



ACT
Government



AEC
Australian Electoral Commission

Memorandum of Understanding

Provision of prisoner data and electoral services

Parties:

**The ACT Government, as represented by the Executive Director, ACT
Corrective Services**

and

**The Commonwealth of Australia as represented by the Australian Electoral
Commission**

Released under the Freedom of Information Act 1982

- (b) an offender under a sentence of imprisonment while the offender is required to perform periodic detention in a detention period under the *Crimes (Sentence Administration) Act 2005*, part 5.3;
- (c) a person while the person is remanded in custody because of an order for remand for the *Crimes (Sentence Administration) Act 2005*, part 3.2;
- (d) anyone else while the person is required to be held in custody or detention under a territory law or a law of the Commonwealth, a State or another Territory.

Election includes an election of a member of the House of Representatives or an election of Senators for a State or Territory or the conduct of a Referendum or an election for the State or Territory Legislative Assemblies or Legislative Councils or an election for Local Government bodies

Elector means any person whose name appears on a Roll as an elector (see Parts VI –VIII of the *CEA the Electoral Act 1992 (ACT)*)

Electoral Commissioner means the Australian Electoral Commissioner established under section 18 of the *CEA*

Electoral Roll or Roll means the Commonwealth electoral roll maintained and updated by the AEC and which consists of a list of persons who are enrolled to vote in Australian Federal Elections, By-elections and Referendums. It also means State and Territory electoral rolls maintained and updated by the AEC and the equivalent electoral agencies in each State or Territory and which consists of a list of eligible persons who are registered to vote in State/Territory and Local Government Elections or By-elections.

Eligible to enrol means in the context of a person being eligible to enrol they must be 16 years of age or more, an Australian citizen (including persons who expect to become an Australian citizen between the date of the writ and polling day and provisionally enrol before the close of rolls), or a British subject whose name was on the roll for a Division immediately prior to 26 January 1984, and have lived for at least one (1) month at their current address. Persons may apply for enrolment at 16 however they cannot vote until they are 18 years of age.

Information Security means the protection of information and data stored by any means, against unauthorised access.

Intellectual Property means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation* of July 1967.

Legislative Requirements Applying to the Commissioner and the Electoral Commissioner means the legislative requirements to provide information to the AEC and the provisions for the enrolment and voting relating to persons serving a sentence of imprisonment as set out in **Schedule 1** of this Memorandum.

Memorandum or MOU means this Memorandum of Understanding and includes all of the attached Schedules and any documents incorporated by reference.

Offender – See Detainee.

Operational Date means the **last date** upon which a Party to this MOU signs this MOU (also indicated on Page 2), unless another date is agreed between the Parties, in writing.

Party/Parties means a Party/both/either Parties to this MOU.

Personal information has the same meaning as in the *Privacy Act 1988 (Cth)* and *Information Privacy Principles* issued under that Act and to the extent that such legislation applies to the Parties

PID number means Offender Number in the ACT system.

Referendum has the same meaning as in the *Referendum (Machinery Provisions) Act 1984 (Cth)*.

RMANS means the Roll Management System that enables the AEC to maintain electoral rolls.

JOIST means Justice Offender Information System of Tasmania that enables the ACTCS to maintain offender information.

Schedules mean all and any of the schedules to this Memorandum of Understanding.

Writ means the same as provided in Part XIII of the CEA and section 32 of the *Commonwealth of Australia Constitution*

2. BACKGROUND

Role and Functions of ACTCS

2.1 The Executive Director, ACT Corrective Services is a representative of the Crown in the Australian Capital Territory

2.2 The Executive Director has responsibilities for the supervision of offenders in custody and in the community, and administration of information regarding offenders in custody and in the community.

2.3 ACT Corrective Services' primary organisational objective is:

As a partner in the criminal justice system, to contribute to community safety through delivery of effective offender management which provides opportunity for rehabilitation and re-integration by:

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- Effectively maintaining safe, secure and humane custodial environments and delivering effective community corrections
- Encouraging change in offender behaviour by effective risk assessment and client centred case management and rehabilitation to:
 - maintain community safety;
 - reduce rates of recidivism; and
 - achieve reparation

2.4 ACT Corrective Services' vision is:

To be an organisation that contributes to a safe, strong and cohesive community through the delivery of custodial and community corrections services and programs that are recognised for their level of excellence.

2.5 The key legislation that applies to ACTCS is set out in **Schedule 1** (Item 1).

Role and Functions of the AEC

2.6 The AEC is an independent statutory authority established under the *Commonwealth Electoral Act 1918* (Cth) (CEA), with a number of functions and powers established under the CEA including:

- Preparing for and conducting Federal Elections, by-Elections and Referendums, including by providing voting options such as using Mobile Booths or making postal votes;
- Maintaining the Commonwealth Electoral Roll;
- Contributing to maintaining State, Territory and Local Government electoral rolls; and
- Administering federal compulsory enrolment and compulsory voting procedures.

2.7 In particular, s.81 of the CEA mandates the establishment of a Roll of electors for each State and Territory and s.92 of the CEA enables the AEC to require and receive information from Commonwealth and State Officers, local government officers and members of the public to maintain and revise the electoral Roll.

2.8 There are rules relating to persons who are serving a sentence of imprisonment and whether they are eligible enrol and to vote under the CEA. S.93(8AA) of the CEA provides that a person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at any Senate election or House of Representatives election. "Sentence of imprisonment" is defined at s.4(1A) as being where a person is in detention on a full-time basis being attributable to an offence against a law of a State or Territory.

