

2026

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**EXPLANATORY STATEMENT AND HUMAN RIGHTS COMPATABILITY STATEMENT
ELECTORAL (ELIGIBILITY) AMENDMENT BILL 2026**

This explanatory statement relates to the *Electoral (Eligibility) Amendment Bill 2026* (the Bill). It has been prepared in order to assist the reader of the Amendments and to help inform debate on the bill. It does not form a part of the bill and has not been endorsed by the Assembly.

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OVERVIEW OF THE BILL

Right now there are over 10,000 16- & 17-year-olds in Canberra who should have the opportunity to vote. These young people are treated as being mature enough to enter into contracts, make medical decisions for themselves, choose a career, drive on our roads, and pay taxes and fines. They will bear the brunt of the climate crisis that older generations are leaving them, and they deserve a say in how we fix it.¹

Another 45,000 people who call Canberra home also pay their taxes and contribute to this community, but aren't eligible to vote because they don't have citizenship. They are mostly from migrant backgrounds, and once they are permanent residents, we should recognise that they deserve to have a say.¹

We will all live with the consequences of the decisions our parliament makes. Everyone is affected by how the government deals with the dual-crises of cost-of-living and climate change. Everyone deserves to be able to pass judgement at the ballot box.

This Bill makes the following primary reforms to matters of eligibility under the Electoral Act:

- (1) Lowering the voting age from 18 to 16 years old.
- (2) Extending voting rights to permanent residents.

The Bill allows for the following consequential reforms:

- (1) Extending the eligibility to be elected as an MLA or serve on the Aboriginal and Torres Strait Islander Elected Body, consistent with the extended voting rights.
- (2) Extending the liability to serve as a juror to permanent residents consistent with the extended voting rights. However, the age of liability to serve as a juror is expressly retained at 18 years old due to human rights considerations.

The Australian system of compulsory voting is preserved. Due to human rights considerations, the maximum penalty and the fine for a failure to enrol or vote by someone under 18 years old is halved.

CONSULTATION ON THE APPROACH

This bill implements an election promise made by the ACT Greens for the 2024 Territory election.² It was broached with Canberrans through that campaign and consequently forms a part of the legislative agenda for the ACT Greens.

This legislative agenda builds on substantial consultative work conducted over the last decade, and in particular with regards to lowering the voting age. Those reforms have been led by youth activist group Make it 16.³ The question has been exposed to extensive previous parliamentary debate which has broadly supported the intent of lowering the voting age, but struggled with determining the framework in which this should be achieved. This bill asks the Assembly to once again consider those questions in a meaningful and considered way.

These reforms were also broached in the inquiry by the Standing Committee on the Integrity Commission and Statutory Office Holders into the operation of the 2024 ACT Election and Electoral Act 1992. While that inquiry's report did not make recommendations on the subject matter of this

¹ Estimates based on the Australian Bureau of Statistics 2021 Census of Population and Housing.

² <https://greens.org.au/act/policies/democracy#democracy>

³ <https://www.makeit16.au/>

bill, the submissions to the inquiry included supportive statements from peak bodies in Canberra's multicultural community which encouraged expanding voting rights to permanent residents.⁴

HUMAN RIGHTS COMPATABILITY

This bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Rights Engaged

The Bill engages the following rights under the *Human Rights Act 2004*:

- Recognition and equality before the law (section 8) (promoted)
- Privacy and reputation (section 12) (limited)
- Freedom of thought (section 14) (promoted)
- Freedom of expression (section 16) (promoted)
- Taking part in public life (section 17) (promoted)
- Children in the criminal process (section 20) (limited)
- Fair trial (section 21) (limited)
- Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities (section 27) (promoted)

As a bill which impacts the eligibility to vote and serve as an elected representative, it could be argued that the full span of all human rights are promoted by this bill on the premise that initiatives which advance democracy itself advance the capacity for all human rights to be promoted. Such an exercise would be lengthy and is beyond the intended scope of this explanatory statement, but it is nonetheless acknowledged how central electoral democracy is to our system of government and way of life.

The nature of the rights affected (s28(2)(a))

The rights to vote and to stand for election are central tenants of a democratic system, and directly manifest the right to take part in public life (s17). To express a political opinion through the electoral process is a form of freedom of expression (s16) informed by freedom of thought (s14). Those who hold the right to vote hold a recognition of validity in our legal system (s8).

This also means that within our democratic system, those who can vote are seen by those who are standing for election as being of greater importance to serve and benefit than those who cannot vote. To the extent that a cultural or minority group have the right to vote, they become more capable of advocating for legislative and regulatory changes which support the exercise of their cultural and similar rights (s27). A significant demonstration of this occurred when Aboriginal and

⁴ <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/integrity-commission-and-statutory-office-holders/inquiry-into-the-operation-of-the-2024-act-election-and-electoral-act-1992#tab2627879-2> – See submissions 14 and 15.

Torres Strait Islander people obtained the right to vote in 1962, expanding their pathways for representation and advocacy that would enhance their ability to practice the world's oldest continuing living culture, and finally began to reverse a decline that had been connected to the genocide against their culture connected to British colonisation.

