

Electoral Newsfile

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Changes to the Commonwealth Electoral Act 1918 since the 2004 federal election

Introduction

1. *Electoral Newsfiles* are published by the Australian Electoral Commission (AEC) to provide basic electoral facts for the information and guidance of all interested parties.
2. Since the 2004 federal election, a series of amendments have been made to the *Commonwealth Electoral Act 1918* (the Electoral Act). The following Acts made amendments directly concerned with enrolment and elections. These are the:
 - *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*
 - *Electoral and Referendum Legislation Amendment Act 2007*
3. The amendments made by these Acts to the Electoral Act are summarised in this edition of *Electoral Newsfile* as follows:
 - *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*
 - Enrolment
 - Voting
 - Candidates
 - Funding and disclosure
 - Other changes
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 - Postal voting
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 - *Administrative Appeals Tribunal Amendment Act 2005*
 - *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*
 - *Australian Citizenship (Transitionals and Consequentials) Act 2007*
 - *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007*
 - *Commonwealth Electoral Amendment (Democratic Plebiscites) Act 2007*
4. While providing information on the major provisions of these Acts, this *Newsfile* is not intended to provide legal advice and should not be relied upon as such. Readers are advised to refer to the relevant Acts for the exact details of the amendments. Links to the relevant legislation are provided on page 6 of this *Newsfile*.

5. The Electoral Act is available on the Attorney-General's Commonwealth Law website at www.comlaw.gov.au. See page 6 of this *Newsfile*.

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006

6. *The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (the Electoral Integrity Act) was given Royal Assent on 22 June 2006.
7. The provisions of the Electoral Integrity Act are part of the government's response to recommendations made by the Joint Standing Committee on Electoral Matters (JCSEM) in its *Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, as well as some additional government reform measures.
8. The Bill proposing the amendments was introduced into the House of Representatives on 8 December 2005 and was passed by the Parliament on 21 June 2006.
9. The major provisions of the Electoral Integrity Act are summarised below. Unless otherwise noted, each of the amendments listed commenced on the date of Royal Assent, 22 June 2006.

Enrolment

10. From 16 April 2007, people are required to provide evidence of identity when enrolling or updating their enrolment. People enrolling or updating their enrolment from within Australia are required to provide their driver's licence number on their enrolment application. If people do not have a driver's licence, then they are required to show a specified type of document, for example an Australian passport or birth certificate, to an elector in a specified class, for example an accountant or medical practitioner. If they do not have a driver's licence or do not possess one of the prescribed documents, they are 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.

11. The close of rolls period has changed. The rolls close at 8 pm on the third working day after the date of the writ. There are **two different deadlines for enrolling**, as set out below.
- a) The deadline for the AEC to receive a correctly completed enrolment form is **8 pm on the same day the writs for the election are issued IF** a person is:
- enrolling for the first time; OR
 - re-enrolling to get back on the roll after having been removed for any reason.
- b) The deadline for the AEC to receive a correctly completed enrolment form is **8 pm three working days after the day the writs are issued IF** a person:
- is 17 years of age, but will turn 18 between the day after the issue of the writs and election day (inclusive); OR
 - will become an Australian citizen between the day after the issue of the writs and the day before election day (inclusive); OR
 - is on the roll, but with an out-of-date address or name details.
12. The electoral roll, as at the close of rolls, is the roll that is used for the federal election known as the certified list of electors.

Voting

13. Voters casting a provisional vote will now have to provide evidence of identity at the time of casting the vote or to the AEC by the following Friday. A provisional vote is a vote cast, for example, when an elector's name cannot be found on the roll or has already been marked off the roll as having voted. The vote cannot be counted until a careful check of enrolment records and entitlements has been made after election day.
14. The Electoral Integrity Act amended the law to provide that prisoners serving full time sentences of imprisonment for an offence against a law of the Commonwealth or a State or Territory are not entitled to vote at any Senate election or House of Representatives election. However, on 30 August 2007 new subsection 93(8AA) and paragraph 208(2)(c) of the Electoral Act were held invalid by the High Court in *Roach v Electoral Commissioner and the Commonwealth*.

Accordingly, the law in this respect, returns to the situation prior to the Electoral Integrity Act. That is, prisoners serving a sentence of three years or longer are not entitled to enrol or vote.

Candidates

15. The nomination deposit has been increased from \$350 to \$500 for House of Representatives candidates and from \$700 to \$1000 for Senate candidates.
16. Paid electoral advertising on the internet must now be authorised in the same manner as printed electoral advertisements. For more information see *Electoral Backgrounder No. 15*, 'Electoral Advertising'.

