

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

ELECTORAL (AMENDMENT) BILL 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

**Circulated by authority of
Rosemary Follett, Chief Minister**

OUTLINE

The purpose of these amendments to the Electoral (Amendment) Bill 1993 is to:

- remove provisions related to party ticket voting;
- reduce the term of the Assembly from 4 years to 3 years;
- lower the threshold for receipt of public funding and for return of candidates' deposits from 4% to 2% of formal first preference votes;
- relax the formality criteria to allow ballot papers with a minimum of a single first preference to be counted as a formal vote;
- make several changes recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation; and
- make several minor changes to correct drafting errors and to clarify the meaning of some provisions.

These Government amendments have no significant financial implications.

DETAILED EXPLANATION

Interpretation

Clause 6 is to be amended to amend the definition of “elector” to ensure that the definition includes those persons taken to be electors by virtue of being Commonwealth electors.

Clause 6 is also to be amended to delete the definitions of “registered voting ticket” and “voting ticket square” as a consequence of the removal of the party ticket voting scheme.

Functions of the Electoral Commission

Clause 8 is to be amended to amend new section 7 to clarify the meaning of new paragraph 7(1)(b). The paragraph as it stands could be said to refer to “the Minister relating to elections”, which is not intended.

Delegation

Clause 9 is to be amended to amend new section 18A to allow the Commission to delegate to an officer of the Commission all or any of its powers other than its powers relating to redistributions of electoral boundaries and its powers related to reviewing decisions. This corrects an oversight and brings the delegation powers of the Commission in line with the delegation powers of the Electoral Commissioner. It would allow, for example, the Commission's electoral education powers to be delegated to officers of the Australian Electoral Commission, who could be appointed as officers under the ACT Electoral Act for that purpose.

Insertion of new Parts and Schedules

Clause 22, which inserts the following new provisions in the Principal Act, is also to be amended as follows.

Roll extracts

New section 53 is to be amended to insert the words “enrolled at the time the extract is prepared” after “elector” in new subsection 53(1). This amendment will clarify the meaning of “roll extract” to ensure that roll extracts that are out of date will still fall within the definition of roll extract. As it stands, it could be argued that a document could not be said to be a roll extract if it did not contain up to date elector details. This is relevant, for example, for the purposes of making roll extracts available and for limiting misuse of them.

Approved use of roll extracts

New section 57 is to be amended to remove the possibility that any person could obtain personal electoral roll information in printed or electronic form for a purpose related to an election or monitoring the accuracy of the electoral roll. The amendment is intended to ensure that only MLAs and registered political parties will have automatic access to enrolment information for election and enrolment related purposes. Under this amendment, persons other than MLAs and political parties will only be able to obtain information for a prescribed purpose.

This amendment will close a potential loophole in the scheme contained in the Electoral (Amendment) Bill which is intended to tightly control the uses to which personal electoral roll information are put. As it stands, new paragraph 57(2)(c) could allow persons with no legitimate interest in the electoral process to obtain personal roll information for purposes that might not be in the public interest. The amendment will ensure that access to enrolment information will only be granted for specific purposes. It is intended that specific prescribed purposes will carry appropriate end-use limitations to ensure that personal information is not misused.

Closed rolls

New section 74 is to be amended to ensure that a person who secures enrolment on the Commonwealth roll during the period when rolls are closed for an ACT election would not be taken to be enrolled on the ACT roll for the ACT election. This amendment will close an unintended loophole.

Objections to enrolment

New section 75 is to be amended to ensure that the provision gives effect to the intent of the provision expressed in the original Explanatory Memorandum. That is, it is intended that objections to enrolment under the ACT Electoral Act should only be able to be made in respect of electors who are enrolled on the ACT roll but not the Commonwealth roll, to avoid persons objecting to the same elector’s enrolment under two different jurisdictions. As it stands, this provision could be taken to allow objections to be made to an elector’s enrolment where the elector made a joint Commonwealth/ACT claim.

New section 75 is also to be amended as a consequence of inserting a right of review of a decision to reject an objection to an enrolment under this new section on the basis that Commissioner considers the objection is frivolous or vexatious, as recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation. See the related amendment to new section 241.

Further information

New section 84 is to be amended as a consequence of inserting a right of review of a decision to refuse an application for party registration under this new section, as recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation. See the related amendment to new section 241.

Refusal of applications

New section 87 is to be amended to ensure that a political party cannot be registered with the name “Independent”.

New section 87 is also to be amended to correct a drafting error in paragraph 87(3)(b).