2.9 There are rules relating to whether a person who is serving a sentence of imprisonment may remain enrolled or be enrolled, if they were not enrolled when commencing their term of imprisonment. Under s.96A(1) and subject to s.93 an eligible person who is serving a sentence of imprisonment is entitled to remain enrolled and under s.96A(2) and subject to s.93 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. Under s.184A an elector may apply to the Electoral Commissioner for registration as a general postal voter for a Division, including if the person is detained in custody (see s.184A(2)(d)).

- 2.10 Under s.208 the Electoral Commissioner is required (among other things) to include the names of persons not covered by s.93(8AA) on the list of voters if they are on the roll for a Division of the House of Representatives and will be at least 18 years old on polling day.
- 2.11 The effect of 2. 6 to 2.10 above is that persons who will be at least 18 years old on polling day and are serving a sentence of less than three years are entitled to be enrolled, register as a general postal voter and vote at federal elections and referendums. Persons who are at least 16 years old and are serving a sentence of less than three years may be enrolled and register as a general postal voter but cannot vote at federal elections or referendums until they are least eighteen years old. Persons who are serving a sentence of three or more years are entitled to enrol but cannot vote.
- 2.12 S.227 deals with arrangements for mobile polling which may include making visits to prisons. S.227(6A) provides that a mobile polling team shall not visit if the prison officer forbids that visit due to circumstances relating to the security of the prison.
- 2.13 The key legislation that applies to the AEC in relation to this Memorandum is set out in **Schedule 1** (Item 2) and the relevant sections of the CEA are set out fully in Item 3 of **Schedule 1**.
- 2.14 RMANS is a key strategic information technology asset of the AEC and contains the electoral rolls for Federal, State and Territory Elections and a range of computer programs for the data entry, storage and extraction of elector and geographical information, including electors' addresses and the boundaries of electoral areas.
- 2.15 In accordance with this Memorandum and the legislative requirements referred to in this Memorandum the AEC seeks information from ACTCS on detainees for the purpose of maintaining and producing the Electoral Roll/s. In particular:
- The AEC seeks information from ACTCS on a regular basis and especially in relation to detainees as set out in **Schedule 2**; and
 - The AEC welcomes the cooperation of ACTCS in order to deliver electoral services to persons serving a sentence or otherwise detained as set out in **Schedule 2**.
- 2.16 The Parties to this Memorandum wish to formalise operational matters and protocols, with respect to the provision of information from the ACTCS to the AEC for the purpose of maintaining the Electoral Roll, providing electoral information and postal vote applications and fulfilling their respective legislative requirements.

3. COMMENCEMENT

- 3.1 This Memorandum commences on the Operational Date.

4. TERM AND EXTENSION OF TERM

- 4.1. The term of this Memorandum is for a period of five (5) years from the Operational Date, unless otherwise agreed by both parties and recorded in writing. The Parties may agree to extend the term for a further agreed period provided any extension of the term is recorded in writing and duly executed by both parties, prior to the last date of the original term otherwise this Memorandum will expire on the last day of the term.

5. REPRESENTATIVES

- 5.1 The ACTCS's representatives are named in **Schedule 3** (Item 1), for the purposes of this Memorandum.
- 5.2 The AEC's representatives are named in **Schedule 3** (Item 2), for the purposes of this Memorandum.

6. KEY OBJECTIVES OF THIS MEMORANDUM

- 6.1 To enable the ACTCS to meet the legislative requirements under s.109 of the CEA whereby a quarterly list of Detainees convicted in the ACT and serving a sentence of imprisonment for any offence for 3 years or longer, is required.
- 6.2 To enable the ACTCS to meet the legislative requirements under s.109 of the CEA whereby a quarterly list of Detainees who ceased to serve a sentence of imprisonment for any offence, is required.
- 6.3 To enable the AEC to maintain the Electoral Roll in accordance with the requirements of s.92 of the CEA.
- 6.4 To enable the AEC to offer and provide enrolment and postal voting services to eligible detainees.
- 6.5 To provide for the transfer of Data and information set out in **Schedule 2 and as amended time to time**, in secure electronic format as agreed between the Parties from time to time, from ACTCS to the AEC within the timeframe specified in **Schedule 2** or within such timeframe as otherwise agreed to by both Parties in writing.

7. OBLIGATIONS OF ACTCS

- 7.1 To provide data and information to the AEC as required by **Schedule 2** of this Memorandum.
- 7.2 To assist AEC in matching information recorded on RMANS or any replacement system, with the Data and information contained in JOIST.
- 7.3 To strictly abide by the requirements set out in the ACTCS Information and Communication Technology (ICT) Security Policies and Procedures and as amended from time to time

8. OBLIGATIONS OF THE AEC

- 8.1 To strictly abide by the requirements set out in the following policies, guidelines and legislation as amended from time to time:
 - AEC IT Security Policy;
 - AEC IT Security General User Guide;
 - AEC IT Supervisors Guide;

- AEC IT Security Investigation Protocol;
- The AEC General IT User Declaration; and *Information Privacy Principles* under section 14 of the *Privacy Act 1988* Cth.

9. USE AND DISCLOSURE OF INFORMATION

9.1 Compliance with privacy laws and policies

9.1.1 The Parties recognise that each is obliged to comply with:

- The *Privacy Act 1988* (Cth) as it regulates Personal Information and any Direction, Code of Practice, Guideline or Regulation made thereunder in the case of the AEC; and
- Internal policies, protocols or policy directives in relation to privacy or information management and exchange.

