

1997

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTORAL (AMENDMENT) BILL (NO. 2) 1997

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries, Attorney-General**

OUTLINE

This Bill provides for amendments to the *Electoral Act 1992* following recommendations made by the ACT Electoral Commission in its report on the operation of the ACT's electoral legislation following the 1995 ACT election

Several of the provisions in the Bill are intended to improve service to electors. These include

- allowing ordinary voting at pre-poll voting centres in the ACT, so that electors voting before polling day because they are unable to attend a polling place on polling day can vote without being required to complete declaration certificates,
- allowing silent electors to cast an ordinary vote at a polling place, rather than a declaration vote,
- allowing for pre-poll voting in the ACT up to 8 pm on the Friday before polling day, rather than the current 6 pm close;
- closing the roll at 8 pm rather than 6 pm,
- not requiring payment of a deposit when an objection is made to an enrolment on the basis that a person is of unsound mind;
- allowing an additional class of persons to make submissions at public hearings into objections against redistribution proposals,
- ensuring that any details submitted to the Electoral Commission by an elector with 'silent' enrolment that could enable another person to contact the silent elector (such as phone numbers or postal addresses) will not be made public,
- providing for the automatic issue of postal ballot papers to registered declaration voters, rather than the automatic dispatch of applications for postal voting, and
- requiring car stickers to be authorised, to prevent mischievous electoral advertising

Several measures in the Bill are aimed at enhancing the independent status of the Electoral Commission. The Bill will guarantee that the Electoral Commission will submit an independent annual report to the responsible Minister for tabling in the Legislative Assembly. At present, the Electoral Commission is only required to submit an independent annual report if an appropriate direction is issued by the responsible Minister under the *Annual Reports (Government Agencies) Act 1995*

Another provision will allow the Electoral Commission to submit reports on matters related to elections and referendums to the responsible Minister, who will be required to table the reports within 6 sitting days of receipt. These reports will enable the Commission to bring any electoral matters it considers important to the notice of the Assembly at any time

The Bill also gives the Electoral Commission the explicit power to advise all Members of the Legislative Assembly on electoral matters

Further amendments will improve the services provided to Members of the Legislative Assembly and to registered political parties. To increase the ability of MLAs to assist the electors of the ACT, the Bill provides for the supply of electronic copies of the electoral roll for all electorates to all MLAs. At present, MLAs are only entitled to automatically receive copies of the rolls for their own electorate

Changes to the political party registration scheme will ensure that public money is not spent on advertising changes of addresses of party registered officers, while ensuring that all registered officers of political parties will be residents of the ACT who are eligible to vote for ACT elections. At present, any person of any age or address may be a registered officer for an ACT political party.

The bill also provides for the appointment of deputy registered officers by a party secretary where the registered officer is unable to carry out his or her duties. At present, only registered officers may appoint deputy registered officers, so that, if a registered officer was unable to carry out his or her duties, a party may be left without a registered officer at a crucial time

Other more machinery amendments are intended to clarify various provisions in the Electoral Act to ensure that the electoral process operates smoothly. These include:

- ensuring that only the Chief Minister can enter into a Joint Roll Arrangement with the Commonwealth, bringing the ACT Electoral Act into line with the Commonwealth Electoral Act;
- providing for a definition of ‘disclosure period’ for non-party groups,
- ensuring that persons can be held responsible for actions taken as reporting agents of political parties even after a party has been deregistered;
- ensuring that ties broken by lot during the distribution of preferences will be determined in favour of the same candidate where a recount is conducted;
- providing for the situation where a candidate contests two or more casual vacancies at the same time, to allow a recount to proceed where a candidate is successful at another recount;
- updating incorrect cross-references, and
- clarifying the intent of several provisions to avoid possible ambiguities

Financial implications

Passage of this Bill is expected to give rise to savings of around \$10000 per election. Issuing ordinary votes at pre-poll centres will reduce the cost of processing pre-poll declaration votes, however increasing times for closing rolls and pre-poll voting to 8 pm will impose some extra staff costs.

DETAILED EXPLANATION

Formal clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill and commencement. The Act is to commence on the day on which it is notified in the *Gazette*.

Principal Act

Clause 3 defines 'Principal Act' to mean the *Electoral Act 1992*.

Interpretation

Clause 4 defines "official error" for the purposes of amendments made by this Bill to section 128 and Schedule 3 of the Electoral Act. As the Electoral Act currently stands, section 128 provides that an elector enrolled for an electorate is entitled to vote for an election for that electorate. Clause 9 of Schedule 3, which deals with the preliminary scrutiny of declaration votes, provides that a person who is not on the roll for an electorate who casts a declaration vote, is entitled to have his or her vote counted if the officer in charge of the scrutiny is satisfied that the person's name was not on the roll because of official error. In order to clarify the right to vote where a name is removed from the roll by official error, section 128 is being amended to refer specifically to this right. This definition facilitates this later amendment.

