2019

LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

ELECTORAL LEGISLATION AMENDMENT BILL 2019

EXPLANATORY STATEMENT

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ELECTORAL AMENDMENT BILL 2019

Outline

Background

This explanatory statement relates to the Electoral Legislation Amendment Bill 2019 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Electoral Legislation Amendment Bill 2019

The *Electoral Act 1992* (the Act) establishes the Australian Capital Territory Electoral Commission and provides the electoral system for the Territory.

On 15 December 2016, the ACT Legislative Assembly passed a resolution which established a Select Committee to review the 2016 ACT election and the Act. The Select Committee released its report in November 2017 and made 23 recommendations. The Government tabled its response on 10 April 2018 agreeing to six recommendations, agreeing in principle to nine, noting six and not supporting two.

This Bill addresses a number of outstanding recommendations of the Select Committee and amendments identified by the Electoral Commission as being necessary to improve the operation of the Act. The Bill also progresses an election commitment made in 2016 which aims to maximise Canberrans' opportunity to participate in ACT elections.

Purpose of the Bill

The policy objective of the Bill is to support a robust, fair, transparent and representative electoral system that helps to promote equal opportunity for participation in the Territory's political process while safeguarding sensitive information.

The Bill makes amendments to the Act to:

- allow voters to enrol to vote in an election up to and including election day;
- ensure consistency in measuring a defined polling area (in which canvassing is not permitted);
- require the full given name and surname of a person and the name of an entity (where an electoral matter is published on behalf of an entity) to be shown in an authorisation statement;
- require fractional transfer values for votes to be rounded down to 6 decimal places rather than the nearest whole number;
- correct an anomaly to prevent the public disclosure of address details of individuals paying money or providing gifts to political entities, to ensure appropriate privacy protections; and

- make a technical amendment to section 292 of the Act (about dissemination of unauthorised electoral material) to ensure consistency of terminology.

The Bill also makes amendments to the *Public Unleased Land Act 2013* to allow an authorised person to immediately remove electoral advertising signs from public unleased land, where the signs are not compliant with statutory requirements, without providing prior notice to the owner of the sign.

Human rights considerations

The preamble to the *Human Rights Act 2004* (HR Act) notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The responsibility of governments to undertake measures to protect their citizens has been discussed in European human rights jurisprudence. This responsibility has been described as the 'doctrine of positive obligations' which encompasses the notion that governments not only have the responsibility to ensure that human rights be free from violation, but that governments are required to provide for the full enjoyment of rights.[1] This notion has been interpreted as requiring states to put in place legislative and administrative frameworks designed to deter conduct that infringes human rights and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights.[2]

Section 28 of the HR Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*.[3] A party must show that:

> *[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".*[4]

[1] Colvin, M & Cooper, J, 2009 *'Human Rights in the Investigation and Prosecution of Crime'* Oxford University Press, p 424-425.
[2] Ibid, p425.
[3] [1986] 1 SCR 103.
[4] *R v Oakes* [1986] 1 SCR 103.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of supporting a robust, fair, transparent and representative electoral system.

Detailed human rights discussion

Rights engaged

The Bill engages the rights of privacy and reputation, freedom of expression, taking part in public life, rights in criminal proceedings, and against retrospective criminal laws. An analysis on the impact of the proposed amendments on these rights are discussed below.

Broadly, the Bill engages the following HR Act rights:

- Section 12 – Right to privacy and reputation
- Section 16 – Freedom of expression
- Section 17 – Taking part in public life

Section 12 – Right to privacy and reputation

Section 12 is modelled on Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and states that every individual has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

When commenting on the operation of Article 17 of the ICCPR,[5] the United Nations Human Rights Committee (UNHRC) stated, "As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant."

Disclosure of information in relation to individuals – amendments to section 243 and 292 of the Electoral Act

The right to privacy is supported by preventing the public disclosure of addresses of individuals who donate reportable amounts and/or gifts to political entities. The amendment to section 243 has the practical effect of protecting the individual's privacy in not allowing their full home address to be shared publicly.

