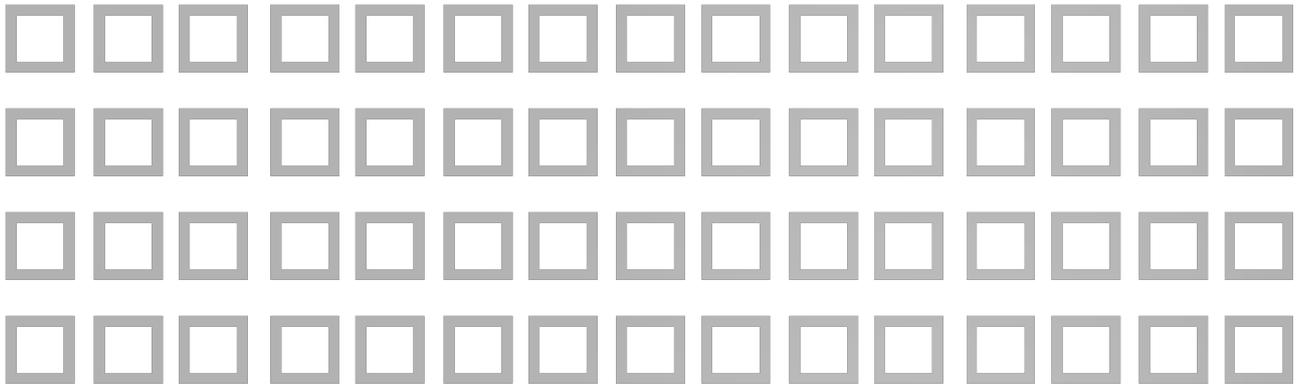


**Elections** ACT

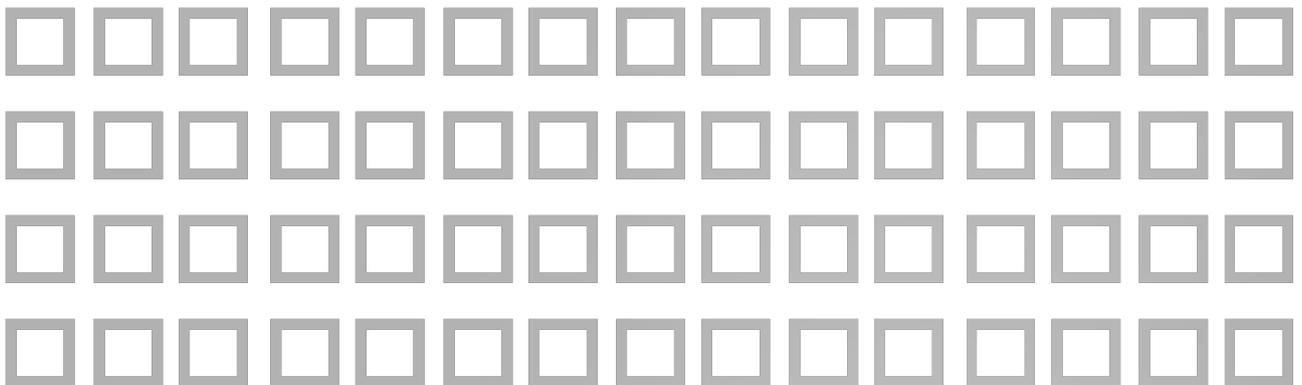
ACT ELECTORAL COMMISSION OFFICERS  
OF THE ACT LEGISLATIVE ASSEMBLY



# A limited electronic voting option for electors who are overseas

*ACT Electoral Commission report to the  
Legislative Assembly*

September 2019



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## Introduction

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The ACT Electoral Commission, in its *Report on the ACT Legislative Assembly Election 2016*, undertook to investigate a limited electronic voting option for electors who are overseas and report back to the Legislative Assembly at a later date.

