

1992
**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

(As presented)

(Chief Minister)

Electoral Bill 1992

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1992

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Electoral Bill 1992

**A BILL
FOR**

**An Act to establish the Australian Capital Territory
Electoral Commission, to provide for the
appointment of the Electoral Commissioner, to
provide for electorates and for related purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Electoral Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on a day, or respective days,
10 fixed by the Chief Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Interpretation

3. In this Act, unless the contrary intention appears—

“Commission” means the Australian Capital Territory Electoral Commission established by section 5;

10 “Electoral Commissioner” means the Electoral Commissioner appointed under section 20;

“electorate” means an electorate, the name and boundaries of which are specified in a determination in force under section 29;

“Judge” means—

- (a) a Judge of the Supreme Court;
- 15 (b) a Judge of the Supreme Court of a State or another Territory; or
- (c) a Judge of the Federal Court or Family Court;

“redistribution” includes distribution.

Crown

20 4. This Act binds the Crown.

PART II—AUSTRALIAN CAPITAL TERRITORY ELECTORAL COMMISSION

Division 1—Establishment, functions and powers

Establishment

25 5. The Australian Capital Territory Electoral Commission is established.

Constitution

6. (1) The Commission shall consist of—

- (a) the Chairperson;
- 30 (b) the Electoral Commissioner; and
- (c) 1 other member.

(2) The performance or exercise of the functions or powers of the Commission is not affected because there is a vacancy in the membership of the Commission.

Electoral matters

- 5 7. In addition to any other functions that the Commission has under this Act, the Commission shall consider, and report to the Chief Minister on, electoral matters referred to it by the Chief Minister and such other electoral matters as it thinks fit.

Powers

- 10 8. The Commission may do all things necessary or convenient to be done in connection with the performance of its functions.

Annual report

- 15 9. The Commission shall, after each 30 June, furnish to the Chief Minister for presentation to the Legislative Assembly a report relating to the activities of the Commission during the year ending on that date.

Division 2—Members

Interpretation

10. In this Division—

“member” means a member referred to in paragraph 6 (1) (a) or (c).

Appointment

- 20 11. (1) A member shall be appointed in writing by the Executive.
- (2) A person shall not be appointed as the Chairperson unless the person—
- 25 (a) is or has been a Judge;
- (b) has been a Justice of the High Court;
- (c) has been an administrative head;
- (d) has held an office of Secretary within the meaning of the *Public Service Act 1922* of the Commonwealth; or
- 30 (e) has been a member of the Commission or of an authority of the Commonwealth, a State or another Territory equivalent to the Commission.
- (3) The appointment of a member is not invalid because of any defect or irregularity in connection with the member’s appointment.

Tenure and conditions

12. (1) A member holds office for the period (not exceeding 5 years) specified in the instrument of appointment.

5 (2) A member holds office on such terms and conditions in respect of matters not provided for by this Act as are determined in writing by the Chief Minister.

(3) A member is eligible for re-appointment.

Remuneration and allowances

10 13. (1) A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply—

- 15 (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the member; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

20 **Leave of absence**

14. The Chief Minister may grant a member leave of absence on such terms and conditions as to remuneration and otherwise as the Chief Minister determines.

Resignation

25 15. (1) A member may resign office by writing signed by the member and delivered to the Chief Minister.

(2) The resignation of a member takes effect on the day on which it is delivered to the Chief Minister or, if a later day is specified in the resignation, on that later day.

30 **Termination of appointment**

16. (1) The Executive may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) The Executive shall terminate the appointment of a member if the member—

- 5
- (a) is absent without leave granted under section 14 from 3 consecutive meetings of the Commission;
 - (b) contravenes section 19 without reasonable excuse; or
 - (c) is convicted of an offence in Australia or elsewhere punishable by imprisonment for 12 months or longer.

Acting members

17. (1) The Executive may, by instrument, appoint a person to act as a member.