9.2 Issuing of Statements

9.2.1. The Parties will not, without the prior written consent of the other Party issue any statement or communication or make any representation in connection with this Memorandum, to any person or entity not a party to this Memorandum other than:

- as necessary to perform any obligations under this Memorandum;
- with respect to any matter already within the public domain; or
- as directed by a court or tribunal or other lawful direction.

9.2.2 In addition, as far as practicable in all the circumstances, both Parties agree to consult each other in respect of any:

- press release, publication or release of information concerning this Memorandum prior to publication or release; or
- media enquiries concerning this Memorandum.

9.2.3 The Parties must ensure that all consultants, sub-contractors and suppliers engaged by them in relation to any aspect of this Memorandum, are informed of and strictly comply with 7.3 and 8.1.

9.3 Fair comment

9.3.1 Nothing in this clause or this Memorandum prevents either Party from making comment on services provided by that Party or under the direction of that Party or matters of interest to the Party which do not specifically deal with the terms of the Memorandum, and which are made as part of the normal day to day functioning of the Party or related agency.

9.4 Compliance with other legislation

9.4.1 The Parties agree that at all times they will comply with all applicable

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legislation, both State and Commonwealth, and any regulations, by-laws, ordinances, or orders made under such legislation as well as any applicable codes of conduct, policies, guidelines, quality assurance standards, all relevant Australian Standards applicable to this Memorandum and any other formal requirement relevant to this Memorandum.

10. CONSULTATION

- 10.1 The Parties agree to hold meetings as required from time to time in order to facilitate the continuation of all operational aspects of this Memorandum.

11. DISPUTE RESOLUTION

- 11.1 Should the Parties disagree on any part of this Memorandum or its operation a representative of each of the Parties shall discuss the dispute as soon as practicable to try to resolve the dispute.
- 11.2 Should the dispute remain unresolved after discussions in accordance with 11.1, the dispute shall be referred to a representative of each of the Parties at a senior managerial level as soon as practicable for resolution.
- 11.3 Should the dispute remain unresolved the dispute shall be referred to the persons holding the positions of the signatories to this Memorandum as soon as practicable to resolve.

12. CHANGE IN LEGISLATION

- 12.1 Both Parties agree to notify each other of any change in legislation that directly affects any part of this Memorandum.
- 12.2 Both Parties agree to implement as far as practicable any procedures that are required as a result of a change in legislation.

13. INFORMATION SECURITY

- 13.1 The Parties warrant that in addition to adhering to their respective Information Security policies, they will ensure that staff of the Parties accessing Data and information pursuant to this Memorandum undergo criminal records inquiries prior to being given access to the Data and information.
- 13.2 The Parties warrant that they will ensure that staff of the Parties accessing Data and information pursuant to this Memorandum must sign a Confidentiality Agreement with their respective employer.
- 13.3 The provisions of 13.1 and 13.2 also apply to any third parties or independent contractors of the parties to this Memorandum.
- 13.4 The Parties warrant that they will ensure that regular audit checks are made of the use of the Data and that they have implemented effective systems to ensure compliance with their respective Information Security policies.

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13.5 The Parties warrant that under no circumstances whatsoever will any Data be transferred by electronic means or any other means without arrangements first being agreed and properly made for the protection and security of that Data.

14. COPYRIGHT AND INTELLECTUAL PROPERTY

14.1 Each Party retains all Intellectual Property rights in its own information, materials and Data.

15. KEEPING OF RECORDS AND ACCESS TO RECORDS

15.1 Subject to the requirements of the *Privacy Act 1988* (Cth) the Parties agree to give the other Party access to or copies of any documents or records reasonably required to enable a matter to be investigated, substantiated or verified. The Parties also agree that any notice given seeking access to any documents or records must be practicable and reasonable in all the circumstances.

16. VARIATIONS

16.1 Any variations to this Memorandum must be agreed, recorded in writing and duly executed by both Parties. Any variations that are not so documented and duly executed will have no effect whatsoever.

17. NOTICES

17.1 All notices must be in writing and may be given by any one of the following means:

- by delivering it to the address of the party on a business day during normal business hours;
- by sending it to the address of the party by pre-paid post or if such post is not available by ordinary post;
- by sending it by facsimile transmission to the facsimile number of the party;
- by email to the relevant agency representative;
- any notice received after 5.00pm on a business day will be deemed to be received the next following business day in the place of delivery pursuant to this clause;
- Notices are to be addressed to the parties as set out in **Schedule 3**:

SCHEDULE 1

Key legislation:

Item 1

Key Legislation applying to ACT Corrective Services and the ACT Electoral Commission includes:

Australian Capital Territory (Self-Government) Act 1988

Crimes (Sentence Administration) Act 2005

Crimes (Sentencing) Act 2005

Corrections Management Act 2007

Public Sector Management Act 1994

Human Rights Act 2004

Privacy Act 1988 (Cth)

Financial Management Act 1996

Electoral Act 1992

Electoral Regulation 1993

Referendum (Machinery Provisions) Act 1994

Proportional Representation (Hare-Clark) Entrenchment Act 1994

Aboriginal and Torres Strait Islander Elected Body Act 2008

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Item 2

(key legislation that applies to the AEC in relation to this Memorandum)

Commonwealth

Commonwealth Electoral Act 1918

Referendum (Machinery Provisions) Act 1984

Representation Act 1983

Commonwealth of Australia Constitution Act

Privacy Act 1988

Item 3

Relevant sections of the CEA that apply in relation to this MOU

“Part 1 Section 4

Controller-General of Prisons means the Controller-General or other principal officer of a State or Territory having control of the prisons and gaols of the State or Territory.

sentence of imprisonment has the meaning given subsection (1A).

