

**2023**

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

**Electoral Amendment Bill 2021**

**REVISED EXPLANATORY STATEMENT**

**and**

**HUMAN RIGHTS COMPATABILITY STATEMENT**

**As updated for amendments in August 2023**

**Presented by:**

**Johnathan Davis MLA  
Member for Brindabella**

**Andrew Braddock MLA  
Member for Yerrabi**

## Introduction

This explanatory statement relates to the Electoral Amendment Bill 2021 (the Bill) as presented to the ACT Legislative Assembly and inclusive of Greens amendments to be moved which address feedback and recommendations from committee inquiry and other subsequent discussions with members of the 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 and Greens amendments. 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.

Greens amendments have been provided for review by the Scrutiny Committee.

## Overview of the Bill

The purpose of the Electoral Amendment Bill 2021 is to strengthen the democratic engagement of young people by lowering the voting age from 18 to 16 within the ACT, while retaining the entrenched principle of compulsory voting.

2023 Amendments to this bill introduce an alternative response for new electors who appear to fail to vote in their first election. This allows for an educational response rather than the default imposition of penalties, and ensure that new electors, including 16- and 17-year-olds, are not at risk of being brought before the criminal justice system in their first election.

## 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.<sup>1</sup> 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 informed decisions about their own health and education". 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.<sup>2</sup> New Zealand is also in the process of introducing a similar reform.<sup>3</sup> The

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<sup>1</sup> 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](https://humanrights.gov.au/sites/default/files/document/publication/childrensrightsreport_2019_ahrc.pdf)

<sup>2</sup> 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>

<sup>3</sup> <https://bills.parliament.nz/v/6/0aba4b2e-edc6-4a27-c01a-08db9d132713?Tab=history>

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.<sup>4</sup>

The most significant objections to lowering the voting age, including as explored for the purpose of this bill, is a hesitancy to expose young people to the prospect of fines, which if unpaid can escalate into a summons to the Magistrates Court. This currently arises because fines under the Electoral Act are handled separately to other types of fines under ACT law. They are administered by the Electoral Commission as a part of their functions under the Electoral Act and therefore do not have the discretion to apply the Regulatory Compliance and Enforcement Policy of Access Canberra.<sup>5</sup> That policy prioritises engagement and education ahead of deterrence and the active pursuit of penalties. Similarly, the police regularly issue warnings rather than fines with respect to traffic offences. Ensuring that some form of response is issued to the offender entrenches the compulsory nature of the road rules and other similar regulatory frameworks. Without limiting the nature of voting being compulsory, it would be consistent to establish a framework whereby new electors, being people who have not previously been eligible to vote, are provided with the benefit of the doubt and given a warning notice by the Electoral Commission rather than have the Electoral Commission issue a fine. As a result, both young people and other categories of new electors, including new citizens, for whom an educational approach will be far more effective at encouraging future compliance, can be used to avoid unnecessary contact with the justice system. This facilitates the expansion of the voting franchise.

## **Clause Notes**

### **1 Name of Act**

The Act is the Electoral Amendment Act 2021.

### **2 Commencement**

Once amendments are incorporated, this Act has a commencement date dependent upon its date of notification. The Electoral Commission have advised that amendments to the Electoral Act which occur less than 12 months before an election can result in compounding strategic risks in their organisational preparations. The dates shown here were selected in consultation with the Electoral Commission.

If this bill is notified prior to the 19<sup>th</sup> of October 2023, that being 12 months before the 2024 Territory election, the commencement date will occur on the 29<sup>th</sup> of February 2024, which will ensure the Electoral Commission has the requisite time to prepare and the ability to enrol people who will be 16- or 17-years-old at the 2024 election.

If the bill is notified on or after the 19<sup>th</sup> of October 2023, the commencement date will occur on the 28<sup>th</sup> of February 2025, which will ensure its implementation is after the 2024 Territory election.

### **3 Legislation amended**

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<sup>4</sup> 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>

<sup>5</sup> Available at <https://www.accesscanberra.act.gov.au/s/article/about-access-canberra-tab-access-canberra-accountability-commitment>

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.

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

This clause ensures that those under the age of 18 are 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 enrol 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. The reason for this provision is provided below in the Human Rights Compatibility Statement.

