Australian Capital Territory

Electoral Amendment Regulation 2023 (No 1)

**Subordinate law SL2023–6**

made under the

Electoral Act 1992

**EXPLANATORY STATEMENT**

**Overview**

The *Electoral Amendment Regulation 2023* *(No 1)* amends the *Electoral Regulation 1993* to allow the Commissioner for the ACT Integrity Commissioner (***integrity commissioner***) to access a roll kept under the *Electoral Act 1992* for the purposes prescribed under the new section 4AC.

The amendment provides that the integrity commissioner may give a copy of a roll or information contained on a roll to another person or entity if they are satisfied that the person or entity requires it for a prescribed purpose. The regulations may provide for how a prescribed authority may deal with material provided.

Giving the integrity commissioner access to electoral roll information allows the commissioner to rely on best available evidence when carrying specific functions under the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*, which include investigating allegedly corrupt conduct, dealing with corruption reports and referring suspected instances of criminality to appropriate authorities. It improves the integrity commissioner’s ability to fulfil its functions of combatting corruption and aids to foster public confidence in the integrity of the ACT Government.

The integrity commissioner’s access to electoral rolls will be for the purposes prescribed in this amendment only. Criminal penalties apply to the misuse of this information (see section 65 (2) of the *Electoral Act 1992*).

This amendment will allow the integrity commissioner to improve its ability to investigate, expose and prevent corruption, and to oversee the management of public interest disclosures in the ACT Public Service.

**Human Rights Implications**

This Regulation is compatible with the *Human Rights Act 2004*. While it limits the right to privacy, that limitation is reasonable, necessary and proportionate.

Rolls kept under the *Electoral Act 1992* contain electors’ names, addresses, sex, and dates of birth, and may include information about electors’ occupations, former surnames, previous addresses, or postal addresses.

In recognition of the sensitive nature of this information, the *Electoral Act 1992* contains several restrictions on access and use of the information contained on a roll. For example, section 65 (2) states that a person shall not use information from the roll except in accordance with the regulations. The maximum penalty for breaching section 65 (2) is 50 penalty units, imprisonment for 6 months, or both.

The *Electoral Act 1992* allows for information from electoral rolls to be provided to prescribed authorities for use only under prescribed purposes, which are specific and narrow.

Other purposes are prescribed by regulations. For example, the chief health officer may access roll information for maintaining the cancer register, contacting women to offer breast cancer screening and prevention services, and contacting people aged 45 to 49 years for health assessment. The roll is also used for the purpose of selecting jurors under the *Juries Act 1967*.

The regulation provides that the integrity commissioner will be able to access information on the electoral roll for the limited purpose of supporting its activities under the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*.

**Nature and extent of the limitation**

This regulation concerns the use of existing personal information. The integrity commissioner will be able to access information on the electoral roll for the prescribed purposes of specific functions of the commissioner.

Those specific functions relate to investigating allegedly corrupt conduct, referring suspected criminality or wrongdoing to the appropriate authority for further action, preventing corruption, and carrying out preliminary inquiries about corruption reports (see section 23 (1) and section 86 of the *Integrity Commission Act 2018*); and additional functions of the commissioner under section 28 of the *Public Interest Disclosure Act 2012*, which include giving advice about disclosures of disclosable conduct and public interest disclosures, and reviewing the way public sector entities investigate and deal with public interest disclosures.

The regulation does not create a new capacity to collect personal information about electors. It also does not impose a duty on citizens to divulge more information. The extent of the limitation is therefore restricted only to information already held by the Government.

**Legitimate purpose**

The purpose of this regulation is to improve the integrity commissioner’s ability to fulfil its functions of combatting corruption and aids to foster public confidence in the integrity of the ACT Government. The regulation achieves this by making the commissioner a prescribed authority to use information from electoral rolls for prescribed purposes under the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*. As a prescribed authority, the commissioner has access to information in electoral rolls and can use this information to investigate allegedly corrupt conduct and to respond to alleged wrongdoing in the ACT Public Sector.

The limitation on the right to privacy is connected to the regulation’s purpose of improving the commissioner’s ability to effectively and efficiently address corruption in the ACT as a matter of public interest and benefit, which warrants the limitations to the right to privacy. There is no less restrictive means for enhancing the commissioner’s ability to investigate and address corruption in the ACT public sector that would have a reduced engagement with the right to privacy.

**Rational connection between the limitation and its purpose**

The limitation on the right to privacy in this regulation is directly connected to its purpose of improving integrity commission investigations that aim to combat corruption and increase public confidence in the ACT Government.

Giving the integrity commissioner access to electoral roll information allows the commissioner to rely on best available evidence when carrying specific functions under the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*, which include investigating allegedly corrupt conduct, dealing with corruption reports and referring suspected instances of criminality to appropriate authorities.

**Proportionality**

Only information relevant to specific functions of the integrity commissioner can be accessed by the integrity commissioner. The scope of the limitation is demonstrably justifiable to support combatting corruption, increasing capacity of the public service to deal with wrongdoing, and fostering public confidence in the integrity of the ACT Government.

Criminal penalties apply to the misuse of this information. Section 65 (2) of the *Electoral Act 1992* states that it is an offence to use information from the roll other than for a prescribed purpose. This provides a strong deterrent to help safeguard the provision and use of electoral roll information to only be used in line with the purposes prescribed in this amendment.

There are no other less restrictive means for undertaking the same cross checking of data that would have a reduced engagement with the right to privacy.

As the limitation is proportionate, necessary, and reasonable, and as the purpose of the limitation is justifiable, this Regulation is compatible with the *Human Rights Act 2004*.