

**AUSTRALIAN ELECTORAL COMMISSION**

**SUBMISSION TO**

**THE JOINT STANDING COMMITTEE ON  
THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

**INQUIRY INTO  
NORFOLK ISLAND ELECTORAL MATTERS**

**ENROLMENT AND CANDIDATURE**

**Submission No 3 of 2 March 2001**

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## Introduction

This submission from the Australian Electoral Commission (AEC) is provided to the Joint Standing Committee on the National Capital and External Territories in response to an invitation from the Committee Secretary on 8 February 2001 to contribute to the Inquiry into Norfolk Island Electoral Matters.

2 The terms of reference for the Committee inquiry are as follows:

The consistency of the laws relating to eligibility to vote and candidature for the Legislative Assembly of the Territory of Norfolk Island with other Australian jurisdictions, in particular:

- a. whether Australian citizenship should be a requirement for eligibility to vote for, or be elected to, the Legislative Assembly;
- b. the time period before which an Australian citizen resident in the Territory can enrol to vote for the local legislature.

3 The AEC has no statutory responsibility, under the *Commonwealth Electoral Act 1918* (the Electoral Act), for Norfolk Island Legislative Assembly elections. However, the AEC does have responsibility for those Norfolk Islanders who choose to enrol for federal elections under section 95AA, 95AB and 95AC of the Electoral Act. Once enrolled, voting is compulsory, as for all other Australian citizens. The relevant provisions were enacted by the Parliament after consideration of AEC submissions by the Joint Standing Committee on Electoral Matters (JSCEM). Copies of relevant extracts from the submissions and reports can be provided if requested.

4 In the attachments to this submission, the AEC provides details of the legal provisions relating to enrolment and voting, and candidate qualifications, for elections to the Australian Parliament. Further background material is available on the AEC website at [www.aec.gov.au](http://www.aec.gov.au).

Extract from the *Commonwealth Electoral Act 1918*

Part VII—Qualifications and disqualifications for enrolment and for voting

93 Persons entitled to enrolment and to vote [see Note 3]

- (1) Subject to subsections (7) and (8) and to Part VIII, all persons:
  - (a) who have attained 18 years of age; and
  - (b) who are:
    - (i) Australian citizens; or
    - (ii) persons (other than Australian citizens) who would, if the relevant citizenship law had continued in force, be British subjects within the meaning of that relevant citizenship law and whose names were, immediately before 26 January 1984:
      - (A) on the roll for a Division; or
      - (B) on a roll kept for the purposes of the *Australian Capital Territory Representation (House of Representatives) Act 1973* or the *Northern Territory Representation Act 1922*;shall be entitled to enrolment.
- (2) Subject to subsections (3), (4) and (5), an elector whose name is on the Roll for a Division is entitled to vote at elections of Members of the Senate for the State that includes that Division and at elections of Members of House of Representatives for that Division.
- (3) An elector:
  - (a) whose name has been placed on a Roll in pursuance of a claim made under section 100; and
  - (b) who has not attained 18 years of age on the date fixed for the polling in an election;is not entitled to vote at that election.
- (4) Notwithstanding section 100 or any enrolment in pursuance of a claim made under that section, for the purposes of this Act in its application in relation to an election, a person who has not attained 18 years of age on the date fixed for the polling in that election shall not be taken to be:
  - (a) entitled to be enrolled on a Roll; or
  - (b) enrolled on a Roll.
- (5) A person is not entitled to vote more than once at any Senate election or any House of Representatives election, or at more than one election for the Senate or for the House of Representatives held on the same day.
- (7) A person who is:
  - (a) within the meaning of the *Migration Act 1958*, the holder of a temporary visa; or
  - (b) an unlawful non-citizen under that Act;is not entitled to enrolment under Part VIII.

- (8) A person who:
- (a) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting; or
  - (b) is serving a sentence of 5 years or longer for an offence against the law of the Commonwealth or of a State or Territory; or
  - (c) has been convicted of treason or treachery and has not been pardoned;
- is not entitled to have his or her name placed on or retained on any Roll or to vote at any Senate election or House of Representatives election.
- (8A) In subsection (1), **relevant citizenship law** means the *Australian Citizenship Act 1948* as amended and in force immediately before the day fixed by Proclamation for the purposes of subsection 2(2) of the *Australian Citizenship Amendment Act 1984* and the regulations in force immediately before that day under the *Australian Citizenship Act 1948* as so amended and in force.
- (10) The reference in subsection (8) to treason or treachery includes a reference to treason or treachery committed in relation to the Crown in right of a State or the Northern Territory or in relation to the government of a State or the Northern Territory.

#### **94 Enrolled voters leaving Australia**

- (1) An elector who:
- (a) is enrolled for a particular Subdivision of a Division; and
  - (b) has ceased to reside in Australia, or intends to cease to reside in Australia; and
  - (c) intends to resume residing in Australia (whether in that Subdivision or elsewhere) not later than 6 years after ceasing to reside in Australia;
- may apply in writing to be treated as an eligible overseas elector. The application must be made to the Divisional Returning Officer for that Division.
- (1A) An application that is made while the elector still resides in Australia must be made within 3 months before the elector intends to cease to reside in Australia.
- (1B) An application that is made after the elector ceased to reside in Australia must be made within 1 year after the day on which the elector ceased to reside in Australia.
- (2) Where an application is made under subsection (1):
- (a) the Divisional Returning Officer must annotate the Roll so as to indicate that the elector is an eligible overseas elector; and
  - (b) subject to this section, the elector is entitled to be treated as an eligible overseas elector from the time when the annotation is made until it is cancelled.
- (3) Notwithstanding anything in subsection 99(1) or (2), while a person is entitled to be treated as an eligible overseas elector by virtue of an annotation under subsection (2) to the Roll for a Subdivision, the person is entitled to:

- (a) have his or her name retained on the Roll for the Subdivision; and
  - (b) vote as an elector of the Subdivision.
- (4) Where a person applies under subsection (1) to the Divisional Returning Officer for a Division to be treated as an eligible overseas elector and the person's name is not on the Roll for a Subdivision of the Division, the Divisional Returning Officer shall refuse the application and give notice in writing of the decision to the person making the application.
- (5) A person who has applied under subsection (1) shall, as soon as practicable, give written notice to the Divisional Returning Officer to whom the application was made of the occurrence of any of the following circumstances:
  - (a) the person does not cease to reside in Australia within 3 months after the day on which the application was made;
  - (b) within 6 years after ceasing to reside in Australia, the person again becomes resident in Australia;
  - (c) the person abandons the intention to become resident again in Australia within 6 years after ceasing to reside in Australia;
  - (d) the person ceases to be entitled to enrolment.
- (6) Subject to subsection (13), if a person who is an eligible overseas elector does not cease to reside in Australia within 3 months after the day on which he or she applied under subsection (1) to be treated as an eligible overseas elector, the person ceases to be entitled to be treated as an eligible overseas elector.
- (6A) Paragraph (5)(a) and subsection (6) do not apply to a person who is an eligible overseas elector whose application under subsection (1) was made after the person ceased to reside in Australia.
- (7) If a person who is an eligible overseas elector again becomes resident in Australia within 6 years after ceasing to reside in Australia, the person ceases to be entitled to be treated as an eligible overseas elector at the end of 1 month after the day on which he or she again became resident in Australia.
- (8) Where a person who is an eligible overseas elector in relation to a Subdivision by virtue of this section:
  - (a) ceases to have the intention to resume residing in Australia within the period (in this subsection referred to as the **relevant period**) of 6 years after the day on which he or she ceased to reside in Australia; and
  - (b) intends to resume residing in Australia at some time after the expiration of the relevant period;and applies, within 3 months before the expiration of the relevant period, to the Divisional Returning Officer for the Division for which he or she is enrolled to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period, the Divisional Returning Officer to whom the application is made shall annotate the Roll for that Subdivision so as to indicate that the eligible overseas elector is to be treated as an eligible overseas elector for that further period of 1 year.

- (9) Where a person who:
- (a) is being treated as an eligible overseas elector in relation to a Subdivision for a further period (in this subsection referred to as the **relevant period**) of 1 year in pursuance of an application made under subsection (8) or under this subsection; and
  - (b) intends to resume residing in Australia;
- applies, within 3 months before the expiration of the relevant period, to the Divisional Returning Officer for the Division for which he or she is enrolled to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period, the Divisional Returning Officer to whom the application is made shall annotate the Roll for that Subdivision so as to indicate that the eligible overseas elector is to be treated as an eligible overseas elector for that further period of 1 year.
- (10) An application under subsection (8) or (9) shall be in writing.
- (11) Where a person who is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9):
- (a) resumes residing in Australia; or
  - (b) ceases to have the intention to resume residing in Australia;
- the person shall, as soon as practicable, give notice in writing to the Divisional Returning Officer for the Division for which he or she is enrolled of the happening of the event referred to in paragraph (a) or (b), as the case may be.
- (12) Subject to subsection (13), where a person who is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9) resumes residing in Australia, the person ceases to be entitled to be treated as an eligible overseas elector under this section on the expiration of 1 month after the day on which he or she resumes residing in Australia.
- (13) A person ceases to be entitled to be treated as an eligible overseas elector under this section if:
- (a) the person gives notice under paragraph (5)(c) and does not make an application under subsection (8);
  - (b) the person gives notice under paragraph (11)(b);
  - (c) while the person is being so treated, a general election is held at which he or she neither votes nor applies for a postal vote;
  - (d) the person ceases to be entitled to enrolment;
  - (e) except where:
    - (i) the person has given notice under paragraph (5)(b); or
    - (ii) the person has made an application under subsection (8);the period of 6 years commencing on the day on which the person ceased to reside in Australia expires; or
  - (f) in a case where:
    - (i) the person is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9) for a further period (in this paragraph referred to as the **relevant period**) of 1 year; and

(ii) the person does not make an application under subsection (9) to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period; the relevant period expires.

- (14) Where the Divisional Returning Officer for the Division on the Roll for a Subdivision of which an annotation in relation to a person under subsection (2) has been made becomes aware that the person has ceased to be entitled to be treated as an eligible overseas elector under this section by virtue of subsection (6), (7), (12) or (13), the DRO shall:
- (a) if the person ceases to be eligible otherwise than by virtue of paragraph (13)(d) and the person resides in the Division at the time when he or she ceases to be entitled to be treated as an eligible overseas elector under this section—cancel the annotation made in relation to the person under subsection (2); or
  - (b) in any other case—cancel the enrolment of the person on the Roll for the Subdivision.
- (15) If, after an application is made by a person under subsection (1) to be treated as an eligible overseas elector and before an annotation under subsection (2) is made in relation to the person, an event occurs by reason of which, if the annotation had been made, the person would have ceased to be entitled to be treated as an eligible overseas elector under subsection (6), (7) or (13), whether immediately or otherwise, then:
- (a) where the annotation was not made before the Divisional Returning Officer to whom the application was made became aware of the happening of the event—the Divisional Returning Officer shall not make the annotation; or
  - (b) where the annotation is made—the annotation or the enrolment of the person, as the case requires, ceases to be in force immediately after the annotation is made.

(16) In this section:

***Australia*** does not include Norfolk Island.

#### **94A Enrolment from outside Australia**

- (1) A person may apply to the Australian Electoral Officer for a State for enrolment for a Subdivision in that State if, at the time of making the application:
- (a) the person has ceased to reside in Australia for reasons relating to the person's career or employment or for reasons relating to the career or employment of the person's spouse; and
  - (b) the person is not enrolled; and
  - (c) the person is not qualified for enrolment, but would be so qualified if he or she resided in a Subdivision of a Division, and had done so for at least a month; and
  - (d) the person intends to resume residing in Australia not later than 6 years after he or she ceased to reside in Australia.
- (2) The application:
- (a) must be in writing; and



- (b) must be made within 2 years of the day on which the person ceased to reside in Australia.
- (3) The Australian Electoral Officer must cause the person's name to be added to the Roll:
  - (a) for the Subdivision for which the person last had an entitlement to be enrolled; or
  - (b) if the person has never had such an entitlement, for a Subdivision for which any of the person's next of kin is enrolled; or
  - (c) if neither paragraph (a) nor (b) applies, for the Subdivision in which the person was born; or
  - (d) if none of paragraphs (a), (b) and (c) applies, the Subdivision with which the person has closest connection.
- (4) If:
  - (a) the application was received by an Australian Electoral Officer after 8 pm on the day of the close of the Rolls for an election to be held in a Division; and
  - (b) the application relates to a Subdivision of that Division;the person's name must not be added to the Roll for the Subdivision until after the close of the poll for that election.
- (5) The Australian Electoral Officer must notify the person in writing:
  - (a) of a decision to grant or refuse the application; or
  - (b) of the Australian Electoral Officer's opinion that the application cannot be proceeded with because of subsection (4).
- (6) If the application is granted, the Australian Electoral Officer must forward the application to the relevant Divisional Returning Officer, who must treat the application as if it were a valid application under subsection 94(1) by the person to be treated as an eligible overseas elector.

**95 Eligibility of spouse or child of eligible overseas elector [see Note 4]**

- (1) Where a person:
  - (a) who is the spouse or child of a person who is an eligible overseas elector by virtue of section 94 in relation to a Subdivision (in this subsection referred to as the **relevant Subdivision**);
  - (b) who is living at a place outside Australia so as to be with or near the eligible overseas elector;
  - (c) who had not attained 18 years of age when he or she last ceased to reside in Australia;
  - (d) whose name is not, and has not been, on a Roll;
  - (e) who is not qualified for enrolment under section 93 but would be so qualified if he or she resided in a Subdivision of a Division; and
  - (f) who intends to resume residing in Australia not later than 6 years after the day on which he or she attained 18 years of age;applies to the Divisional Returning Officer for the Division that includes the relevant Subdivision to have his or her name placed on the Roll for the relevant Subdivision and to be treated as an eligible overseas elector, the Divisional Returning Officer to whom the application is made shall, subject to subsection (4):

(g) add the name of the person to the Roll for the relevant Subdivision;  
and

(h) annotate the Roll for the relevant Subdivision so as to indicate that  
the person is an eligible overseas elector;

and, subject to subsections (7), (12) and (13), the person is entitled to be  
treated as an eligible overseas elector from the time when the annotation  
is made until it is cancelled.

- (2) An application under this section shall be in writing.
- (3) Notwithstanding anything contained in subsection 99(1) or (2), while a  
person is entitled to be treated as an eligible overseas elector by virtue of  
an annotation under subsection (1) to the Roll for a Subdivision, the  
person is entitled to:
- (a) have his or her name retained on the Roll for the Subdivision; and
  - (b) vote as an elector of the Subdivision.
- (4) Where an application under this section is received by a Divisional  
Returning Officer after 8 p.m. on the day of the close of the Rolls for an  
election to be held in the Division, the name of the applicant shall not be  
added to the Roll for a Subdivision, and the annotation of the Roll under  
subsection (1) in relation to the applicant shall not be made, until after the  
close of the polling at that election.
- (5) Where a Divisional Returning Officer:
- (a) grants or refuses an application made under subsection (1); or
  - (b) is of the opinion that an application cannot be proceeded with  
because of the operation of subsection (4);
- the Divisional Returning Officer shall notify the applicant in writing of that  
decision or opinion, as the case may be.
- (6) Where a person who has applied under subsection (1) to be treated as  
an eligible overseas elector:
- (a) resumes residing in Australia within 6 years after the day on which  
he or she attained 18 years of age;
  - (b) ceases to have the intention to resume residing in Australia within 6  
years after the day on which he or she attained 18 years of age; or
  - (c) ceases to be qualified for enrolment;
- the person shall, as soon as practicable, give notice in writing to the  
Divisional Returning Officer to whom the application under subsection (1)  
to be treated as an eligible overseas elector was made of the happening  
of the event referred to in paragraph (a), (b) or (c), as the case may be.
- (7) Subject to subsection (13), where a person who is being treated as an  
eligible overseas elector under this section resumes residing in Australia  
within 6 years after the day on which he or she attained 18 years of age,  
the person ceases to be eligible to be treated as an eligible overseas  
elector under this section on the expiration of 1 month after the day on  
which he or she resumes residing in Australia.
- (8) Where a person who is an eligible overseas elector in relation to a  
Subdivision by virtue of this section:

- (a) ceases to have the intention to resume residing in Australia within the period (in this subsection referred to as the **relevant period**) of 6 years after the day on which he or she attained 18 years of age; and
- (b) intends to resume residing in Australia at some time after the expiration of the relevant period;

applies, within 3 months before the expiration of the relevant period, to the Divisional Returning Officer for the Division for which he or she is enrolled to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period, the Divisional Returning Officer to whom the application is made shall annotate the Roll for that Subdivision so as to indicate that the eligible overseas elector is to be treated as an eligible overseas elector for that further period of 1 year.