#### **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.

For the purpose of clarity, this means that the Electoral Commission will have the ability to enrol people from the age of 14 in preparation of them becoming eligible to vote at the age of 16, much as the existing arrangements allow people to enrol from the age of 16 in preparation of them becoming eligible to vote at the age of 18. It ensures that the administrative capabilities of the Electoral Commission to be effective in their enrolment program are not constrained by updated legislative arrangements.

#### **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 (4) and (5), provisions for new electors**

Once amendments are incorporated, this introduces two new subsections to section 129 on compulsory voting.

Subsection (4) establishes, without limiting the fact that voting is compulsory under subsection (1), that an elector is taken to have a valid and sufficient reason for failing to vote at an election if the elector is a *new elector*. This provision does not ask the Electoral Commissioner to exercise any judgement on the state of mind of the new elector. It provides new electors with the benefit of the doubt as a matter of principle at their first election, and only at their first election.

This provision operates on a very similar basis to the existing provision in section 129 (3) which takes someone as having a valid and sufficient reason for failing vote at an election if the elector believes it to be part of their religious duty to abstain from voting, and without asking the commissioner to make any assessment regarding the truth of that stated belief.

Subsection (5) defines a *new elector* as an individual who is entitled to vote but has not been eligible to vote in either a general election of the Territory Assembly or of the Commonwealth House of Representatives. It has been defined in this way in the interests of ensuring that the Electoral Commission will be capable of administering these provisions. It will, by its nature, include all 16- and 17-year-old voters, but also include other new electors up to the age of 21 as well as new citizens migrated to Australia.

The framing for *new electors* has been chosen on the basis that the potential for someone to appear to fail to vote in a manner which deserves the benefit of the doubt should be tied to their exposure to elections as a citizen rather than being based on their age. The provision does not directly discriminate on the basis of age, which is in accordance with the consultation undertaken with young people and their advocates.

## **12 Warning notice: New Section 161A**

Once amendments are incorporated, this clause introduces the concept of a warning notice. This is required to ensure that an apparent failure to vote still elicits some form of response from government. This ensures that voting remains compulsory in the eyes of both the law and the citizenry.

The information provided to the new elector who has appeared to have failed to vote is designed to be advisory and educational in nature. This concords with the government's preferred approach to law enforcement, as described in the Background section of this statement.

## **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. This includes an understanding that the cognitive functions required to make informed voting decisions are reliably in place by the age of 16.<sup>6</sup> 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.

This is a very similar to basis upon which the Assembly is moving to raise the minimum age of criminal responsibility to 14 – the ability to make informed decisions which consider the consequences of those decisions, be it criminal intent or a voting intent, develop in the 14-16 age range. Recognising that children are insufficiently mature to bear criminal responsibility before the age of 14 is consistent with recognising that they have become sufficiently mature to exercise a voting franchise by the age of 16.

Further to this, the changes proposed to lower the enrolment age to 14 years of age ensures that the bill does not give rise to any other issues of incompatibility with the HR Act. The setting of the age of enrolment at 14 years of age is intended to support the work of the Electoral Commission in ensuring citizens are best facilitated to enrol to vote before they become 16 years of age, in the same way that 16-year-olds can currently enrol ahead of turning 18. Instituting these enrolment provisions ensures that administrative barriers to exercising the right to vote are minimised to the greatest extent possible, consistent with human rights objectives.

The ACT Human Rights Commission recommended that consideration should be given to enabling the Electoral Commissioner to automatically waive fines for non-voting for those under the age of 18. A simple waiver was seen as placing at risk the concept of voting being compulsory for 16- and 17-year-olds and could, in effect, be challenged as being contrary to the ACT Proportional Representation (Hare-Clarke) Entrenchment Act 1994 which requires that voting must be mandatory in the ACT. This is the origin point for designing an approach involving warning notices for new electors, which preserves a legislated response for appearing to not vote, and without directly discriminating on the basis of age.

The ACT Human Rights Commission also recommended that penalties be lowered for people under the age of 18. This has been applied in the case of failing to enrol, noting that penalties for failing to enrol are very infrequently applied, because the standard response of the Electoral Commission is to simply facilitate the enrolment of any eligible person who comes to their attention. Once amendments are incorporated, halving penalties for young people will not be relevant for failing to vote as such a penalty will, by design, not be imposed under the new approach of issuing a Warning Notice to a New Elector.

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<sup>6</sup> See, for example, Sawyer et. Al., *The Age of adolescence*, The Lancet Child & Adolescent Health 2018, <https://www.sciencedirect.com/science/article/abs/pii/S2352464218300221/>