(1A) For the purposes of this Act, a person is serving a *sentence of imprisonment* only if:

- (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
- (b) that detention is attributable to the sentence of imprisonment concerned.

92 Roll reviews

- (1) All officers in the service of the Commonwealth, a State or a Territory, officers in the service of any local governing body, and all occupiers of habitations shall upon application furnish to the Electoral Commissioner or to any officer acting under the Electoral Commissioner's direction all such information as the Electoral Commissioner requires in connexion with the preparation, maintenance or revision of the Rolls.

93 Persons entitled to enrolment and to vote

- (8AA) A person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at any Senate election or House of Representatives election.

Note: For the definition of *sentence of imprisonment*, see subsection 4(1A).

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.

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109 Lists of persons serving, or ceasing to serve, sentences of imprisonment to be forwarded

- (1) The Controller-General of Prisons of a State must, as soon as practicable after the beginning of each month, forward to the Electoral Commissioner (or to an officer nominated by the Electoral Commissioner) a list of:
- (a) the names, addresses, occupations and sexes of all persons who began serving a sentence of imprisonment of 3 years or longer in the State; and
 - (b) the names, addresses, occupations and sexes of all persons who ceased to serve a sentence of imprisonment of 3 years or longer in the State;

during the preceding month.

- (2) Within 4 days of the day of the close of the Rolls for an election for a Division in a State, the Controller-General of Prisons of the State must forward to the Electoral Commissioner (or to an officer nominated by the Electoral Commissioner) a list of:
- (a) the names, addresses, occupations and sexes of all persons who began serving a sentence of imprisonment of 3 years or longer in the State; and
 - (b) the names, addresses, occupations and sexes of all persons who ceased to serve a sentence of imprisonment of 3 years or longer in the State;

between the time the last list was forwarded by the Controller-General under subsection (1) and the day of the close of the Rolls.

Note 1: For the definition of *sentence of imprisonment*, see subsection 4(1A).

Note 2: In this section, a reference to a State includes a reference to the Australian Capital Territory and the Northern Territory: see section 112.

110 Electoral Commissioner to act on receipt of information

- (1) The Electoral Commissioner shall, upon receipt (whether by the Commissioner or by an officer nominated by the Commissioner) of information pursuant to sections 108 and 109, take action under this Act to effect such alterations of the Rolls as are necessary.

183 Grounds of application for postal vote

A person may apply for a postal vote on any of the grounds set out in Schedule 2.

184 Application for postal vote

- (1) An application must be in writing in the approved form and must contain a declaration by the applicant that he or she is entitled to apply for a postal vote.
- (2) An application made in Australia shall be made to the Electoral Commissioner.
- (3) An application made outside Australia shall be made to an Assistant Returning Officer or the Electoral Commissioner.
- (4) An application for a postal vote may not be made until after the issue of the writ for the election in relation to which a postal vote is sought or the public announcement of the proposed date for the polling, whichever is the earlier.
- (5) An application for a postal vote fails to meet the deadline if it is not received by the Electoral Commissioner or the Assistant Returning Officer until after 6 pm on the Thursday that is 2 days before polling day in the election.
- (6) If an application for a postal vote fails to meet the deadline, the Electoral Commissioner or the Assistant Returning Officer must

make, or arrange for the making of, reasonable efforts to advise the applicant that his or her application for a postal vote failed to meet the deadline, and that the applicant will have to vote by other means.

- (7) The Electoral Commissioner must cause a number to be allocated to each application for a postal vote.

184A Application for registration as general postal voter

- (1) An elector may apply to the Electoral Commissioner for registration as a general postal voter for a Division.
- (2) An application shall be made on one of the following grounds:
 - (a) the applicant's real place of living is not within 20 kilometres, by the shortest practicable route, of any polling place;
 - (b) the applicant:
 - (i) is a patient at a hospital (other than a hospital that is a polling place); and
 - (ii) because of serious illness or infirmity, is unable to travel from the hospital to a polling place;
 - (c) because of serious illness or infirmity, the applicant is unable to travel from the place where he or she lives to a polling place;
 - (ca) because the applicant will be at a place (other than a hospital) caring for a person who is seriously ill or infirm, the applicant is unable to travel from that place to a polling place;
 - (d) the applicant is detained in custody;

185B Review of Registers

The Electoral Commissioner may review the Register for a Division and make such alterations as are necessary to ensure that:

- (a) only electors entitled to be registered as general postal voters for the Division are so registered; and
- (b) the particulars entered in the Register are accurate.

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185C Cancellation of registration

- (1) The Electoral Commissioner may cancel the registration of an elector as a general postal voter for a Division if the Electoral Commissioner is satisfied that the ground on which the elector applied for registration no longer exists.
- (2) The Electoral Commissioner must give the elector written notice of the cancellation and of the elector's right to apply for review under Part X.

