



Appendix F

**Table of technical amendments required to the
Commonwealth Electoral Act 1918 and/or the
*Referendum (Machinery Provisions) Act 1984***

	Subject	Electoral Act Section	Referendum Act Section	Amendment Required
1.	Polling Places	80(3)(b)		Section 80(3)(b) provides that the AEC must publish details of those polling places which were in use at the last election but have been abolished since that time. This may lead to a situation that is potentially confusing when the last electoral event was in fact a referendum and not an election. The same confusion is not found in the Referendum Act. Amend section 80(3)(b) of the Electoral Act to reflect the wording of section 16(2)(b) of the Referendum Act.
2.	Use of Information from Roll and Habitation Index	91A(3)		Section 91A(3) provides the meaning of the word election for the section. The AEC considers it would be appropriate to amend the section to also include those elections and ballots conducted under the <i>Workplace Relations Act 1996</i> .
3.	Roll Reviews	92(1)		Section 92(1) provides that “all police, statistical, and electoral officers in the service of any State...” The AEC recommends that this section of the Electoral Act be amended to include officers in the service of a State or Territory.
4.	Spouse	94A & 95		There are two sections of the electoral Act which provide for or include spouse. They are sections 94A and 95. Section 95(17) provides an inclusive definition for the purposes of section 95 but there is nothing for section 94A. The AEC believes it would be appropriate to move the definition of spouse from section 95 into section 4 of the Electoral Act, as this is the section that provides interpretations for the Electoral Act.
5.	Child	95		Subsections 95(16) & (17) provide inclusive definitions for “Child”. The AEC believes it would be appropriate to move the definition of child from section 95 into section 4 of the Electoral Act, as this is the section that provides interpretations for the Electoral Act.
6.	Alteration of Rolls	105		Section 105 provides for the DRO to make alterations to the roll but makes no provision for electors who have been affected by those alterations to appeal them. This section should be amended to allow for decisions made by the DRO to be reviewable by the AEO and the AAT.
7.	Withdrawal of Nomination	177(4)		Section 177(4) provides that where a candidate withdraws their nomination, and was one of a number of candidates nominated by the registered officer of a political party, that the withdrawal does not affect the nomination of the other candidates and that the registered officer may amend the nomination to substitute another candidate. Section 177(1) provides that the notice of withdrawal for House of Representatives candidates be made to the DRO. However, bulk nominations are lodged with the AEO in accordance with Section 167. Section 177(4) should be amended to allow the AEO to receive notices of withdrawal for candidates included in bulk nominations and section should be clarified to ensure that the amended nomination containing the name of the substitute candidate is made to the AEO.
8.	Death of Candidate	178		Section 178 (3) of the Electoral Act provides that where a candidate dies the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it. In all other cases the deposit must be returned to the personal representative of the candidate. There appears to be no formal mechanism for determining who would be the personal representative of the candidate in such circumstances. The AEC recommends that subsection 178(3) be amended to read “In all other cases, the deposit must be paid to the estate of the deceased candidate.”