The right to privacy is limited by amending section 292 to require the name of an entity and the full name of the individual who authorised the dissemination of electoral matter (whether it be behalf of an individual or entity) to be shown in an authorisation statement – a statement to the effect that the named person authorised, or is the author of, the matter. The purpose of

[5] Human Rights Committee, General Comment No 16: The right to respect of privacy, family, home and correspondence (article 17), 32nd sess, UN Doc HRI/GEN/1/Rev.9 (Vol 1) (8 April 1988).

the limitation is to allow the public to identify the source behind the dissemination of the electoral matter.

This limitation is only partial and is proportionate as it does not hinder or prevent the expression of opinions via the dissemination of electoral material. The right to privacy is only limited to the extent that the identity of the person authorising the electoral material will be revealed to the public.

This limitation is further justified when balanced against the amendment's support for a transparent and accountable electoral system, which is supported by the right to seek, receive and impart information (derived from section 16 - the right to freedom of expression).

The amendment supports the right to seek, receive and impart information by preventing "irresponsibility through anonymity",[6] making it unlawful to publish electoral material that does not identify the author and allowing voters to judge whether the material is coming from a source with a particular interest in the election. This will enable voters to be fully informed participants of a democratic society.

Section 16 – Freedom of expression

The right to freedom of expression in the HR Act is a personal freedom which is considered essential for all individuals to achieve full personal development and self-fulfilment through the development and distribution of ideas and opinions. A free flow of ideas is also necessary to encourage the vigorous public debate which is central to the functioning of Australia's liberal democratic system of government.

The right to freedom of expression in the HR Act is a right which is broader in scope than the freedom of political communication which is implied into the Constitution.

The freedom of political communication implied from the Australian Constitution, is a separate freedom that is not a personal right, but rather a restraint on legislative power. In contrast the right to freedom of expression in the HR Act is held by all individuals and extends to information and ideas of all kinds. The right to freedom of expression also includes the right of a person to hold their own opinions without interference or sanction and to seek, receive and impart information and ideas of all kinds.

A number of amendments contained in the Bill engage this right, as discussed below.

Removal of unapproved electoral advertising signs – amendments to the Public Unleased Land Act

The amendment to the *Public Unleased Land Act 2013* (PULA) to allow an authorised officer to remove non-compliant electoral advertising signs from public unleased land engages and limits the right to freedom of expression. The nature of the right is discussed above.

[6] Select Committee on the 2016 ACT Election and Electoral Act, November 2017, 'Inquiry into the 2016 ACT Election and the Electoral Act', Page 11

The importance of the purpose of the limitation

The Select Committee into the 2016 ACT Election and the Act heard evidence that during the 2016 ACT election a significant number of electoral advertising signs placed alongside public roads had not been approved and did not comply with the requirements of the *Public Unleased Land (Movable Signs) Code of Practice 2019* (the Code).

The existing provisions of the PULA do not allow for immediate removal of signs. Section 98 currently requires seven days' notice to be given to the owner before action can be taken to remove the sign. The issue highlighted to the Select Committee was that candidates or parties which placed their signs on public unleased land contrary to the requirements of the PULA or the Code, took the benefit of the sign serving its advertising purpose, for at least seven days before it was possible for authorities to remove the sign.

As a result, it was recommended that an amendment be made to provide for a swift response to non-compliant electoral advertising material placed on public land, to avoid people and entities which do not comply with the Code during an election campaign period gaining an unfair advantage over those who do comply. The amendment to the PULA supports an equitable and transparent electoral process.

Nature and extent of the limitation

The amendment includes a number of safeguards to protect the right to freedom of expression, including that the power to remove signs may only be relied upon where the person or entity responsible for the sign has not complied with the requirements set out by the PULA and Code. The Code is clear in relation to the requirements for placing movable signs containing electoral material on public unleased land.