Deputy registered officer

New section 91 is to be amended to require a proposed deputy registered officer to sign the notice of his or her appointment. This will ensure that the Electoral Commissioner has a specimen signature of the deputy, which may be used, for example, in verifying the deputy’s signature on a nomination form.

Ordinary elections

New section 94 is to be amended to reduce the term of the Assembly from 4 years to 3 years.

Candidates to be nominated

New section 99 is to be amended to require the nomination deposit to be lodged in legal tender rather than cash. This will bring the ACT into line with the equivalent Commonwealth practice and will ensure that the nomination process is not frustrated by deposits being made in coins. Under the Commonwealth’s *Currency Act 1965* “legal tender” cannot be coins for amounts over \$20, whereas “cash” would include coins.

Withdrawal etc. of consent to nomination

New section 101 is to be amended to provide that a nomination may only be withdrawn by a candidate or cancelled by a party registered officer up to 24 hours before the hour of nomination (as this provision stands, nominations may be withdrawn or cancelled/ up to the hour of nomination). This amendment brings the period for withdrawal or cancellation of nominations into line with the period for lodgement of nominations, which cannot be submitted later than 24 hours before the hour of nomination.

Deposit — return or forfeiture

New section 107 is to be amended to lower the threshold for return of candidates' deposits from 4% to 2% of formal first preference votes.

Ballot papers

New section 108 is to be amended as a consequence of the removal of the party ticket voting scheme.

Voting tickets

New section 110 is to be omitted as a consequence of the removal of the party ticket voting scheme.

Display of registered voting tickets

New section 111 is to be omitted as a consequence of the removal of the party ticket voting scheme.

Printing of ballot papers

New section 112 is to be amended as a consequence of the removal of the party ticket voting scheme.

New section 112 is also to be amended to remove a possible anomaly in the wording of new subsection 112(2). As it stands, new subsection 112(2) could be taken to mean that the name of each candidate shall be printed once only on only one ballot paper.

Names on ballot papers

New section 113 is to be amended to remove a possible anomaly in the wording of new subsection 113(1). As it stands, new subsection 113(1) could be taken to mean that a party abbreviation must be printed on ballot papers for candidates of a party where that party has a registered abbreviation, regardless of whether the registered officer has requested that the full party name be printed on the ballot papers under new section 99. The amendment will ensure that the party name printed on ballot papers will be the full name or abbreviation as specified by the registered officer of the party.

New section 113 is also to be amended as a consequence of the removal of the party ticket voting scheme.

Determining matters by lot

New section 121 is to be amended to give the Electoral Commission greater flexibility in approving means by which matters shall be determined by lot. As it stands, new subsection 121(2) is an imperfect attempt to paraphrase the Commonwealth Electoral Act's lengthy and detailed "double randomisation" process (whereby the Act specifies that a person is to be blindfolded and balls rotated in a container). Rather than attempt to go into this detail in the ACT legislation, this amendment will give the Commission the flexibility to approve of an appropriate process without limiting the options of the Commission. It is intended that some form of the "double randomisation" method be used when conducting the draw for positions on the ballot papers.

Interpretation

New section 123 is to be amended to correct a drafting error. The definition of "polling day" in this new section is unnecessary. Related amendments are made to new sections 155 and 156.

Entitlement to vote

New section 124 is to be amended to ensure that the section does not have the unintended result of extending the right to vote to a person who turns 18 after the normal polling day but on or before a day to which polling has been adjourned. As it stands, the use of the defined phrase "polling day" would have this unintended effect. This amendment will make it clear that only those electors who turn 18 on or before the normal polling day are eligible to vote, even where polling is adjourned.

Multiple votes prohibited

New section 126 is to be amended to ensure that the offence of multiple voting covers a person who votes more than once at an election which has been adjourned to a day other than the normal polling day.

Manner of recording vote

New section 128 is to be amended as a consequence of the removal of the party ticket voting scheme.

Voting in private

New section 130 is to be amended to correct an incorrect cross-reference. This error was referred to in the report of the Standing Committee on Scrutiny of Bills and Subordinate Legislation.

Functions of visiting officers

New section 147 is to be amended as a consequence of the removal of the party ticket voting scheme.

Custody of ballot boxes and electoral papers

New section 154 is to be amended to ensure that ballot boxes containing ballot papers to be counted immediately after the close of the poll in polling places can be opened for counting without delay. As it stands, this new section requires all ballot boxes to be closed and sealed before being opened for scrutiny. This was not intended in the case of those ballot boxes used in polling places that will also be scrutiny centres, where the ballot boxes would be opened and ballot papers therein counted as soon as the poll closes.