Funding and disclosure

17. All disclosure thresholds for political donations and receipts were increased to amounts above \$10 000, and are indexed annually by the Consumer Price Index. The threshold for this election is more than \$10 500.
18. Third parties (persons other than parties, candidates and groups, members of Parliament and Commonwealth departments and agencies) that incur expenditure for a political purpose in excess of the disclosure threshold, or if they receive gifts that are used for such expenditure, will now have to complete annual disclosure returns. Previously, they were required to do so only for election periods.
19. The definition of 'associated entity' has been extended to include entities with financial membership of, or voting rights in, a registered political party, and entities on whose behalf a person exercises such membership or voting rights. This will increase the number of entities with annual disclosure obligations.
20. Broadcasters and publishers are no longer required to lodge disclosure returns on electoral advertisements broadcast or published during election periods.
21. All currently registered political parties without current or past representation in the Commonwealth Parliament were automatically deregistered on 27 December 2006. Deregistered parties will have to meet current registration requirements before being re-registered.

Other changes

22. The level of tax-deductible contributions and gifts, whether from an individual or corporation, to political parties and independent candidates has been increased from \$100 to \$1500 in any income year. Note that this is an amendment to the *Income Tax Assessment Act 1997*.
23. The range of people from whom the AEC may demand information for the purposes of maintaining the electoral roll has been expanded to include officers working for all state and territory government agencies. Previously the AEC was limited to requesting information from the police and statistical and electoral agencies of the states and territories.
24. Currently, there are some divisional offices that are co-located with other divisional offices. Therefore, there are currently divisions for which the divisional office is located outside of the divisional boundaries. These co-located offices will stay as they are. In the future, AEC divisional offices must be located within their own divisional boundary unless otherwise authorised by the Special Minister of State.
25. Persons or organisations that verify, or contribute to the verification of, the identity of persons for the purposes of the *Financial Transaction Reports Act 1988* (FTR Act) will now have access to electoral roll information. However, this is limited to name and address details only. The FTR Act requires cash dealers, including financial institutions, to verify the identity of signatories to accounts to minimise the risk of accounts being used for criminal purposes.

Electoral and Referendum Legislation Amendment Act 2007

26. The *Electoral and Referendum Legislation Amendment Act 2007* (the Amendment Act) was given Royal Assent on 15 March 2007.
27. The provisions of the Amendment Act are part of the government's response to recommendations made by the JCSEM in its *Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*.

28. The Bill proposing the amendments was introduced into the House of Representatives on 30 November 2006 and was passed by the Parliament on 26 February 2007.
29. The major provisions of the Amendment Act are summarised below. Unless otherwise noted, each of the amendments listed commenced on the date of Royal Assent, 15 March 2007.

Postal Voting

30. Members of the Australian Defence Force and Australian Federal Police personnel serving outside of Australia, and persons registered as eligible overseas electors, may apply for registration as general postal voters.
31. The deadline for receipt of postal vote applications is now 6 pm on the Thursday two days prior to election day. While the AEC is not required to post or deliver postal voting material to those electors whose postal vote applications are received after this time, it will make reasonable efforts to contact applicants whose postal vote applications are received after the deadline to advise them of the need to vote by other means.
32. Postal vote applications received by the AEC up to and including 6 pm on the Friday eight days before election day will be delivered to the applicant by post or other appropriate means (not being electronic means). For applications received within this time, the applicant may also request on the application form that a means of delivery other than post (not being electronic means) be used. If the alternative means is considered to be reasonable and practicable, then the AEC will deliver the postal voting material by that means.
33. For postal vote applications received after 6 pm on the Friday eight days before election day and up to and including 6 pm on the Thursday two days before election day, the AEC will deliver the postal voting material to the applicant by the most reasonable and practicable means (not being electronic means).
34. If a completed postal vote certificate (if posted or delivered before the close of the poll) would be unlikely to reach the appropriate Divisional Returning Officer (DRO) within 13 days after election day, the range of AEC officers who can receive such an envelope (on or before the close of the poll) has been expanded to include

electoral visitors at hospitals and prisons, mobile team leaders, certain office holders and on-going employees at the AEC's capital city offices.

Trials of electronic voting methods

35. Two trials of electronic voting methods will be conducted at the election. The first trial caters for electors who are blind or have low vision who will use an electronic voting machine to cast a vote independently. The second trial provides for defence personnel in four locations overseas to cast a remote electronic vote using the Department of Defence's secure intranet.

Note: The legislative amendments only allow for the conduct of these trials at this federal election.

Other changes

36. From 16 April 2007, applicants for enrolment from outside Australia (Australian citizens applying for enrolment from overseas) now have the option of providing either their Australian passport number or their driver's licence number as documentary evidence of their name.
37. The AEC may now establish an early voting centre when it would not be possible, due to exceptional circumstances, to formally announce (gazette) the declaration of that early voting centre prior to commencing operations. The AEC must take reasonable steps to advertise the new early voting location as soon as practicable.
38. Section 350 of the Electoral Act, which made it an offence for a person to make or publish any false and defamatory statement in relation to the personal character or the conduct of a candidate, was repealed. Defamation will now be dealt with in accordance with the civil law of defamation existing in the relevant state or territory jurisdiction.