## Aim

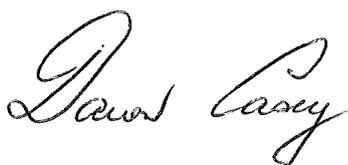
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The aim of this paper is to propose amendments to the ACT *Electoral Act 1992* to support implementation of a secure limited electronic voting option for use by overseas electors in ACT legislative Assembly elections.

## Scope

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This paper outlines the risk of disenfranchisement of overseas electors due to delays associated with international postal services; examines potential options to address this risk; details the most appropriate option to be implemented at the 2020 ACT Legislative Assembly election; and proposes appropriate legislative amendments to support implementation of the intended solution.



Dawn Casey

Chairperson

11 September 2019



Damian Cantwell AM

Electoral Commissioner

11 September 2019



Philip Moss AM

Member

11 September 2019

# The impact of delays in postal services on overseas postal voting

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The ACT Electoral Commission has an obligation to provide an appropriate opportunity for all ACT enrolled electors to cast a valid vote in ACT Legislative Assembly elections. This includes provision of postal voting papers to meet the needs of those eligible electors unable to attend a polling place in the ACT on polling day.

At the 2016 ACT Legislative Assembly election, the ACT Electoral Commission issued 16,925 postal votes. This was a 39% increase in the number of postal votes issued during the 2012 election and reflects the trend of continual and sometimes significant growth in early voting in other jurisdictions.

Of the 16,925 postal votes issued in the 2016 elections, 13,114 were returned prior to the cut off for final receipt of postal votes, i.e. the end of the 6<sup>th</sup> day after the close of the poll and admitted to the count. Of the remaining 3,811 postal votes issued, aside from those incorrectly completed or not returned at all, 710 were returned after the cut off and were accordingly unable to be admitted to the count.

The following table provides details from each of the previous five ACT elections of the number of postal votes issued; the number of postal votes returned and admitted; and the number of postal votes returned but rejected because they were received too late to be counted.

<b>Category</b>	<b>2001</b>	<b>2004</b>	<b>2008</b>	<b>2012</b>	<b>2016</b>
Postal votes issued	8,194	8,325	11,833	12,209	16,925
Postal vote ballot papers admitted to the count	6,410	6,532	9,599	9,859	13,114
Postal votes received too late to be counted	264	211	291	318	701
Percentage of postal votes received too late to be counted against postal votes issued	3.2%	2.5%	2.5%	2.6%	4.1%

Three key points arise from an analysis of the above table and the reasons for postal votes being received too late:

- The recent spike in use of postal voting, with increasing demands on enabling electoral and postal services.
- The significant increase in the pro rata number of postal votes returned after the last permissible date for receipt in 2016 – a 120% increase on 2012 figures (318) and a 232% increase on the figures experienced at the 2004 election.
- Of the 701 postal votes that were rejected because they were received too late to be admitted in 2016, 560 (80%) were postal votes sent to and received from an overseas address.

The Commission's experiences during the 2016 election period along with discussions held with Australia Post at the time of the election, indicate that these trends can be in part attributed to a decline in 'standard' postal services across the globe that have had the effect of increasing delivery times to international destinations.

It is important to note that of the 701 postal votes received too late to be admitted to the count in 2016, a relatively small number (141) were mailed to and from an Australian address. This

indicates the decline in postal services is having most effect on overseas postal votes, rather than those mailed within Australia.

There is therefore a growing risk of disenfranchisement of electors seeking to vote via postal means from overseas locations due to delays associated with international postal services, regardless of individual voters' adherence to current postal vote procedures and timings.

It is incumbent upon the Commission to provide a means by which ACT electors casting a vote from overseas locations can do so confident that their votes will be admitted to the count and contribute to the final election result. The Commission has therefore examined a number of potential options to address the risk of disenfranchisement of electors seeking to vote from overseas locations.