- (9) Where a person who:
  - (a) is being treated as an eligible overseas elector in relation to a Subdivision for a further period (in this subsection referred to as the **relevant period**) of 1 year in pursuance of an application made under subsection (8) or under this subsection; and
  - (b) intends to resume residing in Australia;

applies, within 3 months before the expiration of the relevant period, to the Divisional Returning Officer for the Division for which he or she is enrolled to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period, the Divisional Returning Officer to whom the application is made shall annotate the Roll for that Subdivision so as to indicate that the eligible overseas elector is to be treated as an eligible overseas elector for that further period of 1 year.

- (10) An application under subsection (8) or (9) shall be in writing.
- (11) Where a person who is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9):
  - (a) resumes residing in Australia; or
  - (b) ceases to have the intention to resume residing in Australia;the person shall, as soon as practicable, give notice in writing to the Divisional Returning Officer for the Division for which he or she is enrolled of the happening of the event referred to in paragraph (a) or (b), as the case may be.
- (12) Subject to subsection (13), where a person who is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9) resumes residing in Australia, the person ceases to be entitled to be treated as an eligible overseas elector under this section on the expiration of 1 month after the day on which he or she resumes residing in Australia.
- (13) A person ceases to be entitled to be treated as an eligible overseas elector under this section if:
  - (a) the person gives notice under paragraph (6)(b) and does not make an application under subsection (8);
  - (b) the person gives notice under paragraph (11)(b);

- (c) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;
- (d) the person ceases to be entitled to enrolment;
- (e) except where:
  - (i) the person has given notice under paragraph (6)(b); or
  - (ii) the person has made an application under subsection (8);the period of 6 years commencing on the day on which the person attained the age of 18 years expires; or
- (f) in a case where:
  - (i) the person is being treated as an eligible overseas elector in pursuance of an application made under subsection (8) or (9) for a further period (in this paragraph referred to as the **relevant period**) of 1 year; and
  - (ii) the person does not make an application under subsection (9) to be treated as an eligible overseas elector for a further period of 1 year commencing on the expiration of the relevant period; the relevant period expires.

(14) Where the Divisional Returning Officer for the Division on the Roll for a Subdivision of which an annotation in relation to a person under subsection (1) has been made becomes aware that the person has ceased to be entitled to be treated as an eligible overseas elector under this section by virtue of subsection (7), (12) or (13), the DRO shall:

- (a) if the person ceases to be eligible otherwise than by virtue of paragraph (13)(d) and the person resides in the Division at the time when he or she ceases to be entitled to be treated as an eligible overseas elector under this section—cancel the annotation made in relation to the person under subsection (1); or
- (b) in any other case—cancel the enrolment of the person on the Roll for the Subdivision.

(15) If, after an application is made by a person under subsection (1) to be treated as an eligible overseas elector and before the person's name is added to the Roll and an annotation under paragraph (1)(h) is made in relation to the person, an event occurs by reason of which, if the name had been so added and the annotation so made, the person would have ceased to be entitled to be treated as an eligible overseas elector under subsection (7) or (13), whether immediately or otherwise, then:

- (a) where the name was not added to the Roll, and the annotation was not made, before the Divisional Returning Officer to whom the application was made became aware of the happening of the event—the Divisional Returning Officer shall not add the name to the Roll under this section or make the annotation; or
- (b) where the name is added to the Roll and the annotation is made—the person ceases to be entitled to be treated as an eligible overseas elector immediately after the name is added and the annotation is made.

(16) For the purposes of this section, where a child is adopted by a person, that child shall be taken to be the child of that person.

(17) In this section:

**Australia** does not include Norfolk Island.

**child** includes an ex-nuptial child.

**spouse**, in relation to a person (in this subsection referred to as the **relevant person**) includes a person who, although not legally married to the relevant person, lives with the relevant person as the spouse of the relevant person on a permanent and *bona fide* domestic basis.

## 95AA Norfolk Island electors

(1) In this section:

**exclusive Territory** means an internal Territory that neither:

- (a) includes another Territory; nor
- (b) is included in another Territory;

under section 4 (if any).

**inclusive Territory** means an internal Territory that, under section 4, includes another Territory.

**one-Territory Division** means:

- (a) a Division that is an exclusive Territory; or
- (b) a Division that is one of the Divisions into which an exclusive Territory is distributed; or
- (c) a Division that:
  - (i) is one of the Divisions into which an inclusive Territory is distributed; and
  - (ii) does not include a Territory that, under section 4, is included in that inclusive Territory.

**qualified Norfolk Islander** means a person who:

- (a) resides in Norfolk Island; and
- (b) would be qualified for enrolment under section 93 if he or she lived in a Subdivision and had so lived for a period of one month last past; and
- (c) is not entitled to be enrolled for a Subdivision under section 94, 94A or 95.

**State** does not include a Territory.

**Territory** means:

- (a) an internal Territory; or
- (b) an external Territory.

(2) Subject to subsection (4), a qualified Norfolk Islander who is one of the people of a State for the purposes of sections 7 and 24 of the Constitution is entitled to be enrolled for:

- (a) the Subdivision in that State for which he or she last had an entitlement to be enrolled; or
- (b) if he or she never had such an entitlement—a Subdivision in that State for which any of his or her next of kin is enrolled; or
- (c) if neither paragraph (a) nor (b) applies—the Subdivision in that State in which he or she was born; or

- (d) if none of paragraphs (a), (b) and (c) applies—a Subdivision in that State with which he or she has a close connection.
- (3) Subject to subsection (4), a qualified Norfolk Islander who is not one of the people of any State for the purposes of sections 7 and 24 of the Constitution is entitled to be enrolled for a Subdivision of a one-Territory Division.
- (4) A qualified Norfolk Islander is not entitled to be enrolled for more than one Subdivision at the same time.

#### **95AB Presumption about certain Norfolk Island electors**

If:

- (a) a qualified Norfolk Islander (within the meaning of section 95AA) claims to be one of the people of a State for the purposes of sections 7 and 24 of the Constitution; and
- (b) at least one paragraph of subsection 95AA(2) applies in relation to the claimant and the State; and
- (c) there is no decision by a court that the claimant is not one of those people;

then, for the purposes of section 95AA and subsection 95AC(2), a Divisional Returning Officer must take the claimant to be one of those people.

#### **95AC Rolls relating to Norfolk Island electors**

- (1) A Divisional Returning Officer who, under section 95AA, causes the name of a person to be added to the Roll must annotate the Roll so as to indicate that the person is enrolled under that section.
- (2) A Divisional Returning Officer for a Division must conduct a review of the Roll for a Subdivision of that Division in relation to electors to whom an annotation under subsection (1) applies if directed to do so by the Electoral Commission and, upon completion of the review, make such alterations to the Roll as he or she thinks necessary to ensure that persons on that Roll under section 95AA are entitled to be so.

#### **96 Itinerant electors**

- (1) A person who:
  - (a) is in Australia; and
  - (b) because the person does not reside in any Subdivision, is not entitled to be enrolled for any Subdivision;may apply to the Australian Electoral Officer for a State for enrolment under this section for a Subdivision in that State.
- (2) An application shall be in writing.
- (2A) The Australian Electoral Officer shall cause the name of the applicant to be added to the Roll:
  - (a) for the Subdivision for which the applicant last had an entitlement to be enrolled;

- (b) if the person has never had such an entitlement, for a Subdivision for which any of the applicant's next of kin is enrolled;
  - (c) if neither paragraph (a) nor paragraph (b) applies, for the Subdivision in which the applicant was born; or
  - (d) if none of paragraphs (a), (b) and (c) applies, the Subdivision with which the applicant has the closest connection.
- (2B) The Australian Electoral Officer shall also annotate the Roll so as to indicate that the person is an itinerant elector.
- (2C) Until an annotation under subsection (2B) is cancelled, the person to whom the annotation relates is entitled to be treated as an itinerant elector.
- (3) Notwithstanding anything contained in subsection 99(1) or (2), while a person is entitled to be treated as an itinerant elector by virtue of an annotation under subsection (2B) to the Roll for a Subdivision, the person is entitled to:
- (a) have his or her name retained on the Roll for the Subdivision; and
  - (b) vote as an elector of the Subdivision.
- (4) Where an application under this section is received by an Australian Electoral Officer after 8 p.m. on the day of the close of the Rolls for an election to be held in the Division to a Subdivision of which the application relates, the name of the applicant shall not be added to the Roll for the Subdivision, and the annotation of the Roll under subsection (2B) in relation to the applicant shall not be made, until after the close of the polling at that election.
- (5) Where an Australian Electoral Officer:
- (a) grants or refuses an application made under subsection (1); or
  - (b) is of the opinion that an application made under that subsection cannot be proceeded with because of the operation of subsection (4);
- the Australian Electoral Officer shall notify the applicant in writing of that decision or opinion, as the case may be.
- (6) Where an Australian Electoral Officer notifies a person under subsection (5) of a decision to refuse an application made under subsection (1), the notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision, make an application to the Administrative Appeals Tribunal for review of the decision.
- (7) Where a person who has applied under subsection (1) to be treated as an itinerant elector:
- (a) resides in a Subdivision for a period of 1 month or longer;
  - (b) forms the intention to depart from Australia and to remain outside Australia for a period of 1 month or longer; or
  - (c) ceases to be entitled to enrolment;
- the person shall, as soon as practicable, give notice in writing to the Australian Electoral Officer to whom the application under subsection (1)

was made of the happening of the event referred to in paragraph (a), (b) or (c), as the case may be.

- (8) Subject to subsection (9), where a person who is being treated as an itinerant elector under this section resides in a Subdivision for a period of 1 month or longer, the person ceases to be eligible to be treated as an itinerant elector under this section on the expiration of that period of 1 month.
- (9) A person ceases to be entitled to be treated as an itinerant elector under this section if:
  - (a) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;
  - (b) the person ceases to be entitled to enrolment; or
  - (c) the person departs from Australia and remains outside Australia for a period of 1 month or longer.
- (10) Where the Australian Electoral Officer who has caused the name of a person to be added to the Roll for a Subdivision of a Division under this section becomes aware that the person has ceased to be entitled to be treated as an itinerant elector under this section by virtue of subsection (8) or (9), he or she must:
  - (a) if the person ceases to be entitled otherwise than because of paragraph (9)(b) and the Australian Electoral Officer is aware that the person resides in the Division—cause the annotation made in relation to the person under subsection (2B) to be cancelled; or
  - (b) in any other case—cause the enrolment of the person on the Roll for the Subdivision to be cancelled.
- (11) If, after an application is made by a person under this section to be treated as an itinerant elector and before the person's name is added to the Roll and an annotation under subsection (2B) is made in relation to the person, an event occurs by reason of which, if the name had been so added and the annotation so made, the person would cease to be entitled to be treated as an itinerant elector under this section, whether immediately or otherwise, then:
  - (a) where the name was not added to the Roll, and the annotation was not made, before the Australian Electoral Officer to whom the application was made became aware of the happening of the event—the Australian Electoral Officer shall not cause the name to be added to the Roll under this section or cause the annotation to be made; or
  - (b) where the name is added to the Roll and the annotation is made—the person ceases to be entitled to be treated as an itinerant elector immediately after the name is added and the annotation is made.
- (12) For the purposes of this section, a person shall be taken to reside at a place if, and only if, the person has his or her real place of living at that place.
- (13) In this section:

***Australia*** does not include Norfolk Island.



## 96A Enrolment of prisoners

- (1) Subject to section 93, a person who is serving a sentence of imprisonment is entitled to remain enrolled for the Subdivision (if any) for which the person was enrolled when he or she began serving the sentence.
- (2) An eligible person who is serving a sentence of imprisonment but who was not enrolled when he or she began serving the sentence is entitled to be enrolled for:
  - (a) the Subdivision for which the person was entitled to be enrolled at that time;
  - (b) if the person was not so entitled, a Subdivision for which any of the person's next of kin is enrolled;
  - (c) if neither of paragraphs (a) and (b) is applicable, the Subdivision in which the person was born; and
  - (d) if none of the preceding paragraphs is applicable, the Subdivision with which the person has the closest connection.
- (3) In subsection (2), **eligible person** means a person who, under section 93, is entitled to enrolment.

## 97 Application of Part

- (1) This Part applies in relation to the Australian Capital Territory as if:
  - (a) references in the preceding sections of this Part to a State were references to the Australian Capital Territory; and
  - (b) references in the preceding sections of this Part to an Australian Electoral Officer for a State were references to the Electoral Commissioner.
- (1A) This Part applies to the Northern Territory as if the Territory were a State.
- (2) This Part applies in relation to a Subdivision in relation to which an Assistant Divisional Returning Officer is appointed as if references in the preceding sections of this Part, in relation to a Subdivision, to a Divisional Returning Officer were references to an Assistant Divisional Returning Officer.

**Extract from the *Commonwealth Electoral Act 1918***

**Part VIII—Enrolment**

**98 Addition of names to Rolls**

- (1) Names may be added to Rolls pursuant to claims for enrolment or transfer of enrolment or claims for age 17 enrolment.
- (2) A claim shall:
  - (a) be in the approved form;
  - (b) subject to subsection (3), be signed by the claimant; and
  - (c) be attested by an elector or a person entitled to enrolment, who shall sign the claim as witness in his or her own handwriting.
- (3) Where a person wishes to make a claim for enrolment, for transfer of enrolment or for age 17 enrolment and a registered medical practitioner has certified, in writing, that the person is so physically incapacitated that the person cannot sign the claim, another person may, on behalf of the person, fill out and sign the claim in accordance with the directions of the first-mentioned person.
- (4) A claim shall be completed in accordance with the directions contained in the form approved for the purposes of subsection (2).
- (5) A certificate referred to in subsection (3) shall be lodged with the claim to which it relates.

**99 Claims for enrolment or transfer of enrolment**

- (1) Any person qualified for enrolment, who lives in a Subdivision, and has so lived for a period of one month last past, shall be entitled to have his or her name placed on the Roll for that Subdivision.
- (2) Any elector whose name is on the Roll for any Subdivision and who lives in any other Subdivision, and has so lived for a period of one month last past, shall be entitled to have his or her name transferred to the Roll for the Subdivision in which he or she lives.
- (3) Subject to sections 94, 94A, 95, 95AA, 96 and 96A and Part XVII, a person is not entitled to have his or her name placed on the Roll:
  - (a) for more than one Subdivision;
  - (b) for a Subdivision other than the Subdivision in which the person lives; or
  - (c) in respect of an address other than the address at which the person is living when the claim is lodged.
- (4) In spite of any other provision of this Act:
  - (a) a Senator is entitled to have his or her name placed on the Roll for any Subdivision of any Division in the State or Territory the Senator represents instead of the Subdivision in which the Senator lives;

- (b) a member of the House of Representatives is entitled to have his or her name placed on the Roll for any Subdivision of the Division the member represents instead of the Subdivision in which the member lives; and
  - (c) a Senator or member whose name is enrolled under this subsection may vote as an elector of the Subdivision for which he or she is so enrolled.
- (5) The validity of any enrolment shall not in any case be questioned on the ground that the person enrolled has not in fact lived in the Subdivision for a period of one month.