- 10
- (2) A person shall not be appointed to act as the Chairperson unless the person is eligible for appointment as the Chairperson.

(3) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that—

- 15
- (a) the occasion for the person's appointment had not arisen;
 - (b) there is a defect or irregularity in connection with the person's appointment;
 - (c) the person's appointment has ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

Division 3—Meetings

Procedure

- 20
- 18. (1) The Chairperson may convene a meeting of the Commission.

(2) The Chairperson shall convene such meetings of the Commission as are necessary for the efficient conduct of its functions.

(3) At a meeting, 2 members constitute a quorum.

- 25
- (4) The Chairperson shall preside at all meetings at which he or she is present.

(5) If the Chairperson is not present at a meeting, the Electoral Commissioner shall preside.

(6) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

- 30
- (7) The member presiding at a meeting has a deliberative vote, and in the event of an equality of votes, has a casting vote.

(8) If—

- (a) only 2 members are present at a meeting; and

(b) those members differ in opinion on a matter, other than a matter by reason of which the third member is absent by virtue of section 19; the determination of the matter shall be postponed until the next meeting.

5 (9) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit.

(10) The Commission may inform itself on any matter in such manner as it thinks fit.

Disclosure of interests

10 19. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.

15 (2) The disclosure shall be recorded in the minutes of the meeting and, unless the Commission determines otherwise, the member shall not—

(a) be present during any deliberation of the Commission in relation to the matter; or

(b) take part in any decision of the Commission in relation to the matter.

20 (3) The member shall not—

(a) be present during any deliberation of the Commission for the purpose of considering whether to make a determination under subsection (2) in relation to that member; or

25 (b) take part in the making by the Commission of such a determination.

(4) A member is not to be taken to have an interest in a matter only because the member is entitled to vote in a general election of members of the Legislative Assembly.

PART III—ELECTORAL COMMISSIONER

30 Appointment

20. The Executive may, by instrument, appoint a person to be the Electoral Commissioner.

Functions and powers

35 21. In addition to the functions and powers conferred by this Act, the Electoral Commissioner shall have such other functions and powers as are conferred on him or her by or under any other law of the Territory.

Tenure and conditions

22. (1) The Electoral Commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment.

5 (2) The Electoral Commissioner holds office on such terms and conditions in respect of matters not provided for by this Act as are determined in writing by the Chief Minister.

(3) The Electoral Commissioner is eligible for re-appointment.

Remuneration and allowances

10 23. (1) The Electoral Commissioner shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply—

(a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the Electoral Commissioner; or

15 (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the Electoral Commissioner.

(3) In subsection (2)—

20 “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

Leave of absence

24. The Chief Minister may grant the Electoral Commissioner leave of absence on such terms and conditions as to remuneration and otherwise as the Chief Minister determines.

25 **Resignation**

25. (1) The Electoral Commissioner may resign office by writing signed by the Electoral Commissioner and delivered to the Chief Minister.

30 (2) The resignation takes effect on the day on which it is delivered to the Chief Minister or, if a later day is specified in the resignation, on that later day.

Termination of appointment

26. (1) The Executive may terminate the appointment of the Electoral Commissioner for misbehaviour or physical or mental incapacity.

35 (2) The Executive shall terminate the appointment of the Electoral Commissioner if he or she—

- (a) is absent without leave granted under section 24 from 3 consecutive meetings of the Commission;
- (b) contravenes section 19 without reasonable excuse; or
- 5 (c) is convicted of an offence in Australia or elsewhere punishable by imprisonment for 12 months or longer.

Acting Electoral Commissioner

27. (1) The Executive may, by instrument, appoint a person to act as the Electoral Commissioner.

10 (2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment has ceased to have effect; or
- 15 (d) the occasion for the person to act had not arisen or had ceased.

PART IV—ELECTORATES

Multi-member electorates

28. (1) The Territory shall be divided into 3 separate electorates.

20 (2) Seven members of the Legislative Assembly shall be elected from 1 electorate.

