

## COMMONWEALTH ELECTORAL (WAR-TIME).

### No. 48 of 1940.

An Act to make Provision, for the duration of the Present War and six months thereafter, relating to Elections and Referendums.

[Assented to 22nd August, 1940.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

#### PART I.—PRELIMINARY.

- Short title.**       **1.** This Act may be cited as the *Commonwealth Electoral (War-time) Act 1940*.
- Commencement.**   **2.** This Act shall come into operation on the day on which it receives the Royal Assent.
- Incorporation.**   **3.** The *Commonwealth Electoral Act 1918-1940*, the *Northern Territory Representation Act 1922-1936* and the *Referendum (Constitution Alteration) Act 1906-1936* shall be incorporated and read as one with this Act.
- Parts.**             **4.** This Act is divided into Parts as follows:—  
                     Part I.—Preliminary.  
                     Part II.—Voting by Members of the Forces outside Australia.  
                     Part III.—Voting by unenrolled Members of the Forces in Australia.  
                     Part IV.—Miscellaneous.
- Definitions.**     **5.**—(1.) In this Act, unless the contrary intention appears—  
                     “Commonwealth Returning Officer” means a person appointed under this Act to be a Commonwealth Returning Officer;  
                     “Commanding Officer” means the officer commanding any unit;  
                     “election” means an election for the Senate, a general election for the House of Representatives (including the election of a member of the House of Representatives for the Northern Territory held at the same time as a general election) or a Referendum held under the *Referendum (Constitution Alteration) Act 1906-1936*;

“ member of the Forces ” means a person who is or has been a member of the Defence Force of the Commonwealth and who is or has been on active service outside Australia during the present war ;

“ the present war ” means the war in which His Majesty is engaged and which commenced on the third day of September, One thousand nine hundred and thirty-nine ;

“ unit ” includes any detachment, formation, establishment or ship of the Defence Force of the Commonwealth.

(2.) For the purposes of this Act—

(a) the Returning Officer for the Northern Territory shall be deemed to be a Divisional Returning Officer ;

(b) a member of the Forces shall, in respect of any election, be deemed to be serving outside Australia if he embarked for service outside Australia on or before the date fixed for the nomination of candidates and has not returned to Australia prior to polling day.

6. Subject to sub-section (4.) of section thirty-nine of the *Commonwealth Electoral Act 1918-1940*, a member of the Forces who is not under the age of twenty-one years and who—

Members of the Forces entitled to vote.

(a) is serving outside Australia with any unit ; or

(b) has returned to Australia but is not enrolled as an elector of the Commonwealth,

shall, during the present war and for a period of six months thereafter, be entitled to vote at any election as an elector of the Division in which, immediately prior to his appointment or enlistment as a member of the Forces, he was ordinarily resident or, in the case of a member of the Forces appointed or enlisted prior to the third day of September, One thousand nine hundred and thirty-nine, of the Division in which he was ordinarily resident immediately prior to that date.

## PART II.—VOTING BY MEMBERS OF THE FORCES OUTSIDE AUSTRALIA.

7.—(1.) For the purposes of this Part, the Chief Electoral Officer may appoint such Commonwealth Returning Officers as he thinks necessary, and any Commonwealth Returning Officer so appointed may appoint such Deputy Returning Officers to assist him in carrying out his functions under this Part as he thinks necessary.

Appointment of Commonwealth Returning Officers and Deputy Returning Officers.

(2.) A Commonwealth Returning Officer may delegate to a Deputy Returning Officer appointed by him the whole or any of his powers and functions under this Act, except this power of delegation.

8.—(1.) The Chief Electoral Officer shall arrange for each Commonwealth Returning Officer to have in his possession all necessary material for the use of members of the Forces in the area under his control pending the happening of any election.

Action by Chief Electoral Officer.

(2.) Immediately after the close of nominations in the case of a Senate election or a general election for the House of Representatives, or immediately after the issue of the writ by the Governor-General in the case of a referendum, the Chief Electoral Officer shall notify each Commonwealth Returning Officer—

- (a) in the case of a Senate election—of the names, addresses and occupations of all candidates nominated for each State and such additional information as is necessary to enable the candidates to be grouped as required by the provisions of the *Commonwealth Electoral Act 1918-1940* ;
- (b) in the case of a House of Representatives election—the names, addresses and occupations of all the candidates for each Division ; and
- (c) in the case of a referendum—the text of the proposed law to be submitted to the electors.

