

2003

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

ELECTORAL AMENDMENT BILL 2003

EXPLANATORY STATEMENT

**Circulated by authority of
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Attorney-General**

OUTLINE

This Bill provides for amendments to the *Electoral Act 1992* (Electoral Act) to provide that:

- An additional requirement will be imposed on a political party applying for registration. Each party must provide a list of members with its application for registration. This list must contain the names and addresses of at least 100 members who are electors.
- Party membership lists received by the Electoral Commissioner should not be able to be used for any purpose other than for checking whether a party has 100 members who are electors.
- The Electoral Commissioner must refuse an application to register a political party if the Commissioner believes on reasonable grounds that the party did not have at least 100 members who were electors on the date on which the party applied for registration.
- The latest date on which an application for party or ballot group registration, or an application to change the name or abbreviation of a registered political party or ballot group, may be made before an election will be 30 June in the year in which the next ordinary general election is due to be held.
- Only candidates belonging to registered political parties or ballot groups will be able to be listed in groups on ballot papers. As a result, the provisions related to non-party groups will be removed. All non-party candidates will be listed in the “ungrouped” columns on the ballot papers.
- Postal vote applications from electors who are overseas must be received before the last mail delivery on the Friday 8 days before polling day.
- Postal votes must be issued for the electorate for which the elector is enrolled, or, if the issuing officer cannot determine whether the elector is currently enrolled, the vote is to be issued for the electorate in which the elector claims to be entitled to vote.
- The Electoral Commissioner will not be permitted to be present during any deliberation of the Commission in relation to a review of a decision of the Commissioner not to conduct a recount, and the Commissioner will not be permitted to take part in making any such decision, unless the original decision was made by a delegate of the Commissioner.
- The thresholds related to disclosure of identities of donors to candidates and submission of disclosure returns by persons incurring electoral expenditure, that currently specify \$200, will be increased to \$1500.
- The threshold at which anonymous gifts may not be received by candidates, MLAs, parties, ballot groups and associated entities will be increased to \$1500.
- Broadcasters and publishers will be required to provide the address of those people who have placed election advertisements when submitting election disclosure returns.

BACKGROUND

The provisions in this Bill are based on recommendations made by the ACT Electoral Commission in its report, *The 2001 ACT Legislative Assembly Election: Review of the Electoral Act 1992*, tabled in the Legislative Assembly on 20 August 2002. This report examined the operation of the *Electoral Act 1992* in relation to the conduct of the 2001 election.

Requiring applicants for registration of a political party to provide a list of at least 100 members at the time of its application for registration will ensure that only eligible political parties will be able to apply for registration. By contrast, under the existing provisions, it is possible for a party to apply for registration before it has attained the necessary number of members needed for registration. Party membership lists received by the Electoral Commissioner should not be able to be used for any purpose other than for checking whether a party has 100 members who are electors. As the lists will contain personal details of individual's political affiliations, they should not be obtainable under the *Freedom of Information Act 1989*.

Providing for a cut-off date of 30 June in an election year for submission of an application for party or ballot group registration or an application to change the name or abbreviation of an already registered political party or ballot group, will ensure that there will be time for appeals against a decision to register a party to be made and considered before the election period commences. By contrast, under the existing provisions, a party or ballot group could be registered just before the start of the election period, leaving no time for appeals to be made against the registration.

Removing non-party groups is intended to give voters a clearer picture of the backgrounds of candidates, by more clearly delineating independent and non-party candidates from candidates representing registered political parties or ballot groups. It will also reduce the opportunity for persons to mischievously frustrate the electoral process by causing ballot papers to be unnecessarily large, through the proliferation of non-party groups.

Requiring overseas applicants for postal votes to submit their applications by no later than the Friday 8 days before polling day will allow for the time needed for mail to be delivered to and from overseas locations, and should serve to increase the probability that an overseas postal vote will be received in time to be included in the count. At the 2001 election, all postal vote applications received from overseas in the week before polling day were received too late for the votes to be returned and counted.

Requiring postal votes to be issued for the electorate for which the elector is enrolled, rather than for the electorate for which the elector claims to be enrolled, will ensure that postal voters will be treated on the same basis as a voter presenting at a polling place. This will increase the probability that a postal vote will be included in the count. At present, electoral officers are obliged to issue postal votes for the electorate a person claims to be enrolled for, even when the officer knows the person is enrolled for a different electorate, and that, therefore, the postal vote will have to be rejected at the count.

Requiring the Electoral Commissioner not be present during consideration of an appeal by the Electoral Commission against a decision of the Commissioner not to hold a recount will bring this process into line with the principle that a person should not consider appeals to the person's own decisions.

The changes to the disclosure thresholds will bring all the thresholds for disclosure and for receipt of anonymous donations to \$1500. This will remove a number of inconsistencies and inequities in the current disclosure scheme, ensuring that different types of political entities will be treated the same way. For example, under the current scheme the identity of donors giving \$200 or more to candidates must be disclosed, whereas the threshold for identifying the identity of donors to parties is \$1500. As party candidates can direct all of their donations through their party, this means that the effective disclosure threshold for donations to party candidates is \$1500, compared to a \$200 threshold for donations to non-party candidates.