(3) Five members of the Legislative Assembly shall be elected from each of the other 2 electorates.

Redistribution of electorates

25 29. (1) Subject to this Part, the Commission shall redistribute electorates by determining—

- (a) the name and boundaries of each electorate; and
- (b) the number of members of the Legislative Assembly to be elected from each electorate.

30 (2) A determination shall be made by notice in the *Gazette* after the completion of any investigation required by section 43.

Factors relevant to redistribution

30. In making a redistribution of electorates, the Commission shall—

- (a) ensure that the number of electors in an electorate immediately after the redistribution is within the range permitted by subsection 67D (2) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth;
- 5 (b) endeavour to ensure, as far as practicable, that the number of electors in an electorate at the time of the next general election of members of the Legislative Assembly will not be greater than 102%, or less than 98%, of the expected quota for the electorate at that time ascertained in accordance with the formula set out in
- 10 subsection 67D (1) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth; and
- (c) duly consider—
- (i) the community of interests within each proposed electorate, including economic, social and regional interests;
- 15 (ii) the means of communication and travel within each proposed electorate;
- (iii) the physical features and area of each proposed electorate;
- (iv) the boundaries of existing electorates; and
- 20 (v) the boundaries of divisions, sections and blocks fixed under the *Districts Act 1966*.

Timing of redistributions

31. (1) The first redistribution of electorates shall be made as soon as practicable after this Part commences.

25 (2) Subsequent redistributions shall be made within 12 months after the date of each general election of members of the Legislative Assembly.

Redistribution Committees

32. (1) The Commission shall cause Redistribution Committees to be formed for the purposes of this Part.

30 (2) The Commission shall cause notice of the formation of a Redistribution Committee to be published in the *Gazette*.

(3) A Redistribution Committee shall consist of—

- (a) the Electoral Commissioner;
- (b) the Chief Planner for the Australian Capital Territory;
- (c) the Chief Surveyor; and

- (d) a person appointed by the Commission whose qualifications or experience would, in the opinion of the Commission, enable the person to assist the Committee, particularly in relation to the factors set out in section 30.

5 (4) The member referred to in paragraph (3) (d) holds office on such terms and conditions as are determined by the Commission in consultation with the Chief Minister and specified in the instrument of appointment.

10 (5) The appointment of the member referred to in paragraph (3) (d) is not invalid because of any defect or irregularity in connection with the appointment.

(6) The performance or exercise of the Committee's functions or powers is not affected because of any vacancy in the membership of the Committee.

Meetings of Redistribution Committee

15 33. (1) The Electoral Commissioner may convene a meeting of a Redistribution Committee.

(2) The Electoral Commissioner shall preside at all meetings at which he or she is present.

20 (3) If the Electoral Commissioner is absent from a meeting, the members present shall elect 1 of their number to preside.

(4) At a meeting, 3 members constitute a quorum.

(5) Questions shall be determined by a majority of the votes of the members present and voting.

25 (6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(7) A Redistribution Committee may regulate the conduct of proceedings at its meetings as it thinks fit.

(8) A Redistribution Committee may inform itself in such manner as it thinks fit.

30 (9) The Commission shall, on request by a Redistribution Committee, give the Committee such information and assistance as it requires for the purposes of this Part.

Suggestions regarding redistribution

35 34. (1) A Redistribution Committee shall cause a notice to be published in the *Gazette*—

- (a) inviting written suggestions relating to the redistribution of electorates to be lodged with it within 28 days after the date of the invitation; and
- 5 (b) inviting written comments relating to such suggestions to be lodged with it within 14 days after the closing date for making suggestions.

(2) The Committee shall cause notice of the invitations to be published in a newspaper circulating throughout the Territory.

- 10 (3) The Committee shall cause copies of any suggestions lodged with it in accordance with the invitation under paragraph (1) (a) to be made available for perusal by members of the public at the office of the Commission.