## **Potential options to address risk of disenfranchisement of overseas electors**

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There are a number of potential options to achieve the required intent:

- Increase the pre-poll period
- Extend the period for return of postal votes
- Use of Australian embassies and consulates as polling locations
- Transactional database based online voting
- A limited electronic voting option

### **Increasing the pre-poll period**

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One option for addressing the issue of overseas postal votes returned outside of the legislated timeframe would be to commence the pre-poll period a week or two earlier in the election timetable to allow for earlier printing and postage of ballot papers. This would provide a longer period in which the ballot papers could be delivered to the overseas location, be completed by the elector and then returned to the Electoral Commission in time to be admitted to the count. Such a change, while aimed at addressing the issues around the time constraints effecting overseas postal votes, would also extend the timeframes for all postal votes, domestic and international, as well as extending the period for attendance pre-polling.

While this would almost certainly have the effect of increasing the likelihood of some overseas ballots being returned in time, it would not entirely resolve the issue. Extending the maximum time limit for a postal vote process to 35 days for example, would provide an increase in available time but only if the elector applies for the postal vote at the beginning of the election period. For those overseas electors applying later in the pre-poll period, the original issue remains.

Further, the Commission does not support this option as it would lead to significantly increased time and cost to both the Commission and election participants in servicing a longer pre-poll period. The Commission also would not support increasing the postal vote period only while leaving the in-person pre-poll period at the current 3 weeks, as it can be expected that electors would assume to be able to vote in person from the commencement of the postal voting period. It may also result in an increase in the number of people postal voting who might otherwise cast an electronic pre-poll vote. This would have the dual effect of reducing the number of voters accessing the most expeditious and efficient method of voting (electronic) and increasing the

number of votes cast via the method with the highest risk of the vote being rejected (postal voting).

The Commission does not support the option of increasing the length of the pre-poll period.

## **Extending the time for the return of ballots**

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An alternative option for addressing the issue of overseas postal votes returned outside of the legislated timeframe could be to extend the period for receipt of postal votes after polling day. Current legislation provides until the end of the 6<sup>th</sup> day after the close of the poll to receive a postal vote and admit it to the count.

While extending the time for the return of ballots by a further seven days, for example, would almost certainly have the effect of increasing the likelihood of some overseas ballots being returned in time, it would also have the effect of a corresponding increase in the time during which the government is in caretaker mode while the election result is being finalised. The Commission suggests that the value of deciding election results within a single week of polling day would outweigh the benefits of admitting a relatively small number of additional postal votes to the scrutiny.

Such a change, while aimed at addressing the specific issue regarding the spike in overseas postal votes returned too late to be admitted, would also provide an increased timeframe for all postal votes, domestic and international.

The Commission does not support the option of extending the time for the return of postal ballots.

## **Attendance voting at overseas missions and embassies**

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For federal elections, electors are able to cast a vote in person at an overseas voting centre. Overseas voting centres are typically established at Australian Embassies, Consulates and High Commissions in the lead up to a federal election.

The recently concluded Select committee inquiry into the 2016 ACT election and the Electoral Act recommended in the final report that the ACT Electoral Commissioner investigate and report on the possible use of Australian Consular and diplomatic posts overseas, as an alternative voting option for electors who are overseas.

The Commission has previously examined this option and reaffirmed it as both logistically and practically ineffective and inefficient. Whilst appropriate for a Federal election, the time and costs associated with establishing overseas voting facilities across all of the numerous DFAT overseas posts cannot be justified for the relatively small number of ACT enrolled electors wishing to vote in a legislative assembly election whilst overseas.

Even if the ACT Electoral Commission was to establish overseas voting centres at all Australian consular buildings across the globe, and assuming ease of access to such facilities, many of those voting centres would not take a single vote. An alternative option to use consular posts at major overseas posts only (UK, USA, NZ and Canada for example) would leave any ACT electors travelling overseas elsewhere at the time of an election unable to cast their vote.

The Commission does not believe that such a solution fully resolves the problem associated with overseas based postal voting. Australian embassies and consulates would still rely on the postal service, diplomatic or otherwise, to deliver the ballot papers to the overseas voting centre and then back again before the legislated cut-off. The risk remains that many votes would not be returned in time for them to be counted in the election.