Requiring broadcasters and publishers to provide addresses of political advertisers will facilitate identification of, and contact with, advertisers. This will enable the Electoral Commissioner to follow up cases where advertisers are required to submit disclosure returns.

FINANCIAL IMPLICATIONS

None.

DETAILED EXPLANATION

Formal clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Act, commencement and to the Act being amended. The Act is to commence on the day after its notification day.

Application for registration of a political party

Clauses 4, 5 and 6 amend section 89 to provide that an application for registration of a political party must be accompanied by a list of the names and addresses of at least 100 members of the party who are electors. Such a list may only be used by the Electoral Commissioner for the purpose of finding out whether the party has at least 100 members who are electors.

This change extends the current provision in the Electoral Act that allows the Electoral Commissioner at his or her discretion to ask for this information under existing section 90, so that provision of a membership list is to become an automatic part of applying to register a political party. The amended provisions will make it clear that a party applying for registration has to have at least 100 members who are electors at the time at which it applies for registration. Under the existing provisions in the Act it is not clear that a party has to have 100 members when it applies for registration.

The provision restricting the use the Electoral Commissioner may make of party membership lists (which simply restates an existing provision in section 90) is intended to make it clear that party membership lists may only be used for checking whether a party is eligible to be registered. It is not intended that party membership lists should be made available to any other persons or agencies other than the Electoral Commissioner and his or her staff. It is also intended that party membership lists should not be available under the *Freedom of Information Act 1989*, on the basis that disclosure of the political affiliations of individuals would involve the unreasonable disclosure of information relating to the personal affairs of a person.

Further information about application for political party registration

Clauses 7 and 8 amend section 90 to remove provisions that have been inserted into section 89. This change makes the provision of a party membership list by a party applying for registration a mandatory requirement rather than a requirement at the discretion of the Electoral Commissioner.

Refusal of applications for registration

Clause 9 amends section 93 to provide that the Electoral Commissioner must refuse an application to register a political party if the Commissioner believes on reasonable grounds that the party did not have at least 100 members who were electors at the time when the party applied for registration. This replaces a similar provision that does not make it clear that a party has to have 100 members at the time when it applies for registration.

When certain action cannot be taken

Clause 10 inserts a new section 95B to provide that no action is to be taken by the Electoral Commissioner in relation to any application to register a political party or ballot group, or any application to change the name or abbreviation of a political party or ballot group, during the period beginning on 1 July in a normal election year and ending when the pre-election period for the election commences.

This effectively means that the latest date on which an application for party or ballot group registration, or an application to change the name or abbreviation of a registered political party or ballot group, may be made before an election will be 30 June in an ordinary election year. Any applications received during this period would be considered by the Electoral Commissioner after the polling day for the election. (Note that section 96 currently provides that no action can be taken in relation to any matter related to the registration of political parties and ballot groups during the period between the start of the pre-election period and polling day. This section is not changed by this Bill.)

Information about political parties

Clause 11 replaces section 97A to make equivalent changes to those made to section 89. The section is amended to make it clear that it enables the Electoral Commissioner to require registered political parties to provide the Commissioner with a list of the names and addresses of at least 100 members of the party who are electors. It is also amended to make it clear that this information may only be used for the purpose of finding out whether the party remains entitled to registration.

The existing section 97A already provides that the Commissioner may seek information from a registered party reasonably necessary for finding out whether the party is entitled to registration, such as a party membership list, however it does not provide for the same level of protection from misuse as is currently applied in relation to party membership lists provided when a party is applying for registration. This amendment corrects this anomaly.

Grouping of candidates' names

Clauses 12 and 13 amend section 115 to remove references to allowing 2 or more non-party candidates to be grouped on ballot papers. As amended, section 115 will only allow 2 or more candidates from a registered political party or ballot group to be grouped on ballot papers. (Non-party candidates will be included in the list of ungrouped candidates provided for by section 116.)

Definitions for div 10.4

Clause 14 replaces existing section 136 to insert definitions of “authorised delivery service” and “post”. These definitions replace equivalent provisions removed from existing section 136A by the following clause. The substance of these definitions has not changed.

Postal voting before polling day

Clause 15 replaces existing section 136A to provide for the issuing of postal ballot papers.

The substantive changes made by this clause provide that:

- Postal votes must be issued for the electorate for which the elector is enrolled, or, if the issuing officer cannot determine whether the elector is currently enrolled, the vote is to be issued for the electorate in which the elector claims to be entitled to vote; and
- Postal vote applications from electors who are overseas must be received before the last mail delivery on the Friday 8 days before polling day.