#### **99A Provisional claim for enrolment by applicant for citizenship**

- (1) A person who:
- (a) applies for a certificate of Australian citizenship under section 13 of the *Australian Citizenship Act 1948*; and
  - (b) would, if he or she were an Australian citizen, be entitled to enrolment for a subdivision;
- may make a provisional claim for enrolment for that subdivision.
- (2) If a person who has made a provisional claim for enrolment for a subdivision, either under subsection (1) or under this subsection:
- (a) is living in another subdivision; and
  - (b) has lived in that subdivision for the period of one month last past;
- the person may make a provisional claim for enrolment for that other subdivision.
- (3) If a person makes a provisional claim for enrolment under subsection (2), any previous provisional claim for enrolment by that person has no effect.
- (4) A claim must be:
- (a) in the approved form; and
  - (b) subject to subsection (5), signed by the claimant; and
  - (c) attested to by an elector or a person entitled to enrolment, who must sign the claim as witness in his or her own handwriting; and
  - (d) lodged:
    - (i) if the claim is made under subsection (1)—together with the claimant's application for a certificate of Australian citizenship; or
    - (ii) if the claim is made under subsection (2)—with any Australian Electoral Officer or DRO.
- (5) If:
- (a) a person wishes to make a provisional claim for enrolment; and
  - (b) a registered medical practitioner has certified, in writing, that the person is so physically incapacitated that the person cannot sign the claim;
- another person may, on behalf of the person, fill out and sign the claim in accordance with the directions of the first-mentioned person.
- (6) The Secretary of the Department of Immigration, Local Government and Ethnic Affairs must:

- (a) send to the Electoral Commissioner, as soon as practicable, any provisional claim for enrolment lodged by a person under subparagraph (4)(d)(i); and
  - (b) inform the Electoral Commissioner, as soon as practicable, whether or not a certificate of Australian citizenship has been granted to the person.
- (7) If a person who has made a provisional claim for enrolment for a subdivision is granted a certificate of Australian citizenship, the provisional claim is taken to be a claim for enrolment for the subdivision, made by the person on the day on which the person is granted the certificate of citizenship.
- (8) If a person who has made a provisional claim for enrolment is refused a certificate of Australian citizenship, the provisional claim has no effect.

### **100 Claims for age 17 enrolment**

- (1) A person who:
- (a) is 17 years of age; and
  - (b) would be entitled to be enrolled for a Subdivision if he or she were 18 years of age;
- may send or deliver a claim to have his or her name placed on the Roll for that Subdivision to any Divisional Returning Officer or Australian Electoral Officer.
- (2) A claim made under subsection (1) shall be treated as a claim for enrolment for the Subdivision to which the claim relates and the provisions of sections 102, 103 and 104 apply in relation to the claim as if the person making the claim were 18 years of age and the claim were made pursuant to section 101.
- (3) For the purposes of sections 389 and 390, a claim made under subsection (1) shall be taken to be a claim for enrolment.

### **101 Compulsory enrolment and transfer**

- (1) Subject to subsection (5A), every person who is entitled to be enrolled for any Subdivision, otherwise than by virtue of section 94, 94A, 95, 96 or 100, whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll, shall forthwith fill in and sign a claim and send or deliver the claim to any Divisional Returning Officer or Australian Electoral Officer.
- (1A) A person who is entitled to be enrolled for any Subdivision under section 95AA may fill in and sign a claim and send or deliver it to any Divisional Returning Officer or Australian Electoral Officer.
- (2) Where a person sends or delivers a claim for enrolment (including a claim for age 17 enrolment), or for transfer of enrolment, to a Divisional Returning Officer for a Division other than the Division (in this subsection referred to as the ***proper Division***) on the Roll for a Subdivision of which the person is entitled to be enrolled, the Divisional Returning Officer shall note on the claim the date of its receipt, subject to subsection 102(2A), and forthwith send the claim and any documents sent or delivered by the

person with the claim to the Divisional Returning Officer for the proper Division.

- (3) Where a person sends or delivers a claim for enrolment (including a claim for age 17 enrolment), or for transfer of enrolment, to an Australian Electoral Officer, the Australian Electoral Officer shall note on the claim the date of its receipt and, subject to subsection 102(2A), forthwith send the claim and any documents sent or delivered by the person with the claim to the Divisional Returning Officer for the Division on the Roll for a Subdivision of which the person is entitled to be enrolled.
- (4) Subject to subsection (5A), every person who is entitled to have his or her name placed on the Roll for any Subdivision whether by way of enrolment or transfer of enrolment, and whose name is not on the Roll upon the expiration of 21 days from the date upon which the person became so entitled, or at any subsequent date while the person continues to be so entitled, shall be guilty of an offence unless he or she proves that the non-enrolment is not in consequence of his or her failure to send or deliver to a Divisional Returning Officer or an Australian Electoral Officer, a claim, duly filled in and signed in accordance with the directions printed thereon.
- (5) Subject to subsection (5A), where a person enrolled for a Subdivision (including a person whose address, in pursuance of a request made under section 104, is not entered on a Roll) changes his or her place of living from one address in that Subdivision to another address in the same Subdivision, the person shall, within 21 days after the date of making the change, give notice in writing of the new address to the Divisional Returning Officer for the Division that includes that Subdivision.
- (5A) Subsections (1), (4) and (5) do not apply to a qualified Norfolk Islander within the meaning of section 95AA.
- (6) A person who fails to comply with subsection (1), (4) or (5) is guilty of an offence punishable on conviction by a fine not exceeding \$50.
- (6A) Subsection (6) does not apply to a person who fails to comply with subsection (5) if the person has not reached the age of 18 years.
- (7) Where a person sends or delivers a claim for enrolment, or for transfer of enrolment, to a Divisional Returning Officer or an Australian Electoral Officer, proceedings shall not be instituted against that person for any offence against subsection (1) or (4) committed before the claim was so sent or delivered.

## **102 Action on receipt of claim**

- (1) Subject to subsection (4), where, pursuant to section 101, a Divisional Returning Officer for a Division receives a claim for enrolment or transfer of enrolment for that Division, the Divisional Returning Officer shall:
  - (a) note on the claim the date of its receipt;
  - (b) if the claim is in order and the officer is satisfied that the claimant is entitled to be enrolled for a Subdivision of that Division, forthwith:
    - (i) enter on the Roll for the Subdivision the name of the claimant and the other particulars required by section 83;

- (ii) notify the claimant in writing that he or she has been enrolled for that Subdivision;
    - (iii) in the case of a claim for transfer of an enrolment from the Roll for another Subdivision in that Division—delete the name of the claimant from the Roll for the last-mentioned Subdivision; and
    - (iv) in the case of a claim for transfer of enrolment from a Subdivision not included in that Division—give notice of the transfer to the Divisional Returning Officer for the Division that includes the last-mentioned Sub-division; and
  - (ba) if the claim is in order but the officer is satisfied that the claimant is already properly enrolled in the Subdivision for which he or she is entitled to be enrolled—notify the claimant, in writing, that he or she has been enrolled for that Subdivision; and
  - (c) if the claim is not in order or the officer is not satisfied that the claimant is entitled to be enrolled in a Subdivision of that Division—notify the claimant in writing that the claim has been rejected.
- (1A) Before dealing with a claim under paragraph (1)(b), (ba) or (c), a Divisional Returning Officer may make any inquiries the officer thinks necessary.
- (2) Where a Divisional Returning Officer for a Division receives notice, pursuant to subparagraph (1)(b)(iv), of the transfer of a person's enrolment from a Subdivision in that Division, the Divisional Returning Officer shall delete the name of, and particulars relating to, the person from the Roll for the Subdivision.
- (2A) This subsection applies during the period commencing on a public announcement that an election will be held or the issue of the writ or writs for the election, whichever is the earlier, and ending at 8 p.m. on the day on which the Rolls for the election close.
- (2B) At any time when subsection (12) applies, a Divisional Returning Officer may, with the concurrence of the Australian Electoral Officer for the State, and in accordance with such directions (if any) as are given by the Electoral Commissioner, deal with a claim for enrolment or transfer of enrolment received by the Divisional Returning Officer or by another Divisional Returning Officer for a Division in the same State.
- (2C) Where a claim for enrolment or transfer of enrolment for a Division is dealt with by the Divisional Returning Officer for another Division, subsection (1) applies as if the Divisional Returning Officer were the Divisional Returning Officer for the first-mentioned Division.
- (2D) At any time when subsection (2A) applies, the Australian Electoral Officer for a State may, in accordance with such directions (if any) as are given by the Electoral Commissioner, deal with a claim for enrolment or transfer of enrolment received by the Australian Electoral Officer, by any Divisional Returning Officer in that State or by an Australian Electoral Officer or Divisional Returning Officer in another State.
- (2E) Where a claim for enrolment or transfer of enrolment is dealt with by an Australian Electoral Officer, subsection (1) applies as if the Australian Electoral Officer were the Divisional Returning Officer for the Division for which the claim is made.

- (3) Notice of a decision given to a claimant by a Divisional Returning Officer under paragraph (1)(c) shall include:
  - (a) a statement of the reasons for the decision; and
  - (b) a statement setting out the rights of the claimant to have the decision reviewed under Part X.
- (4) A claim under section 101 by a person to have his or her name placed on the Roll for a Subdivision received during the period commencing at 8 p.m. on the day on which the Rolls for an election to be held in the Subdivision close and ending on the close of polling at the election shall not be considered until after the expiration of that period.
- (4A) This subsection applies to a claim under section 101 if:
  - (a) the claim is received during the period referred to in subsection (4);
  - (b) the Australian Postal Corporation has notified the Electoral Commission in writing that:
    - (i) the delivery of mail identified in the notification was delayed by an industrial dispute affecting a specified post office or mail exchange; and
    - (ii) but for the industrial dispute, that mail would, in the ordinary course of post, have been delivered before the commencement of the period referred to in subsection (4); and
  - (c) the claim is included in the mail identified in the notification.
- (4B) In spite of subsection (4):
  - (a) a claim to which subsection (4A) applies shall be regarded as having been received before the commencement of the period referred to in subsection (4); and
  - (b) if the claimant's name is entered on the Roll in accordance with the claim, the enrolment shall, in relation to any vote recorded by the claimant in an election, be regarded as having been effected before the commencement of the period referred to in subsection (4).
- (5) A name may, at any time, be removed from a Roll pursuant to a notice of transfer of enrolment.

### **103 Penalty on officer neglecting to enrol claimants**

Any officer who receives a claim for enrolment or transfer of enrolment and who without just excuse fails to do everything necessary on his or her part to be done to secure the enrolment of the claimant in pursuance of the claim shall be guilty of an offence.

Penalty: \$1,000.

### **104 Request for address not to be shown on Roll**

- (1) Where a person considers that having his or her address shown on the Roll for a Subdivision would place the personal safety of the person or of members of the person's family at risk, he or she may lodge with the claim for enrolment (including a provisional claim for enrolment) or transfer of enrolment a request, in the approved form, that his or her address not be entered on the Roll for the Subdivision for which enrolment is claimed.

- (2) Where:
- (a) the address of a person is included in the particulars relating to the person that are entered on the Roll for a Subdivision; and
  - (b) the person considers that having his or her address so shown places the personal safety of the person or of members of his or her family at risk;
- the person may lodge with the DRO keeping the Roll for the Subdivision a request, in the approved form, that his or her address be deleted from the particulars that are entered on that Roll.
- (3) A request under subsection (1) or (2) shall give particulars of the relevant risk and shall be verified by statutory declaration by the person making the request or some other person.
- (4) Where:
- (a) a request has been made under subsection (1) or (2); and
  - (b) the DRO for the Division that includes the Subdivision on the Roll for which the person making the request is to be or has been enrolled, as the case may be, is satisfied that having the address of the person making the request shown on the Roll for the Subdivision would place or places the personal safety of the person or members of the person's family at risk;
- the DRO:
- (c) in a case where the request was lodged under subsection (1)—shall not include the address of the person in the particulars relating to the person that are entered on the Roll for the Subdivision; and
  - (d) in a case where the request is lodged under subsection (2)—shall delete the address of the person from the particulars relating to the person that are entered on the Roll for the Subdivision.
- (5) Where a DRO grants or refuses a request made by a person under subsection (1) or (2), the DRO shall notify the person in writing of the decision.
- (6) Notwithstanding anything contained in section 107, where an address is deleted from a Roll in pursuance of subsection (4), the address so deleted shall be obliterated.
- (7) A DRO for a Division shall, when directed to do so by the Electoral Commission, conduct a review of the Roll for a Subdivision of that Division in relation to electors whose addresses are not shown on the Roll by virtue of this section.
- (8) If, after such a review, the DRO is not satisfied that the personal safety of an elector whose address is not shown on the Roll, or of the elector's family, would be at risk if the elector's address were shown on the Roll, the DRO must notify the elector in writing that the DRO has decided that the elector's address should be entered on the Roll.
- (9) If:
- (a) the decision that the elector's address should be entered on the Roll has not been set aside under subsection 120(3), or by the Administrative Appeals Tribunal or a court; and



(b) it is no longer possible for the decision to be so set aside;  
the DRO must enter the elector's address on the Roll.

## 105 Alteration of Rolls

- (1) In addition to other powers of alteration conferred by this Act, a Divisional Returning Officer may alter any Roll kept by the officer by:
  - (a) correcting any mistake or omission in the particulars of the enrolment of an elector;
  - (b) altering, on the written application of an elector, the original name or address of the elector on the same Subdivision Roll;
  - (c) removing the name of any deceased elector;
  - (d) striking out the superfluous entry where the name of the same elector appears more than once on the same Subdivision Roll;
  - (e) reinstating any name removed by mistake as the name of a deceased elector;
  - (f) where the officer is satisfied that an objection against the enrolment of an elector whose name has been deleted from the Roll as a result of the objection was based on a mistake of fact and that the person objected to still retains and has continuously retained his or her right to the enrolment in respect of which the objection was made—reinstating on the Roll the name of the elector;
  - (g) reinstating any other name removed by mistake; and
  - (h) where the name of a street or any other part of an address that appears on the Roll is changed—substituting the new name or other part of the address for the name or other part of the address so appearing.
- (2) Where the name of an elector has, pursuant to a claim, been incorrectly placed on the Roll for a Subdivision other than the Subdivision in which the elector was living at the date of the claim, and the elector was entitled on that date to be enrolled for the Subdivision in which he or she was living:
  - (a) if the 2 Subdivisions are both in the same Division, the Divisional Returning Officer may remove the name of the elector from the Roll on which the elector is enrolled and place the name of the elector on the Roll for the Subdivision in which the elector is living and notify the elector of the change of enrolment; and
  - (b) if the 2 Subdivisions are not in the same Division, the Australian Electoral Officer shall forward a certificate setting forth the facts to the Divisional Returning Officer for the Division for which the elector is enrolled, and the Divisional Returning Officer for the Division in which the elector is living, and thereupon the Divisional Returning Officer for the Division for which the elector is enrolled shall remove the name of the elector from that Roll and the Divisional Returning Officer for the Division in which the elector is living shall place the name of the elector on the Roll for the Subdivision in which the elector is living and notify the elector of the change of enrolment.
- (3) An alteration to a Roll in pursuance of subsection (1) or (2) may be made at any time.

- (4) Where, at a preliminary scrutiny of declaration votes, a vote is admitted to further scrutiny because of paragraph 12 of Schedule 3, the Divisional Returning Officer shall, as soon as practicable, enter the name of the elector on the Roll for the Subdivision for which, but for an error or mistake, the name would have appeared unless, since the close of the Rolls for the election, the person has been enrolled for another Subdivision.
- (5) Where, at a preliminary scrutiny conducted under section 89A of the *Referendum (Machinery Provisions) Act 1984*, a vote is admitted to further scrutiny because of paragraph 11 of Schedule 4 to that Act, the Divisional Returning Officer shall, as soon as practicable, enter the name of the elector on the Roll for the Subdivision for which, but for an error or mistake, the name would have appeared unless, since the close of the Rolls for the referendum, the person has been enrolled for another Subdivision.

### **106 Incorrect enrolment**

Where a person, whose name has been placed on the Roll for a Division, is not entitled to enrol for that Division and that person secured enrolment pursuant to a claim in which the person made a false statement, the Divisional Returning Officer for that Division, upon receipt of a certificate from the Australian Electoral Officer setting forth the facts, may, at any time between the date of the issue of the writ for an election for that Division, and before the close of the polling at that election, remove the name of that person from that Roll.

### **107 Alterations to be initialled**

Every alteration of a Roll shall be made in such a manner that the original entry shall not be obliterated, and the reason for each alteration and the date thereof shall be set against the alteration, together with the initials of the Divisional Returning Officer or of the person who makes the alteration on behalf of the Divisional Returning Officer.