186 Dispatch of postal voting papers to registered general postal voters

- (1) As soon as ballot papers for an election for a Division are available, the Electoral Commissioner must send or arrange for the delivery of postal voting papers to each registered general postal voter for the Division.
- (2) In this section:

postal voting papers means:

- (a) a postal vote certificate printed on an envelope; and
- (b) one postal ballot paper for a Senate election or one postal ballot paper for a House of Representatives election, or both, as the case requires; and
- (c) if the envelope on which the postal vote certificate is printed is not itself addressed to the DRO for the Division for which the general postal voter is registered—an envelope addressed to that DRO.

188 Issue of certificate and ballot papers

Material to be sent to postal vote applicant

- (1) If the Electoral Commissioner or an Assistant Returning Officer receives an application for a postal vote that is in accordance with subsection 184(1), he or she must (unless the application fails to meet the deadline as mentioned in subsection 184(5)) send, or

arrange for the sending, to the applicant in accordance with whichever of subsections (2), (3) and (4) of this section applies:

- (a) a postal vote certificate printed on an envelope; and
- (b) one postal ballot paper for a Senate election or one postal ballot paper for a House of Representatives election, or both, as the case requires; and
- (c) if the envelope on which the postal vote certificate is printed is not itself addressed to:
 - (i) if the application is provided to an Assistant Returning Officer outside Australia—the Assistant Returning Officer or to the DRO for the Division for which the applicant is enrolled; or
 - (ii) otherwise—the DRO for the Division for which the applicant is enrolled;an envelope addressed to that Assistant Returning officer or DRO.

Dealing with certificates and ballot papers before sending

- (1A) Before a postal vote certificate and postal ballot paper are sent to an applicant under subsection (1):
 - (a) the date of issue of the certificate and ballot paper must be recorded; and
 - (b) the certificate must be numbered with the same number allocated to the application under subsection 184(7); and
 - (c) the top of the front of the ballot paper must be marked with the initials of the officer who issued the ballot paper, or caused it to be issued.

How material is to be sent

- (2) Subject to subsection (3), if the Electoral Commissioner or Assistant Returning Officer receives the application for a postal vote at or before 6 pm on the Friday that is 8 days before polling day in the election, the material required by subsection (1) must be sent to the applicant by post or by another means (not being an electronic means, such as fax or email).

(3) If:

- (a) the Electoral Commissioner or Assistant Returning Officer receives the application for a postal vote at or before 6 pm on the Friday that is 8 days before polling day in the election; and
- (b) in accordance with the approved form referred to in subsection 184(1), the applicant has requested a particular means of delivery (not being an electronic means such as fax or email); and
- (c) the Electoral Commissioner or Assistant Returning Officer considers that that means is reasonable and practicable in the circumstances;

the material required by subsection (1) must be sent to the applicant by that means.

- (4) If the Electoral Commissioner or Assistant Returning Officer receives the application for a postal vote after 6 pm on the Friday that is 8 days before polling day in the election and at or before 6 pm on the Thursday that is 2 days before polling day in the election, the material required by subsection (1) must be sent to the applicant by the means (not being an electronic means such as fax or email) that the Electoral Commissioner or Assistant Returning Officer considers is the most reasonable and practicable in the circumstances.

Note: If the application is received after 6 pm on the Thursday that is 2 days before polling day in the election, it fails to meet the deadline (see subsection 184(5)), and therefore no material is required by subsection (1) to be sent to the applicant.

193 Authorised witnesses

- (1) An elector whose name appears on a Roll is an authorised witness.
- (2) Outside Australia, the following persons are authorised witnesses:
 - (a) an officer of the Defence Force or of the naval, military or air forces of a Commonwealth country;

- (b) a person appointed or engaged under the *Public Service Act 1999*;
 - (c) a member of the civil or public service of a State or Territory or of a Commonwealth country;
 - (d) a Justice of the Peace for a State or Territory or a Commonwealth country;
 - (e) a minister of religion or medical practitioner resident in a State or Territory or a Commonwealth country;
 - (f) an Australian citizen.
- (3) A person who is a candidate at an election is not an authorised witness in relation to the casting of a postal vote in that election.
- (4) In this section:

Commonwealth country means a political entity, or part of a political entity, that is a member of the international organisation known as the Commonwealth of Nations.

194 Postal voting

- (1) The following requirements for postal voting shall be substantially observed:
- (a) the person voting must show the unsigned postal vote certificate and the unmarked postal ballot paper to an authorised witness;
 - (b) except in the case of a person registered as a general postal voter on the ground set out in paragraph 184A(2)(e) or (f), the person must sign the postal vote certificate in the presence of the authorised witness;
 - (c) the authorised witness shall sign the certificate as witness, adding the date and an indication of the capacity in which the witness acts;
 - (d) the person must then, in the presence of the authorised witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope on which the postal vote certificate is printed and fasten the envelope;