The redrafting of existing clause 136A also incorporates some more technical changes:

- The person applying for a postal vote is referred to in some subsections as a “person” or an “applicant” rather than as an “eligible elector”. In practice, eligibility of a person to cast a postal vote is determined after the person has submitted a postal vote, when the person’s declaration is checked against the electoral roll.
- The reference to “the last mail clearance at the nearest post office” has been changed to “the last mail clearance at the post office nominated by the Electoral Commissioner”. This recognises that the Electoral Commission uses temporary accommodation at election times, so that the nearest post office to the postal voting issuing officers may not be the post office regularly used by the Electoral Commission.

- Those parts of existing section 136A that deal with the requirements imposed on postal voters for completing and returning postal vote material have been moved to new section 144A.

Issue of voting papers to registered declaration voters

Clause 16 inserts a new note in existing section 141 of the Electoral Act (which provides for the automatic despatch of postal voting papers to registered declaration voters) to refer to the fact that new section 144A deals with how to cast a postal vote.

Requirement for casting postal votes

Clause 17 inserts new section 144A to provide for the requirements imposed on postal voters for completing and returning postal vote material. These requirements have been moved from existing section 136A. The substance of the requirements has not changed, other than adding a clarification that these requirements apply to postal voters issued with a vote either under section 136A (which provides for issuing postal voting papers to persons applying for postal votes) or section 141 (which provides for the automatic despatch of postal voting papers to registered declaration voters).

Recount of ballot papers

Clause 18 replaces existing section 187 with new sections 187, 187A and 187B to amend the provisions relating to the conduct of recounts of ballot papers. The substantial change made by this amendment is to provide that the Electoral Commissioner will not be permitted to be present during any deliberation of the Commission in relation to a review of a decision of the Commissioner not to conduct a recount, and the Commissioner will not be permitted to take part in making any such decision, unless the original decision was made by a delegate of the Commissioner.

Existing section 187 has been recast as three sections in order to separate the role of the Electoral Commissioner from the review role of the Electoral Commission and to provide more explicitly for the mechanism for a candidate to request a recount.

Renumbering of section 187A

Clause 19 renumbers section 187A as section 187C to allow for the insertion of new sections 187A and 187B.

Consequential amendments related to the removal of non-party groups

Clauses 20 to 33 amend various provisions as a consequence of the removal of non-party groups.

Disclosure of gifts

Clause 34 amends section 217 to increase the disclosure threshold at which the identity of a donor to a candidate must be disclosed by the candidate. At present, a candidate must disclose the identity of a donor giving the candidate a total of \$200 or more during the disclosure period for an election. This amendment increases this threshold to \$1500.

Further consequential amendments related to the removal of non-party groups

Clauses 35 to 40 amend various provisions as a consequence of the removal of non-party groups.

Donations to candidates

Clause 41 amends section 221 to increase the disclosure threshold at which a person making a donation to a candidate must submit a disclosure return. At present, a person giving a candidate a total of \$200 or more during the disclosure period for an election is required to submit a return. This amendment increases this threshold to \$1500.

This section is also amended by this clause as a consequence of the removal of non-party groups.

Further consequential amendments related to the removal of non-party groups

Clauses 42 to 47 amend various provisions as a consequence of the removal of non-party groups.

Anonymous gifts

Clause 48 amends section 222 to increase the threshold at which anonymous donations may not be received by an electoral participant. At present, a party, ballot group, MLA or associated entity may not accept an anonymous gift of \$1000 or more, and a candidate may not accept an anonymous gift of \$200 or more. This amendment increases this threshold to \$1500.

This section is also amended by this clause as a consequence of the removal of non-party groups.

Further consequential amendments related to the removal of non-party groups

Clauses 49 to 53 amend various provisions as a consequence of the removal of non-party groups.

Returns of electoral expenditure

Clause 54 amends section 224 to increase the disclosure threshold at which a person (other than a person acting with the authority of a party, ballot group, candidate or associated entity) making electoral expenditure must submit a disclosure return. At present, a person spending \$200 or more on electoral expenditure for an election is required to submit a return. This amendment increases this threshold to \$1500.

This section is also amended by this clause as a consequence of the removal of non-party groups.

Further consequential amendments related to the removal of non-party groups

Clauses 55 to 57 amend various provisions as a consequence of the removal of non-party groups.

Returns by broadcasters and publishers

Clause 58 amends section 226 to provide that broadcasters and publishers must provide the name and address of those people who have placed election advertisements in broadcasters and publishers election disclosure returns. Currently only names are required to be disclosed.

Further consequential amendments related to the removal of non-party groups

Clauses 59 to 61 amend various provisions as a consequence of the removal of non-party groups.

Consequential amendments related to the changes to the postal voting provisions

Clauses 62 to 65 amend various provisions as a consequence of the changes to the postal voting provisions.

Further consequential amendment related to the removal of non-party groups

Clause 66 amends the Dictionary as a consequence of the removal of non-party groups.

Further consequential amendments related to the changes to the postal voting provisions

Clauses 67 to 68 amend the Dictionary as a consequence of the changes to the postal voting provisions.