The majority of the grounds on which an electoral advertising sign may not comply with the Code will be able to be readily objectively determined. These include whether the dimensions of the sign exceed the maximum allowable dimensions, whether any aspects of its construction, such as protrusions or lack of stability in windy conditions, could be a danger to the public and whether it includes relevant authorisations under the Electoral Act. Similarly, in relation to electoral advertising signs, it will be clear whether or not such signs are on public unleased land during the period of time permitted under the Code – up to six weeks immediately preceding the election date, and for no more than 48 hours after the close of polling.

Another ground on which a sign, including an electoral advertising sign, may not be compliant with requirements of the Code, is that it displays words or images likely to cause offence to a reasonable adult to the extent that the sign should not be displayed in a public place (the 'offensiveness test'). It is appropriate to ensure that authorised officers can take action to remove any offensive advertising material which is in a public place, including offensive electoral material. Authorised officers include police officers and government officials – officers of Transport Canberra and City Services (TCCS). In practice, enforcement of the code is undertaken by TCCS officers with police being only rarely involved.

It is important in the election period for the community to be confident that decisions made by authorised officers, in applying the 'offensiveness test' in the Code, will be based on appropriate judgement and will not result in the removal, without notice, of electoral advertising signs that, while confronting or graphic, do not meet the 'offensiveness test'. As an additional safeguard, as a matter of practice, authorised officers in TCCS will be required to seek the approval of their director-general, prior to exercising the power to immediately remove the sign on the ground that it is offensive under the Code. This will provide an opportunity for an assessment by more senior officials of whether any electoral advertising material is in breach of the Code, on the grounds of offensiveness, before any action is taken under the new provision.

Further, the amendment provides that, as soon as practicable after a sign has been removed, the authorising officer must take reasonable steps to give the owner a written notice of its removal. This notice must provide details of when and from where the sign may be collected, so that the owner of the sign may recover the sign (with the potential to reuse the sign in a way which complies with the Code).

The Bill makes provision for the decision to remove a sign under the new power to be appealed and independently reviewed by the ACT Civil and Administrative Tribunal, further safeguarding the right to freedom of expression, and providing transparency in relation to the basis and quality of decision-making.

Relationship between the limitation and its purpose

The amendment to the PULA will enable authorised officers to remove non-compliant signs from public unleased land. The purpose of the amendment is to ensure that a party or candidate does not gain the benefit of electoral advertising unfairly as a result of placing a sign which does not comply with the Code or the PULA.

Any less restrictive means reasonably available to achieve the purpose

These restrictions are proportionate to the aim of creating an electoral system that is fair to all candidates and are considered the least restrictive means possible in the circumstances.

Rounding down of fractional transfer values – amendments to Schedule 4 of the Electoral Act

The right to hold opinions without interference is supported by providing that the rounding down of fractional transfer values should be to 6 decimal places rather than to the nearest whole number. The ACT electoral system is a form of proportional representation voting system which uses a single transferable vote (based on preferences) to determine final vacancies. Under this system, rounding down of vote values is applied when surplus votes from an elected candidate are being distributed to continuing candidates. At the point where a candidate is elected with more votes than the quota needed for election (surplus votes), the 'last parcel' of votes received by the elected candidate is allocated to continuing candidates and a fractional transfer value is applied to each ballot paper showing preferences. Under the current provisions of the Act, where the application of this fractional transfer value results in a continuing candidate being allocated a fraction of a vote, the fraction is ignored, effectively

rounding down all vote value calculations to the nearest whole number. The amendment will minimise the possibility of unfair and/or anomalous election results that may result from rounding down to whole numbers (albeit the possibility of this occurring was relatively small).

Section 17 – Taking part in public life

The nature of the right

The right to take part in public life in section 17 of the HR Act is a fundamental right but it is not absolute.

Section 17 provides that every citizen has the right, and is to have the opportunity, to—

a) take part in the conduct of public affairs, directly or through freely chosen representatives; and

b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and

c) have access, on general terms of equality, for appointment to the public service and public office.

The right to take part in public life is engaged by multiple amendments in the Bill. The Act is a key part of the framework that gives effect to the right to take part in public life by establishing a clear framework for the conduct of elections for representatives that does not unreasonable or arbitrarily limit who may stand for public office.