9.	Postal Voting Envelopes	188(1)		Section 188 requires the DRO or ARO to issue a postal vote certificate, ballot paper, or papers, and an envelope (the outer envelope) addressed to the DRO or ARO. In practice the outer envelope is window faced, which means it is not “addressed” as such. It merely serves as a carrier for the postal vote certificate on which the address of the DRO or ARO is printed. This section requires amendment to remove the requirement for the outer envelope to be addressed to the DRO or ARO, whilst retaining the intent of the section. An amendment similar to the Referendum Act section 61 may be appropriate.
10.	Postal Voting Envelopes	194(1)		Section 194(1) provides for the elector to place completed ballot papers in the “envelope addressed to the appropriate DRO” which is the postal vote certificate referred to in section 188(1). This section should be amended to require the elector to place the ballot papers in the postal vote certificate and then place the postal vote certificate in an envelope (the envelope referred to in section 188(C)) and fasten the envelope.
11.	Ballot Papers	209(5)		<ul style="list-style-type: none"> Section 209(5) of the Electoral Act is the counterpart provision to section 25(4) of the RPMA. Like section 25(4) of the RPMA, section 209(5) of the Electoral Act provides that a ballot-paper used for postal voting is to contain the following directions: “Fold the ballot-paper, place it in the envelope addressed to the Divisional Returning Officer and fasten the envelope”. As the envelope containing the address of the DRO is the postal vote certificate, the wording of the directions require amendment to eliminate confusion on the part of the elector. Section 188 of the Electoral Act already allows in certain circumstances for a postal ballot-paper to be returned to a person other than a DRO. As a consequence, section 209(5) of the Electoral Act should also be amended so as to be consistent with the postal voting provisions of the Electoral Act.
12.	The Polling	220©	29(1)©	Section 220(C) of the Electoral Act and 29(1)(C) of the Referendum Act require amendment so that they are consistent in expression.
13.	The Polling	220(d)	29(1)(d)	Section 220(d) of the Electoral Act and 29(1)(d) of the Referendum Act require amendment so that they are consistent in expression.
14.	Prison Mobile Voting	226A	49A	Section 226A Electoral Act and 49A Referendum Act do not specify whether the provision of mobile polling is to be made available to the same classes of electors as sections 224, 225 and 227. That is electors entitled to vote in a by election, or an elector for the State or Territory in which the voting is being conducted. Section 226A should be amended to include similar wording to sections 224, 225 and 227 so as to ensure consistency of application.
15.	Compulsory Voting	245(6)		Section 245(3) provides for the DRO to “arrange for a penalty notice to be delivered by other means” to an elector who appears to have failed to vote. Subsection 245(6) provides “the DRO must send by post or deliver to the elector...” Section 245(6) should be amended to allow for the DRO to “arrange to be delivered by other means” a second penalty notice to the elector.

16.	Printing and publication of electoral advertisements etc.	328		<p>Drafting errors have been identified in section 328(4) of the Electoral Act. These came about because section 328(4) was not consequentially amended following amendments to section 328(3). Section 328(3)(b) of the Electoral Act was the former provision relating to prescribing classes of articles. That provision was repealed by the <i>Electoral and Referendum Amendment Act 1998</i> and the classes of articles which were prescribed (in Regulation 87 of the Electoral and Referendum Regulations) under that provision were included in the Electoral Act as sub-sections 328(b) and 328(c). A new section 328(3)(d) was added in relation to prescribing classes of articles; section 328(3)(d) is in identical terms to the former section 328(3)(b).</p> <p>Amend section 328(4) of the Electoral Act so that the reference to paragraph 328(3)(a) is corrected to refer to paragraphs 328(3)(a)-(c), and the reference to paragraph 328(3)(b) is corrected to refer to paragraph 328(3)(d).</p>
17.	Service of Process by Mail	387A		Section 387A requires amendment to allow for notices to be delivered to the "latest known address of the person" in order to be consistent with the wording of section 245(3).
18.	No State Referendum or Vote to be held on polling day	394	143	<p>Section 394 of the Electoral Act provides that no election or referendum or vote of the electors of a State or part of a State shall be held under a law of the State on the day appointed as polling day for a Senate or General Election. Section 143 of the Referendum Act extends that same provision to include any Territory or part of a Territory. The AEC recommends that section 394 of the Electoral Act be amended to provide the same coverage as section 143 of the Referendum Act. This will eliminate confusion and clarify the coverage of section 394 in so far as Territories are concerned.</p>
19.	Forms	Schedule 1	Schedule 1	There is inconsistency in the wording of forms (Writs) between the Electoral Act and the Referendum Act. Dates on forms require amendment to refer to the current century.
20.	Preliminary Scrutiny	Schedule 3 Paragraph 13		Paragraph 13(b) of the Schedule 3 of the Electoral Act refers to when "the error or mistake" occurred in relation to the omission of an elector's name from the roll. It is possible that an error or mistake was made prior to the relevant election but that action to remove the name from the roll was not taken until after the election (because of the operation of s118(5) which precludes removal of names from the roll between the close of roll and polling day). In such situations it may not be possible to determine when the error or mistake was made, however, it is possible to determine when the omission from the roll was made. This paragraph should be amended to remove the words "error or mistake" and insert the words "omission from the roll".
21.	Ballot-Paper/Ballot Paper	Various	Various	The use of a hyphen to separate the words ballot and paper is inconsistently applied throughout the Electoral Act and the Referendum Act. Similarly the words ballot and papers, ballot and box etc. Consistent use should be maintained – ie. no hyphen.

