

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Electoral and Referendum Amendment
(Enrolment and Prisoner Voting) Bill
2010**

No. , 2010

(Special Minister of State)

**A Bill for an Act to amend the law relating to
elections and referendums, and for related
purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **elections and referendums, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Electoral and Referendum*
7 *Amendment (Enrolment and Prisoner Voting) Act 2010*.

8 **2 Commencement**

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

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3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

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2 **Schedule 1—Amendments relating to close of**
3 **Rolls**

4 **Part 1—Amendments**

5 *Commonwealth Electoral Act 1918*

6 **1 After subsection 4(7)**

7 Insert:

8 (7A) Unless the contrary intention appears, a reference in this Act to an
9 election or poll in, for or in relation to, a Division or Subdivision,
10 includes a reference to a Senate election, or a poll for a Senate
11 election, for the State or Territory that includes the Division or
12 Subdivision.

13 **2 Subsection 94A(4)**

14 Repeal the subsection, substitute:

15 (4) If:

16 (a) the application is received by the Electoral Commissioner
17 after 8 pm on the day of the close of the Rolls for an election
18 to be held in a Division; and

19 (b) the application relates to a Subdivision of that Division;
20 the person's name must not be added to the Roll for the
21 Subdivision until after the close of the poll for that election.

22 **3 Subsection 95(4)**

23 Repeal the subsection, substitute:

24 (4) If:

25 (a) an application under this section is received by the Electoral
26 Commissioner after 8 pm on the day of the close of the Rolls
27 for an election to be held in a Division; and

28 (b) the application relates to a Subdivision of that Division;
29 the person's name must not be added to the Roll for the
30 Subdivision, and the annotation of the Roll under subsection (1) in

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

3 **4 Subsection 96(4)**

4 Repeal the subsection, substitute:

5 (4) If:

6 (a) an application under this section is received by the Electoral
7 Commissioner after 8 pm on the day of the close of the Rolls
8 for an election to be held in a Division; and

9 (b) the application relates to a Subdivision of that Division;
10 the person's name must not be added to the Roll for the
11 Subdivision, and the annotation of the Roll under subsection (2B)
12 in relation to the person must not be made, until after the close of
13 the poll for that election.

14 **5 Section 102**

15 Repeal the section, substitute:

16 **102 Action on receipt of claim**

17 (1) Subject to subsection (4), if, pursuant to section 101, the Electoral
18 Commissioner receives a claim for enrolment, or transfer of
19 enrolment, the Electoral Commissioner must:

20 (a) note on the claim the date of its receipt; and

21 (b) if the claim is in order and the Electoral Commissioner is
22 satisfied that the claimant is entitled, in respect of residence
23 at an address, to be enrolled for a Subdivision, without delay:

24 (i) enter on the Roll for the Subdivision the name of the
25 claimant and the other particulars required by
26 section 83; and

27 (ii) notify the claimant in writing that he or she has been
28 enrolled for that Subdivision; and

29 (iii) in the case of a claim for transfer of an enrolment from
30 the Roll for another Subdivision—delete the name of
31 the claimant from the Roll for that other Subdivision;
32 and

33 (c) if the claim is in order but the Electoral Commissioner is
34 satisfied that the claimant is already properly enrolled in
35 respect of residence at the address in the Subdivision for

- 1 which he or she is entitled to be enrolled—notify the
2 claimant, in writing, that he or she has been enrolled for that
3 Subdivision; and
- 4 (d) if the claim is not in order or the Electoral Commissioner is
5 not satisfied that the claimant is entitled, in respect of
6 residence at an address, to be enrolled for a Subdivision—
7 notify the claimant in writing that the claim has been
8 rejected.
- 9 (2) Before dealing with a claim under paragraph (1)(b), (c) or (d), the
10 Electoral Commissioner may make any inquiries that he or she
11 thinks necessary.
- 12 (3) Notice of a decision given to a claimant by the Electoral
13 Commissioner under paragraph (1)(d) must include:
14 (a) a statement of the reasons for the decision; and
15 (b) a statement setting out the rights of the claimant to have the
16 decision reviewed under Part X.
- 17 (4) Subject to subsection (5), if:
18 (a) a claim under section 101 is received by the Electoral
19 Commissioner during the period (the *suspension period*):
20 (i) starting at 8 pm on the day of the close of the Rolls for
21 an election to be held in a Division; and
22 (ii) ending on the close of the poll for the election; and
23 (b) the claim relates to a Subdivision of that Division;
24 the claim must not be considered until after the end of the
25 suspension period.
- 26 (5) If:
27 (a) a claim under section 101 is received by the Electoral
28 Commissioner during the suspension period; and
29 (b) the Australian Postal Corporation has notified the Electoral
30 Commission in writing that:
31 (i) the delivery of mail identified in the notification was
32 delayed by an industrial dispute affecting a specified
33 post office or mail exchange; and
34 (ii) but for the industrial dispute, that mail would, in the
35 ordinary course of post, have been delivered before the
36 start of the suspension period; and
37 (c) the claim is included in the mail identified in the notification;
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Schedule 1 Amendments relating to close of Rolls
Part 1 Amendments