The Commission does not support the option of engaging Australian embassies, consulates and missions to provide overseas voting services for ACT elections.

## **Transactional database based online voting**

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A further option could be to introduce some form of transactional database based online voting solution in which each elector's vote preferences are recorded and stored on mass in an internet connected repository. The NSW Electoral Commission (NSWEC) has implemented such a solution, iVote, for its general elections since 2011 and the Western Australian Electoral Commission (WAEC) contracted the use of iVote for its general election in 2017.

However, the ACT Electoral Commission remains cautious regarding the introduction of this style of online voting for ACT elections. The Commission considers that under existing technology, hosting a voting service using transactional databases to record and store the preferences of voters increases the degree of risk and consequences in relation to malicious attack. Such events, if inappropriately secured, could result in wholesale vote corruption or manipulation, which in turn could result in election results being overturned in the courts, or worse, could go undetected.

The Commission maintains the view that, while the NSWEC and WAEC experiences with iVote appear to have been successful, the very nature of digitising the recording and storage of votes online, and the scale to which malicious attack may be able to affect the overall result, means that the integrity of the entire electoral system is exposed to an unacceptable level of risk.

It is the view of the Electoral Commission that the technology required to support online voting, while also protecting the integrity of the election and voter privacy to an acceptable level, does not yet exist in a form that can be efficiently and cost effectively maintained by the ACT Electoral Commission.

The Commission does not support the option of implementing a transactional database form of online voting until the risks associated with this option can be suitably and sufficiently overcome. It is the view of the Commission that this is only likely if a national approach to an online voting system is taken and the system is sufficiently funded and resourced to maintain the considerable levels of appropriate security and redundancy.

## **A limited electronic voting option**

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Although traditional forms of voting such as postal voting are not without risk, it is much harder to perform and conceal large-scale election manipulation through traditional mediums, than is possible when online transactional database voting is provisioned. The nature of hosting transactional databases online to facilitate voting, means that it is easier for a small number of people, or even a single person, to have a significant malicious effect on the election result. It is the scale to which automation may be used to affect the vote that significantly raises the risk profile of online voting.

The challenge to the Commission in mitigating the decline in overseas postal services is minimising the risk of wholesale vote corruption or manipulation while engaging contemporary technologies to extend the franchise to overseas electors.

Accordingly, working with the Australian Cyber Security Centre within the Department of Home Affairs, and other ICT security experts, the ACT Electoral Commission has designed a limited electronic voting option to provide an expeditious and secure means for electors residing in an overseas location to cast their vote without recording and storing vote preferences in a single online database location.

Upon application, electors will receive encrypted de-identified access to a ballot paper, accessible to the elector only through completion of successful two-factor authentication practices. The elector will be able to complete the ballot paper from their chosen overseas location and securely lodge their vote via infrastructure supported by secure cloud tenancies and contemporary encryption protocols.

Together with a suite of customised strategies and protocols designed to protect each individual vote, maintain elector privacy and uphold electoral integrity, the development of this system will comply with industry standards through the implementation of the Australian Cyber Security Centre's Essential Eight cyber-security mitigation strategies and the Open Web Application Security Project (OWASP) development standards. The system will utilise only Australian Signals Directorate certified hosting infrastructure.

By avoiding online transactional databases and developing appropriate procedures to manage the end-to-end process, the risk of wholesale corruption or manipulation of votes with election results overturned by the Court of Disputed Elections is greatly reduced. This option also best mitigates the risk of privacy breaches, where a specific elector's vote can be viewed by illegal actors, through contemporary security protocols and management procedures.

## **Selection of most appropriate solution**

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The ACT Electoral Commission considers the introduction of a limited electronic voting option, underpinned by appropriate legislation, as the most appropriate solution to address the risk of disenfranchisement of overseas electors. This option best meets the requirements related to electoral security and integrity, cost effectiveness, risk minimalisation, and practicality.