The definition of "official error" is derived from the definition currently contained in subclause 9(2) of Schedule 3. It is intended to cover the circumstance where an elector's name has been removed from the roll on the basis that the elector no longer resides in the electorate, whereas the elector claims to still reside in the electorate. This can occur following an electoral roll review, if an elector moves from one address to another in an electorate without updating his or her enrolled address, and is removed from the roll for the old address.

The definition only applies where the elector's name was removed from the roll after the rolls closed for the previous election for that electorate. This places the onus on the elector to ensure that his or her enrolment is up to date if it is identified at an election that his or her name was removed from the roll through official error.

Functions of Electoral Commission

Clause 5 amends section 7 of the Electoral Act to provide that the Electoral Commission has the explicit function of advising MLAs on electoral matters.

Insertion — Annual reports/Special reports

Clause 6 inserts two new sections in the Electoral Act. New section 10 provides that the Electoral Commission shall be taken to be a public authority required to lodge a separate annual report to the responsible Minister for tabling in the Legislative Assembly in accordance with the *Annual Reports (Government Agencies) Act 1995*. At present, the Electoral Commission is only required to make a separate annual report if the appropriate Minister has made an instrument to that effect.

New Section 10A provides that the Electoral Commission may present special reports to the Minister on matters related to elections, referendums or other ballots. Where the Minister receives a special report, he or she will be required to table the report in the Legislative Assembly within 6 sitting days of receipt.

Investigation of objections

Clause 7 amends section 49 of the Electoral Act to provide that, at a public hearing into objections to a redistribution proposal, the augmented Electoral Commission may at its discretion hear submissions by any persons in relation to an objection. At present, only those persons who made suggestions, comments or objections have standing to make submissions at a public hearing. This amendment will permit persons who agreed with a proposed redistribution to make submissions in relation to objections to the proposal.

Supply of roll extracts in electronic form to MLAs etc.

Clause 8 amends section 62 of the Electoral Act to provide that MLAs will be entitled to receive, on request and without charge, roll extracts in electronic form for all three ACT electorates. At present the Electoral Act only entitles MLAs to receive electronic copies of the roll without charge for their own electorate.

Provision of roll information to prescribed authorities

Clause 9 amends section 65 of the Electoral Act to provide that only the name of an elector with a suppressed address may be made available to a prescribed authority. As it stands, the Electoral Act does not expressly prescribe release of details relating to 'silent' electors except for their addresses. This amendment will ensure that other details that may be sensitive, such as an elector's phone number or postal address, will not be made available to a prescribed authority. It should be noted that, at the time of publication of this Memorandum, there were no prescribed authorities for the purposes of section 65, and no details of silent electors other than their names have been released to any agency by the Electoral Commission.

Joint roll arrangements with the Commonwealth

Clause 10 amends section 70 of the Electoral Act to provide that only the Chief Minister may enter into a joint roll arrangement with the Commonwealth. This brings the Electoral Act into line with the Commonwealth Electoral Act, which contains a similar provision.

This clause also amends subsection 70(2) to make clear that only those electors on the Commonwealth roll who are not entitled to be Territory electors are not to be taken to be part of the ACT roll. The present wording of this subsection may be ambiguous.

A saving provision in this clause ensures that the amendments made to section 70 will not affect the current joint roll arrangement.

Closed rolls

Clause 11 amends section 80 of the Electoral Act to provide that rolls will close at 8 pm on the 29th day before polling day, rather than 6 pm. This mirrors a similar amendment recently made to the Commonwealth Electoral Act and provides for greater service to electors.

Objections to enrolment

Clause 12 amends section 81 of the Electoral Act to provide that a deposit will not be payable where an objection to an enrolment is made on the ground that the person is of unsound mind. As such an objection must be accompanied by a medical certificate, it is considered that a deposit (which is primarily intended to deter frivolous objections) is not necessary. This mirrors a similar amendment recently made to the Commonwealth Electoral Act.

Refusal of applications

Clause 13 is part of a series of amendments intended to ensure that the registered officer of a registered political party must be qualified to be an elector of the ACT. As it stands, any person of any age or place of residence may be the registered officer of a political party. As the registered officer has significant functions under the Electoral Act, particularly the role of nominating candidates, it is considered that the registered officer should be qualified to be an ACT elector.