Action by  
Commonwealth  
Returning  
Officer.

9. As soon as possible after he receives from the Chief Electoral Officer notification of the names, addresses and occupations of the candidates, or the text of the proposed law to be submitted to the electors, as the case may be, the Commonwealth Returning Officer shall, so far as the exigencies of defence operations permit, supply to the Commanding Officer of each unit in the area under his control a sufficient supply of envelopes bearing the prescribed declaration and of ballot-papers to enable the members of the Forces in that unit to record their votes, together with a printed list of the names, addresses and occupations of all candidates nominated for each State or for each Division, as the case may be, or, in the case of a referendum, the text of the proposed law.

Action by  
Commanding  
Officers.

10. Immediately upon receipt of the material specified in the last preceding section, the Commanding Officer of each unit shall—

- (a) designate one or more Commissioned officers of the unit before whom the members of the Forces serving with that unit may record their votes ;
- (b) hand over to the officer or officers so designated the envelopes, ballot-papers and lists received from the Commonwealth Returning Officer ; and
- (c) notify in Orders where and before whom and on what days and during what hours members of the Forces serving with the unit may record their votes.

Voting.

11.—(1.) The manner of voting shall be as follows :—

- (a) a member of the Forces serving with the unit who is entitled to vote by reason of section six of this Act shall attend before an officer of that unit designated in pursuance of the last preceding section and shall, in the presence of that officer, fill in the prescribed form of declaration which the officer shall then complete and attest :

Provided that if the voter is unable to state the Division in which he ordinarily resided immediately prior to appointment or enlistment as a member of the Forces, or immediately prior to the third day of September, One thousand nine hundred and thirty-nine, as the case may be, the officer shall, by reference to the alphabetical lists of polling places supplied to him, determine the Division and insert the name thereof in the declaration ;

- (b) the officer shall initial and issue to the voter such of the following ballot-papers as the case requires, namely :—
- (i) in the case of a Senate election—a Senate ballot-paper for the State of which the voter's Division forms part, on which have been printed the names of all the candidates in the order and grouped as required by the provisions of the *Commonwealth Electoral Act 1918–1940* ;
  - (ii) in the case of a House of Representatives election—a House of Representatives ballot-paper for the voter's Division on which the officer has written, in alphabetical order the names of all the candidates for that Division as appearing in the list supplied to the officer ; and
  - (iii) in the case of a Referendum—a Referendum ballot-paper printed in accordance with the form prescribed by the *Referendum (Constitution Alteration) Act 1906–1936* ;
- (c) the voter shall, then and there, in private, mark his vote on the ballot-paper, or ballot-papers, as the case may be, and return the ballot-paper or ballot-papers to the officer so folded as to conceal his vote and to show clearly the initials of the officer ; and
- (d) the officer shall, then and there, place the ballot-paper, or ballot-papers, as the case may be, in the envelope bearing the declaration of the voter, fasten and seal the envelope and, at the earliest practicable time, deliver it or cause it to be delivered to the Commanding Officer.

(2.) Where only one Commissioned officer of a unit is designated in pursuance of the last preceding section, the Commanding Officer shall, for the purpose of enabling that officer to vote, perform the functions of the officer set forth in the last preceding sub-section.

**12.** The Commanding Officer shall forthwith transmit, or cause to be transmitted, by the most expeditious means available, to the Commonwealth Returning Officer controlling the area in which his unit is located, all envelopes bearing declarations and containing ballot-papers which are delivered to him in accordance with the last preceding section.

Envelopes  
to be  
transmitted to  
Commonwealth  
Returning  
Officer.

Action by  
Commonwealth  
Returning  
Officer on  
receipt of  
envelopes.