Outline of proposal

- 15 35. Before making a proposed redistribution of electorates, a Redistribution Committee may cause an outline of its proposal to be made available to members of the public.

Proposed redistribution

- 20 36. (1) A Redistribution Committee shall make a proposed redistribution of electorates after considering any suggestions and comments lodged with it in accordance with an invitation under subsection 34 (1).

(2) Section 30 applies in relation to the making of the proposed redistribution as if it were a redistribution by the Commission.

(3) The Committee shall state the reasons for its proposal in writing.

- 25 (4) A member of the Committee who disagrees with its proposal may state the reasons for the disagreement in writing.

Publication of proposal

37. (1) A Redistribution Committee shall—

- 30 (a) cause a map or maps showing the name and boundaries of each proposed electorate to be exhibited at the office of the Commission;
- (b) cause copies of—
- (i) the suggestions and comments lodged with the Committee in accordance with the invitation under subsection 34 (1);
- 35 (ii) a description (whether by reference to a map or plan or otherwise) of the boundaries of each proposed electorate;

(iii) a statement as to the number of members of the Legislative Assembly that it proposes should be elected from each proposed electorate;

(iv) its statement of reasons for the proposed redistribution; and

5 (v) if a member of the Committee has provided a written statement of reasons for any disagreement with the proposal—that statement;

to be made available for perusal by members of the public at the office of the Commission;

10 (c) cause a notice to be published in the *Gazette* inviting public attention to the exhibition referred to in paragraph (a) and to the availability for perusal of copies of the documents referred to in paragraph (b); and

(d) cause—

15 (i) a map or maps of each proposed electorate; and

(ii) a notice inviting public attention to the availability for perusal of copies of the documents referred to in paragraph (b);

20 to be published in a newspaper circulating throughout the Territory.

(2) A notice published in accordance with paragraph (1) (c) or (d) shall include a statement to the effect that written objections against the proposal may be lodged with the Commission within 28 days after the date of publication of the notice in the *Gazette*.

25 **Dissolution of Redistribution Committee**

38. A Redistribution Committee is dissolved immediately after the notices referred to in paragraphs 37 (1) (c) and (d) have been published in relation to the Committee's proposal.

Objections

30 39. An objection against a proposal by a Redistribution Committee shall be—

(a) in writing; and

35 (b) lodged with the Commission within 28 days after the date on which the notice referred to in paragraph 37 (1) (c) is published in the *Gazette* in relation to the Committee's proposal.

Investigation of objections

40. (1) The Commission shall investigate each objection made in accordance with section 39.

5 (2) For the purpose of investigating an objection, the Commission shall hold a public hearing, unless it is of the opinion that—

(a) the matters raised in the objection (or substantially the same matters) were raised in suggestions or comments lodged with the Redistribution Committee in accordance with the invitation under subsection 34 (1); or

10 (b) the objection is frivolous or vexatious.

(3) The Commission may hold one public hearing in relation to several objections.

(4) At a public hearing, submissions to the Commission may only be made by or on behalf of a person who made—

15 (a) an objection in accordance with section 39; or

(b) a suggestion or comment concerning the proposed redistribution in accordance with the invitation under subsection 34 (1).

(5) The Commission shall consider all such submissions.

20 (6) At a public hearing, the Commission is not bound by the rules of evidence and, subject to this section, may regulate the conduct of proceedings as it thinks fit.

(7) Without limiting the generality of subsection (6), the following matters are within the discretion of the Commission:

25 (a) the manner in which, and the time within which, submissions may be made;

(b) the extent to which the Commission may be addressed, and the persons by whom it may be addressed.

Redistribution—proposal by Commission

30 41. The Commission shall make a proposed redistribution of electorates after completing any investigation required by section 40.

Publication of Commission's proposal

42. (1) After making a proposed redistribution of electorates, the Commission shall cause a public announcement to be made concerning the proposal.

