

2020

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

ELECTORAL LEGISLATION AMENDMENT BILL 2019

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

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INTRODUCTION

This supplementary explanatory statement relates to Government amendments to the *Electoral Act 1992* (the Act) to be moved by the Attorney-General. It has been prepared in order to assist the reader of the Government amendments and help inform debate on them. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the Government amendments and the Bill. It is not, and is not intended to be, a comprehensive description of the Bill and the Government amendments. 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.

OVERVIEW OF THE BILL

On 26 September 2019, the Electoral Legislation Amendment Bill 2019 was introduced in the Legislative Assembly.

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 proposes to amend the Act to address 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.

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.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill and can be accessed at:

https://www.legislation.act.gov.au/b/db_61023/

OUTLINE OF GOVERNMENT AMENDMENTS

The Government amendments are minor consequential amendments to provisions that will be inserted into the Act by the *COVID-19 Emergency Response Legislation Amendment Act 2020 (No 2)* (COVID-19 Amendment Act).

Consequential amendments to the Act are required to reflect the new arrangements introduced by the Bill to enable a person to enrol up to and including polling day.

Among other changes, the Bill replaces the definition of ‘certified list of electors’ to eliminate the concept of a closed roll and to enable new enrolments up to and including polling day. As such, references to the term ‘certified list of electors’ that will be introduced by the COVID-19 Amendment Act will need to be changed.

Human Rights Considerations

As outlined in the explanatory statement to the Bill, the Bill may engage and limit a number of rights under the *Human Rights Act 2004* (HRA). The Government amendments do not further engage the HRA except insofar as they promote the right to take part in public life and vote in elections.

CLAUSE NOTES

Amendment 1

Clause 2

Page 2, line 4

This amendment provides that, except for schedule 2, the *Electoral Legislation Amendment Act 2019* commences on the day after its notification day.

Schedule 2 contains the Government amendments and the commencement of this schedule is contingent on the passage of both the *Electoral Legislation Amendment Bill 2019* and *COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 2)*. Schedule 2 will commence on the later of the commencement dates of the two Bills.

Amendment 2

Proposed new schedule 2

Page 17, line 6

Amendment 2 inserts new schedule 2 to amend provisions that will be inserted into the Act by the COVID-19 Amendment Act.

Clause [2.1] Section 136BA (4)

This amendment relates to the temporary telephone voting option for the 2020 ACT Legislative Assembly election. The amendment inserts the word 'preliminary' before 'certified list of electors' in section 136BA of the Act which reflects the updated definition of certified list of electors introduced by the Bill.

The consequential amendment does not alter the form of telephone voting i.e. a vote submitted by telephone will remain an ordinary vote. As such, telephone voting will only be available for electors who are on the preliminary certified list of electors i.e. on the roll immediately before 6pm on the first day of the pre-election period.

Clause [2.2] Section 136D (6) (a)

This amendment relates to the temporary overseas electronic voting option for the 2020 ACT election. This amendment inserts the word 'preliminary' before 'certified list of electors' in section 136D of the Act.

This consequential amendment provides that the Electoral Commission will be required to assess the eligibility of an overseas elector against the preliminary certified list of electors. Nevertheless, as electronic voting is a form of declaration vote, should an elector not be on the preliminary certified list, they can still submit an electronic vote and the Electoral Commission can check their eligibility after election day.