### **108 Lists of deaths to be forwarded**

The Registrar-General shall as soon as practicable after the beginning of each month or at such other times as are arranged with the Electoral Commissioner:

- (a) forward to each Divisional Returning Officer in the State (either direct or through the Australian Electoral Officer for the State as may be arranged) a list of the names, addresses, occupations, ages, and sexes and dates of death of all persons of the age of 17 years or upwards whose deaths have been registered during the preceding month in respect of the Division for which the Divisional Returning Officer has been appointed;
- (b) forward to the Australian Electoral Officer for the State any information that the Registrar-General is required to forward under an agreement entered into for the purposes of this Act between the Electoral Commission and a Minister of the State or the Registrar-General.

### **109 Lists of convictions to be forwarded**

The Controller-General of Prisons shall as soon as practicable after the beginning of each month forward to the Australian Electoral Officer a list of the names, addresses, occupations, and sexes of all persons who during the preceding month have been convicted in the State and are serving a sentence of 5 years or longer for any offence.

### **110 Officers to act on receipt of information**

- (1) The Australian Electoral Officer or the Divisional Returning Officer, as the case requires, shall, upon receipt of information pursuant to sections 108 and 109, take action under this Act to effect such alterations of the Rolls as are necessary.
- (2) An officer shall not take action under subsection (1) to remove the name of an elector, other than a deceased elector, from the Roll otherwise than by way of an objection under Part IX.

### **111 Computer records relating to Roll**

- (1) Where, but for this subsection, a Divisional Returning Officer is required or permitted under this Act or the regulations to record particulars (including make an annotation) in a written form on a Roll, the officer may do so by recording or storing those particulars, or causing those particulars to be recorded or stored, on a mechanical, electrical or other device approved by the Commission.
- (2) Where a Divisional Returning Officer is required or permitted under this Act or the regulations to vary or remove particulars which, but for this section, would be on a Roll but which have been recorded or stored in accordance with this section, the officer shall do so by varying or removing the particulars so recorded or stored, or causing the particulars so recorded or stored to be varied or removed, as the case may be.
- (3) Without limiting section 90, where particulars are recorded or stored by virtue of this section, the Divisional Returning Officer responsible for the Roll on which, but for this section, those particulars would be recorded shall ensure that means are provided by which those particulars are available, without fee, for public inspection in a written form at the office of the Divisional Returning Officer during ordinary office hours.
- (4) Where a Divisional Returning Officer who is required under this Act or the regulations to enter particulars on, vary particulars on, or remove particulars from, a Roll complies with the requirement by taking action in accordance with this section, the officer shall, for the purposes of this Act, including any provisions imposing obligations on the officer, be taken to have entered those particulars on the Roll, varied those particulars or removed those particulars, as the case may be.
- (5) Section 107 does not apply to alterations of a Roll made in pursuance of this section.

### **111A Claims may be sent by fax**

- (1) A claim under this Part that is to be sent to an Australian Electoral Officer or a DRO may be sent by fax machine. This subsection does not apply to a provisional claim under section 99A or to a claim that is accompanied by a request under section 104.
- (2) If a claim is sent by a fax machine in accordance with subsection (1), references in this Act to the claim include references to the fax received by the Australian Electoral Officer or the DRO.

### **112 Application of Part**

- (1) This Part applies in relation to the Australian Capital Territory as if:
  - (a) references in the preceding sections of this Part to a State were references to the Australian Capital Territory; and
  - (b) references in the preceding sections of this Part to an Australian Electoral Officer for a State were references to the Electoral Commissioner.
- (1A) This Part applies to the Northern Territory as if the Territory were a State.
- (2) This Part applies in relation to a Subdivision in relation to which an Assistant Divisional Returning Officer is appointed as if references in the preceding sections of this Part, in relation to a Subdivision, to a Divisional Returning Officer were references to an Assistant Divisional Returning Officer.

Extract from the *Commonwealth Electoral Act 1918*

Part XIV—The nominations

**162 Candidates must be nominated**

No person shall be capable of being elected as a Senator or a Member of the House of Representatives unless duly nominated.

**163 Qualifications for nomination** [see Note 6]

- (1) A person who:
  - (a) has reached the age of 18 years;
  - (b) is an Australian citizen; and
  - (c) is either:
    - (i) an elector entitled to vote at a House of Representatives election; or
    - (ii) a person qualified to become such an elector;is qualified to be elected as a Senator or a member of the House of Representatives.
- (2) A person is not entitled to be nominated for election as a Senator or a member of the House of Representatives unless the person is qualified under subsection (1).

**164 State and Territory members not entitled to be nominated**

A person who is, at the hour of nomination, a member of:

- (a) the Parliament of a State;
  - (b) the Legislative Assembly of the Northern Territory of Australia; or
  - (c) the Legislative Assembly for the Australian Capital Territory;
- is not capable of being nominated as a Senator or as a Member of the House of Representatives.

**165 Multiple nominations prohibited**

- (1) Where:
  - (a) a day is fixed as the polling day for 2 or more elections under this Act; and
  - (b) at the hour of nomination there exist nominations of a person for 2 or more of those elections;each of those nominations is invalid.
- (2) For the purposes of subsection (1), where a person has consented to act if elected in relation to a nomination in relation to an election and the person withdraws that consent under section 177 before the hour of nomination, the nomination of the person for the election shall be taken to have ceased to have effect at the time when the person withdrew that consent.

## 166 Mode of nomination

- (1) Subject to subsections (1A) and (1B), a nomination may be in Form C, CA, CB, CC, D or DA in the Schedule, as the case requires, and shall:
  - (a) set out the name, place of residence and occupation of the candidate or each candidate; and
  - (b) be signed by:
    - (i) not less than 50 persons entitled to vote at the election for which the candidate is, or the candidates are, nominated; or
    - (ii) the registered officer of the registered political party by which the candidate has, or the candidates have, been endorsed for that election.

### (1A) Where:

- (a) a candidate in a Senate election is:
  - (i) a Senator; or
  - (ii) in the case of an election following a dissolution of the Senate, a person who was, immediately before the dissolution, a Senator; and
- (b) the candidate's name is, under subsection 99(4), enrolled on the Roll for any Subdivision of a Division of the State or Territory that he or she represents or represented;

the candidate may set out in his or her nomination the address recorded in that enrolment rather than his or her place of residence.

### (1B) Where:

- (a) a candidate in an election for the House of Representatives was, immediately before the dissolution or expiration of the House of Representatives that preceded the election, a member of the House of Representatives; and
- (b) the candidate's name is, under subsection 99(4), enrolled on the Roll for any Subdivision of the Division that he or she represented;

the candidate may set out in his or her nomination the address recorded in that enrolment rather than his or her place of residence.

- (2) A nomination may name a candidate only by specifying:
  - (a) the surname and the Christian or given name, or one or more of the Christian or given names, under which the candidate is enrolled; or
  - (b) in a case where the candidate is not enrolled—a surname and the Christian or given name, or one or more of the Christian or given names, under which the candidate is entitled to be enrolled.
- (3) For the purposes of subsection (2), a Christian or given name may be specified by specifying:
  - (a) an initial standing for that name; or
  - (b) a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name).
- (4) A nomination shall include a statement of the form in which the candidate's name or candidates' names, as the case may be, is or are to be printed on the ballot-papers for the election.

- (5) Where:
- (a) persons to be nominated as candidates in a Senate election wish to have their names grouped in the ballot-papers; and
  - (b) those persons have been endorsed for that election by different registered political parties;
- the nominations of the candidates may be combined in such manner as the Electoral Commission approves.
- (6) Nothing in this Act is to be taken as requiring a person:
- (a) who is a candidate or the nominator of a candidate; and
  - (b) whose address is not shown on the Roll because of section 104; to set out his or her address on a nomination paper.
- (7) A candidate who does not set out his or her address on a nomination form must provide the Divisional Returning Officer or Australian Electoral Officer, as the case may be, with an address for correspondence.

### **167 To whom nominations made**

- (1) Nominations of candidates for election to the Senate must be made to the Australian Electoral Officer.
- (2) Subject to subsection (3), nominations of candidates for election to the House of Representatives must be made to the DRO.
- (3) A nomination of all of the candidates endorsed by a registered political party for election to the House of Representatives in respect of the Divisions situated in a particular State or Territory may be made by the registered officer of the party to the Australian Electoral Officer for that State or Territory.
- (4) If a nomination for a House of Representatives election is made to the Australian Electoral Officer, the Australian Electoral Officer:
  - (a) must deliver to the DRO for each Division for which a candidate has been so nominated, as soon as practicable before the hour of nomination, a facsimile of the nomination paper; and
  - (b) must advise the DRO for each Division for which a candidate has been so nominated, forthwith after a sum is deposited with the Australian Electoral Officer under section 170, being a sum that is, or includes an amount, in respect of that candidate, that it was so deposited.

### **168 Grouping of candidates**

- (1) Two or more candidates for election to the Senate may make a joint request:
  - (a) that their names be grouped in the ballot-papers; or
  - (b) that their names be grouped in the ballot-papers in a specified order.
- (2) A request under subsection (1) shall be in writing, signed by the candidates, and shall be given to the Australian Electoral Officer with the nomination or nominations of the candidates.
- (3) A candidate's name may not be included in more than one group.

## 169 Notification of party endorsement

- (1) The registered officer of a registered political party may request that the name, or the registered abbreviation of the name, of that party be printed on the ballot-papers for an election adjacent to the name of a candidate who has been endorsed by that party.
- (3) A request under subsection (1) shall be in writing, signed by the person making the request, and shall:
  - (a) in the case of a Senate election, be given to the Australian Electoral Officer before the close of nominations; and
  - (b) in the case of an election for a Member of the House of Representatives for a Division, be given to the Divisional Returning Officer with the nomination of the candidate or to the Australian Electoral Officer for the State or Territory in which the Division is situated before the close of nominations.
- (4) Where:
  - (a) a request has been made under subsection (1) in respect of candidates in a Senate election; and
  - (b) the candidates propose to have a group voting ticket registered for the purposes of that election;the request may include a further request that the name of the registered political party that endorsed the candidates, or a composite name formed from the registered names of the registered political parties that endorsed the candidates, be printed on the ballot-papers adjacent to the square printed in relation to the group in accordance with subsection 211(5).
- (5) In this section, **registered abbreviation**, in relation to the name of a registered political party, has the same meaning as in section 210A.

## 169A Notification of independent candidacy

- (1) A candidate in an election may request that the word "Independent" be printed adjacent to the candidate's name on the ballot-papers for use in that election.
- (2) A request under subsection (1) shall be in writing, signed by the candidate, and shall be given to the Australian Electoral Officer or the Divisional Returning Officer, as the case requires, with the nomination of the candidate.
- (3) A candidate may not make requests under both this section and section 168.

## 169B Verification of party endorsement

- (1) For the purposes of this Act, subject to subsection (2), a person shall be taken to have been endorsed as a candidate in an election by a registered political party if:
  - (a) the candidate is nominated by the registered officer of the party;
  - (b) the name of the candidate is included in a statement, signed by the registered officer of the party, setting out the names of the candidates endorsed by the party in the election and lodged:



- (i) in the case of a Senate election, with the Australian Electoral Officer; and
    - (ii) in the case of an election of a member of the House of Representatives for a Division, with the Australian Electoral Officer for the State or Territory in which that Division is situated;
  - before the close of nominations for the election; or
  - (c) the Electoral Commission is satisfied, after making such inquiries as it thinks appropriate of the registered officer of the party or otherwise, that the candidate is so endorsed.
- (2) For the purposes of section 214, if a person would, apart from this subsection, be taken to have been endorsed as a candidate in an election by more than one registered political party, the person is taken to have been endorsed:
- (a) if the person is nominated by the registered officer of one, and only one, of the parties—by that party; or
  - (b) if paragraph (a) does not apply and a request is made under section 169 by the registered officer of one, and only one, of the parties—by that party; or
  - (c) if neither paragraph (a) nor (b) applies and the person specifies one, and only one, of the parties, in a written notice given to the Australian Electoral Officer or Divisional Returning Officer, as the case requires—by that party; or
  - (d) if none of paragraph (a), (b) or (c) applies—by the party that the Electoral Commission decides, after making such enquiries as it thinks appropriate of the registered officers of the parties or otherwise, is the appropriate party.

### **169C Combination of requests and nominations**

A request required by a provision of this Part or Part XVI to be given to the Australian Electoral Officer or a Divisional Returning Officer may:

- (a) be written on the same paper as the nomination of the candidate to whom the request relates; and
- (b) if 2 or more such requests are to be made by the same person, may be combined with the other requests.

### **170 Requisites for nomination**

- (1) A nomination is not valid unless, in the nomination paper, the person nominated:
  - (a) consents to act if elected; and
  - (b) declares that:
    - (i) the person is qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or a member of the House of Representatives, as the case may be; and
    - (ii) the person is not, and does not intend to be, a candidate in any other election to be held on the same day as the election to which the nomination relates; and

- (c) states whether the person is an Australian citizen by reason of birth in Australia, having been granted a certificate of Australian citizenship or other means and provides:
  - (i) in the case of citizenship by birth in Australia—the date and place of birth; or
  - (ii) in the case of citizenship by reason of having been granted a certificate of Australian citizenship—the date on which the person became an Australian citizen; or
  - (iii) in the case of citizenship by any other means—particulars of those means.
- (2) A nomination is not valid unless:
  - (a) the nomination paper or a facsimile of it:
    - (i) if it is a nomination for a Senate election—is received by the Australian Electoral Officer after the issue of the writ and before the hour of nomination; or
    - (ii) if it is a nomination for a House of Representatives election made to the Australian Electoral Officer—is received by the Australian Electoral Officer after the issue of the writ and not less than 48 hours before the hour of nomination; or
    - (iii) if it is a nomination for a House of Representatives election made to the DRO—is received by the DRO after the issue of the writ and before the hour of nomination; and
  - (b) if, for the purpose of the nomination, a nomination paper is delivered to the Australian Electoral Officer or the DRO—the person nominated, or some person on his or her behalf, deposits with that officer, at the time of delivery of the nomination paper, a sum determined under subsection (3); and
  - (c) if, for the purpose of the nomination, a facsimile of a nomination paper is received by the Australian Electoral Officer or the DRO—the person nominated, or some person on his or her behalf deposits with that officer, before the latest time at which such a facsimile could have been received so that the nomination is valid, a sum determined under subsection (3).
- (3) For the purposes of paragraphs (2)(b) and (c), the sum to be deposited by or on behalf of a person nominated is:
  - (a) if a person is nominated as a Senator—\$700; or
  - (b) if a person is nominated as a member of the House of Representatives—\$350;in legal tender or in a cheque drawn by a bank or other financial institution on itself.

### **171 Form of consent to act**

The consent of the person nominated to act if elected and the declaration referred to in paragraph 170(a)(ii) shall be sufficient if the person signs the form of consent and declaration at the foot of the nomination paper, but the Australian Electoral Officer or Divisional Returning Officer receiving the nomination may accept any other form of consent and declaration whether accompanying the nomination paper or not that the officer deems satisfactory, and such acceptance shall be final.

## **172 Rejection of nominations and requests**

- (1) Subject to subsection (2), a nomination shall be rejected by the officer to whom it is made if, and only if, the provisions of section 166, 167, 170 or 171 have not been complied with in relation to the nomination.
- (2) No nomination shall be rejected by reason of any formal defect or error in the nomination if the officer to whom the nomination is made is satisfied that the provisions of sections 166, 167, 170 and 171 have been substantially complied with.
- (3) A request under this Part is not ineffective because of any formal defect or error in the request if the requirements of this Act have been substantially complied with.

## **173 Deposit to be forfeited in certain cases**

- (1) The deposit made by or on behalf of a candidate at a Senate election or at a House of Representatives election shall be retained pending the election, and after the election shall be returned in accordance with subsection (2) or (3), if the candidate is elected, or:
  - (a) in the case of a Senate election:
    - (i) if the total number of votes polled in the candidate's favour as first preferences is at least 4% of the total number of votes polled in favour of the candidates in the election as first preferences; or
    - (ii) in a case where the name of the candidate is included, in ballot-papers used in the election, in a group in pursuance of section 168—if the sum of the votes polled in favour of each of the candidates included in the group as first preferences is at least 4% of the total number of votes polled in favour of the candidates in the election as first preferences; or
  - (b) in the case of a House of Representatives election, if the total number of votes polled in the candidate's favour as first preferences is at least 4% of the total number of votes polled in favour of the candidates in the election as first preferences;otherwise it shall be forfeited to the Commonwealth.
- (2) If the candidate was nominated under subsection 167(3) and the deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.
- (3) In all other cases, the deposit must be returned to the candidate, or to a person authorised in writing by the candidate.