## **Funding**

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The Commission received 2018-19 capital funding approval for \$0.756 million to be invested over two years to modernise the Electoral Commission's election management system (\$0.394 million) and improve voting accessibility to electors who are overseas (\$0.361 million).

These funds received are considered sufficient to implement the intended solution for the 2020 ACT Legislative Assembly elections. Additional funding may be sought in future budget proposals to support further improvements to the intended solution.

## **Implementation**

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The ACT Electoral Commission intends to offer a limited electronic voting option to overseas electors for the 2020 ACT Legislative Assembly election, utilising the funds provisioned in the 2018-19 budget.

The Commission considers that some legislative amendments to the ACT Electoral Act are desirable to support the implementation of the intended solution.

# Proposed supporting legislative amendments

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## Current provisions

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The *Electoral Act 1992* at Division 9.3 sets out the provisions concerning *Electronic voting devices and vote counting programs*. Section 118A provides for the Commissioner to approve one or more computer programs to allow electronic voting in an election. It also outlines the requirements of a system that must be met if the Commissioner is to approve such an electronic voting system.

The system must;

- Allow an elector to show consecutive preferences starting at 1;
- Give the elector an opportunity to correct any mistakes before processing the vote;
- Allow an elector to make an informal vote by showing no preferences; and
- Not allow a person to find out how a particular elector cast a vote.

Further, s118B provides that the Commissioner must take steps to ensure that electronic devices and computer programs used for, or in connection with, electronic voting are kept secure from interference at all times.

Section 114(3) provides that a ballot paper may be in electronic form.

While current legislation provides the Commissioner with the ability to approve and set procedures for the implementation of electronic voting devices, amendments to the Electoral Act are desirable to address issues specific to the implementation of this proposed system.

Current legislation provides, under s 144A *Requirements for casting postal votes*, for a time frame in which postal votes must be posted to the Commissioner, i.e. before polling day. Section 136A(7)(a) provides that an authorised officer of the Commission must not post postal voting papers to an applicant if the voting papers are to be sent to an address overseas and the application is received after 5pm on the Friday 8 days before polling day. Section 179(1)(b) provides that all completed declaration voting papers used for postal voting, must be received by the Commissioner before the end of the 6<sup>th</sup> day after the close of the poll, in order to be included in the count.

In practice these provisions ensure that an elector who is voting by post has voted prior to the close of polls on election day but provides six further days for the postal vote to make its way back to the Commissioner to be added to the final count of preferences.

## Proposed legislative amendments

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By providing an electronic means for overseas electors to cast their vote in an ACT election, it would be prudent to include provisions in the Electoral Act that outline a timeframe in which an overseas elector wishing to cast an electronic vote must have applied by, and a timeframe in which a returned overseas electronic vote must be received by, in order to be included in the final distribution of preferences. The Commission recommends setting such timeframes as 4pm Australian Eastern Standard Time (AEST) on election day and 6pm AEST on election day, respectively.

Further legislative amendments under Division 10.4 *Voting otherwise than at a polling place* and Schedule 3 *Preliminary scrutiny of declaration voting papers* may also be required to address the issue and receipt of this new specific type of declaration vote.

The Electoral Commission intends to engage the Justice and Community Safety Directorate, Legislation, Policy and Programs to further refine the details in relation to potential *Electoral Act 1992* amendment prior to the October 2020 ACT Legislative Assembly election.

## **Conclusion**

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There is a growing risk of disenfranchisement of electors seeking to vote in the ACT Legislative Assembly elections via postal means from overseas locations due to delays associated with international postal services. After consideration of a number of options to address this risk, the ACT Electoral Commission has concluded a limited electronic voting option best meets the requirements of electoral security and integrity, cost effectiveness, risk minimalisation, and practicality.

The Commission intends to offer a limited electronic voting option to overseas electors for the 2020 ACT Legislative Assembly election, utilising the funds provisioned for this purpose in the 2018-19 budget.

This paper outlines appropriate legislative amendments to the ACT Electoral Act considered desirable to support the implementation of the intended solution.