Extension of time for conducting elections

New section 155 is to be amended to correct a drafting error. This amendment will ensure that, where appropriate, references to polling day in this Part (Part X — Voting) include references to days to which polling has been extended under this new section. Related amendments are made to new sections 123 and 156.

Suspension and adjournment of polling

New section 156 is to be amended to ensure that the section does not have the unintended result of extending the right to vote to a person who may be entitled to vote on a day to which polling has been adjourned but who was not entitled to vote on the ordinary polling day. As it stands, the use of the defined phrase “polling day” would have this unintended effect. This amendment will ensure that the only persons who can vote on a day to which polling has been adjourned are those entitled to vote on the normal polling day.

New section 156 is also to be amended to correct a drafting error. This amendment will ensure that, where appropriate, references to polling day in this Part (Part X — Voting) include references to days to which polling has been adjourned under this new section. Related amendments are made to new sections 123 and 155.

Voting tickets — elector’s preferences

New section 176 is to be omitted as a consequence of the removal of the party ticket voting scheme.

Formality of ballot papers

New section 177 is to be amended as a consequence of the removal of the party ticket voting scheme.

In addition, this new section is to be amended to relax the formality criteria for ballot papers to allow ballot papers with a minimum of a single first preference to be counted as a formal vote. Under the Bill as it stands (disregarding the ticket vote provisions), a ballot paper must be marked with at least as many preferences as there are vacancies in the electorate for it to be formal. For example, in a five member electorate, the numbers “1, 2, 3, 4 and 5” must be present without omission or duplication for a ballot paper to be formal. Under this amendment, a ballot paper with a single number “1” would be formal. Any further preferences are therefore optional.

In keeping with the Referendum Options Description Sheet, the instructions on the ballot papers will still instruct voters to put a minimum number of preferences for at least many candidates as there are vacancies in an electorate. This is desirable to maximise the number of ballot papers that will have effect during the scrutiny of preferences and minimise the number of ballot papers “exhausted” because an insufficient number of preferences is shown. The intent behind this amendment is to provide a “safety net” for those voters who fail to follow the instructions on the ballot papers but whose voting intention is nonetheless clear.

New section 291 makes it an offence to “disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.” In other words, campaigners will not be able to distribute how-to-vote material instructing voters to mark fewer preferences than for the number of vacancies in an electorate, even though such a vote might be formal. Again this is desirable to minimise the number of exhausted votes in the scrutiny.

This new section is also being amended (new subsections 177(2) and 177(10)) to clarify that all preferences on a ballot paper that is otherwise formal are to be given effect to as far as the voter’s intention is clear. For example, it is not uncommon for a voter to make a mistake in a candidate square, cross out the mistake and mark an alternative preference adjacent to the square. This amendment will ensure that such a preference can be counted. As it stands, new subsection 177(10), which makes reference to given effect to a voter’s intention as far as that intention is clear, only applies in relation to determining whether a ballot paper is informal.

First count — declaration ballot papers

New section 180 is to be amended to make it clear that declaration votes admitted to further scrutiny following the preliminary scrutiny cannot be counted until after the close of the poll on polling day.

Candidates for casual vacancy

New section 189 is to be amended to insert a definition of a person eligible to contest a casual vacancy under this new section. This definition was omitted from the Bill in error.

The definition of “eligible person” prescribes the same qualifications for candidates contesting casual vacancies as are prescribed for candidates contesting general elections. That is, a candidate must be qualified to be an MLA under new section 97, with the exception that the disqualification related to the holding of a public office or public employment does not apply. (A candidate declared elected to fill a casual vacancy must resign from public office or employment before the declaration of the election result.) Note that under this amendment only candidates eligible to be enrolled on the ACT electoral roll are eligible to contest a casual vacancy.

Publication of candidates' details

New section 190 is to be amended to bring the requirements for publication of casual vacancy candidates' details into line with the equivalent provisions for candidates contesting general elections. As it stands, new paragraph 190(1)(b) can be taken to require the Electoral Commissioner to publicise the details of candidates with suppressed addresses. This was not intended, and this amendment will ensure that candidates' suppressed addresses will not be made public under this provision.

Disclosure periods

New section 198 is to be amended as a consequence of the reduction of the term of the Assembly from 4 years to 3 years.

Entitlement to funds

New section 204 is to be amended to clarify that amounts payable under the election funding scheme cannot exceed electoral expenditure actually incurred.