## **174 Place of nomination**

- (1) In an election of Senators for a State or Territory the office of the Australian Electoral Officer for that State or Territory shall be the place of nomination for the election.
- (2) In elections for the House of Representatives the office of the Divisional Returning Officer for the Division shall be the place of nomination therein.

### 175 Hour of nomination

- (1) The hour of nomination shall be 12 o'clock noon on the day of nomination.
- (2) The **declaration time** for an election is 12 noon on the day after the day on which nominations for the election close.

### 176 Declaration of nominations

- (1) Subject to subsection (3), in the case of a Senate election, the Australian Electoral Officer must, at the declaration time, attend at the place of nomination, or at the declaration place, publicly produce all nomination papers received by him or her, and, in respect of each candidate, declare:
  - (a) the name of the candidate; and
  - (b) either:
    - (i) if an address has been specified by the candidate under subsection 166(1A)—that address; or
    - (ii) in any other case—the place of residence of the candidate.
- (2) Subject to subsection (3), in the case of a House of Representatives election, the DRO must, at the declaration time, attend at the place of nomination for the Division, publicly produce all nomination papers received by him or her, and, in respect of each candidate, declare:
  - (a) the name of the candidate; and
  - (b) either:
    - (i) if an address has been specified by the candidate under subsection 166(1B)—that address; or
    - (ii) in any other case—the place of residence of the candidate.
- (3) The Australian Electoral Officer or the DRO, as the case requires, must not declare:
  - (a) the address specified by a candidate under subsection 166(1A) or (1B); or
  - (b) the place of residence of a candidate;if the candidate's address has been excluded from the Roll under section 104.
- (4) In this section:

**declaration place**, for an election, means a place determined by the Australian Electoral Officer for the relevant State or Territory.

### 177 Withdrawal of consent to nomination

- (1) A candidate may withdraw his or her consent to nomination at any time before the hour of nomination by lodging with the Australian Electoral Officer in the case of a Senate election, or with the Divisional Returning Officer for the Division in the case of a House of Representatives election, a notice of withdrawal, and thereupon the nomination shall be cancelled, and the deposit lodged shall be returned in accordance with subsection (2) or (3).

- (2) If the candidate was nominated under subsection 167(3) and the deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.
- (3) In all other cases, the deposit must be returned to the candidate, or to a person authorised in writing by the candidate.
- (4) The withdrawal of consent by a candidate who was one of a number nominated under subsection 167(3) does not affect the nomination of the other candidates so nominated.

#### **178 Return of deposit in case of candidate's death**

- (1) In the case of the death of any candidate before the date of election the deposit lodged by the candidate shall be returned in accordance with subsection (2) or (3).
- (2) If the candidate was nominated under subsection 167(3) and the deposit was paid by a person other than the candidate, the deposit must be returned to the person who paid it, or to a person authorised in writing by the person who paid it.
- (3) In all other cases, the deposit must be returned to the personal representative of the candidate.

#### **179 Proceedings on nomination day**

- (1) In the case of a Senate election, if the number of candidates nominated is not greater than the number of candidates required to be elected, the Australian Electoral Officer shall declare the candidate or candidates nominated duly elected.
- (2) In the case of a House of Representatives election, if one candidate only is nominated, the Divisional Returning Officer shall declare that candidate duly elected.
- (3) If in any election the number of candidates nominated is greater than the number required to be elected, the proceedings shall, subject to the provisions of this Act, and the regulations relating to voting before polling day, stand adjourned to polling day.

#### **180 Death of candidate after nomination**

- (1) If after the nominations for an election for the Senate have been declared and before polling day any candidate dies and the candidates remaining are not greater in number than the candidates required to be elected, they shall forthwith be declared to be elected and the writ returned.
- (2) If after the nominations for an election for the House of Representatives have been declared, and before polling day, any candidate dies, the election shall be deemed to have wholly failed.
- (3) If a candidate who was one of a number nominated under subsection 167(3) dies before the nominations have been declared, that death does not affect the nomination of the other candidates so nominated.

## **181 Failure of election**

- (1) Whenever an election wholly or partially fails a new writ shall forthwith be issued for a supplementary election:

Provided that where the election has failed in consequence of the death of a candidate after the declaration of the nominations and before polling day, the supplementary election shall be held upon the roll which was prepared for the purpose of the election which failed.

- (2) An election shall be deemed to have wholly failed if no candidate is nominated or returned as elected.
- (3) An election shall be deemed to have partially failed whenever one or more candidates is returned as elected, but not the full number required to be elected.

**Extract from the Australian Constitution, "Candidate Disqualifications"**

44. Any person who-

- (i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or
- (ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- (iii) Is an undischarged bankrupt or insolvent: or
- (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

**Electoral Backgrounder No. 4**

**CANDIDATE DISQUALIFICATIONS  
Section 44 of the Constitution**

**Introduction**

1. This publication is produced by the Australian Electoral Commission (AEC) to assist intending candidates for election to the Parliament of Australia in understanding their obligations to ensure that they are legally qualified to nominate, in particular, that they are not disqualified by sections 44(i) or 44(iv) of the Constitution.
2. The House of Representatives Standing Committee on Legal and Constitutional Affairs recently inquired into the operation of the candidate disqualifications in sections 44(i) and 44(iv) of the Constitution and recommended that the AEC publish a booklet noting possible problem areas, which if relevant, should cause an intending candidate to consider seeking advice from his or her own legal advisers.
3. The AEC already publishes a Candidates Handbook which provides essential information on the electoral process. Intending candidates should read the Handbook, as it becomes available prior to each election, in conjunction with this Electoral Backgrounder, which specifically addresses candidate disqualifications under sections 44(i) and 44(iv) of the Constitution.
4. The AEC urges any intending candidate who is still in doubt after reading this Backgrounder, as to whether their personal circumstances might disqualify them from standing for election to the Federal Parliament, to consult the sources provided in the Endnotes, and/or their legal advisers.

**Qualifications and Disqualifications**

5. Candidates intending to nominate for election to the Federal Parliament must ensure that they are qualified, and not disqualified, to stand for election under the provisions of the *Commonwealth Electoral Act 1918* (‘the Act’). Section 163 of the Act requires any person nominating for election to be 18 years of age, an Australian citizen, and entitled to vote at a House of Representatives election (or qualified to become such an elector).
6. In addition, section 165 of the Act prohibits multiple nominations, and section 164 of the Act provides that no member of a State Parliament, the Northern Territory Legislative Assembly or the Australian Capital Territory Legislative Assembly may be nominated as a candidate unless he or she has resigned before the hour of nomination. The manner of resignation of members of other parliaments is governed by State and Territory law and intending candidates should ensure that their resignation is effective before the hour of nomination.
7. Intending candidates should also ensure that they are not disqualified by section 44 of the Constitution. The disqualifications that most commonly arise are in section 44(i), relating to dual citizenship; and in section 44(iv), relating to office of profit under the Crown. The purpose of these provisions is to protect the parliamentary system by disqualifying candidates and members of Parliament who are at risk of allowing conflicts of loyalty to affect their performance.



## **Section 44 of the Constitution**

*Any person who -*

- (i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or*
- (ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or*
- (iii) Is an undischarged bankrupt or insolvent: or*
- (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or*
- (v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:*

*shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.*

*But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the*

*naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.*

## **Candidate Nomination**

8. At the issue of the writs for a federal election, the dates are set for the election period, including the date and time for close of nominations. In order to nominate, intending candidates should obtain an official Nomination Form and copy of the Candidates Handbook from the AEC.

9. Part XIV of the *Commonwealth Electoral Act 1918* governs the process of nomination, and in particular section 170(1) provides the following:

A nomination is not valid unless, in the nomination paper, the person nominated:

- (a) consents to act if elected;
- (b) declares that:
  - (i) the person is qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or a member of the House of Representatives, as the case may be; and
  - (ii) the person is not, and does not intend to be, a candidate in any other election to be held on the same day as the election to which the nomination relates; and

(c) states whether the person is an Australian citizen by reason of birth in Australia, having been granted a certificate of Australian citizenship or other means and provides:

- (i) in the case of citizenship by birth in Australia - the date and place of birth; or
- (ii) in the case of citizenship by reason of having been granted a certificate of Australian citizenship - the date on which the person became an Australian citizen; or
- (iii) in the case of citizenship by any other means - particulars of those means.

10. Sections 170(2) and (3) of the Act provide that a nomination is not valid unless it is lodged with a particular person, in a particular time period, and is accompanied by the appropriate deposit (see Candidates Handbook).

11. At the end of this Backgrounder, the Candidate Declaration, as it appears on a House of Representatives Nomination Form, is reproduced.

### **False or Misleading Statements**

12. Section 339(3) of the *Commonwealth Electoral Act 1918* provides that a person must not:

- make a statement in his or her nomination paper that is false or misleading in a material particular; or
- omit from a statement in his or her nomination paper any matter or thing without which the statement is misleading in a material particular.

13. The maximum penalty for this offence is 6 months imprisonment. It is a defence in a prosecution of a person for such an offence if the person proves that he or she did not know, and could not reasonably be expected to have known, that the statement to which the prosecution relates was false or misleading.

### **Status of the Section 44**

#### **Disqualifications**

14. There is no doubt that the complex legal language in section 44 of the Constitution, and the use of some terms and concepts that no longer have any standard currency, makes it difficult for intending candidates and their advisers to decide whether they are vulnerable to disqualification. The 1997 Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, entitled "Aspects of Section 44 of the Constitution", recognised these difficulties and recommended a referendum to amend section 44 of the Constitution:

The Committee considers that constitutional amendment is necessary to address the problems raised by the subsections. The Committee is well aware that amendments have little chance of succeeding at referendum unless there is bipartisan support for the proposals outlined in its report. We trust that such support will be forthcoming.

15. The practical consequences of not attending to the problems in the operation of section 44 are best demonstrated in the outcomes of recent electoral litigation. In the past decade there have been three major challenges in the High Court of Australia to the qualifications of sitting Members of Parliament, or candidates for election to Parliament, originating under section 44 of the Constitution.

16. The first challenge involved a sitting Senator, Mr Robert Wood, in 1987; the second involved the election of Mr Phil Cleary in the Division of Wills, in 1992; and the third involved the election of Ms Jacqueline Kelly in the Division of Lindsay, in 1996. Mr Wood was, at the time of the challenge to his qualifications to sit in Parliament, a British subject but not an Australian citizen. Mr Cleary was, at the time of his nomination, a Victorian State school teacher on leave without pay, and Ms Kelly was, at the time of her nomination, a serving member of the Australian Defence Force.

17. The High Court, sitting as the Court of Disputed Returns, disqualified the then Senator Wood from sitting in the Parliament because he was not an Australian citizen as required by section 163 of the *Commonwealth Electoral Act 1918* (the court did not find it necessary to express a view on the section 44(i) disqualification issue). Mr Cleary and Ms Kelly, both newly-elected members of the House of Representatives, were disqualified by the High Court, sitting as the Court of Disputed Returns, because they held an office of profit under the Crown, contrary to section 44(iv) of the Constitution. Both the Cleary and Kelly cases also raised the issue of dual citizenship under section 44(i) of the Constitution.

18. In the case of Mr Wood in 1987, his statutory disqualification resulted in a recount of certain New South Wales Senate ballot papers to fill his vacated Senate position with a person from the same political party; in the case of Mr Cleary in 1992, the electors of the Division of Wills remained unrepresented until the federal election the following year; and in the case of Ms Kelly in 1996, a fresh election for the Division of Lindsay was held soon after the court decision, at which she was again elected.

19. This Electoral Backgrounder provides some detailed discussion of sections 44(i) and 44(iv) of the Constitution as they currently stand, but it must be appreciated that it is for intending candidates themselves, in consultation with their legal advisers, to make a decision on whether they are qualified to nominate.

### **Section 44(i) of the Constitution**

20. The Section 44(i) disqualification in the Constitution reads as follows:

Any person who-

- (i) is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power.....

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

21. Section 44(i) of the Constitution therefore appears to apply to three categories of persons:

- a person who is under any acknowledgment of allegiance, obedience or adherence to a foreign power;
- a subject or a citizen of a foreign power; and
- a person who is entitled to the rights or privileges of a subject or a citizen of a foreign power.

22. The first category of disqualification under section 44(i) appears to have a wide application, disqualifying persons who, although they may not have a formal nationality or citizenship link with another country, may have some other form of allegiance with that country. The most recent judicial consideration of this category of disqualification is provided by the High Court in the 1987 election petition *Nile v Wood* in which Mrs Elaine Nile unsuccessfully sought the constitutional

disqualification of Mr Robert Wood, recently elected to the Senate for the State of New South Wales. Mrs Nile asserted in her petition to the Court, in paragraph 2(e), that Mr Wood's previous protest activity in obstructing shipping, the vessels of a friendly nation, indicated allegiance, obedience or adherence to a foreign power. The High Court held that:

Paragraph 2(e) of the petition falls well short of setting out facts which bring the first respondent within s 44(i) of the Constitution. It does not, in terms, assert allegiance, obedience or adherence to a foreign power. And the facts it sets out in order to establish the conclusion that the first respondent was under any acknowledgment of allegiance, obedience or adherence to a foreign power are clearly insufficient for the purpose. It does not even identify a foreign power. Furthermore it would seem that s 44(i) relates only to a person who has formally or informally acknowledged allegiance, obedience or adherence to a foreign power and who has not withdrawn or revoked that acknowledgment: see *Crittenden v Anderson* (unreported decision of Fullagar J dated 23 August 1950 noted in (1977) 51 *Australian Law Journal* at 171), also Quick and Garran pp 490, 491; *Official Report of the National Australasian Convention Debates*, Adelaide (1897), p 736. That however is a matter we do not have to decide.

23. That is, it might be concluded that a "formally or informally" acknowledged allegiance to a particular foreign power, whatever this might constitute in particular circumstances, would disqualify a candidate.

24. The second category of disqualification under section 44(i) refers to a specific type of foreign allegiance, where a person is a "subject or citizen" of a foreign power. It applies to persons who have certain rights because of a formal citizenship link with a foreign power, and therefore to any person who holds dual citizenship. The High Court has concluded in two specific instances that such candidates are disqualified from election to Parliament if all reasonable steps are not taken to renounce dual citizenship before nomination.

25. In the 1992 *Sykes v Cleary* petition, the High Court found Mr Cleary disqualified because he held an office of profit under the Crown, but also found two other candidates at the same election, Mr Kardamitsis (ALP) and Mr Delacretaz (LP), were disqualified under section 44(i) of the Constitution. The High Court concluded that section 44(i) required an intending candidate who held dual citizenship to take "all reasonable steps" to renounce their other citizenship before nomination. This necessitates the use of renunciation procedures of the other country where such procedures are available. If the other country refuses renunciation then proof of requesting renunciation is sufficient. Because such procedures were available in relation to the two countries of which Mr Kardamitsis and Mr Delacretaz were citizens (Greece and Switzerland respectively), it was concluded that they had not taken "all reasonable steps" to renounce, and were therefore disqualified under section 44(i) of the Constitution.

26. The third category of disqualification under section 44(i) refers to the rights or privileges of a subject or citizen. It is unclear whether this means entitlement to all the rights and privileges of such a citizen or merely one or some of such rights or privileges. In some situations it may be difficult to determine whether a person is entitled to merely some rights or entitled to the whole package of citizenship rights. If this part were to come before the High Court for consideration, the court might favour an approach that examined whether the entitlement was a substantial or trivial right, and secondly, whether the entitlement was actually providing enjoyment or benefit.

### **Dual Citizens**

27. As a consequence of the recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs in relation to section 44(i) of the Constitution, the Department of Immigration and Multicultural Affairs (DIMA) now

maintains a database on the procedures for renunciation of other citizenship in various countries. The following information on renunciation procedures is drawn from the DIMA database and is provided for the assistance of intending candidates who may hold dual citizenship.