**13.** In respect of all envelopes bearing declarations and containing ballot-papers which are received by him prior to eight o'clock in the afternoon (reckoned according to the standard or legal time of the country or place in which he is) of the date fixed by the writ for the polling, the Commonwealth Returning Officer—

- (a) if he is satisfied that the declaration is in order and that the person by whom it has been made is a member of the Forces entitled to vote under this Part, shall accept the envelope for further scrutiny and place it in a locked and sealed ballot-box or other similar receptacle pending the closing of the poll; and
- (b) if he is not so satisfied, shall endorse the envelope with the word "Rejected" and preserve it in safe custody separately from those accepted for further scrutiny.

Scrutiny.

**14.** As soon as practicable after eight o'clock in the afternoon (reckoned according to the standard or legal time of the country or place in which he is) of the date fixed by the writ for the polling, the Commonwealth Returning Officer shall take from the ballot-box or other similar receptacle all the envelopes which have been accepted by him for further scrutiny, sort the envelopes into separate parcels according to the Divisions respectively indicated thereon and, in the prescribed manner, extract the ballot-papers therefrom and proceed with the scrutiny of the votes marked thereon.

Notification  
of result of  
scrutiny.

**15.** Upon completion of the scrutiny the Commonwealth Returning Officer shall, in respect of the ballot-papers scrutinized by him in relation to each Division, notify the Chief Electoral Officer by telegraph or some other expeditious means of communication—

- (a) in the case of a Senate election or a House of Representatives election—of the number of first preference votes for each candidate and of the number of informal ballot-papers; and
- (b) in the case of a Referendum—of the number of votes recorded in favour of the proposed law, of the number of votes recorded not in favour of the proposed law and of the number of informal ballot-papers,

and shall forthwith parcel the ballot-papers so scrutinized separately in respect of each Division and of each election, endorse and seal the parcels and—

- (i) in the case of a Senate election—assemble the parcels containing the ballot-papers for all the Divisions in each State and, at the earliest practicable date, transmit them, by the most expeditious means practicable, to the Commonwealth Electoral Officers for the respective States;

- (ii) in the case of a House of Representatives election—retain the ballot-papers in safe custody for the purpose of such further scrutiny as the Chief Electoral Officer directs ;  
and
- (iii) in the case of a Referendum—retain the ballot-papers in safe custody.

**16.** Upon receipt of the telegraphic or other communication of the result of the scrutiny, the Chief Electoral Officer shall forthwith notify each Divisional Returning Officer of the result of the scrutiny in so far as it affects his Division and the Divisional Returning Officer shall include the result so notified in determining the result of the polling at the election in that Division :

Inclusion of result of scrutiny in determining result of polling.

Provided that, where the first preference votes for candidates for a Senate election have been communicated to the Chief Electoral Officer and the ballot-papers on which those votes are indicated are subsequently lost during the course of their transmission to Australia, those first preference votes shall not be taken into consideration in determining the result of the polling at that election.

**17.** Upon receipt of the parcels of Senate election ballot-papers, a Commonwealth Electoral Officer shall cause them to be transmitted forthwith to the respective Divisional Returning Officers who shall deal with the ballot-papers in the same manner as ballot-papers contained in a parcel received from an Assistant Returning Officer.

Action on receipt of Senate election ballot-papers.

**18.—(1.)** Where, in a House of Representatives election in any Division, there are more than two candidates and a further scrutiny becomes necessary, the Chief Electoral Officer shall, as often as is necessary, notify each Commonwealth Returning Officer of the necessity for a further scrutiny and of the name of the candidate to be excluded.

Further scrutiny of House of Representatives election ballot-papers.

(2.) Upon receipt of the notification, each Commonwealth Returning Officer shall—

- (a) open the parcel containing the House of Representatives election ballot-papers for the Division concerned ;
- (b) exclude the candidate named in the notification ;
- (c) transfer the votes counted to the excluded candidate to the unexcluded candidates according to the next available preference indicated on the ballot-papers ; and
- (d) notify the Chief Electoral Officer, by telegraph or some other expeditious means of communication, of the number of votes so transferred to each of the unexcluded candidates.

(3.) Upon receipt of the notification of the number of votes transferred to each of the unexcluded candidates, the Chief Electoral Officer shall forthwith notify the Divisional Returning Officer accordingly and the Divisional Returning Officer shall include the votes so notified in determining the result of the polling at the election.

PART III.—VOTING BY UNENROLLED MEMBERS OF THE FORCES IN AUSTRALIA.