## Appendix A – Electoral Act extracts

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### ELECTORAL ACT 1992 - SECT 118A

#### Approval of computer program for electronic voting and vote counting

- (1) The commissioner may approve 1 or more computer programs for any of the following:
  - (a) to allow electronic voting in an election;
  - (b) to perform steps in the scrutiny of votes in an election.
- (2) The commissioner may approve a program under subsection (1) (a) only if the program will—
  - (a) allow an elector to show consecutive preferences starting at '1'; and
  - (b) give an elector an opportunity to correct any mistakes before processing the elector's vote; and
  - (c) allow an elector to make an informal vote showing no preference for any candidate; and
  - (d) not allow a person to find out how a particular elector cast his or her vote.
- (3) The commissioner may approve a program under subsection (1) (b) only if—
  - (a) the proper use of the program would give the same result in the scrutiny of votes in an election as would be obtained if the scrutiny were [conducted](#) without using the program; and
  - (b) the program—
    - (i) will not allow a person to find out how a particular elector cast his or her vote; and
    - (ii) is designed to pause while the commissioner makes a determination by lot required by schedule 4; and
    - (iii) can produce indicative distributions of preferences at any time after the close of the poll and before the declaration of the poll.
- (4) An approval under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act 2001

- (5) The commissioner must determine processes that must be followed in relation to the use of an approved computer program in the scrutiny of votes in an election.
- (6) Without limiting subsection (5), the commissioner may approve a process—
  - (a) for entering preferences shown on paper ballots into the approved computer program; and
  - (b) for counting preferences using the program to work out—

- (i) the number of unrejected ballot papers on which a first preference is recorded for each candidate; and
- (ii) the number of informal ballot papers for each electorate.

## **ELECTORAL ACT 1992 - SECT 118B**

### **Security of electronic voting devices and related material**

- (1) The commissioner must take steps to ensure that electronic devices and computer programs used or intended to be used for or in connection with electronic voting are kept secure from interference at all times.
- (2) The commissioner must keep backup copies of electronic data produced at a polling place or scrutiny centre until whichever of the following happens last:
  - (a) the beginning of the pre-election period for the next election;
  - (b) the documents are no longer required by the commissioner, another member of the electoral commission or a member of the staff of the commission for exercising a function under this Act.

## **ELECTORAL ACT 1992 - SECT 114**

### **Ballot papers**

- (1) Subject to this division, the ballot papers to be used in an election shall be in accordance with the form in schedule 1.
- (2) The commissioner may determine the colour of the paper on which ballot papers for each electorate are to be printed.
- (3) A ballot paper must bear an official mark in the form approved under section 340A (Approved forms).
- (4) The ballot paper may be in electronic form.
- (5) The commissioner may approve changes to the electronic form of the ballot paper that are necessary to facilitate the display of the electronic form.

## **ELECTORAL ACT 1992 - SECT 136A**

### **Applications for postal voting papers**

- (7) However, the authorised officer must not post postal voting papers to the applicant –
  - (a) if the applicant has nominated a postal address outside Australia – if the application is received by the officer after 5 pm on the Friday 8 days before polling day;

## **ELECTORAL ACT 1992 - SECT 144A**

### **Requirements for casting postal votes**

- (2) To cast a postal vote, the person must –

- (a) complete and sign the declaration; and
- (b) mark the person's vote on the ballot paper; and
- (c) fold the ballot paper, place it in the envelope addressed to the commissioner and fasten the envelope; and
- (d) either –
  - (i) post the envelope and contents to the commissioner before polling day; or
  - (ii) give the envelope and contents to the commissioner or another officer by polling day.