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- (da) the person must declare, on the postal vote certificate, that the requirements referred to in paragraphs (a), (b) and (d) were satisfied before the close of the poll;
 - (db) the authorised witness must declare, on the postal vote certificate, that the requirements referred to in paragraphs (a) to (c) were satisfied before the close of the poll;
 - (e) the person must post or deliver the envelope to the DRO for the Division for which the person is enrolled;
 - (f) if the person (the *elector*) cannot read or is so disabled as to be unable to vote without assistance, another person chosen by the elector may, according to the directions of the elector, complete the postal vote certificate and do for the elector any act required by paragraph (d) or (e);
 - (g) directions under paragraph (f) may be given by reference to a how-to-vote card.
- (1A) A postal vote by a person outside Australia that does not meet the requirements in subsection (1) concerning an authorised witness is, despite that subsection, taken to meet those requirements for the purposes of this Act if:
- (a) the postal vote is accompanied by a signed and dated statement by the person setting out why the person was unable to comply with those requirements; and
 - (b) the DRO or officer dealing with the postal vote under section 195A is satisfied that the person made reasonable efforts to comply with those requirements; and
 - (c) the postal vote is accompanied by a photocopy, that is certified by the person to be a true copy, of a part of the person's passport that includes:
 - (i) the country and date of issue and the number of the passport; and
 - (ii) the person's name, date of birth and signature; and
 - (iii) a photograph of the person.
- (2) In spite of paragraph (1)(e), where:

- (a) a ballot paper, if posted before the close of the poll, would be unlikely to reach the DRO for the Division for which the person is enrolled within 13 days after polling day; or
- (b) a ballot paper, if it were to be delivered to the DRO for the Division for which the person is enrolled, would be unlikely to reach the DRO before the close of the poll;

the envelope containing the ballot paper may:

- (c) before the close of the poll be addressed to, and posted or delivered to, any other DRO or to an Assistant Returning Officer at a place outside Australia; or
 - (d) be handed to a pre-poll voting officer; or
 - (e) be delivered, on polling day and before the close of the poll, to a presiding officer (other than an electoral visitor or mobile polling team leader who is deemed to be a presiding officer); or
 - (g) be handed to a mobile polling team leader when the team is at a place for the purpose of taking votes under section 227; or
 - (h) be handed, before the close of the poll, to a person who is at a capital city office of the Electoral Commission and who is:
 - (i) the holder of a particular office provided for by Division 3 or 4 of Part II; or
 - (ii) a member of the staff of the Electoral Commission (not being the holder of a particular office referred to in subparagraph (i)) who is engaged under the *Public Service Act 1999* as an ongoing APS employee within the meaning of that Act, or who is employed under paragraph 35(1)(b) of this Act.
- (3) A person to whom an envelope containing a ballot paper is posted, delivered or handed under subsection (2) shall deal with the envelope and ballot paper according to sections 195A and 228.

195 Duty of authorised witnesses etc.

Except at the request of a person voting (the *elector*), a person shall not:

- (a) interfere with the elector in relation to the marking of a postal ballot paper; or
- (b) do anything that would enable the person or any other person to find out how the elector marked a postal ballot paper.

197 Failure to post or deliver postal vote application etc.

A person to whom another person entrusts:

- (a) an application for a postal vote; or
- (b) an envelope apparently containing a postal ballot paper;

for posting or delivery to an officer shall post or deliver the application or envelope, as the case may be, as soon as practicable.

208 Certified lists of voters

- (1) The Electoral Commissioner must arrange for the preparation of a list of voters for each Division and must certify the list.
- (2) The list must include the name of each person who:
 - (a) is on the Roll for the Division; and
 - (b) will be at least 18 years old on polling day; and
 - (c) is not covered by subsection 93(8AA) (sentences of imprisonment).

221 Elections at which electors entitled to vote

- (1) In the case of a Senate election, an elector shall only be admitted to vote for the election of Senators for the State or Territory for which he or she is enrolled.
- (2) In the case of a House of Representatives election, an elector shall only be admitted to vote for the election of a member for the Division for which he or she is enrolled.

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- (3) For the purposes of this section, the electoral Rolls in force at the time of the election are conclusive evidence of the right of each person enrolled on the Rolls, other than:
- (a) a person whose name has been placed on a Roll because of a claim made under section 100 and who will be under 18 on the date fixed for the polling in the election; or
 - (b) a person who is covered by subsection 93(8AA) (sentences of imprisonment);

to vote as an elector, unless a person shows by his or her answers to the questions prescribed by section 200DI or 229 that he or she is not entitled to vote.

227 Mobile booths

- (1) In this section:

leader means a person appointed under this section to be the leader of a team.

team means a mobile polling team appointed under this section.

- (2) The Electoral Commissioner may appoint persons to be members of mobile polling teams for the purposes of this section and, in respect of each team, a person to be the leader.
- (3) The following provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Act.
- (4) The Electoral Commissioner:
- (a) may determine in writing the places that teams will visit for the purposes of taking votes under this section in an election; and
 - (b) must give notice to the public on the Electoral Commission's website and by any other means that the Electoral Commissioner thinks fit of:
 - (i) the places determined under paragraph (a); and

- (ii) the days and times when teams will visit for the purposes of this section.
- (4A) Before determining a prison under subsection (4), the Electoral Commissioner must consult the Controller-General of Prisons for the State or Territory in which the prison is located.
- (5) A day notified under paragraph (4)(b) shall be any of the 12 days preceding polling day, polling day, or a day to which the polling is adjourned.
- (6) Subject to subsection (6A), a team shall make a visit or visits as notified under paragraph (4)(b), but, if, for reasonable cause, the team is unable, or the leader considers it inappropriate, to make such a visit, the leader may substitute another place, day or time for the visit and, in that event, shall:
- (a) give notice to the public on the Electoral Commission's website and by any other means that he or she thinks fit of the substituted place, day or time; and
 - (b) inform the Divisional Returning Officer for the Division in which the visit is to occur.
- (6A) A visit to a prison must not be made if the Australian Electoral Officer for the State or Territory in which the prison is located is informed by the officer in charge of the prison, or a member of the staff of the prison, that the visit is forbidden by the officer in charge because of circumstances related to the security of the prison.