22.	Definition of authorised witness	193	3	<p>“Authorised witness” is defined in section 193 of the Electoral Act and section 3 of the RPMA. Inconsistencies have developed between the provisions in the two Acts, and the AEC recommends that these be addressed by standardising the definitions in such a way that the broadest coverage is retained. Compare:</p> <ul style="list-style-type: none"> • Sub-paragraph (b)(iii) of the definition of “authorised witness” in the RPMA, which refers to one of the categories of an authorised witness outside Australia as being, among other things, “a person employed in the Public Service of a State or Territory or of a part of the Queen’s dominions”; and • Section 193(2)(c) of the Electoral Act, which refers to “a member of the civil or public service of a Territory or of a Commonwealth country”. <p>For consistency, both Acts should refer to the “civil or public service” of a State or Territory – there is no reason to restrict authorised witnesses under the Electoral Act so that State public servants are not covered by this provision. Another inconsistency is in relation to medical practitioners and ministers of religion resident in a State being included in the Electoral Act provision but not in the RPMA provision (however, medical practitioners and ministers of religion resident in a Territory are included in both provisions).</p> <p>The AEC recommends that the definitions of “authorised witness” in the RPMA and Electoral Act be amended to standardise the definitions in such a way that the broadest coverage is retained.</p>
23.	Interpretation – Queen’s dominions		3	<p>For consistency both the Electoral Act and Referendum Act should also (as the Electoral Act does) refer to “a Commonwealth country” rather than “a part of the Queen’s dominions”. The phrase “a part of the Queen’s dominions” is used in sub-paragraph (b)(ii) and (b)(iv) of the definition of “authorised witness” in the RPMA. It should be noted that the <i>Electoral and Referendum Amendment Act 1998</i> attempted to amend this, however the amendment was misdescribed. The <i>Electoral and Referendum Amendment Act 1998</i> referred, in item 1 of Schedule 2, to omitting “another part of the Queen’s dominions” and replacing this with “a Commonwealth country”, however the RPMA does not use the words “another part of the Queen’s dominions” (it refers to “a part of the Queen’s dominions”) – thus the attempted amendment was ineffectual.</p> <p>The AEC recommends that the definition of “authorised witness” in the RPMA be amended to refer to “a Commonwealth country” rather than “a part of the Queen’s dominions”.</p>

