

2021

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

Electoral Amendment Bill 2021

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATABILITY STATEMENT**

Presented by:

**Johnathan Davis MLA
Member for Brindabella**

**Andrew Braddock MLA
Member for Yerrabi**

Electoral Amendment Act 2021

Introduction

This explanatory statement relates to the Electoral Amendment Bill 2021 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared 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.

Overview of the Bill

The purpose of the Electoral Amendment Bill 2021 is to strengthen the democratic engagement of young people by lowering the mandatory voting age from 18 to 16 within the ACT.

Background

In 2019, the Australian Human Rights Commission found that people under the age of 18 feel they have no voice in society. The report found that young people were frustrated about their lack of ability to participate in politics and about social structures that diminish their agency.¹ The Commission's survey of Australian teenagers found that they held a 'keen understanding' of areas for improvement in Australian Government policy as it relates to obligations under the Conventions of the Rights of the Child.

This Bill responds to human rights advocates and young people by seeking to increase their political engagement and political relevance. The Commission quotes an individual interviewed as expressing concern with "the stigma surrounding young people being 'incapable' of making

¹ Australian Human Rights Commission. (2019). In Their Own Right: Children's Rights in Australia. Page 59. https://humanrights.gov.au/sites/default/files/document/publication/childrensrightsreport_2019_ahrc.pdf

informed decisions about their own health and education”.² It also found a particular interest from young people about mental health, education, and connections to culture in the context of Aboriginal and Torres Strait Islander children. This exemplifies the desire for political engagement from young people to affect issues that impact them. Similar reforms to this Bill have been achieved in Austria, Brazil and Scotland which research found has had a positive impact on the confidence of young people to feel they can affect change.³ The Whitlam Institute (a public policy research foundation) also recommended that governments must urgently address the barriers to the engagement of young people in political systems and institutions to strengthen Australian democracy.⁴

Clause Notes

1 Name of Act

The Act is the *Electoral Amendment Act 2021*.

2 Commencement

This Act commences 12 months after its notification day.

3 Legislation amended

This Act amends the *Electoral Act 1992* (the Act)

4 Entitlement: Section 72 (1) (a)

This clause amends section 72 (1) (a) so that people enrolled under the *Commonwealth Electoral Act 1918*, section 100 (which details enrolment of people aged 16 and 17) are entitled to be enrolled in the same way (in terms of mandatory enrolment) as people aged 18 and over.

² Australian Human Rights Commission. (2019). In Their Own Right: Children’s Rights in Australia. Page 59. https://humanrights.gov.au/sites/default/files/document/publication/childrensrightsreport_2019_ahrc.pdf

³ Christine Huebner. (2021). How Young People in Scotland Experience the Right to Vote at 16: Evidence of ‘Votes-at-16’ in Scotland from Qualitative Work with Young People. *Parliamentary Affairs*, 74(3), 569-570. <https://doi.org/10.1093/pa/gsab017>

⁴ Philippa Colin and Jane McCormack. (2020). Future of Australian Democracy – Young People and Democracy. *The Whitlam Institute*. Page 5. <https://doi.org/10.26183/ybv-2t95>

5 Compulsory enrolment etc. – residents: Section 73 (4)

This clause ensures that those under the age of 18 required to submit a transfer of enrolment document when changing their place of residence outside their existing electorate.

6 Section 73 (5)

This clause amends section 73 (5) so that people enrolled under the *Commonwealth Electoral Act 1918*, section 100 (which details enrolment of people aged 16 and 17) are taken to be enrolled in the same way (in terms of mandatory enrolment and prerequisites to enrolment) as people aged 18 and over.

7 Section 73 (6), penalty

This clause amends the penalty imposed on persons of 16 or 17 years of age for:

1. neglecting to enroll within 21 days of entitlement and;
2. neglecting to transfer enrolment to their current place of residence within 52 days of a change of address.

This clause amends the fine to 0.25 penalty units. This is half of the prescribed amount for electors aged 18 or over.

8 Age 14 enrolment: Section 75 (2)

This clause substitutes a new section 75, making the eligible age of enrolment in the ACT 14 years of age. It does not replace subsection (2), consequentially on the amendments in clauses 4 and 6. This subsection would be otherwise inconsistent with the provision of this Act for people of 16 years of age to vote on a mandatory basis.

9 Certified extracts and certified lists of electors: Section 121 (4), definition of eligible elector

This clause amends the definition of 'eligible elector' for the purposes of section 121 (which is about providing extracts of the roll), to reflect the new voting age of 16.

10 Entitlement to vote: Section 128 (2)

This clause lowers the age of persons eligible to vote from 18 years of age to 16 years of age.

11 Compulsory voting: Section 129 (1), penalty

This clause amends the maximum penalty imposed on persons of 16 or 17 years of age for neglecting to vote. This clause amends the fine to 0.25 penalty units. This is half of the prescribed amount for electors aged 18 or over.

12 Default notice: Section 161 (2)

This clause amends the default notice penalty imposed on persons of 16 or 17 years of age for neglecting to vote. This clause amends the fine to \$10 dollars. This is half of the prescribed amount for electors aged 18 or over.

Interaction with Federal Law

This Bill does not conflict with federal legislation. Section 67C of the *Australian Capital Territory (Self-Government) Act 1988* allows for the territory to enact legislation which provides that other persons may be entitled to vote at a general election.

Human Rights Considerations

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HR Act).

The proposal to lower the mandatory voting age to 16 years would advance the rights of young people to take part in public life, which is protected under section 17 of the *Human Rights Act 2004*. The right to take part in public life in section 17 of the HR Act applies to all citizens in the ACT and includes the right to vote, subject to eligibility requirements that must be reasonable and based on objective criteria. Setting the minimum voting age at 16 years old would be consistent with contemporary understandings about the cognitive development and maturity of young people. Enabling young people to directly participate and be heard in the democratic process would also be consistent with Article 12 of the Convention on the Rights of the Child, which requires due weight and recognition to be given to the views of young people in accordance with their age and maturity. Further to this, the changes proposed to lower the enrolment age to 14 years of age do not give rise to any issues of incompatibility with the HR Act.

The ACT Human Rights Commission recommended that in addition to lowering penalties for non-voting in this Bill, that consideration should also be given to enabling the Electoral Commissioner to automatically waive fines for non-voting for those under the age of 18. Section 161 (1) of the *Electoral Act 1992* describes the discretionary ability of the Commissioner to determine sufficient reason for a failure to vote. This would extend itself to the recommendation of the ACT Human Rights Commission to allow the Electoral Commissioner the ability to waive fines for non-voting on a case-by-case basis only. Any attempt to legislate for the autonomous waiver of this fine would not be possible under this Bill due to the possible interpretation of this amendment as making voting voluntary for electors of 16 or 17 years of age. In effect, this would go against the *ACT Proportional Representation (Hare-Clarke) Entrenchment Act 1994* which dictates that that voting must be mandatory in the ACT. Any attempt to systematically remove a penalty for not voting could be in contravention of this.