## **ELECTORAL ACT 1992 - SECT 179**

### **Preliminary scrutiny of declaration voting papers etc**

- (1) The Commissioner shall arrange for the conduct of the preliminary scrutinies necessary in relation to a poll until the following documents have been dealt with in accordance with this section:
  - a) All completed declaration voting papers (including those used for postal voting) received by the commissioner or another officer on or before polling day;
  - b) All completed declaration voting papers used for postal voting received by the commissioner before the end of the 6<sup>th</sup> day after the close of the poll;
  - c) Any envelope referred to in section 176 (1)(d) containing a ballot paper recording the vote of an Antarctic elector.

## **ELECTORAL ACT 1992 - SCHEDULE 3**

### **Preliminary scrutiny of declaration voting papers**

- (1) In this schedule:
  - Envelope* means an envelope on which appears a declaration, in the form approved under section 340A (Approved forms) for the declaration, made by an elector for the purpose of casting a declaration vote.
- (2) The OIC of a scrutiny centre shall arrange for a preliminary scrutiny at the centre to be conducted in accordance with this schedule.
- (4) An officer must produce at the centre each set of declaration voting papers that has not been dealt with at an earlier preliminary scrutiny.
- (5) An officer shall sort the declaration voting papers to which the preliminary scrutiny relates into the following groups:
  - a. 1 group containing papers to which clause 6 applies;
  - b. 1 group containing the remainder.
- (6)
  - (1) In this clause:

*relevant provision* means—

- a. for a vote under section 135 — section 135 (4); or
- b. for a vote under section 136B — section 135 (4) as applied by section 136B (18); or
- c. for a vote under section 136C — section 135 (4) as applied by section 136C (8); or
- d. for a vote under section 144A — section 144A (2).

(2) This clause applies to a set of declaration voting papers if the officer is satisfied that—

- a) the signature on the declaration is that of the elector; and
- b) the certificate by the witness is in accordance with the relevant provision; and
- c) for a postal vote if the papers were posted to the commissioner — the papers were so posted before the close of the poll; and
- d) for the vote of an Antarctic elector — the envelope referred to in section 176(1)(c) is endorsed and signed by an authorised officer in accordance with that paragraph.

(3) For subclause (2)(b), if an officer referred to in section 135(4) omits to sign the certificate, the certificate shall nevertheless be taken to be in accordance with the relevant provision if —

- a) the issue of the relevant declaration voting papers was recorded under division 10.3 or 10.4; and
- b) the OIC is satisfied the papers were properly issued to the elector.

(7) An officer shall sort the declaration voting papers to which clause 6 applies into the following groups:

- a. 1 group containing envelopes on which appear declarations by electors enrolled for the electorate indicated in the declaration;
- b. 1 group containing the remainder.

(8) An officer shall sort the remaining declaration voting papers referred to in clause 7 (b) into the following groups:

- a. 1 group containing papers to which clause 9 applies;
- b. 1 group containing the remainder.

(9) This clause applies to a set of declaration voting papers if the OIC is satisfied that —

- a. the elector who signed the declaration was, when the roll closed for the election, entitled to be enrolled; and
- b. the omission of the elector's name from the roll resulted from an official error.

(10)

- (1) An officer shall withdraw the ballot papers from the envelopes in the groups of declaration voting papers to which clause 7 (a) or 9 applies and, without unfolding or inspecting the ballot papers or allowing any other person to do so, admit them to scrutiny under section 183.
- (2) If 2 or more sets of papers to which clause 7 (a) or 9 applies are in the name of a particular elector —
  - a) the OIC shall determine which set shall be dealt with in accordance with subclause (1); and
  - b) the remaining set shall be set aside.
- (3) The OIC shall, ensure that ballot papers referred to in subclause (1) are kept in a separate sealed ballot box until they are dealt with under section 183

- (11) The OIC in accordance with clauses 4 to 10, conduct a further scrutiny of the groups of remaining declaration voting papers to which clause 5 (b) or 8 (b) apply and, if there are any papers to which either paragraph applies after the further scrutiny, the OIC shall —
- a) Reject them from further scrutiny; and
  - b) Seal them, together with any papers to which clause 10 (2) (b) applies, in a parcel endorsed with a description of the contents, the name of the electorate and the date.