24.	Australian Electoral Officer (AEO) for the Northern Territory.		5	<p>Section 20 of the Electoral Act provides that there shall be an AEO for each "State". Section 5A of the Electoral Act provides that "State" is read in section 20 as including the Northern Territory. Thus there is, under the Electoral Act, an AEO for the Northern Territory. However, section 5(1) of the Referendum Act refers to the AEC appointing an AEO for each "Territory" (defined in section 3 as the Australian Capital Territory and the Northern Territory) for each referendum. This would appear to be unnecessary in relation to the Northern Territory given the provisions of the Electoral Act referred to above.</p> <p>The AEC recommends that section 5 of the Referendum Act be amended to refer to "the Australian Capital Territory" rather than "a Territory", and consequential changes be made to ensure that the AEO for the Northern Territory is recognised.</p>
25.	Return of Writs		8-9	<p>Section 159 of the Electoral Act provides that the date fixed for the return of the writ in an election shall not be more than 100 days after the issue of the writ. In the 1999 Referendums, the writs were returned within 100 days of their issue, and in practice the AEC would return writs for a referendum within such a period. However, the AEC sees merit in the period for the return of a writ for a referendum being set in legislation, and therefore would recommend that the RPMA be amended to include an equivalent of section 159 of the Electoral Act.</p>
26.	Statutory Advertising Requirement		14(1)(b)	<p>Subsection 14(1)(b) of the RPMA requires that the particulars of the writ and a copy of the proposed law or statement attached to the writ be published in at least 2 newspapers circulating in the State or Territory. The comparable sections in the Electoral Act - sections 153(2)(b) and 154(4)(b) - were amended by the <i>Electoral and Referendum Amendment Act 1998</i> as a result of a JSCEM recommendation from the 1996 Report. An amendment to the RPMA was also included in this JSCEM recommendation, however the RPMA was never amended. The AEC believes that this was a legislative oversight that should be addressed.</p> <ul style="list-style-type: none"> • Amend section 14 of the RPMA to require the advertising of referendum writs in only one newspaper circulating in a State or Territory where there are not two newspapers in wide circulation.
27.	Staffing of Polling Places		17(6)	<p>Subsection 17(6) of the Referendum Act places constraints on the flexibility of staffing arrangements in polling booths which mitigate against the AEC alleviating queuing problems in some polling places. An equivalent section of the Electoral Act - s. 203(6) - was repealed in 1992; therefore the AEC recommends repeal of subsection 17(6) of the Referendum Act.</p>
28.	Voting Outside Polling Place		36A(2)(b)	<p>This subsection provides for certain voters to vote outside the polling place but refers to "one scrutineer per candidate". There are no candidates in a referendum, therefore this subsection needs to be amended to remove any reference to "candidate" while retaining the intention that only one scrutineer per interest represented by a scrutineer may be present.</p>

29.	Compulsory Voting		45	Section 45 of the Referendum Act requires amendment to be brought in line with section 245 of the Electoral Act so that, without limiting what constitutes a valid and sufficient reason for not voting, it shall be a valid and sufficient reason for not voting that an elector believes it part of his or her religious duty to abstain from voting.
30.	Special Hospitals		49	Section 49 of the Referendum Act requires amendment so as to be consistent with s. 80 of the Electoral Act in providing an explicit power for the abolition of special hospitals.
31.	Special Hospitals		50(2A)	<ul style="list-style-type: none"> Section 50(2A) of the Referendum Act provides that a presiding officer or electoral visitor who visits a patient under section 48 or 49 of the Referendum Act (which relate to mobile booths at hospitals that are polling places, and at other hospitals) must advise the patient that literature relating to the referendum supplied by political parties is available, and give the patient any such literature that the patient requests. The AEC is of the view that the wording of section 50(2A) of the Referendum Act is not technically adept to deal with the issue that it addresses, namely that patients should have access to literature relating to a referendum if they so desire it. Firstly, in several referendums (and the 1999 Referendums were examples of this) much literature in relation to a referendum would not be supplied by political parties, but by other persons. Also, the wording of the section would appear to impose a duty on the presiding officer or electoral visitor to give any literature that the patient requests, however it may be impossible, despite the best efforts of the presiding officer or electoral visitor, for this to be done. Section 49A(8) of the Referendum Act, which relates to mobile booths at prisons, avoids both these technical drafting problems. Section 49A(8) provides that: "An electoral visitor who visits a prison may, at the request of an elector confined in the prison, give the elector literature relating to the referendum". <p>The drafting of section 50(2A) of the Referendum Act requires amendment so as to reflect the drafting of section 49A(8) of the Referendum Act.</p>
32.	Postal voting – double enveloping		61	The JSCEM considered section 61 of the RPMA along with the counterpart section of the Electoral Act (section 188) in its Report on the 1996 Election. The JSCEM made the following recommendation, so as to allow "double enveloping" of postal votes: (pages 56-57): that the postal voting provisions of the Electoral Act and the RPMA be amended to enable double enveloping, by deleting the requirement for the declaration certificate and the return address of the DRO to be printed on the envelope into which the postal ballot papers are placed. The Government supported this recommendation and stated in its response that the amendment is included in the <i>Electoral and Referendum Amendment Bill 1997</i> . However, this legislation, which was passed as the <i>Electoral and Referendum Amendment Act 1998</i> , in fact only amended the Electoral Act, leaving the RPMA unamended. The AEC considers that this is an oversight that should be addressed. Amend section 61 of the RPMA to enable double enveloping, by deleting the requirement for the declaration certificate and the return address of the DRO to be printed on the envelope into which the postal ballot-papers are placed.

