division; and
  - (b) the list of names for each Division is sealed, with the envelope containing the printed remote electronic vote records for that Division, in another envelope marked with the name of the Division.
- (5) The envelopes must then be sent to the relevant offices of the DRO.
- (6) The DRO who receives the envelopes must confirm that the envelopes have been received.
- (7) The DRO must deal with the envelopes in accordance with Part XVIII of the Act or Part VI of the Referendum (Machinery Provisions) Act.

**68      Role for scrutineers (section 264 of the Act and section 89 of the Referendum (Machinery Provisions) Act)**

A scrutineer appointed under section 264 of the Act or section 89 of the Referendum (Machinery Provisions) Act may observe the printing of the remote electronic vote record or records and the bundling of those vote records for distribution to the relevant DRO office.



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- 69      Communication about an elector's vote (subsection 202AH (4) of the Act and subsection 73S (5) of the Referendum (Machinery Provisions) Act)**
- (1) A person must not make any communication to an elector in relation to the elector's vote.
- Penalty: 10 penalty units.
- (2) Subregulation (1) does not apply to a person assisting the elector, at the request of the elector, under subregulation 64 (2).
- 70      Interference with an elector's vote (subsection 202AH (4) of the Act and subsection 73S (5) of the Referendum (Machinery Provisions) Act)**
- (1) A person must not interfere with an elector in relation to the elector's vote.
- Penalty: 10 penalty units.
- (2) Subregulation (1) does not apply to a person who is assisting an elector, at the request of the elector, under subregulation 64 (2).
- 71      Knowledge of an elector's vote (subsection 202AH (4) of the Act and subsection 73S (5) of the Referendum (Machinery Provisions) Act)**
- (1) A person must not do anything to find out how an elector voted.
- Penalty: 10 penalty units.
- (2) Subregulation (1) does not apply to a person who is assisting an elector, at the request of the elector, under subregulation 64 (2).

**72      Protection of electronic voting hardware or software  
(subsection 202AH (4) of the Act and subsection  
73S (5) of the Referendum (Machinery Provisions)  
Act)**

- (1) A person commits an offence if the person destroys or interferes with:
- (a) a computer program; or
  - (b) a data file; or
  - (c) an electronic device;
- that is used, or intended to be used, for or in connection with remote electronic voting.
- Penalty: 50 penalty units.
- (2) Subregulation (1) does not apply to an officer acting in the course of his or her duties.

**Division 4                      Functions of Electoral  
Commissioner for Divisions 2 and 3**

**73      Functions of Electoral Commissioner (paragraph  
7 (1) (g) of the Act and section 144 of the Referendum  
(Machinery Provisions) Act)**

It is a function of the Electoral Commissioner to give advice or instructions to a person for the purpose of assisting the person to comply with Division 2 or 3.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).