Summary of amending Acts which were not directly enrolment or election related

Administrative Appeals Tribunal Amendment Act 2005

39. The *Administrative Appeals Tribunal Amendment Act 2005* (the AAT Act) was given Royal Assent on 1 April 2005.

40. The Bill proposing the amendments was introduced into the Senate on 17 November 2004 and was passed by the Parliament on 17 March 2005.
41. The AAT Act amended the Electoral Act as a consequence of changes to the way that the Administrative Appeals Tribunal managed its workload. The amendments provided flexibility to appoint one or more Federal Court judges when reviewing decisions under subsection 141(1) of the Electoral Act.

Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006

42. The *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006* (the AML Act) was given Royal Assent on 12 December 2006.
43. The Bill proposing the amendments was introduced into the House of Representatives on 1 November 2006 and was passed by the Parliament on 7 December 2006.
44. The AML Act amended the Electoral Act as a consequence of changes to the regulation of the financial sector in relation to deterring money laundering and terrorism financing. The amendments provided for the provision of electoral roll information to prescribed persons or organisations who carry out applicable customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Australian Citizenship (Transitionals and Consequentials) Act 2007

45. The *Australian Citizenship (Transitionals and Consequentials) Act 2007* (the Citizenship Act) was given Royal Assent on 15 March 2007.
46. The Bill proposing the amendments was introduced into the House of Representatives on 9 November 2005 and was passed by the Parliament on 26 February 2007.
47. The Citizenship Act amended the Electoral Act as a consequence of the commencement of the new *Australian Citizenship Act 2007*. The amendments update references from the

Australian Citizenship Act 1948 to the new *Australian Citizenship Act 2007* and associated terminology relating to the process by which Australian citizenship by conferral is acquired and evidenced.

Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007

48. The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007* (the AML Amendment Act) was given Royal Assent on 12 April 2007.
49. The Bill proposing the amendments was introduced into the House of Representatives on 15 February 2007 and was passed by the Parliament on 28 March 2007.
50. The AML Amendment Act amended the Electoral Act as a consequence of changes to the regulation of the financial sector in relation to deterring money laundering and terrorism financing. The amendments provided for the provision of roll information to prescribed persons or organisations who facilitate the carrying out of applicable customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Commonwealth Electoral Amendment (Democratic Plebiscites) Act 2007

51. The *Commonwealth Electoral Amendment (Democratic Plebiscites) Act 2007* (the Plebiscites Act) was given Royal Assent on 24 September 2007.
52. The Bill proposing the amendments was introduced into the House of Representatives on 16 August 2007 and was passed by the Parliament on 17 September 2007.
53. The Plebiscites Act amends the Electoral Act to add to the existing wide powers contained in s. 7A and enable the AEC to both 'use' and, if necessary, 'disclose' the Commonwealth electoral rolls for the purposes of conducting an activity (such as a plebiscite) under an arrangement that has been entered into. Section 7A enables the AEC to enter into arrangements for the supply of goods and services to a person or body. This power has already been used by the AEC to enable the expertise of AEC staff to run elections for third parties.

Electoral Newsfile

The Acts referred to in this Newsfile can be accessed via the Commonwealth Attorney-General's legislation website, ComLaw.

Commonwealth Electoral Act 1918
www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/4E11653A3B440759CA2571A200014B84

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006
www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/all/search/E50535E944E4D45ECA2571990012CFBC

Referendum (Machinery Provisions) Act 1984
www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/8218580EF2EBF339CA2571A000276135

Income Tax Assessment Act 1997
www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/E00624DD13B31096CA2571B50080374D

Financial Transaction Reports Act 1988
www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/65C9E03863E3DB90CA2571AE000D122B

Electoral and Referendum Legislation Amendment Act 2007
<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all/search/B76532CEDDB8E80FCA2572BA00173877>

Administrative Appeals Tribunal Amendment Act 2005
<http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/all/search/FC0C99D8A7193B3CCA256FFE0023287E>

Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006
<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/51A2DD3C9813268ECA2572C20025186D>

Australian Citizenship (Transitional and Consequential) Act 2007

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/173011FF6457BD4BCA2573040082E434>

Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007

<http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/asmade/bynumber/E96F04E23474100DCA2572C0007A04E1?OpenDocument>

Commonwealth Electoral Amendment (Democratic Plebiscites) Act 2007

<http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/asmade/bynumber/1856AFBEDEB8C6E6CA257369001E15FD?OpenDocument>

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