Removing electoral advertising signs immediately – amendments to the Public Unleased Land Act 2013

The right is partially limited by the amendment to the PULA. The amendment allows authorised officers to remove electoral advertising signs where the sign does not comply with the Code made under section 27 of the PULA.

The amendment to the PULA supports the framework provided by the Act to ensure that those running for public office do so in a way that is fair and transparent.

The UN Human Rights Committee has stated that the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies the freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas. These aspects of

public participation are supported by other rights including the right to free expression and equality.[7]

The importance of the purpose of the limitation

As discussed above, under current provisions of the PULA, candidates or parties which place their signs on public unleased land contrary to the requirements of the PULA or the Code, take the benefit of the advertising exposure that the sign delivers during the period in which the sign cannot be removed, following the giving of notice to remove the sign.

As a result, the amendment removes the potential for inequitable results by allowing authorities to immediately remove signs that don't comply with requirements of the PULA or the Code. In this way, the amendment to the PULA supports an equitable and transparent electoral process.

Nature and extent of the limitation

The ability of authorised officers to remove electoral advertising signs limits a very small element of the right to take part in public life. The core guarantees outlined in section 17 of the HR Act are not impeded. Parties and candidates are still able to take part in public affairs directly while running for office, including placing electoral advertising signs on public unleased land, provided the sign complies with the Code. The decision to remove a sign is a reviewable decision and as such is subject to scrutiny by an independent body.

Relationship between the limitation and its purpose

As discussed above, the amendment to the PULA will enable authorised officers to remove non-compliant signs from public unleased land. The purpose of the amendment is to ensure that no party or candidate benefits unfairly as a result of placing an electoral advertising sign on public unleased land, contrary to the PULA or the Code.

Any less restrictive means reasonably available to achieve the purpose

These restrictions are proportionate to achieve the purpose of creating an electoral system that is fair to all candidates and are considered the least restrictive means possible in the circumstances.

[7] UN Human Rights Committee (Fifty-seventh session, 1996) General Comment No. 25 'The right to participate in public affairs, voting rights and the right of equal access to the public service', Un Doc. CCPR/C/21/Rev.1/Add.7 [8, 25]

Electoral Legislation Amendment Bill 2019

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Electoral Legislation Amendment Act 2019* (the Amendment Act).

Clause 2 — Commencement

This clause provides information about when the provisions commence. The Amendment Act will commence on the day after its notification day.

Clause 3 — Legislation amended

This clause outlines the legislation that is amended by the Bill. The Bill will amend the following:

- *Electoral Act 1992* (the Act);
- *Public Unleased Land Act 2013;*
- *Referendum (Machinery Provisions) Act 1994.*

Clause 4 — Legislation repealed

This clause repeals a notifiable instrument – the *Electoral (Canvassing within 100m of polling places) Notice 2016* (NI2016-536). Notifiable instrument 2016-536 was made by the Electoral Commissioner on 21 September 2016 and lists polling places with enclosures that fall within the definition of *defined polling area* pursuant to section 303 (7) (b) of the Act.

The repeal of this instrument is a consequence of the omission of section 303 (2) of the Act, under which the instrument is made, and the amendment of section 303 (7), by clauses 27 and 28.

Part 2 – Electoral Act 1992

Clause 5 – Enrolment etc

Section 76 (5)

This clause amends section 76 (5) which is about the ACT Electoral Commissioner (the Commissioner) making a decision to accept or reject a claim by a person for enrolment. The

amendment omits the phrase ‘, subject to section 80’. This clause is consequential on the omission of section 80, which relates to the closing of the electoral roll, by clause 7.

Clause 6 – New section 76 (7) and (8)

This clause inserts a new section 76 (7) and is a consequential amendment. This provision was previously located at section 80 (4) of the Act, which is omitted by clause 7. The purpose of omitted section 80 (4) and new section 76 (7) is unchanged – to allow posted claims for enrolment that would have been received by the relevant cut-off date, but for the effect of an industrial dispute affecting the time taken to deliver the claim for enrolment, to be treated as having been received in time.