Member of Forces may apply for certificate and ballot-paper.

19. A member of the Forces in Australia who is entitled to vote at an election by reason of section six of this Act, may, at any time after the issue of the writ, make application to a Divisional Returning Officer for a certificate and ballot-paper to enable him to vote at the election.

(2.) An application under this Part shall not be considered unless it is made in accordance with the prescribed form and manner and reaches the Divisional Returning Officer before six o'clock in the afternoon of the day immediately preceding polling day.

Issue of certificate and ballot-paper

20. Upon receipt of an application for a certificate and ballot-paper, the Divisional Returning Officer, if he is satisfied that the application is in order and that the applicant is in Australia and entitled to vote at the election by reason of section six of this Act—

- (a) shall endorse on the application the Division in respect of which the applicant is entitled to vote ;
- (b) shall issue to the applicant a certificate and ballot-paper in respect of that Division ; and
- (c) if that Division is not the Division for which he is the Divisional Returning Officer, shall forthwith transmit the application to the Divisional Returning Officer for that Division.

Form of certificate and ballot-paper.

21. The certificates and ballot-papers issued under this Part shall be in the form prescribed by the Electoral and Referendum Regulations for Postal Vote Certificates and Postal ballot-papers with such adaptations and endorsements as are prescribed.

Application of provisions of Part XII. of Commonwealth Electoral Act.

22. The provisions of Part XII. of the *Commonwealth Electoral Act* 1918–1940 shall, in so far as they are applicable, apply to the recording and scrutiny of votes recorded under this Part :

Provided that if he is satisfied that the certificate has been signed by the applicant and has been duly witnessed by an authorized witness, the Divisional Returning Officer for the Division named in the certificate shall accept for further scrutiny the ballot-paper contained in the envelope bearing the certificate without questioning the right of the applicant to vote for that particular Division.

PART IV.—MISCELLANEOUS.

Member of Forces may not vote more than once.

23.—(1.) A member of the Forces, in respect of the same election, shall not vote more than once under this Act and shall not vote both under this Act and also under the *Commonwealth Electoral Act* 1918–1940, the *Northern Territory Representation Act* 1922–1936 or the *Referendum (Constitution Alteration) Act* 1906–1936, as the case may be.

Penalty : Fifty pounds or imprisonment for six months.

(2.) A prosecution for an offence against this section may, in the case of a member of the Forces who is absent from Australia when the offence is committed, be commenced at any time within twelve months after the return of that person to Australia.

24. Notwithstanding anything contained in any other Act, a person entitled to vote at an election by reason only of this Act shall not be guilty of an offence by reason of his failing to vote at that election.

Voting n + compulsory.

25. The validity of any election shall not be questioned on the ground of anything done or omitted to be done or of any irregularity in the administration of this Act, or on the ground that any ballot-papers have been lost or destroyed during the course of their transmission to the Commonwealth Returning Officer or to Australia or on the ground that, for any reason whatsoever, a member of the Forces was unable to record his vote.

Validity of election not to be questioned.

26. Each candidate may, by notice in writing or by telegram addressed to the Commonwealth Returning Officer, appoint one scrutineer to represent him at any scrutiny under this Act and any scrutineer so appointed shall, if he presents himself at any such scrutiny, be entitled to be present at that scrutiny.

Scrutineers.

27. Notwithstanding anything contained in paragraph (e) of section one hundred and eighty-five of the *Commonwealth Electoral Act 1918-1940*, a petition under Part XVIII. of that Act disputing any election held during the present war or during the period of six months thereafter, or disputing any return in respect of any such election (other than a petition based on breaches by a candidate of the provisions of Part XVI. of that Act) may be filed within sixty days after the return of the writ.

Time for lodging petitions disputing elections and returns.

28. The Governor-General may make Regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and, in particular, for prescribing penalties, not exceeding Fifty pounds, for any breach of the Regulations.

Regulations.

## RAW COTTON BOUNTY.

### No. 49 of 1940.

An Act to provide for the Payment of a Bounty on the Production of Raw Cotton.

[Assented to 22nd August, 1940.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

Preamble.

1. This Act may be cited as the *Raw Cotton Bounty Act 1940*.

Short title.