

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 83**

*Commonwealth Electoral Act 1918*  
*Referendum (Machinery Provisions) Act 1984*

*Electoral and Referendum Amendment Regulations 2007 (No. 1)*

Section 395 of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides, in part, that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters which by that Act are required or permitted to be prescribed, or necessary or convenient to be prescribed for giving effect to that Act.

In addition, section 144 of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) provides, in part, that the Governor-General may make regulations, not inconsistent with that Act, prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The purpose of the *Electoral and Referendum Amendment Regulations 2007 (No. 1)* is to expand the evidence of identity that may be provided to the Australian Electoral Commission (AEC) by people residing outside Australia when making an application for enrolment.

The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* amended the Electoral Act to introduce a scheme requiring people enrolling for the first time, or updating their enrolment details, to provide evidence of their name (the POI Scheme). The scheme is to be implemented by the *Electoral and Referendum Amendment Regulations 2006 (No. 1)* (POI Regulations), which will commence on 16 April 2007. The broad framework of the POI Scheme has been amended by Part 1 of Schedule 3 to the *Electoral and Referendum Legislation Amendment Act 2007* which will commence on 16 April 2007. Following these amendments, the Principal Regulations require amendment.

The POI Scheme to be implemented by the POI Regulations has three tiers. Under the first tier, people will be required to provide their driver's licence number on their enrolment application. If people do not have a driver's licence then they will be required to show a prescribed document to an elector in a prescribed class (second tier). If they do not have a driver's licence or are not able to show a prescribed document to an elector in a prescribed class, they will be required to have their application countersigned by two electors who have known the applicant for at least one month and who can confirm the applicant's name (third tier).

The POI Scheme applies to people residing outside Australia who apply for enrolment. As it is possible that not all overseas applicants may be able to provide an Australian driver's licence number, the Regulations amend the Principal Regulations to provide these people with the option of supplying either their Australian passport number or their driver's licence number as documentary evidence of their name. This reflects changes introduced by Part 1 of Schedule 3 to the *Electoral and Referendum Legislation Amendment Act 2007*.

Details of the proposed Regulations are set out in the Attachment.

The regulations commence on 16 April 2007.

The States, Territories and the Federal Privacy Commissioner were consulted on the operation of the substantive POI Regulations. Consultation was unnecessary for this legislative instrument as this instrument makes a minor amendment to the substantive scheme.

**Details of the proposed *Electoral and Referendum Amendment Regulations 2007 (No. 1)***

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Electoral and Referendum Amendment Regulations 2007 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on 16 April 2007.

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

This regulation provides that the *Electoral and Referendum Regulations 1940* (the Principal Regulations) as amended by the *Electoral and Referendum Amendment Regulations 2006 (No. 1)* are amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Item [1] – Before regulation 12**

Sections 94A and 95 of the Electoral Act provide that, subject to a number of conditions, a person residing outside Australia may apply for enrolment. Section 98AA requires that an applicant for enrolment must provide evidence of his or her name by providing certain information. This item inserts new regulation 11A into the Principal Regulations to provide for the information that must be provided by applicants residing outside Australia. Under subregulation (1), subject to subregulation (2), applicants are required to provide either their Australian driver's licence number or their Australian passport number.

If an applicant does not hold a driver's licence or an Australian passport, subregulation (2) requires an applicant to show a specified document prescribed in Schedule 3 to an elector in a class set out in Schedule 2. In any other case, the Principal Regulations as amended by the *Electoral and Referendum Amendment Regulations 2006 (No. 1)* provide that an applicant is required to have his or her application countersigned by two electors who have known the applicant for at least one month and who can confirm the applicant's name.

**Item [2] – Regulation 12, heading**

This item makes a consequential amendment to the heading of regulation 12 in the Principal Regulations by removing the reference to sections 94A and 95 of the Electoral Act from the heading to regulation 12. These are the sections under which people residing outside Australia may apply for enrolment; these applicants would now be covered under new regulation 11A.

**Item [3] – Subregulation 12(1)**

This item makes a consequential amendment to subregulation 12(1) of the Principal Regulations by removing the reference to sections 94A and 95 of the Electoral Act from regulation 12. These are the sections under which people residing outside Australia may apply for enrolment, and would be covered by new regulation 11A.