Section 76 (7) provides that Australia Post may notify the Commissioner in writing that a delay in the delivery of a posted claim for enrolment or transfer of enrolment has arisen as a consequence of an industrial dispute, and that apart from the dispute, the claim would have been delivered to the commissioner before 6pm on polling day for an election. The section provides that where Australia Post writes to the Commissioner in this circumstance, the claim is taken to have been received by the Commissioner before 6pm on polling day for the election.

A new section 76 (8) provides a definition of *Australia Post.* The language in this provision has been updated to ensure plain English is used.

Clause 7 – Closed roll

Section 80

Section 80 currently provides for the roll for an electorate to be taken to be closed from 8pm on the 29th day before polling day. This, together with other provisions of the Act, have the effect that unless a person is enrolled by the close of the roll (29 days before the polling day) they are unable to vote in the election.

A key reform made by the Bill is to allow a person to enrol as late as the close of the poll on polling day and, as a result, have their vote included in the count.

Implementing this reform requires a departure from the closing of a roll in advance of polling day, and section 80 is, therefore, omitted.

Clause 8 – Candidates to be nominated

Section 105 (2) (b)

Section 105 (2) specifies how a person may be nominated as a candidate for an election. Unless the person is nominated by the registered officer of a registered party under section 105 (2) (a), a candidate must currently be nominated “by 20 electors entitled to vote at the election”. Under section 128, an elector enrolled for an electorate is entitled to vote at an election for the electorate (provided the person is at least 18 years old on election day). The

inclusion of the name of a person on a certified list of electors (otherwise known as the roll) for an election is conclusive evidence of the person's right to vote at that election.

This clause substitutes for the words 'entitled to vote at the election' the words 'listed on the preliminary certified list of electors for the electorate'.

This amendment is consequential on the amendments made by clause 10 which provide for the use of a *preliminary certified list of electors* (at the beginning of the pre-election period) and a *supplementary certified list of electors* (after the close of the poll) to enable new enrolments up to and including polling day.

The amendment maintains the requirement that nominators of a candidate must be entitled to vote by virtue of being on the *preliminary certified list of electors* (or roll) at the start of the pre-election period and also at least 18 years of age on election day.

The addition of the words 'for the electorate' makes clearer on the face of the provision, the existing requirement that nominators must be on the roll for the electorate for which they are nominating the candidate.

Clause 9 – Section 105 (4) (g)

The amendment made by clause 9 is consequential on the amendment made by clause 8.

Clause 10 – Section 121

Section 121 currently provides that as soon as practicable after the roll for an electorate closes the Commissioner must prepare a certified extract of electors and a certified list of electors.

The certified list shows the name, address, gender and year of birth of electors and is provided to the officer in charge (OIC) for each polling place. This is the list used by electoral officials for the purpose of recording an elector as having been provided a ballot paper.

The certified extract may be given to each candidate on request and shows names and addresses of electors listed in the extract (but not year of birth or gender).

Clause 10 substitutes a new section 121 which reflects the new arrangements required to enable a person to enrol up to and including polling day. Under these new arrangements, a preliminary certified extract and preliminary certified list for each electorate will be prepared as soon as practicable after the beginning of the pre-election period.

The *preliminary certified list of electors* will include particulars of eligible electors who are enrolled for that electorate immediately before 6pm on the first day of the pre-election period. This will be used as the roll throughout the pre-election period which ends on polling day. The Act, as amended, will allow a person who is not on the preliminary certified list for an electorate to enrol and vote in the pre-election period up until 6pm on polling day. This will

be done by the completion of a declaration vote. The envelope for a declaration vote incorporates an application to enrol. It will also be possible for a person to enrol direct with the Australian Electoral Commission (AEC) including via its website, in the normal way prior to the close of the poll.