### **United Kingdom**

- British citizenship may be renounced with the approval of the Home Secretary. An application for renunciation by those resident in Australia can be made on Form RN1 and lodged at the British High Commission in Canberra.

### **New Zealand**

- New Zealand citizenship may be renounced with the approval of the Minister of Internal Affairs. A person must make a declaration of renunciation of New Zealand citizenship on an official form which can be lodged at the New Zealand High Commission in Canberra.

### **Italy**

- Advice may be obtained from the Italian Embassy in Canberra.

### **Vietnam**

- Vietnamese citizenship may be renounced by application to the Ministry of Justice. It is not clear whether this needs to be done on a specific form, and contact should be made with the Vietnamese Embassy in Canberra.

### **Greece**

- Greek citizenship may be renounced by application to the Ministry of Interior or diplomatic mission. A formal application form is not necessary, but a written request stating the reason for renunciation should be sent to the Embassy of Greece in Canberra.

### **People's Republic of China**

- Chinese citizenship may be renounced by application to the Ministry of Public Security. In most circumstances PRC citizenship is lost upon acquiring a new citizenship, but confirmation should be sought from the Embassy of the People's Republic of China in Canberra.

### **Germany**

- German citizenship may be renounced with the approval of the Ministry of Interior or diplomatic mission, and a formal application form is not required.

### **The Philippines**

- Philippine citizenship may be renounced by application. In most circumstances Philippine citizenship is lost upon acquiring a new citizenship, but confirmation should be sought from the Embassy of the Philippines in Canberra.

### **The Netherlands**

- Dutch citizenship may be renounced with the approval of the Burgomasters (in Netherlands) or diplomatic missions (outside Netherlands). In most circumstances Dutch citizenship is lost upon acquiring a new citizenship,

but confirmation should be sought from the Embassy of the Netherlands in Canberra.

## India

- Contact should be made with the Indian High Commission in Canberra.

28. This information, as supplied by the Department of Immigration and Multicultural Affairs, is correct at the date of publication, and further inquiries should be directed to the Citizenship Policy Section of DIMA on ph: 02 6264 2940.

### **Section 44(iv) of the Constitution**

29. The section 44(iv) disqualification in the Constitution reads as follows:

Any person who -

- (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

30. The most recent judicial consideration of this disqualification is provided by the two petitions *Sykes v Cleary* (1992) and *Free v Kelly* (1996). Mr Cleary was disqualified by the High Court because he was, at the time of his nomination, a Victorian State school teacher on leave without pay, and Ms Kelly was disqualified by the High Court because she was, at the time of her nomination, a serving member of the Australian Defence Force.

31. Both of these occupations are then clearly to be regarded as "offices of profit under the Crown", and by implication, all federal and State public servants and members of the Australian Defence Force would be disqualified from standing for election. This appears to apply even if the person is "unattached", or on leave without pay, and not currently in receipt of remuneration. However, it would appear that the holding of an office involving merely the reimbursement of expenses, say in relation to the membership of boards and committees, does not contravene the disqualification provision.

32. The mere holding of an office under the Crown does not necessarily disqualify a person from being chosen or of sitting as a member of either House of Parliament. Factors which must be considered include the actual status of the Crown in the making of the appointment and whether remuneration is payable. These considerations suggest that such positions as councillors and employees of local government, and members of the governing bodies and the employees of statutory authorities, could be at risk of disqualification, depending on their particular circumstances.

33. It would appear that Assistant Ministers are not at risk in this regard, and Parliamentary Secretaries are governed by the *Parliamentary Secretaries Act 1980*, which is designed to remove the risk of disqualification under section 44(iv). While Senators-elect do not hold offices of profit under the Crown, they should exercise caution in any chosen form of employment while waiting to take their seats.

34. The second part of the section 44(iv) disqualification refers to a person in receipt of a "pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth". While this part of the provision has not yet been judicially considered, there appears to be little doubt that pensions payable under the Social Security Act or other legislation conferring similar benefits, or superannuation entitlements, would not disqualify an intending candidate.

### **Public Servants**

35. Federal, State and Territory public servants who wish to nominate for election to the Federal Parliament should resign from the relevant Service before nomination in order to comply with section 44(iv) of the Constitution. Conditions of re-entry to the various Public Services by unsuccessful candidates are matters for the relevant Public Service authority. The following information on resignation and re-appointment conditions for federal, State and Territory public servants who resign and unsuccessfully contest a federal election, is correct at the date of publication, but should be checked with the relevant federal/State/Territory department or agency responsible for public service matters.

### **Federal Public Servants**

- Federal public servants who resign to contest a federal election, and are unsuccessful at that election, may apply for re-appointment or re-engagement under sections 47C or 82B of the *Public Service Act 1922*. The resignation must take effect not earlier than six months before the date of nomination, and the application for re-appointment must be made within two months of the declaration of the result for the election. The period between a person's resignation and re-appointment is disregarded for the purposes of calculating relevant entitlements. For further information contact the Public Service and Merit Protection Commission on ph: 02 6272 3977.

### **New South Wales Public Servants**

- New South Wales public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their former position under the *Public Service (Commonwealth Elections) Act 1943*. The resignation must take effect within three months of polling day and must state an intention to contest the election. Application for re-appointment must be made within two months of the declaration of the poll, satisfy any requirements of superannuation funds, and re-appointment must be made at a remuneration and under conditions that are not less favourable than before resignation. The period between the resignation and re-appointment is deemed to be leave without pay. For further information contact the Public Employment Office on ph: 02 9228 4770.

### **Victorian Public Servants**

- Victorian public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their classification under section 49 of the *Constitution Act Amendment Act 1958*. Re-appointment must be within two months after the declaration of the poll, is made by the Governor in Council, and is at the same classification as immediately before resignation. For the purposes of specified superannuation entitlements, the person is deemed not to have resigned. For further information the Office of the Public Service Commissioner has advised direct contact with the employing department or agency.

### **Queensland Public Servants**

- Queensland public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed at the discretion of the Queensland Government. Re-appointment may be made immediately after the election at the previous salary level, with the Government having discretion as to what position and in what department/agency the person is placed. For further information contact the Office of the Public Service on ph: 07 3224 6346.

### **Western Australian Public Servants**

- Western Australian public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed under sections 103 and 104 of the *Public Sector Management Act 1994*. Application for re-appointment must be made not later than two months after the declaration of the result of the election, and re-appointment may be to the same public sector body, but not necessarily to the position formerly occupied before resignation. Remuneration and terms and conditions of employment cannot be less favourable than before. A re-appointed employee does not accrue any rights as an employee during the period between resignation and re-appointment, but resignation is not taken to have affected continuity of service. For further information contact the Public Service Management Office on ph: 08 9222 8777.

### **South Australian Public Servants**

- South Australian public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their former position under the provisions of section 54 of the *Public Sector Management Act 1995*. Resignation must take effect not more than one month before the issue of the writ for the election, and application for re-appointment is made within two months after the return of the writ for the election. Re-appointment must be to the former position or to a position with the same remuneration level. The period between resignation and re-appointment is deemed to be leave without pay. For further information contact the Office of the Commissioner for Public Employment on ph: 08 8226 2200.

### **Tasmanian Public Servants**

- Tasmanian public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their former position under the provisions of the *Crown Servants Reinstatement Act 1970*. Application for re-appointment must be made within two months of the declaration of the result of the election. The period between resignation and re-appointment may be deemed as either leave without pay or long service leave. For further information contact the Director of the Employment Policy and Industrial Relations Division of the Department of the Premier and Cabinet on ph: 03 6233 2039.

### **Australian Capital Territory**

- Australian Capital Territory public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their former position under section 118 of the *Public Sector Management Act 1994*. To be considered for re-appointment a person must have resigned no



earlier than six months before the close of nominations and must apply for re-appointment no later than two months from the date of the declaration of the result. The period between resignation and re-appointment is deemed to be leave without pay. For further information contact the Commissioner for Public Administration on ph: 02 6205 0016.

### **Northern Territory Public Servants**

- Northern Territory public servants who resign to contest a federal election, and are unsuccessful at that election, may be re-appointed to their former position under sections 37 and 38 of the *Public Sector Employment and Management Act*. Resignation must not be effective earlier than one month before the close of nomination, and application for re-appointment must be made within two months of the declaration of the result of the election. Re-appointment will be at a salary equivalent, or as nearly as possible equivalent, to the salary immediately before resignation took effect. The period between resignation and re-appointment is deemed to be leave without pay. For further information contact the Commissioner for Public Employment on ph: 08 8999 4115.

36. Federal, State and Territory public servants intending to stand as candidates at a federal election should contact their relevant federal, State or Territory public service authority to determine the process for resignation and re-appointment in their jurisdiction, and determine whether, in the light of the 1992 *Sykes v Cleary* decision, the period between resignation and re-appointment is regarded as leave without pay.

### **Legal Advice on Section 44**

37. Under the provisions of the *Commonwealth Electoral Act 1918*, AEC officers are only able to reject nominations for certain specified technical deficiencies, such as for example, that the nomination declaration is not signed, or that the Nomination Form was not provided to the AEC before the close of nominations. There is no requirement for AEC officers to check all nomination declarations against the provisions of section 44 of the Constitution, and to reject nominations on the grounds that the declaration is incorrect. That is, the Parliament has decided, in the Act, that the AEC should not be required to assess the truth or otherwise of nomination declarations, and thereby provide advice on eligibility, even if this were possible in practice.

38. Officers of the AEC charged with receiving nominations from intending candidates are not professionally qualified to provide legal advice on the interpretation of the Constitution. Even if AEC officers were so qualified, many nominations are not lodged with the AEC until hours or even minutes before the close of nominations, leaving very little time for the settlement of complex questions of legal interpretation. Further, if AEC officers were required to check the correctness of all nomination declarations, an election might never get underway.

39. Candidates make a declaration on the Nomination Form and the AEC is required to accept this at face value for the purposes of nomination. If the qualifications of a candidate are found during or after the election to lack credibility, then proceedings can be instituted in the Court of Disputed Returns after the election against the candidate, which could result in the election being voided. Other proceedings in the lower courts could result in a candidate being convicted for the offence of providing false and misleading information on a Nomination Form.

40. The House of Representatives Standing Committee on Legal and Constitutional Affairs recently considered the role of the AEC in advising intending candidates on section 44 of the Constitution, and concluded that:

The Committee agrees that the AEC should have no role in giving legal advice to candidates. The Committee recognises that the AEC's role in running elections must be protected from any criticism that it has given wrong advice. The Committee appreciates that AEC officials have no role in going behind a candidate's declaration that he or she is eligible to stand. If the AEC was required to perform such a function the election cycle would take months.

41. It is not the role of the AEC to provide legal advice to intending candidates on the application of section 44 of the Constitution to their personal circumstances. Intending candidates needing legal advice should consult their own lawyers. This is a long-standing position, and is based on the legal framework of the *Commonwealth Electoral Act 1918*, on practical considerations relating to the nomination process, and on the conclusions of parliamentary committees which have inquired into this issue.

### **Conclusion**

With respect to section 44(i) of the Constitution, intending candidates holding dual citizenship should take all reasonable steps to renounce their other citizenship before the close of nominations. With respect to section 44(iv) of the Constitution, intending candidates who are employed as public servants by federal, State or Territory governments, should resign before the close of nominations. In all other cases of possible disqualification under section 44 of the Constitution, it is recommended that intending candidates seek their own legal advice.

### **Endnotes**

The [Commonwealth Electoral Act 1918](#) and the [Constitution](#) may be purchased from the Commonwealth Bookshop, or accessed at any major public library. Parliamentary reports and papers may be accessed through the Australian Parliament Internet site ([www.aph.gov.au](http://www.aph.gov.au)). Cases cited can be accessed through the Australasian Legal Information Institute Internet site or any major public library.

The information provided in this Backgrounder was drawn from the following sources:

- S. O'Brien, "Dual Citizenship, Foreign Allegiance and s. 44(i) of the Australian Constitution", Australian Parliamentary Library, December 1992.
- K. Cole, "Office of Profit under the Crown and Membership of the Commonwealth Parliament", Australian Parliamentary Library, April 1993.
- House of Representatives Standing Committee on Legal and Constitutional Affairs, "Aspects of Section 44 of the Constitution", Report, July 1997
- Senate Standing Committee on Constitutional and Legal Affairs, "The Constitutional Qualifications of Members of Parliament", Report, 1981.
- The decisions of the High Court of Australia in *Sykes v Cleary* (1992) 176 CLR 77, *Free v Kelly* (1996) 70 ALJR 809, *Nile v Wood* (1988) 167 CLR 133, and *Re Wood* (1988) 167 CLR 145.

Some guidance on the other parts of section 44 of the Constitution may be obtained from *Nile v Wood* (1987) 167 CLR 133, in relation to sections 44(ii) and (iii), and *In re Webster* (1975) 132 CLR 270, in relation to section 44(v).

***This Electoral backgrounder is published on 17 July 1998 by the Australian Electoral Commission and is consistent with advice provided by the Office of the Commonwealth Director of Public Prosecutions.***

**National enquiry telephone service: 13 23 26**

**Candidate Declaration**

The Candidate Declaration in Part C of the House of Representatives Nomination Form (which is the same in this part as the Senate Nomination Form) reads as follows:

PART C - Candidate to complete

I, the candidate named herein, state that I am an Australian citizen:

Yes \_\_\_

No \_\_\_

If yes, by:

birth \_\_\_ naturalisation \_\_\_ other means \_\_\_

Date of birth \_\_\_\_\_ Place of birth \_\_\_\_\_

Date granted citizenship \_\_\_\_\_ Details \_\_\_\_\_

• I am at least 18 years of age

Yes \_\_\_

No \_\_\_

• I am an elector or qualified to be an elector

Yes \_\_\_

No \_\_\_

• I am capable of being chosen and sitting as a Member of the House of Representatives (because I am not disqualified by virtue of Section 44 of the Constitution - see reverse side)

Yes \_\_\_

No \_\_\_

and declare that:

• I am qualified under the Constitution and the laws of the Commonwealth to be elected as a Member of the House of Representatives;

• I am not, and do not intend to be, a candidate in any other election to be held on the same

day as the election to which the above nomination relates;

• I consent to act as Member of the House of Representatives for the above Division if elected.

• I wish my Christian or Given names to appear on the ballot paper as shown opposite.

Signature of candidate \_\_\_\_\_ //

**Extract from *Commonwealth Electoral Procedures* (April 1999)**

**ENROLMENT**

Electoral rolls

Commonwealth electoral roll

4.1 The Commonwealth electoral roll lists the names and address of electors entitled to vote in federal elections. Other enrolment particulars, such as each elector's date of birth and gender are recorded and stored on computer for identification and verification purposes. The electoral roll database containing personal information is not available to the public for inspection.

4.2 A separate roll, with names and addresses only, is printed for each Division and can be inspected or bought by the public. Rolls are printed at least once within two years after the first meeting of a new Parliament. A microfiche print of the electoral roll, up-dated every six months and available by State/Territory or Division, is also obtainable for sale to the public. [note microfiche no longer available for sale from 2000]

4.3 A copy of the official roll, containing the names and addresses of electors, is available for inspection by the public at all Australian Electoral Commission offices. Addition and deletion lists for each Division are only available for public inspection in that divisional office.

Electoral enrolment information

4.4 A number of Commonwealth and State government agencies have access to enrolment information that is not publicly available, for purposes permitted by the Commonwealth Privacy Act 1988. These agencies include Australia Post, the Australian Federal Police, Centrelink and the Department of Health and Family Services. Electoral roll information may also be supplied to;

- Members of Parliament, Councils, registered political parties and candidates participating in the electoral process (Members of Parliament and Registered Political Parties also receive gender information).
- Medical research and public health screening programs (name, address, gender and decade age range enrolment information may be supplied).

4.5 Rolls available for public inspection at some State Electoral offices may contain name, address, gender and occupation.

Electoral roll reviews

4.6 The Australian Electoral Commission conducts a continuous review of the electoral roll by:

- targeted mailing to residential addresses where no electors are currently enrolled;
- the use of change of address data provided by other agencies to encourage enrolment;
- the removal of electors names from the roll if the AEC receives information that an elector has left their enrolled address and no reply is received to the mailing of an official notice;

4.7 In some cases household door knocks by officers of the AEC are conducted in addition to roll review mailing. AEC staff also attends citizenship ceremonies,

schools, universities and community events to provide electoral information and to collect completed enrolment forms.