This amendment will require the Electoral Commissioner to refuse the application for the registration of a political party if the registered officer is not qualified to be an ACT elector.

Changes to register

Clause 14 amends section 95 of the Electoral Act to remove the requirement to invite public objections where a party applies to change the address of its registered officer. There is no practical reason why objections should be sought to such a change.

Insertion — Registered officer — entitlement to office

Clause 15 inserts a new section 96A in the Electoral Act to provide that a person is not entitled to be, or to continue to be, a registered officer of a political party unless the person is qualified to be an ACT elector. A transitional provision in this clause will give registered parties a 2 month period after commencement of the amending Act to allow the parties to appoint new registered officers if the parties have registered officers who are not entitled to be ACT electors

Deputy registered officer

Clause 16 amends section 97 of the Electoral Act to provide that the secretary of a registered political party may appoint a deputy registered officer to carry out functions under Parts IX and X of the Electoral Act where the office of registered officer is vacant or the registered officer is unable to carry out his or her duties. At present, only the registered officer may appoint a deputy registered officer, so that difficulties may arise where there is no registered officer of a party or if the registered officer is not able to carry out his or her duties.

This clause also provides that deputy registered officers must be, and continue to be, qualified to be ACT electors

Cancellation of registration

Clause 17 amends section 98 of the Electoral Act to remove a possible ambiguity in subsection 3. The amendment will make it clear that it is intended that the registration of a political party will be cancelled if it does not endorse a candidate at the last 2 consecutive general elections, provided that the party was registered at the time of those elections.

Entitlement to vote

Clause 18 amends section 128 of the Electoral Act to ensure that a person whose name is removed from the roll through official error shall not be disqualified from voting. See the above discussion related to the definition of “official error” to be inserted by clause 4.

Claims to vote

Clause 19 amends section 133 of the Electoral Act to allow a person with a suppressed address (known colloquially as a ‘silent elector’) to cast an ordinary vote at a polling place by stating his or her name and that he or she has a suppressed address. At present, silent electors are only able to cast a declaration vote at a polling place.

Declaration voting at polling places

Clause 20 amends section 135 of the Electoral Act to provide that a declaration vote is not required where a person's name is suppressed from the electoral roll. This is a complementary amendment to the change made by clause 19 to section 133.

Substitution — Division 3A — Voting otherwise than at a polling place

Clause 21 creates a new Division in Part X of the Electoral Act, omits existing section 136 and inserts 4 new sections. The purpose of these amendments is to clarify the distinctions between postal voting and "pre-poll" voting in person, and to provide for "ordinary voting" before polling day in the ACT.

New section 136 defines "eligible elector" for the purposes of new Division 3A to mean an elector who is entitled to vote at an election who expects to be unable to attend at a polling place or whose address is a suppressed address. This definition is used in the following new sections to define an elector eligible to apply for a postal vote or pre-poll vote. This amendment is a recasting of the existing entitlement and does not change the intent of the existing provisions.

New section 136A provides for postal voting before polling day. It is primarily a recasting of the postal voting provisions in existing section 136. It also clarifies the obligations imposed on the Electoral Commissioner's authorised officers to despatch postal ballot papers by post or, where the postal service is unlikely to deliver postal ballot material on time, to despatch postal ballot papers by a courier or other agent.

New section 136B provides for voting in person before an officer in the ACT before polling day (colloquially known as "pre-poll voting"). A significant change made by this new section is the introduction of ordinary pre-poll voting. At present, all pre-poll votes are issued as declaration votes, whereby electors are required to complete a declaration certificate. The process of issuing and processing declaration votes is time consuming, both for the voters and for the electoral administration. The introduction of ordinary voting, whereby an elector simply states his or her name address and is issued with a ballot paper if his or her name is found on the roll, will provide a better service to electors and reduce the cost and time involved in processing pre-poll declaration votes.

Under new section 136B, places used for pre-poll voting operate in the same manner as polling places on polling day. In particular, scrutineers will be entitled to be present while votes are being taken. Voters whose name cannot be found on the certified list or whose names have already been marked as having voted, will be issued with a declaration vote, provided they indicate they have not voted before. As polling will take place over several days, provision is made for sealing ballot boxes over night and checking the seals before opening the boxes for the next day's polling. Pre-poll voting in the ACT will be available until 8 pm on the Friday before polling day.

Under new section 136C, electors will be able to vote in person before authorised officers outside the ACT by casting declaration votes. This is unchanged from the current situation for voters outside the ACT. Typically, votes are issued in this way in each State and Territory capital city before polling day (usually at the main office of the State and Territory electoral authorities), and at one or more locations on the South Coast of NSW, such as at Batemans Bay.