After the close of the poll, when ballot boxes are opened the applications to enrol will be forwarded to the AEC for processing. The AEC will provide enrolment information to the ACT Electoral Commission to enable it to prepare a supplementary certified list for each electorate showing electors who were on the preliminary certified list, and electors who were enrolled at or after 6pm on the first day of the pre-election period, whose applications were received by the close of the poll or the close of the polling place on polling day.

The *supplementary certified list of electors* for an electorate will not include any electors who were on a preliminary certified list for another electorate, but who have, during the pre-election period, enrolled in the electorate. Electors who are on a *preliminary certified list of electors* for an electorate will only be able to vote in that electorate.

The ballot papers for electors on the *preliminary certified list of electors* and the *supplementary certified list of electors* for an electorate will be able to be included in the count.

New section 121 provides for the *preliminary certified extract of electors* for an electorate to be made available to a candidate for the electorate upon request.

No change has been made to the nature of the particulars that are included in the extract of electors or the list of electors.

These amendments are intended to support maximising the opportunity for ACT residents to participate in the electoral process.

Clause 11– Claims to vote

Section 133 (1)

Clause 11 amends section 133 which requires that a person claiming to vote at an election must be issued a ballot paper for the relevant electorate if the person is on the *certified list of electors*, and the list hasn't been marked to indicate that the person has already been issued with a ballot paper. The amendments are consequential on the amendments made by clause 10, and in particular, the introduction of the *preliminary certified list of electors*. The substantive effect of the provision is unchanged.

Clause 12 – Section 133 (2)

Clause 12 makes a consequential amendment arising from a drafting change to the way in which section 133 (1) is set out.

Clause 13 – Declaration voting at polling places

Section 135 (1) (a) and (b)

Section 135 provides for declaration voting at polling places. A person can complete a declaration vote for the relevant electorate if, when they attend a polling place on polling day, the person's name is not on the certified list of electors for the electorate, or the list has been marked to indicate that the person has already voted, but the person claims not to have already voted.

Clause 13 amends this provision to replace references to the *certified list of electors*, with references to a *preliminary certified list of electors*, consequential on the amendments made by clause 10.

Clause 14 – applications for postal voting papers

Section 136A (6) (a)

Clause 14 makes a consequential amendment to section 136A, to insert the word 'preliminary' before the words 'certified list of electors'.

Clauses 15 to 18 – section 136B

Clauses 15 to 18 amend section 136B which deals with ordinary or declaration voting in the ACT before polling day (known as pre-polling). The changes are consequential on the amendments made by clause 10 and predominantly relate to changing references to the *certified list of electors* to the *preliminary certified list of electors*. The amendments also modernise the drafting of the provision.

Clause 19 - Functions of visiting officers

Section 151 (1) (a)

Clause 19 amends section 151, dealing with visiting officers (who visit locations such as hospitals and correctional centres to enable patients or detainees to vote). The amendment replaces a reference to the *certified list of electors*, with a reference to the *preliminary certified list of electors*, consequential on the amendments made by clause 10.

Clause 20 – Arrangements at polling places

New Section 154 (2)

This clause amends section 154 which currently provides that the poll shall not close until all electors present in a polling place at 6pm and desiring to vote have voted. The amendment makes clear that a reference to an *elector,* for the purpose of this provision, includes a person who is not on the *preliminary certified extract of electors* for an electorate, but who wishes to apply for enrolment in the electorate.

This provision, in conjunction with the provisions of new section 121, will mean that a person who is not yet enrolled, but who is present in the polling place at 6pm, can complete a declaration ballot, incorporating the application to enrol. In practice, at polling places, voting

continues after 6pm until all voters who are present at 6pm and wishing to vote have voted, at which point polling closes.

Clause 21 – Arrangements for polling in Antarctica

New section 172 (1) (a) (i)

Clause 21 amends section 172, dealing with arrangements for enabling an elector who is posted at Antarctica to vote. The amendment replaces a reference to the *certified list of electors*, with a reference to the *preliminary certified list of electors*, consequential on the amendments made by clause 10.