#### Joint electoral rolls

4.8 The Commonwealth Electoral Act empowers the Governor-General to make arrangements with the State Governors, the Administrator of the Northern Territory or the Chief Minister of the Australian Capital Territory for the preparation, alteration, revision and maintenance of joint electoral rolls so that they may be used for State or Territory elections as well as for federal elections.

4.9 Joint roll arrangements have operated with Tasmania since 1908, South Australia since 1920, New South Wales since 1927, the Northern Territory since 1989, Queensland since 1992 and the Australian Capital Territory since 1994. Joint electoral enrolment arrangements have operated with Western Australia, since 1983 and Victoria since 1952, where the AEC has day-to-day responsibility for the collection and processing of roll information, but the Commonwealth and State rolls are held on separate databases.

#### Enrolment qualifications

4.10 Anyone who:

- is 18 years of age or more; and
- is an Australian citizen (or a British subject who was on the electoral roll on 25 January 1984); and
- has lived at his or her current address for one month;

is qualified to enrol.

4.11 Anyone who is currently living outside Australia, and:

- is 17 years of age or older and;
- is an Australian citizen (or a British subject who was on the electoral roll on 25 January 1984) and;
- departed Australia within the last 2 years and intends to return within 6 years of the date of departure from Australia and;
- left Australia for reasons relating to their career or employment or that of their spouse;

is qualified to enrol as an elector from outside Australia.

4.12 Anyone who:

- because of unsound mind, is incapable of understanding the nature and significance of enrolment and voting; or
- is serving a sentence of five years or longer for an offence against the law of the Commonwealth or of a State or Territory; or
- has been convicted of treason and has not been pardoned;

is not qualified to enrol.

## Compulsory enrolment

4.13 It is compulsory for every person who is qualified to enrol as an elector to apply for enrolment within 21 days after becoming qualified to enrol.

4.14 Any elector who changes his or her address must change his or her enrolment details.

4.15 The penalty for breaching the compulsory enrolment provisions of the Commonwealth Electoral Act is a fine of up to \$50.

## Enrolment procedures

### How to enrol

4.16 To enrol (or change enrolment), a person must complete an electoral enrolment form (see Appendix A for sample). The form must be signed by the person and a witness (who must be enrolled or entitled to be enrolled). Enrolment forms are available from offices of the AEC throughout Australia, from any Post Office or on the AEC's internet site: <http://www.aec.gov.au> Physically handicapped persons may, on the production of a medical certificate, ask another person to fill in and sign the form on their behalf. Anyone who cannot sign his or her name may not act as a witness for a person seeking to enrol.

4.17 After the enrolment form has been correctly filled in and witnessed, it must be sent to a Divisional Returning Officer or Australian Electoral Officer. Assuming all is in order the relevant Divisional Returning Officer (or, in the period between the announcement of an election and the close of the rolls, another Divisional Returning Officer or an Australian Electoral Officer) will enter the person's particulars onto the electoral roll. The elector will be notified by mail that their details have been entered on the electoral roll. The elector will be sent an acknowledgment card showing their enrolment details and which Federal, State and local government area that they are enrolled for.

### Objections to enrolment

4.18 The Divisional Returning Officer is required to object to the enrolment of a person if he or she has reason to believe the person's name ought not to be on the roll for the Division. A private objection to a person's enrolment may also be lodged with the Divisional Returning Officer. A private objection to a person's enrolment may also be lodged with the Divisional Returning Officer by another elector.

4.19 The Divisional Returning Officer must notify the challenged elector, by mail, advising him or her of the reason(s) and of the steps to be taken if the elector wishes to answer the objection. The Divisional Returning Officer must also notify the challenged elector (and the objector if applicable), again by mail, of his or her decision on an objection. This correspondence helps to ensure that an elector is not removed from his or her enrolled address in error.

## Special enrolment provisions

### Members of Parliament

4.20 A Member of Parliament need not enrol for the Division in which he or she lives. A Member of the House of Representatives may enrol in the Division he or she represents. Senators for the Australian Capital Territory may enrol in either of the Territory's Divisions and Senators for a State may enrol in any Division in the State they represent.

### General postal voters

4.21 Electors may apply to the Divisional Returning Officer to become registered general postal voters if they:

- live 20 kilometres or more from a polling place or a place that will be visited by a remote mobile polling team;
- are seriously ill or infirm and unable to travel from their home or hospital (other than a hospital that is a polling place or is serviced by mobile polling) to a polling place;
- are unable to travel to a polling place because they are caring for a seriously ill or infirm person (other than in a hospital);
- are detained in custody;
- because of physical incapacity, are unable to sign their name;
- have silent enrolment;
- because of their religious beliefs, are unable to attend a polling place.

4.22 The Divisional Returning Officer keeps a Register of General Postal Voters for the Division.

4.23 When an election is held, the Divisional Returning Officer sends ballot paper(s) and a postal vote certificate envelope to each registered general postal voter.

#### Overseas electors

4.24 An enrolled elector who is going overseas for six years or less may apply in writing to the Divisional Returning Officer, to be treated as an eligible overseas elector. The application must be received within the three month before the elector's departure. An elector who has already departed may make application within one year after leaving Australia. The electoral roll is then marked to indicate that the elector is an eligible overseas elector.

4.25 People who are qualified to enrol, but have ceased to reside in Australia due to career or employment commitments and are no longer enrolled, but intend to return to Australia within six years of their departure, are also entitled to apply for enrolment. The application must be made to the Australian Electoral Officer for the State or Territory and must be made within two years of their departure from Australia. If granted, their application for enrolment is also treated as an application as an eligible overseas elector.

4.26 Eligible overseas electors vote as electors of the Divisions for which they are enrolled before leaving Australia. Yearly extensions beyond the one year period may be granted. Eligible overseas electors lose their entitlement to be treated as such if they fail to vote or to apply for a postal vote at a general election of the House of Representatives.

4.27 On turning 18, the spouse or child of an eligible overseas elector may apply for enrolment from outside Australia provided he or she:

- would otherwise be qualified to enrol if resident in Australia; and
- intends returning to Australia not more than six years after turning 18.

#### Itinerant electors

4.28 An Australian citizen otherwise qualified to enrol but who does not have a permanent address may apply in writing to be treated as an itinerant elector. The person may be enrolled for:

- the Division containing the address for which the person last had an entitlement to be enrolled; or
- if the person has never had such an entitlement, the Division for which any next of kin is enrolled; or
- if neither of the above applies, the Division containing the person's birthplace; or
- if none of these applies, the Division with which the person has the closest connection.

#### Enrolment of prisoners

4.29 A person who was an enrolled elector when he or she began serving a prison sentence is entitled to remain on the same roll. However, this only applies to prisoners who are not subject to disqualification from enrolment.

4.30 A person who is qualified to enrol but was not enrolled at the time his or her prison sentence began is entitled to be enrolled for:

- the Division containing the address for which the person was entitled to be enrolled at that time; or
- if the person did not have such an entitlement, the Division for which any next of kin is enrolled; or
- if neither of the above applies, the Division containing the person's birthplace; or
- if none of these applies, the Division with which the person has the closest connection.

#### Antarctic electors

4.31 An elector who in the course of employment is, or expects to be, in the Australian Antarctic Territory (Antarctica) may apply to register as an Antarctic elector. To register, an elector is required to apply to the Divisional Returning Officer for the Division in which they are currently enrolled. Requests for registration must be received by the Divisional Returning officer prior to the close of nominations for an election. Special arrangements apply so that these electors can vote while they are residing in the Antarctic. The special status is removed when the elector returns permanently to Australia.

4.32 Special provision is made for taking the votes of Antarctic electors at permanent research stations and on ships transporting research personnel to or from Antarctica.

#### Provisional enrolment at 17 years of age

4.33 Persons who are 17 and who, when turning 18, will be qualified to enrol may apply for enrolment. Provisional enrolment ensures that, should such persons turn 18 after the close of the rolls but on or before polling day for an election, they will be able to vote in that election.

#### Silent enrolment

4.34 Electors who consider that the publication of their addresses on the publicly available federal electoral roll, would endanger the personal safety of themselves or their families, may make a request to the Divisional Returning Officer that their addresses not appear on the roll. A request must give details of the relevant risk and be verified by statutory declaration.



## Norfolk Island Residents

4.35 Qualified Norfolk Island residents may enrol for a Division with which they have a connection, or if they have no connection with a State, they may enrol for the Division of Canberra. Norfolk Island residents may not enrol for the Divisions of Fraser or Northern Territory.

### Review of enrolment decisions

4.36 A person may seek review of a Divisional Returning Officer's decision to:

- reject the person's claim for enrolment;
- remove the person's name from the roll as the result of an objection;
- reject an objection made by the person to another person's name remaining on the roll;
- refuse the person's application for enrolment as the spouse or child of an eligible overseas elector
- refuse the person's request for silent enrolment
- refuse the person's application for registration as a general postal voter; or
- cancel the person's registration as a general postal voter.

4.37 The review is undertaken by writing, within 28 days of receiving the notification, to the appropriate Australian Electoral Officer for the State or Northern Territory, or to the Electoral Commissioner, in the case of a review of a decision made by a Divisional Returning Officer in the Australian Capital Territory.

4.38 If the Divisional Returning Officer's decision is upheld, an application for further review may be made to the Administrative Appeals Tribunal.

**Extract from *Commonwealth Electoral Procedures* (April 1999)**

**NOMINATIONS**

7.1 Candidates must be nominated before they may be elected to the Senate or House of Representatives.

Qualifications

7.2 The qualifications for a candidate for the Senate or the House of Representatives are the same. A candidate must be:

- at least 18 years old;
- an Australian citizen; and
- an elector entitled to vote, or a person qualified to become such an elector.

Disqualifications

7.3 A Senator cannot be chosen or sit as a Member of the House of Representatives. Likewise, a Member cannot be chosen or sit as a Senator.

7.4 No member of a State Parliament, the Northern Territory Legislative Assembly or the Australian Capital Territory Legislative Assembly may be nominated as a candidate for the Senate or the House of Representatives.

7.5 Section 44 of the Constitution bars certain people from being elected to the Senate or House of Representatives.

44. Any person who:

- i) is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or
- ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under law of the Commonwealth or of a State by imprisonment for one year or longer; or
- iii) is an undischarged bankrupt or insolvent; or
- iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any revenues of the Commonwealth; or
- v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or sitting as a senator or a member of the House of Representatives.

Multiple nominations prohibited

7.6 No one may nominate as a candidate for more than one election held on the same day. Hence it is not possible for anyone to nominate for more than one Division for the House of Representatives, or more than one State or Territory for the Senate, or for both the House and the Senate.

## Timing of nominations

7.7 It is not possible to nominate as a candidate for election until the writ for the election has been issued. The writ is deemed to have been issued at 6pm on the day of the issue of the writ.

7.8 The date fixed for the close of nominations must be at least 10 days but not more than 27 days after the issue of the writ for the election and is specified in the writ.

7.9 Nominations must be made before 12 noon on the day nominations close and the onus is on candidates to ensure nominations reach the appropriate electoral officer in time. Nominations of House of Representatives candidates endorsed by a registered political party, made to the Australian Electoral Officer by the party's registered officer, must be received at least 48 hours before the close of nominations.

## Withdrawal of nominations

7.10 Candidates may withdraw their consent to nominations at any time up to the close of nominations, but cannot do so after nominations have closed. The deposit of a candidate who withdraws his or her nomination will be returned.

## How to make a nomination

7.11 A nomination is made on the appropriate nomination form (or a facsimile of the form). Nomination forms are available from Head Offices or Divisional Offices of the AEC. Nominations of candidates for the Senate are made to the Australian Electoral Officer for the State or Territory for which the election is to be held, and nominations of candidates for the House of Representatives are made to the Divisional Returning Officer for the Division for which the election is to be held. However, the registered officer of a registered political party may lodge a "bulk nomination" of all endorsed House of Representatives candidates within a particular State or Territory with the Australian Electoral Officer for that State or Territory. These "bulk nominations" must be received at least 48 hours before the close of nominations.

7.12 A candidate must be nominated by either:

- fifty electors, that is, fifty people entitled to vote at the election for which the candidate is nominated; or
- the registered officer of the registered political party which has endorsed the candidate. (If an endorsed candidate is not nominated by the registered officer then the registered officer must otherwise verify that the candidate is in fact endorsed by the registered party.)

## Grouping of candidates

7.13 Two or more candidates in a Senate election may make a request on their nomination form to have their names grouped on the ballot paper.

## Party affiliations on ballot papers

7.14 The registered officer of a registered political party may request on the nomination form that the registered name or abbreviation of the party be printed on the ballot paper adjacent to the name of a candidate who has been endorsed by the party.

7.15 For an endorsed Senate group for which a group voting ticket is to be lodged, the registered officer may request that the party name or abbreviation (or for a group endorsed by more than one registered party, a composite name) be printed on the ballot paper adjacent to the group voting ticket square.

### Independent candidates

7.16 Unendorsed candidates (except two or more candidates who wish to be grouped on the Senate ballot paper) may request on the nomination form that the word 'Independent' be printed adjacent to their names on the ballot paper.

### Individual incumbent senators

7.17 Incumbent senators who wish to remain ungrouped but who intend to lodge individual voting tickets must indicate their intention on the nomination form.

### Candidate declaration

7.18 A person's nomination is not valid unless, in the nomination paper, the person:

- consents to act if elected;
- declares that he or she is qualified to be elected and that he or she is not a candidate in any other election to be held on the same day; and
- states whether he or she became an Australian citizen by birth, by naturalisation or by other means, and provides relevant particulars.

### Deposits

7.19 For each nomination a deposit must be lodged. The deposit must be in cash or in a cheque drawn by a bank or other financial institution on itself (banker's cheque). A personal cheque is not acceptable.

7.20 The deposit required is:

- \$700 for each person on a Senate nomination; or
- \$350 for a House of Representatives nomination.

7.21 The deposit lodged with a nomination will be returned if a candidate is elected, or

- in a Senate election if:
  - in the case of ungrouped candidates, the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes; or
  - where the candidate's name is included in a group, the sum of the first preference votes polled by all the candidates in the group is at least four per cent of the total number of formal first preference votes; or
- in a House of Representatives election, if the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in the Division.

All other candidates forfeit their deposit.

7.22 A deposit may be returned to the candidate or someone authorised by the candidate. However, if the candidate was nominated as part of a bulk nomination, it must be returned to the person who paid it or another authorised person.

## Uncontested elections

7.23 In a Senate election, if the number of candidates nominated is not greater than the number of candidates to be elected, the Australian Electoral Officer, on nomination day, declares the candidates elected. In a House of Representatives election, if only one candidate is nominated, the Divisional Returning Officer, on nomination day, declares that candidate elected.

## Death of a candidate

7.24 If a nominated candidate dies before the close of nominations, the nomination period is extended by a day.

7.25 In a Senate election, if any candidate dies between the declaration of nominations and polling day, and the number of remaining candidates is not greater than the number of candidates to be elected, those candidates are declared elected. However, if the remaining candidates are greater in number than the number of candidates to be elected, the election proceeds. A vote recorded on a Senate ballot paper for a deceased candidate is counted to the candidate for whom the voter has recorded the next preference, and the numbers indicating subsequent preferences are regarded as altered accordingly.

7.26 In a House of Representatives election, if a candidate dies between the declaration of nominations and polling day, the election is deemed to have wholly failed and does not proceed. A new writ is issued for another election in that Division, but this supplementary election is held using the electoral roll prepared for the original election.

7.27 The deposit of any candidate who dies before polling day will be returned.

**Extract from *Candidates' Handbook* (1998)**

**Nominations**

The following discussion in this section is based on Part XIII of the Act entitled 'Writs for Election', Part XIV entitled 'The Nominations' and Section 44 of the Constitution. Candidates are advised to refer to the Act and the Constitution for the exact provisions.

A person must be duly nominated as a candidate for election before they can be elected to either the Senate or the House of Representatives.

**Who is qualified to nominate?**

To nominate for either the Senate or the House of Representatives, you must be:

- at least 18 years old;
- an Australian citizen; and
- an elector entitled to vote, or a person qualified to become such an elector.