4% — 2% threshold

New section 205 is to be amended to lower the threshold for receipt of public funding from 4% to 2% of formal first preference votes.

Claims for payment

New section 206 is to be amended as a consequence of inserting a right of review of a decision to refuse a request to extend the period for lodgement of claims for payment of public funding under this new section, as recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation. See the related amendment to new section 241.

Claims by party reporting agents

New section 207 is to be amended as a consequence of the reduction of the threshold for receipt of public funding from 4% to 2% of formal first preference votes.

Disclosure of gifts

New section 214 is to be amended to make the disclosure requirements in this new section internally consistent. This amendment will require the reporting agents of candidates to declare dates on which gifts were *received*, rather than the dates on which they were *made*.

Annual returns

New section 226 is to be amended to make it clear that parties that cease to be registered parties and persons who cease to be MLAs during a financial year are required to submit an annual return for that part of the financial year in which the party was registered or the person was an MLA, as the case may be.

Outstanding amounts

New section 230 is to be amended to make it clear that *all* outstanding debts owed by a party or MLA at the end of a financial year to a particular person or organisation of \$1500 or more must be disclosed, not just those debts incurred during the financial year.

Interpretation

New section 231 is to be amended to correct an incorrect cross-reference to paragraph 236(4)(b), which should simply be a reference to subsection 236(4).

Offences

New section 232 is to be amended as a consequence of the reduction of the term of the Assembly from 4 years to 3 years.

Investigation — search warrants

New section 234 is to be amended to give a right of access to documents seized under this section to persons otherwise entitled to possession of such documents. This amendment was recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation.

Records

New section 235 is to be amended as a consequence of the reduction of the term of the Assembly from 4 years to 3 years.

Amendment of claims and returns

New section 238 is to be amended to allow a request to amend a claim or return to be made by the person who lodged the claim or return *or* the person who is the relevant reporting agent at the time of making the request, rather than only allowing requests for amendments to be made by the person who lodged the original claim or return. Under this new section as it stands this provision could be unworkable if the person who made the original request is unavailable or has ceased to have any connection with the party, MLA or candidate, as the case may be.

New section 238 is also to be amended as a consequence of inserting a right of review of a decision to refuse a request to amend a claim or return under this new section, as recommended by the Standing Committee on Scrutiny of Bills and Subordinate Legislation. See the related amendment to new section 241.

Review of decisions

New section 241 is to be amended to implement several recommendations of the Standing Committee on Scrutiny of Bills and Subordinate Legislation to provide review mechanisms for the following decisions:

- to reject an objection to an enrolment under new section 75 on the basis that Commissioner considers the objection frivolous or vexatious;
- to refuse an application for party registration under new section 84;

- to refuse a request to extend the period for lodgement of claims for payment of public funding under new section 206; and
- to refuse a request to amend a claim or return under new section 238.

How-to-vote material in polling places

New subsection 298 is being amended to ensure that the offence of exhibiting electoral matter in a polling place does not apply to material exhibited by a visiting officer acting under new section 147.

Service of documents by fax

New subsection 321(2) is being omitted as it could be taken to give the unintended result of allowing a person to claim a document was sent by fax to the Electoral Commissioner simply by producing a fax transmission report. By omitting this subsection, the onus will be placed on the sender to ensure that a fax is properly received by the Commissioner.

New subsection 321(4) is being amended to correct a drafting error.

Schedule 1 — Form 1 — Ballot paper where voting ticket lodged

This form is to be omitted as a consequence of the removal of the party ticket voting scheme.

Form 2 — Ballot paper where no voting ticket lodged

The title of this form is to be amended as a consequence of the removal of the party ticket voting scheme.

This form is also being amended as a consequence of the relaxation of the formality rules. The reminder notice at the foot of the ballot paper is being changed to read:

“Remember, number at least [] boxes from 1 to [] in the order of your choice.”

This change removes the inference that a vote will not count [that is, will not be formal] if a voter fails to number as many preferences as there are vacancies in the electorate.

Schedule 3 — Preliminary scrutiny of declaration voting papers

This Schedule is to be amended to clarify the intent of clause 9, which provides that, where a person claiming to vote is not on the electoral roll, the person’s vote will be admitted to the count if the person’s name was removed from the roll because of an “official error”. This amendment makes it clear that a name removed from the roll prior to the previous election is not to be taken to be removed as a result of official error.

Schedule 4 — Ascertaining result of poll

This Schedule is to be amended as a consequence of the removal of the party ticket voting scheme.