Clause 22 – Copies of returns to be available for public inspection

Section 243 (5)

Section 243 currently protects the privacy of individuals who provide gifts to political entities by requiring that the full home addresses of these individuals are not disclosed to the public, when the Commissioner makes returns relating to gifts available for public inspection in accordance with the Act.

This clause will correct a drafting anomaly by extending this privacy protection to individuals who provide other reportable amounts such as direct payments to political entities.

Clause 23 – Immaterial delays and errors

Section 268 (1) (b)

This is a consequential amendment as a result of the changes made by clause 10 for a *preliminary certified extract of electors* to be used as the roll throughout the pre-election period. The reference in section 268 (1) (b) to providing certified extracts of electors to candidates for the election is amended to now refer to providing preliminary certified extracts of electors to candidates.

Clauses 24 to 26 – Dissemination of unauthorised electoral matter

Section 292 (1) (b) (i)

Section 292 makes it an offence for a person to disseminate electoral material without including the required details about the person authorising the matter. Currently it requires the name of the person who authorised the matter or its author to be included in disseminated electoral matter.

This clause amends section 292 to provide that the *full name* of the individual who authorised the dissemination of electoral matter must be shown in an authorisation statement. The requirement for the provision of the full name of the authorising individual will support transparency and accountability for the dissemination of electoral matter.

The full name of the authorising individual is required regardless of whether the electoral material is disseminated on behalf of an individual or entity.

Section 292 (1) (b) (iii)

This clause corrects a drafting error in section 292 (1) (b) (iii) of the Act replacing the word 'published' with 'disseminated'.

The offence in section 292 of the Act relates to 'dissemination' more broadly as defined in the Dictionary of the Act. The Dictionary states 'disseminate' electoral matter (whether in printed or electronic form) means print, publish, distribute, produce or broadcast the electoral matter, encompassing 'published'.

New section 292 (1) (b) (iv)

This clause inserts new section 292 (1) (b) (iv) to clarify that an entity for which electoral matter is disseminated, other than those entities listed in section 292 (1) (b) (iii) i.e. a registered party, a candidate for election or prospective candidate, is also required to provide its full name in an authorisation statement.

Where an individual is authorising the dissemination of electoral matter on behalf of an entity, the full name of the individual and the full name of the entity will be required to be shown in an authorisation statement pursuant to sections 292 (1) (b) (i) and (iv).

The requirement for the provision of the full name of any entity for which electoral matter is disseminated to be included in the matter supports transparency and accountability for the dissemination of electoral matter.

Clause 27 – Canvassing within 100m of polling places

Section 303 (2) and (3)

Section 303 of the Act prohibits canvassing during polling hours, within 100m of a polling place.

Section 303 (2) of the Act currently provides the Commissioner with a discretion, where a building where a polling place is located, is situated on grounds within an enclosure, to specify the boundary for that enclosure. Where the Commissioner specifies the boundary, under section 303(7), canvassing is prohibited within the boundary and within 100m outside that boundary.

This clause omits section 303 (2) of the Act to remove the ability of the Commissioner to specify the boundary of a defined polling area with an enclosure, to ensure there is a consistent method of measuring the limits of the canvassing rule pursuant to section 303 of the Act.

Section 303 (3) of the Act has been omitted as a consequence of omitting section 303 (2).

Clause 28 – Section 303 (7), definition of *defined polling area*

Clause 26 amends the definition of *defined polling area* to specify that a defined polling area is the area within the building where the polling place is located, and within 100m of the building.

These amendments to section 303 will have the result that there is a single method of measuring the 100m from a polling place within which canvassing is not allowed.

Clause 29 - Preliminary scrutiny of declaration voting papers

Schedule 3, new clause 6 (2) (ba)

Schedule 3 sets out how a preliminary scrutiny of declaration voting papers is to be conducted. Clause 6 (2) of the schedule sets out certain matters which an electoral officer must be satisfied of to enable the declaration vote to be admitted to the count. Currently these are:

- the signature on the declaration is that of the elector;
- the certificate by the witness is in accordance with relevant requirements;
- for a postal vote which was posted, the papers were posted before the close of the poll; and
- for the vote of an Antarctic elector, the envelope has been endorsed and signed as required.