The qualifications for nominating as a candidate for the Senate or the House of Representatives are the same. A member of the Senate or the House of Representatives cannot be chosen or sit as a member of the other House of Parliament.

You **cannot** nominate for the Senate or the House of Representatives if you:

- are currently a member of a State Parliament or a Territory Legislative Assembly and have not resigned before the hour of nomination (at 12 noon on the Close of Nominations date). As the manner of resignation is governed by State and Territory law, intending candidates should check their resignation is effective before the hour of nomination.
- are disqualified by section 44 of the Constitution and have not remedied that disqualification before nomination.

**Section 44 of the Constitution**

Section 44 of the Constitution disqualifies certain persons from being elected to the Commonwealth Parliament. Section 44 of the Constitution is reproduced below:

*44. Any person who -*

- i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or*
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or*
- (iii) is an undischarged bankrupt or insolvent; or*
- (iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or*
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common*

*with the other members of an incorporated company consisting of more than twenty-five persons;*

*shall be incapable of being chosen or of sitting as a Senator or a member of the House of Representatives.*

*But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.*

**Candidates are required to sign a declaration on the nomination form that they are qualified under the Constitution and the laws of the Commonwealth to be elected to the Commonwealth Parliament.**

**If prospective candidates have any doubts as to their qualifications under the Constitution, the AEC recommends that they seek their own legal advice.**

The November 1992 High Court decision in *Sykes v Cleary*, which voided the election of Mr Phil Cleary as Member of the House of Representatives for the Division of Wills, should be noted. Mr Cleary was disqualified from being chosen as a Member of the House of Representatives under section 44(iv) of the Constitution on the grounds that, as a Victorian State School teacher on leave without pay, he held an office of profit under the Crown.

Commonwealth, State or Territory public servants who wish to nominate for election to the Commonwealth Parliament should resign from the relevant Service before nomination in order to comply with the Constitution. Conditions of re-entry to the various Public Services by unsuccessful candidates are matters for the relevant Public Service authority. The position of local government employees is not clear and it might be that such persons are vulnerable to the office of profit disqualification.

Commonwealth public servants who resign to contest an election and who are unsuccessful may apply for re-appointment or re-engagement under sections 47C or 82B of the Public Service Act 1922. A former officer or former temporary employee is required to be re-appointed or re-engaged subject to certain conditions. Most States and Territories have comparable statutory or administrative provisions. Candidates should enquire about these from the relevant authorities before resigning or nominating.

The Constitutional disqualification on the ground of office of profit applies to permanent members of the Australian Defence Force. The relevant Defence Force authority should be consulted on conditions of resignation and re-entry.

In the *Sykes v Cleary* decision the High Court also commented on the "foreign allegiance" disqualification in section 44(i) of the Constitution. The majority view of the Court was that naturalised Australian citizens who also have foreign citizenship and are standing as candidates should take "reasonable steps to renounce foreign nationality". The available steps may depend upon foreign law, and intending candidates should enquire of their relevant Embassy or High Commission.

Section 172 of the Act provides that electoral officers can only reject a nomination if the nomination does not comply with certain provisions of the Act. Electoral officers are not generally empowered to question, challenge or provide advice on the declaration made by an intending candidate on the nomination form that they are qualified to be elected as a Member of Parliament under the Constitution and the laws of the Commonwealth.

The election of any Member of Parliament may be challenged within 40 days of the return of the writ, by petition in the High Court sitting as the Court of Disputed Returns under Part XXII of the Act. The *Common Informers (Parliamentary Disqualifications) Act 1975* provides penalties for ineligible Members of Parliament.

No candidate may be appointed as an electoral officer of any description either as a permanent officer or as a polling official and if any electoral officer becomes a candidate they must vacate the office. [s.36 of the Act]

### **When to nominate**

It is not possible to nominate as a candidate until the writ for the election has been issued. The writ is deemed to have been issued at 6pm on the day which it is issued.

You can nominate anytime after 6pm on the day the writ has been issued and until 12 noon on the day nominations close, during normal business hours.

The date fixed for the close of nominations must be at least 10 days but no more than 27 days after the issue of the writ and is specified in the writ. The AEC advertises the dates fixed in the writ in at least two major newspapers circulating in each State and Territory, or, if there is only one major newspaper circulating in the State or Territory, in that newspaper.

Nominations must be received by 12 noon on the day nominations close. Bulk nominations of endorsed candidates for the House of Representatives must be lodged 48 hours before the close of nominations.

### **Late nominations cannot be accepted under any circumstances.**

### **Where to nominate**

Nominations for the Senate for a State or Territory must be made at the capital city office of the Australian Electoral Officer (AEO) for that State or Territory.

Nominations for the House of Representatives must be made at the office of the Divisional Returning Officer (DRO) for that Division.

Bulk nominations of endorsed candidates for the House of Representatives must be lodged with the AEO for the relevant State or Territory.

It is the candidate's responsibility to ensure that their nomination is completed and received by the AEO or DRO (as appropriate) by the close of nominations. Lodgement with Australia Post is not the equivalent of receipt by the AEO or DRO. In addition, for the nomination to be valid it must include both the completed nomination form and the nomination deposit.

It is in the candidate's interest to lodge their nomination as early as possible. Nominating on the last day may cause problems, particularly if there are deficiencies in the nomination form which require time to resolve.

### **Faxed nominations**

While a facsimile of the nomination form is acceptable, it is the responsibility of the candidate to ensure that the fax is received by the AEO or DRO (as appropriate) before the close of nominations. Candidates are advised to telephone the relevant AEC officer to confirm receipt of the faxed nomination.

A time record on a despatching fax machine is not a record of receipt of the fax by the relevant AEC officer. The possibility of transmission or print delays on receiving fax machines must be considered under such circumstances.

When faxing a nomination form, it is still necessary for both the form and the nomination deposit to be in the hands of the AEO or DRO (as appropriate) by the close of nominations, for the nomination to be valid.



### **Bulk Nominations**

The registered officer of a registered political party may make a bulk nomination of all their endorsed House of Representatives candidates for a particular State or Territory at the one time. However, each of the candidates included in the bulk nomination must complete a separate Part B page of the Bulk Nomination Form.

Bulk nominations must be received by the AEO for the relevant State or Territory 48 hours before the close of nominations.

If a party chooses to lodge a bulk nomination it must include all the candidates that the party is endorsing for the particular State or Territory.

If a bulk nomination is lodged with the AEO and a single nomination for a candidate endorsed by the same party, being one of the candidates in the bulk nomination or not, is lodged with a DRO, the bulk nomination of all that party's candidates will be invalidated.

If a candidate who was included in a bulk nomination, resigns or dies after the cut-off date for bulk nominations and before the close of nominations, that withdrawal or death does not affect the nomination of the other candidates in the bulk nomination.

**Details of AEC offices can be found in the telephone directory or by ringing the AEC on 13 23 26.**

### **Multiple Nominations**

A person cannot nominate as a candidate for more than one election held on the same day. Hence it is not possible to nominate for more than one Division for the House of Representatives, or more than one State or Territory for the Senate, or for both the House of Representatives and the Senate.

If a person nominates more than once, all their nominations will be invalid.

### **Nomination Form**

When nominating for either the Senate or the House of Representatives, the following personal information of a candidate must be set out in the nomination form:

#### **the name of the candidate**

The name of a candidate must be specified on the form and must comprise:

- their surname and one or more of the Christian or given name/s under which the candidate is enrolled; or
- when a candidate is not enrolled, a surname and one or more of the Christian or given name/s, under which the candidate is entitled to be enrolled.

A Christian or given name may be specified by:

- an initial standing for that name; or
- a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name).

The nomination must also include a statement of the form in which the candidate's Christian or given name/s are to be printed on the ballot paper.

#### **the place of residence of the candidate**

Candidates are required to set out their residential address.

However, sitting House of Representatives Members who do not reside within the Division they represent, but are enrolled for that Division, may show their enrolled address rather than their place of residence. Similarly, incumbent Senators who are

enrolled for an address in the State other than their place of residence may show their enrolled address rather than their place of residence.

A candidate, or nominator of a candidate, who has 'silent' enrolment is not required to set out their address on the nomination form. A candidate with silent enrolment must supply the DRO or AEO (as appropriate) with a correspondence address. This address may be a postal address and is not made publicly available.

#### **the occupation details of the candidate**

The Act requires these details to be provided.

#### **contact numbers of the candidate**

A candidate must provide contact numbers, but can ask that these numbers are not publicly released.

#### **a signed declaration**

Each candidate must sign a declaration that they:

- are not constitutionally disqualified from being elected;
- have not nominated for another election to be held on the same day; and
- consent to act if elected.

A person must not make a statement in their nomination form that is false or misleading or omit from a statement any information, without which the statement is misleading in a material particular. The maximum penalty for this offence is imprisonment for 6 months.

All nomination forms are publicly produced at declaration time (12 noon, the day after nominations close) and remain public documents from that time.

**Nomination forms for the Senate and the House of Representatives are available at AEC offices or by ringing the AEC on 13 23 26.**

**The forms will also be available here on the AEC's web site once the writ for the election has been issued.**

#### **Candidates endorsed by registered political parties**

The registered officer and the deputy registered officer of a registered political party have equal powers in relation to the nomination process [s.4C of the Act].

An endorsed party candidate may be nominated for election by either:

##### **1. The registered officer of the party that is endorsing the candidate**

If the registered officer nominates the candidate, the request for the party's registered name or abbreviation to be printed on the ballot paper can be made on the nomination form. Alternatively, the registered officer may provide these details in writing to the appropriate DRO or AEO before the close of nominations.

or

##### **2. Fifty electors who are entitled to vote at the election for which the candidate is standing**

The fifty electors who nominate a Senate candidate must be enrolled for the State or Territory for which the candidate is standing. The fifty electors who nominate a House of Representatives candidate must be enrolled for the Division for which the candidate is standing.

If an endorsed candidate is nominated by fifty electors, the registered officer must verify that the candidate has been endorsed by the registered party. This can be

done by the registered officer completing the appropriate section of the nomination form or by lodging a written statement with the relevant AEO or DRO before close of nominations.

If a candidate has been endorsed by two or more political parties, only one political party can be taken to have endorsed that candidate for the purpose of printing party affiliations on the ballot paper.

Only a political party registered by the AEC may request the name of their party to be printed next to their candidate(s) names on the ballot paper. Parties, however constituted, which are not registered with the AEC are not entitled to have a name printed next to their candidate(s) name on the ballot paper.

#### **candidates not endorsed by registered political parties**

A candidate who is not endorsed by a party must be nominated by fifty electors, that is, fifty people entitled to vote at the election for which the candidate is standing.

The fifty electors who nominate a Senate candidate must be enrolled for the State or Territory for which the candidate is standing. The fifty electors who nominate a House of Representatives candidate must be enrolled for the Division for which the candidate is standing.

Candidates who are not endorsed by a registered political party may request that the word 'Independent' be printed adjacent to their names on the ballot paper provided they are not in a group of Senate candidates.

#### **Senate nominations**

A candidate nominating for election to the Senate may be endorsed by a registered political party or may nominate as an independent.

Candidates running as independents may do so individually or as part of a group with other independent candidates.

If candidates are endorsed as part of a group by a registered political party, the name of that party will appear on the ballot paper both above the line and next to each of the candidate's names below the line.

If different parties combine to form a 'joint ticket' then the name of the relevant party will be placed beside each candidate below the line and a composite name will appear above the line.

Specific provisions for nominating apply to an incumbent Senator who is not grouped.

#### **Senate nomination forms**

There are three nomination forms for the Senate which cater for the various types of candidates:

- Form 1: Nomination of a single (ungrouped) Senate candidate
- Form 2: Nomination of grouped Senate candidates who are either all not endorsed or all endorsed by one registered political party
- Form 3: Nomination of grouped Senate candidates who are each endorsed by one registered political party, but not all by the same party.

When nominating **endorsed candidates** the Registered officer may:

- nominate endorsed party candidates, or verify a candidate's party endorsement;
- request that the party name or abbreviation appear beside a candidate's name on the ballot paper;

- request the name of the party be printed on the ballot paper beside the group voting square or a composite name if candidates in a group are endorsed by different parties.

When nominating as **grouped candidates** the candidates may:

- specify the ballot paper order of the candidates' names in the group;
- request that the name(s) of the registered political party or parties (if any) that endorsed the candidates, or a composite name formed from these names, be printed on the ballot paper.

**Grouped candidates not endorsed** by a political party cannot have the word 'Independent' printed adjacent to their names or against their box above the line.

When nominating as an **ungrouped (single) and not endorsed candidate**, the candidate may have the word 'Independent' printed beside their name on the ballot paper.

**Incumbent Senators** who may or may not be endorsed, and who wish to remain ungrouped and intend to lodge individual voting ticket(s) must include with their nomination a written declaration to that effect. [s.211A of the Act]

### **House of Representatives nominations**

The same nomination form is issued for House of Representatives candidates whether they are endorsed by a registered political party (unless bulk nominated), or standing as an independent.

There is also a bulk nomination form to enable registered political parties to nominate all their candidates in a particular State or Territory at the one time. The form must be completed by the registered officer of the party, and each candidate being nominated must complete a separate Part B page of the Bulk Nomination Form.

### **Nomination Deposit**

Each nomination for the Senate and the House of Representatives must be accompanied by a deposit paid by legal tender (cash) or a cheque drawn by a bank or other financial institution on itself. Personal cheques cannot be accepted.

**Both the nomination form and deposit must be received before 12 noon on the day nominations close.**

The deposit required is \$700 for each Senate candidate and \$350 for each House of Representatives candidate.

The deposit for a Senate candidate will be returned to the payee or someone authorised by the payee in writing if the candidate:

- is elected; or
- in the case of an ungrouped candidate, the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that State or Territory; or
- where the candidate's name is included in a group, the sum of the first preference votes polled by all the candidates in the group is at least four per cent of the total number of formal first preference votes in that State or Territory.

The deposit for a House of Representatives candidate will be returned to the payee or someone authorised by the payee in writing if the candidate:

- is elected; or

- if the candidate's total number of first preference votes is at least four per cent of the total number of formal first preference votes cast for all candidates in that Division.

All other candidates forfeit their deposit. However, if a candidate dies before polling day their deposit is returned (see page 11).

### **Rejection of Nomination**

A nomination shall be rejected if the provisions relating to:

- the mode of nominations; and
- to whom the nomination is made; and
- the requisites for nomination; and
- the form of consent to act

have not been complied with.

A nomination will not be rejected simply because of a formal defect or error in the nomination provided these provisions have been complied with.

### **Withdrawal of Nomination**

A candidate may withdraw their nomination until the close of nominations.

The withdrawal notice can be obtained from any AEC office or by calling 13 23 26. Senate candidates must lodge their withdrawal with the AEO for the State or Territory for which they had nominated for. House of Representatives candidates must lodge their withdrawal with the DRO for the Division for which they had nominated for, even if they were one of a number of bulk nominated candidates.

Once the withdrawal notice is in the hands of the relevant AEC officer, the nomination is cancelled and the deposit refunded.

### **Uncontested election**

In a Senate election, if the number of candidates nominated is no greater than the number of candidates to be elected, the AEO declares the candidate(s) duly elected at the declaration time.

In a House of Representatives election, if only one candidate is nominated, the DRO declares that candidate duly elected at the declaration time.

### **Death of a candidate**

For either the Senate or House of Representatives, if a nominated candidate dies before the close of nominations, the nomination period is extended by a day.

In a Senate election, if any candidate dies between the close of nominations and polling day and the number of remaining candidates is no greater than the number of candidates to be elected, those candidates are declared elected. However, if the remaining candidates are greater in number than the number of candidates to be elected, the election proceeds. A vote recorded on a Senate ballot paper for a deceased candidate is counted to the candidate for whom the voter has recorded the next preference and the numbers indicating subsequent preferences are regarded as being altered accordingly. [s.273(27) of the Act].

In a House of Representatives election, if a candidate dies between the close of nominations and polling day the election does not proceed. A new writ is issued for another election in the Division, but this supplementary election is held using the electoral roll prepared for the original election.

### **Return of deposit on the death of a candidate**

If a nominated candidate for either the Senate or the House of Representatives dies

before polling day, the deposit lodged is returned to the payee or a person authorised in writing by the payee or, if this was the candidate, to his or her personal representative.