33.	Postal voting – return		61	<ul style="list-style-type: none"> Section 61 of the RPMA has also diverged from section 188 of the Electoral Act in that section 61 of the RPMA only allows the address on the return envelope to be that of the DRO for the Division for which the applicant declares that he or she is enrolled. However, the Electoral Act provides that if the application is provided to an ARO outside Australia then the return envelope is to be addressed either to the ARO or to the DRO for the Division for which the applicant declares that he or she is enrolled. Making the same change to the RPMA would allow for more postal voters to have their votes counted, as delays in international post (which can lead to votes being returned too late to be counted) can be avoided by encouraging voters to return their votes to the ARO. Amend section 61 of the RPMA so that if the application is provided to an ARO outside Australia then the return envelope is to be addressed either to the ARO or to the DRO for the Division for which the applicant declares that he or she is enrolled. As a consequential amendment, should section 61 of the RPMA be amended, the directions in section 25(4) of the RPMA should be amended to be consistent with the new requirements.
34.	Fresh Scrutiny of Referendum Ballot Papers	274 (7)	Part VI	Section 274(7) of the Electoral Act provides for the conduct of a fresh scrutiny of ballot papers (for the House of Representatives) by the DRO after receipt of ballot papers from AROs. Practice has shown that errors do occur at counting centres and these errors are identified and corrected during the fresh scrutiny process. There is no provision in the Referendum Act that allows for the conduct of a fresh scrutiny of votes in a referendum. Therefore, there is no mechanism to allow for the checking of those ballot papers that have been counted to ensure the accuracy of the count. Section 95 of the Referendum Act allows for a recount of votes in certain circumstances, however, such a recount must be requested. The AEC is of the opinion that a fresh scrutiny of referendum votes is desirable to ensure the accuracy of the referendum counts. The AEC recommends that a provision similar to section 274(7) of the Electoral Act be added to Part VI of the Referendum Act.
35.	Misleading or deceptive publications etc.		122(3)	Section 122(3) of the RPMA is a counterpart to the (now repealed) section 329(3) of the Electoral Act. The JSCEM recommended in its Report on the 1996 Election that section 329(3) of the Electoral Act be repealed. This recommendation was part of the response to “Langer-style” voting. The AEC believes that for consistency section 122(3) of the RPMA should also be repealed.
36.	Evidence of authorship or authorisation of material		new	The RPMA contains no equivalent to section 385A of the Electoral Act. 385A is an evidentiary provision which was added to the Electoral Act by the <i>Electoral and Referendum Amendment Act 1992</i> . The AEC recommends that there be added to the RPMA an equivalent section to section 385A of the Electoral Act.
37.	Preliminary Scrutiny		Schedule 4 Paragraph 6(b)	This provision refers incorrectly to the (now repealed) section 73G of the Referendum Act. The reference should be to section 73D. Paragraph 6(b) of Schedule 4 of the RPMA should therefore be amended to refer to section 73D of the Referendum Act.

38.	ACT Self-Government (Consequential Provisions) Regulations		various	<p>The Australian Capital Territory (Consequential Provisions) Regulations made modifications to the Referendum Act in a number of respects concerning the Australian Capital Territory, so as to appropriately recognise that the ACT is self-governing, including: in relation to the appointment of scrutineers, and in relation to disputed returns. The AEC believes that this arrangement of modification by the Australian Capital Territory (Consequential Provisions) Regulations is potentially confusing to the readers of legislation, and undesirable from a policy point of view in that such significant changes to legislation should be done by statute rather than regulation.</p> <p>The AEC recommends that the alterations to the Referendum Act made as modifications by the ACT Self-Government (Consequential Provisions) Regulations should be moved into the Referendum Act itself by amending the Referendum Act.</p>
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