231 Right of elector to receive ballot paper

- (1) The presiding officer or a polling official shall at the polling hand to each person claiming to vote a ballot paper duly initialled by the presiding officer:
- (a) if the name under which the person claims to vote is on the certified list of voters or an approved list of voters for the polling place and the person's answers to the prescribed questions show that he or she is entitled to vote; or

- (b) if the person claims to vote under the provisions relating to absent voting and complies with those provisions.
- (2) The presiding officer, at the request of a scrutineer, shall note any objection by the scrutineer to the right of any person to vote, and shall keep a record thereof.

(CEA) Schedule 2—Grounds of application for postal or pre-poll vote

Sections 183 and 200A

1. Throughout the hours of polling on polling day, the person will be absent from the State or Territory for which the person is enrolled.
2. The person will not, at any time during the hours of polling on polling day, be within 8 kilometres by the nearest practicable route of any polling booth in the State or Territory for which the person is enrolled.
3. Throughout the hours of polling on polling day, the person will be travelling under conditions that will prevent the person attending a polling booth in the State or Territory for which the person is enrolled.
- 3A. Throughout the hours of polling on polling day, the person will be absent from the Division for which the person is enrolled.
4. The person will be unable to attend a polling booth on polling day because of:
 - (a) serious illness;
 - (b) infirmity; or
 - (c) approaching childbirth.

(In the case of a person who will be a patient at a hospital on polling day, this paragraph applies regardless of the operation of sections 224 and 227.)

5. On polling day, the person will be unable to attend a polling booth because the person will be at a place (other than a hospital) caring for a person who is seriously ill or infirm or who is expected shortly to give birth.

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6. Throughout the hours of polling on polling day, the person will be a patient at a hospital and unable to vote at the hospital.
- 7A. The person will be unable to attend a polling booth on polling day because of a reasonable fear for, or a reasonable apprehension about, his or her personal wellbeing or safety.
8. Because of the person's religious beliefs or membership of a religious order, the person:
 - (a) is precluded from attending a polling booth; or
 - (b) for the greater part of the hours of polling on polling day, is precluded from attending a polling booth.
9. On polling day, the person will be serving a sentence of imprisonment or otherwise under detention.
10. The person's address has been excluded from the Roll under section 104.
11. Throughout the hours of polling on polling day, the person will be engaged in his or her employment or occupation and:
 - (a) if the person is an employee, the person is not entitled to leave of absence under section 345; and
 - (b) in any other case, the absence of the person for the purpose of attending at a polling booth to vote would be likely to cause loss to the person in his or her occupation.

Endnote 10—Miscellaneous

This endnote sets out other information relating to the *Commonwealth Electoral Act 1918*.

Section 3—For Proclamations fixing the dates of repeal of these Acts: see *Gazettes* 1918, p. 2257; 1919, p. 401 and 1934, p. 1351.

Section 95—Section 41 of the Constitution provides as follows:

41 Right of electors of States

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Section 152—Sections 12, 32 and 33 of the Constitution provide as follows:

12 Issue of writs

The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

32 Writs for general election

The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33 Writs for vacancies

Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

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Section 163—*Note also sections 43 and 44 of the Constitution, which provide as follows:*

43 Member of one House ineligible for other

A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

44 Disqualification

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 subsection (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

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of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Sections 93 and 208:

- (1) Some provisions relating to voting by prisoners have been found to be invalid by the High Court of Australia, namely subsection 93(8AA) and paragraph 208(2)(c). For more information, see the High Court press release of 30 August 2007 or the full judgment *Roach v Electoral Commissioner* [2007] HCA 43 as available at:

http://www.austlii.edu.au/au/cases/cth/high_ct/2007/43.html

- (2) Sections 93 and 208 of the *Commonwealth Electoral Act 1918* were subsequently amended by the *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011*, which commenced on 25 May 2011.

Sections 94A, 95, 96, 102 and 155:

- (1) The High Court of Australia has declared some provisions relating to electoral rolls and voting to be invalid, namely items 20, 24, 28, 41, 42, 43, 44, 45 and 52 of Schedule 1 to the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*. Those provisions affected paragraph 94A(4)(a), subsections 95(4), 96(4) and 102(4), paragraph 102(4A)(a), subparagraph 102(4A)(b)(ii), subsection 102(4B), paragraphs 102(4B)(a) and (b) and section 155 of the *Commonwealth Electoral Act 1918*. For more information, see the High Court press release of 6 August 2010 as available online at:

<http://www.hcourt.gov.au/assets/publications/judgment-summaries/2010/rowe-2010-08-06.pdf>

- (2) Sections 94A, 95, 96, 102 and 155 of the *Commonwealth Electoral Act 1918* were subsequently amended by the *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011*, which commenced on 25 May 2011.

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(CEA) Schedule 2

7 Application provision

The amendments made by this Schedule apply in relation to elections and referendums the writs for which are issued on or after the commencement of this Schedule.’

SCHEDULE 2

Preamble

The AEC seeks to collaborate with ACTCS in order to meet the requirements of the *Commonwealth Electoral Act 1918* and to implement strategies to achieve the following goals.

- provide enrolment services to eligible detainees;
- provide postal and/or other voting services to eligible detainees
- enable eligible detainees to cast a formal vote; and
- to ensure that those not eligible to vote are excluded from any list of voters.