Issue of voting papers to registered declaration voters

Clause 22 amends section 141 of the Electoral Act to provide that postal ballot papers shall be posted to each registered declaration voter automatically. At present, only those registered declaration voters who are registered on the ground of physical incapacity are automatically sent postal ballot papers. All other registered declaration voters are currently sent postal vote application forms. This amendment will provide a greater service to this class of electors by removing the need to complete an application form. This mirrors a similar change made at the Commonwealth level.

Antarctic electors

Clause 23 amends section 171 of the Electoral Act to provide for a cut-off date for registration as an Antarctic elector as at the hour of nomination for the relevant election. This corrects an oversight in the existing provision, which does not provide for a cut-off. A cut-off date is necessary to enable a definitive list of Antarctic voters to be compiled and used by Antarctic returning officers, in the same way as there is a cut-off for the electoral roll. This amendment is in line with the equivalent Commonwealth provision.

Disclosure periods

Clause 24 amends section 201 of the Electoral Act to provide for a definition of “disclosure day” for non-party groups. This definition is used in relation to disclosure requirements imposed on non-party groups. This amendment corrects an oversight in the existing provision, which does not define disclosure day for non-party groups.

Appointed agents

Clause 25 amends section 203 of the Electoral Act to provide that a person appointed as reporting agent of a party shall continue to be taken to be the reporting agent where the party ceases to be registered. This amendment is required to ensure that the ex-reporting agent of a party that has ceased to be registered shall continue to be responsible for submitting disclosure returns as required under the Electoral Act. As the Act currently stands, failure to comply with the disclosure laws cannot be effectively enforced where a party has ceased to be registered. This could allow a party to voluntarily seek deregistration in order to avoid complying with the disclosure laws.

Non-appointed agents

Clause 26 amends section 204 of the Electoral Act to provide that a person appointed as registered officer of a party shall continue to be taken to be the reporting agent where there is no appointed reporting agent and the party ceases to be registered. This amendment mirrors the amendment made by clause 25 to section 203.

Dissemination of electoral matter — campaign stationery

Clause 27 amends section 295 of the Electoral Act to remove the exemption from the authorisation requirements currently provided for car stickers. This mirrors an amendment made to the equivalent Commonwealth provision, which was amended following examples of car stickers being misused to overcome the authorisation requirements.

Schedule 3 — amendment of clause 9

Clause 28 amends clause 9 of Schedule 3 of the Electoral Act to omit subclause 9(2), which provides for the definition of ‘official error’ which is being inserted in section 3 of the Electoral Act by clause 4.

Schedule 4 — amendment of clause 7

Clause 29 amends clause 7 of Schedule 4 of the Electoral Act to provide that, where votes are tied in the scrutiny of preferences and the tie is broken by lot to determine which surplus is to be dealt with first, and votes are recounted in accordance with section 187, if the same tie occurs during the recount, the tie shall be broken by reference to the earlier tie break by lot.

Schedule 4 — amendment of clause 8

Clause 30 amends clause 8 of Schedule 4 of the Electoral Act to provide that, where votes are tied in the scrutiny of preferences and the tie is broken by lot to determine which candidate is to be excluded first, and votes are recounted in accordance with section 187, if the same tie occurs during the recount, the tie shall be broken by reference to the earlier tie break by lot.

Schedule 4 — amendment of clause 17

Clause 31 amends clause 17 of Schedule 4 of the Electoral Act to provide that, where a candidate is an applicant for two or more casual vacancies that occur at or around the same time, and the candidate is successful at one of the casual vacancies, for the purposes of the other vacancies that successful candidate shall be taken not to be a continuing candidate. This situation is not adequately catered for in the existing Electoral Act.

Further amendments

Clause 32 provides that the Electoral Act is further amended as set out in the Schedule. These amendments are either consequential amendments to the changes to the postal and pre-poll voting provisions or corrections of minor errors in the Electoral Act.

SCHEDULE

Amendments consequential to the changes to the postal and pre-poll voting provisions:

The amendments to section 3 (definitions of “declaration vote” and “postal vote”), Heading to Division 2 of Part X, paragraphs 131(1)(a) and (b), Heading to Division 3 of Part X; section 291; subsection 303(6); paragraph 307(5)(a); subsection 320(6), Schedule 3, paragraph 6(2)(a), subsection 137(1), and subsection 139(1)

Amendments to correct minor errors in the Electoral Act:

The amendments to section 3 (definition of “staff”); and paragraph 178(3)(e)