Clause 29 amends this list to add the requirement that the elector's name is on the *supplementary certified list of electors*. The *supplementary certified list of electors* for an electorate will include electors who are on the *preliminary certified list of electors* for that electorate and, in addition, electors who were not on a preliminary certified list for any electorate who have enrolled for that electorate prior to the close of the poll.

Clause 30 – Schedule 3, clause 9 (a)

Clause 9 of schedule 3 supports the inclusion in the count of a declaration vote where the OIC of a scrutiny centre is satisfied that the elector who signed the declaration was, when the roll closed, entitled to be enrolled and the omission of the elector's name from the roll resulted from official error.

Clause 30 amends this provision, consequential on the amendments made by clause 7 to omit provisions which reference the roll being closed for the election.

Clause 31– Meaning of *count* votes – sch 4

Schedule 4, clause 1A (2)

The Hare-Clark system is a form of proportional representation voting system which uses a single transferable vote (based on preferences) to determine final vacancies. Under the Hare-Clark system, rounding down of vote values is applied when surplus votes from an elected candidate are being distributed to continuing candidates. At the point where a candidate is elected with more votes than the quota needed for election (surplus votes), the 'last parcel' of votes received by the elected candidate is allocated to continuing candidates and a fractional transfer value is applied to each ballot paper showing preferences.

Clauses 32 to 35 – Dictionary definitions

Clauses 30 to 35 amend the Dictionary to the Act consequentially on the Act no longer using the concept of a roll being closed – the definition of *closed* is omitted.

New definitions of *preliminary certified list of electors* and *supplementary certified list of electors* are included, and the existing definition of *certified list of electors* is amended to mean a preliminary or supplementary certified list of electors.

The definition of *official error* is amended to remove reference to the roll being 'closed' and to reflect the introduction of a preliminary certified list of electors which is prepared as soon as practicable at the beginning of the pre-election period.

Part 3 – Public Unleased Land Act 2013

Clause 36 – New section 105A

This clause inserts new section 105A into the *Public Unleased Land Act 2013* (PULA) to provide for the removal of non-compliant electoral advertising signs by the Territory. This new section will apply only where a person places an electoral advertising sign on public unleased land and either, the person fails to comply with the *Public Unleased Land (Movable Signs) Code of Practice 2019* the Code made under section 27 of the PULA, or the sign itself fails to comply with the Code.

The amendment enables a swift response to non-compliant electoral advertising material on public unleased land. This will assist to prevent individuals and entities from gaining an unfair advantage over those who do comply with the applicable requirements. This amendment supports an equitable and transparent electoral process.

Where a sign is removed to a retention area, the new provision requires that reasonable steps be taken as soon as practicable to notify the owner of the removed sign that the sign has been moved to a retention area, when and where the sign may be collected, and that if not collected within 7 days, the sign will be disposed of under the *Uncollected Goods Act 1996*.

The decision to remove a sign is a made a reviewable decision under the Act, by the amendment made by clause 37.

Clause 37 – Disposal of objects by Territory

Section 106 (1)

Section 106 provides for the process to deal with objects moved to a retention area under existing section 105 of the PULA. This clause amends this provision to apply the same process to electoral advertising signs moved to a retention area pursuant to new section 105A. This means that they will be taken to be uncollected goods under the *Uncollected Goods Act 1996*.

Clause 38 – Reviewable decisions

Schedule 1, new item 26

This clause inserts new section 105A into the table in Schedule 1, to provide that a decision to remove electoral advertising signs under that section is a reviewable decision. Under part 5 of the PULA the decision is reviewable by the ACT Civil and Administrative Tribunal.

Schedule 1 Consequential Amendment

Schedule 1 makes a consequential amendment to the *Referendum (Machinery Provisions) Act 1994*.

The amendment is consequential on the amendments made by clause 10 which reflects the removal of the concept of a roll close and the introduction of new arrangements to enable a person to enrol up to and including polling day.