To assist in the maintenance of an accurate and up-to-date Electoral Roll, the AEC seeks data on all persons serving a sentence so that it can ensure that the relevant records accurately reflect both enrolment and voting entitlements.

All Data being electronically transferred to the AEC by ACTCS will be transferred by secure means and strictly in accordance with the Information Security controls and standards as arranged and agreed between the authorized representatives of the Parties from time to time.

This Schedule sets out the data requirements and details the services to be provided by the Parties.

Item 1

Each Quarter

A list of all Detainees in custody

Such list is to be provided to the AEC on a quarterly basis, at the beginning of each quarter ("the indicated date").

The specific data items being sought as at the indicated date on each Detainee include:

- Centre key – (the facility where held)
- PID (Offender Number) a prisoner Identification Number.
- Surname or Family Name.
- Given Names (*provided as separate columns as Given Names 1 and Given Names 2*).
- Date of Birth (*in DD/MM/YYYY format*)
- Gender M, F or U.
- Received Date
- Date of Commencement of Sentence (*in DD/MM/YYY format*).
- Sentence days

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- Latest Release Date (in DD/MM/YYYY) the date the sentence would end if the full term was served.
- Legal status
- Address 1
- Address 2
- Suburb
- Post Code

Item 2

Each Quarter

For all Detainees who had been serving a sentence full time and who have been released from custody during the preceding quarter:

- Centre key – (the facility where held)
- PID (Offender Number) a prisoner Identification Number.
- Surname or Family Name.
- Given Names (provided as separate columns as Given Names 1 and Given Names 2).
- Date of Birth (in DD/MM/YYYY format)
- Gender M, F or U.
- Received Date
- Date of Commencement of Sentence (in DD/MM/YYY format).
- Sentence days
- Sentence length
- Latest Release Date (in DD/MM/YYYY) the date the sentence would end if the full term was served.
- Legal status
- Actual Release date
- Release reason
- Address 1
- Address 2
- Suburb
- State
- Post Code
- all data fields set out in item 1 of this Schedule.

Item 3

Periodically or if Postal Address of a Centre changes

A file containing the postal address details for the centres in column 1 of the data provided at item 1

Item 4

Within 4 days of the day of the close of the Rolls for an election for a Division in a State.

All data set out in items 1, 2 and 3 of this schedule as at the close of business on the day of the close of the roll. The AEC will provide advice of the close of rolls date.

Item 5

Enrolment and Voting Services

The priority goals of the AEC will be:

- to provide enrolment, general postal voter and other voting services to eligible detainees;
- enable eligible detainees to cast a formal vote; and
- to ensure that those not eligible to vote are excluded from any list of voters

The AEC seeks to collaborate with ACTCS in order to implement strategies to achieve these goals.

On a regular basis, and in particular during the period leading up to an Election or Referendum, the AEC seeks the collaboration of ACTCS to:

- provide electoral enrolment forms, applications for registration as a general postal voter, applications for a postal vote and information kits to detainees in custody (including persons on remand and where applicable in periodic detention), provided always that it is the responsibility of the AEC to distribute electoral enrolment forms, applications for registration as a general postal voter, applications for a postal vote and information kits directly to correctional centres across New South Wales;
- display AEC information posters, in all correctional centres; and
- where possible to collect and return completed enrolment forms to the AEC prior to the applicable Close of Rolls date, or key election dates as advised by the AEC.

The AEC also has an Indigenous Electoral Participation Program (IEPP). Backed-up by the AEC Reconciliation Action Plan 2012-14, this program has a primary aim of closing the gap in the awareness of and participation in the democratic process by eligible Aboriginal and Torres Strait Islander People. The AEC would like to discuss, formulate and execute strategies geared to achieving this aim in collaboration with ACTCS.

SCHEDULE 3

Representatives:

Item 1

(ACTCS representative)

Notices, Data Issues and General Matters:

Ximena Nikias
Manager, Governance
ACT Corrective Services
197 London Circuit
Canberra ACT 2601
GPO Box 158 Canberra ACT 2601
T (02) 6207 3979
Email: actcs.governance@act.gov.au

Item 2

(representatives of the AEC)

Notices, Data Issues, General Matters, Detainee Enrolment and Voting:

James Carroll
Assistant Director, Enrolment
Australian Electoral Commission
Level 10, 59 Goulburn Street
Haymarket NSW 2000
Telephone: (02) 9375 6310
Facsimile: (02) 9375 6383
Email: James.Carroll@aec.gov.au

EXECUTION:

4 [Redacted]

SIGNED BY **Bernadette Mitcherson**
the Executive Director of Corrective Services for
and on behalf of ACT Corrective Services

Melinda Peluko

in the presence of Print name of witness

Signature of witness

4 [Redacted]

Date: 14 Aug 2013

SIGN [Redacted]
the Australian Electoral Officer for NSW for
and on behalf of Australian Electoral Commission

Nicole Belge

in the presence of Print name of witness

Signature of witness

4 [Redacted]

Date: 14 August 2013

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Business information (Bank Account details) redacted.
- 14 Business information (Billing Account details) redacted.
- 15 Legal Professional Communication redacted.
- 16 Deliberative material redacted.
- 17 Irrelevant material redacted.
- 18 Electoral Roll material redacted.
- 19 Tests, examinations or audits material redacted.
- 20 Management or assessment of personnel material redacted.
- 21 Proper and efficient conduct of the operations of AEC material redacted.