- 1 then, despite subsection (4):
2 (d) the claim must be regarded as having been received before
3 the start of the suspension period; and
4 (e) if the claimant's name is entered on the Roll in accordance
5 with the claim, the enrolment must, in relation to any vote
6 recorded by the claimant in an election, be regarded as
7 having been effected before the start of the suspension
8 period.
- 9 (6) A name may, at any time, be removed from a Roll pursuant to a
10 notice of transfer of enrolment.

11 **6 Subsection 118(5)**

12 Repeal the subsection, substitute:

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

20 **7 Section 155**

21 Repeal the section, substitute:

22 **155 Date for close of Rolls**

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

25 **8 Subparagraphs 10(a) and 11(a) of Schedule 3**

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

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

28 **9 Subsections 4(2) and (3)**

29 Repeal the subsections, substitute:

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

14 **10 Subsection 9(1)**

15 Repeal the subsection, substitute:

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

18 **11 Subsection 9(3)**

19 Repeal the subsection.

20 **12 Subparagraph 10(a) of Schedule 4**

21 Omit “102(4A)”, substitute “102(5)”.

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2 **Part 2—Application**

3 **13 Application**

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

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2 **Schedule 2—Amendments relating to prisoner**
3 **voting**

4 **Part 1—Amendments**

5 *Commonwealth Electoral Act 1918*

6 **1 Subsection 93(2)**

7 Repeal the subsection, substitute:

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

13 **2 Subsections 93(8) and (8AA)**

14 Repeal the subsections, substitute:

- 15 (8) A person who:
16 (a) by reason of being of unsound mind, is incapable of
17 understanding the nature and significance of enrolment and
18 voting; or
19 (b) has been convicted of treason or treachery and has not been
20 pardoned;
21 is not entitled to have his or her name placed or retained on any
22 Roll or to vote at any Senate election or House of Representatives
23 election.

- 24 (8AA) A person who is serving a sentence of imprisonment of 3 years or
25 longer is not entitled to vote at any Senate election or House of
26 Representatives election.

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

28 **3 Section 109**

29 Repeal the section, substitute:

1 **109 Lists of persons serving, or ceasing to serve, sentences of**
2 **imprisonment to be forwarded**

- 3 (1) The Controller-General of Prisons of a State must, as soon as
4 practicable after the beginning of each month, forward to the
5 Electoral Commissioner (or to an officer nominated by the
6 Electoral Commissioner) a list of:
7 (a) the names, addresses, occupations and sexes of all persons
8 who began serving a sentence of imprisonment of 3 years or
9 longer in the State; and
10 (b) the names, addresses, occupations and sexes of all persons
11 who ceased to serve a sentence of imprisonment of 3 years or
12 longer in the State;
13 during the preceding month.

- 14 (2) Within 4 days of the day of the close of the Rolls for an election
15 for a Division in a State, the Controller-General of Prisons of the
16 State must forward to the Electoral Commissioner (or to an officer
17 nominated by the Electoral Commissioner) a list of:
18 (a) the names, addresses, occupations and sexes of all persons
19 who began serving a sentence of imprisonment of 3 years or
20 longer in the State; and
21 (b) the names, addresses, occupations and sexes of all persons
22 who ceased to serve a sentence of imprisonment of 3 years or
23 longer in the State;
24 between the time the last list was forwarded by the
25 Controller-General under subsection (1) and the day of the close of
26 the Rolls.

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

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

31 **4 Subsection 208(2)**

32 Repeal the subsection, substitute:

- 33 (2) The list must include the name of each person who:
34 (a) is on the Roll for the Division; and
35 (b) will be at least 18 years old on polling day; and

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

3 **5 Subsection 221(3)**

4 Repeal the subsection, substitute:

5 (3) For the purposes of this section, the electoral Rolls in force at the
6 time of the election are conclusive evidence of the right of each
7 person enrolled on the Rolls, other than:

8 (a) a person whose name has been placed on a Roll because of a
9 claim made under section 100 and who will be under 18 on
10 the date fixed for the polling in the election; or

11 (b) a person who is covered by subsection 93(8AA) (sentences of
12 imprisonment);

13 to vote as an elector, unless a person shows by his or her answers
14 to the questions prescribed by section 200DI or 229 that he or she
15 is not entitled to vote.

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

17 **6 At the end of subsection 22(2)**

18 Add:

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

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Part 2—Application and transitional

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7 Application and transitional

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(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.

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(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.

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(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.

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(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.