35 (2) The public announcement shall include a statement—

- (a) setting out the substance of the Commission's findings or conclusions concerning the Redistribution Committee's proposal and any objection to it;
- (b) setting out particulars of the Commission's proposal; and
- 5 (c) whether, in the opinion of the Commission, its proposal is significantly different from the Redistribution Committee's proposal and, if so, a further statement to the effect that written objections against the proposal may be lodged with the Commission in accordance with the notice published under
- 10 subsection (3).

(3) Where the Commission is of the opinion that its proposal is significantly different from the Redistribution Committee's proposal, the Commission shall cause to be published in the *Gazette* a notice to the effect that written objections against the proposal may be lodged with the

15 Commission within 28 days after the date of publication of the notice.

Objections to Commission's proposal

43. (1) An objection against a redistribution proposed by the Commission shall be—

- (a) in writing; and
- 20 (b) lodged with the Commission within 28 days after the date on which the notice referred to in subsection 42 (3) is published in the *Gazette* in relation to the Commission's proposal.

(2) Where an objection is lodged with the Commission in accordance with subsection (1)—

- 25 (a) the Commission shall investigate the objection; and
- (b) section 40 applies as if the investigation were an investigation under that section.

Report by Commission and public announcement

44. (1) After redistributing electorates under section 29, the

30 Commission shall cause—

- (a) a report concerning the redistribution to be submitted to the Chief Minister;
- (b) copies of the report to be made available for perusal by members of the public at the office of the Commission; and
- 35 (c) a public announcement to be made to the effect that the redistribution has been made and that copies of the report are

available for perusal by members of the public at the office of the Commission.

(2) The report shall contain particulars of—

- 5 (a) any suggestions or comments lodged with the Redistribution Committee;
- (b) the redistribution proposed by the Redistribution Committee and its reasons for the proposal;
- 10 (c) if a member of the Redistribution Committee has provided a written statement of reasons for any disagreement with the Committee's proposal—that statement;
- (d) any objections lodged with the Commission against the Redistribution Committee's proposal;
- 15 (e) the result of the investigation of any objections against the Redistribution Committee's proposal (including particulars of the proceedings at any public hearings in the course of an investigation);
- (f) the redistribution proposed by the Commission and its reasons for the proposal;
- 20 (g) any objections lodged with the Commission against the Commission's proposal;
- (h) the result of the investigation of any objections against the Commission's proposal (including particulars of the proceedings at any public hearings in the course of an investigation);
- 25 (i) the redistribution made by the Commission and its reasons for the redistribution; and
- (j) if a member of the Commission has provided a written statement of reasons for any disagreement with the Commission's proposal—that statement.

Report to Legislative Assembly

- 30 45. The Chief Minister shall present a copy of the Commission's report to the Legislative Assembly on the first sitting day after the day on which the Chief Minister receives the report from the Commission.

PART V—MISCELLANEOUS

Decisions under Part IV final

- 35 46. (1) A decision of the Commission or a Redistribution Committee made, or purporting to be made, under Part IV—

- (a) is final and conclusive;
- (b) shall not be challenged, appealed against, reviewed, quashed, set aside or called into question in any court or tribunal on any ground; and
- 5 (c) is not subject to any proceedings for a writ of mandamus, prohibition or certiorari or for an injunction, declaration or other order in any court on any ground.

(2) A reference in subsection (1) to a decision shall be read as including a reference to a refusal or failure to make a decision.

10 **Validity not affected**

47. A failure to comply with the provisions of Part IV (except section 28, 29 or 30) is not to be taken to affect the validity of a decision of the Commission or of a Redistribution Committee.

Improper influence

- 15 48. A person shall not improperly influence a member of the Commission or of a Redistribution Committee.

Penalty: \$20,000 or imprisonment for 2 years, or both.

Regulations

- 20 49. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

25 **Amendment of *Administrative Decisions (Judicial Review) Act 1989***

50. Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1989* is amended by adding at the end the following:

“This Act does not apply to decisions made under Part IV of the *Electoral Act 1992*.”