Australia has a system of compulsory voting, which is required to be maintained in the ACT under Section 4(1)(c) of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. This in turn mandates a requirement for compulsory enrolment which requires the creation of a list of all eligible electors. The manner in which this electoral roll is maintained impacts on the right to privacy (s12). The necessary imposition of consequences for a failure to vote, such as through penalties, can expose people to criminal proceedings, which must be handled fairly at trial (s21) and properly consider the needs of children where they may be exposed to penalties (s20).

These rights are also relevant in the context of jury duty, with the liability to serve as a juror connected to a presence on the electoral roll. This obligation will be extended only to permanent residents, and not to people under the age of 18 years old.

How the rights are promoted

The bill extends the right to vote and to stand for election to people who are 16 years old, and to permanent residents. This is done in recognition that people who live in Canberra, pay taxes in Canberra, and are liable to face penalties for offences primarily under ACT Law, should be recognised as having an equal and democratic say in how those laws are developed, enforced, reviewed and changed. Granting people the right to vote who do not currently have it extends equality before the law (s8), further entrenches freedom of thought (s14) and freedom of expression (s16), and substantially the ability to take part in public life (s17).

Additional information – lowering the voting age

The cognitive development of humans occurs in stages. While the pre-frontal cortex continues to develop in a person throughout their 20s, the foundations of consequence-informed decision-making are developed through adolescence and are reliably in place by the time a person is 16 years old for the vast majority of people. This means that most young people are developmentally prepared for contexts which involve thoughtful consideration and deliberation – such as during an election campaign period.⁵

While it might be preferable to grant rights associated with cognition based on biological development, this is a difficult basis on which to establish laws for a system of compulsory voting. It falls to us to select the optimal age at which children can be concluded to have matured sufficiently to make consequence-informed decisions in the same way as their adult peers.

With this premise in hand, we should observe the actions of the Make It 16 campaign.⁶ Here we have an organised effort, by and for people who are 16 and 17 years old, to seek the right to vote, because they care about the decisions being made by governments that will directly affect their futures. This is itself evidence that young people of their age range are ready to vote.

If we can recognise that they are ready – and the premise of this bill is that they are – the ACT human rights framework encourages us to advance their human rights with the right to vote.

⁵ See, for example: <https://developingadolescent.ucla.edu/resource/what-is-unique-about-adolescent-decision-making-and-how-we-can-support-it/>

⁶ <https://www.makeit16.au/>

Additional information – permanent residents

Around the world, elections to sub-national levels of government are frequently conducted based on residency. A large number of states in the Commonwealth of Nations allow Commonwealth citizens to vote in their national and/or subnational elections, including in the United Kingdom. All EU states allow EU citizens to vote in local/municipal and EU elections in accordance with Article 22 of the Treaty on the Functioning of the European Union.⁷ The Iberian states offer voting rights to people from foreign countries on a reciprocity basis if their own nationals can vote in the foreign country in question via an international agreement of some form.⁸ Countries which currently allow all foreign residents to vote in at least some sub-national elections, often with some restrictions around the duration of residency, include Argentina, Belgium, Chile, Colombia, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Israel (awkwardly), Lithuania, Luxembourg, Malawi, Namibia, the Netherlands, New Zealand, Norway, Slovenia, Slovakia, South Korea, Sweden, Switzerland, Trinidad & Tobago, the UK (Scotland & Wales), the USA (in some municipalities including Washington DC⁹), Uruguay, and Venezuela. This concept is therefore not without international precedent.

In some local councils across Australia, voting is not based at all on citizenship and only on the location of a person's home, business or other property. For example, in the City of Melbourne Council Elections, people are eligible to vote if they are a non-citizen but own or occupy rateable property in the City of Melbourne.¹⁰

In Australia at the national level, prior to 1984, the right to vote was not associated with Australian citizenship. The right to vote was instead based on being a British Subject resident in Australia. Grandfathered voting rights for such people in 1984 who are not presently Australian citizens continue to exist, resulting in some non-citizens who have the right to vote.

Many cultural groups are comprised of migrant populations who hold permanent residency rather than citizenship, and might not seek citizenship due to complicating issues associated with their country of origin. This makes them second-class residents in the eyes of our democracy, and therefore less important to our electoral system. By granting these people voting rights, they become more relevant to local political decision-making, and their cultural rights are elevated.

Similarly, they will become eligible to be selected to serve on a jury, which ensures that their perspectives on societal standards are more relevantly considered in trials conducted with a jury.

The importance of the purpose of the limitation (s28(2)(b))

The administration of a voting system which permits certain people to vote while barring others, and which is structured to protect against people voting multiple times, requires the creation and maintenance of a roll of electors. This roll contains defined pieces of private and personal information necessary for the administration of a poll, and is made available to poll workers for the purposes of administering an election and to political parties for the purposes of engaging with

⁷ Official Journal of the European Union, 2012, consolidated version of the treaty on the functioning of the European Union. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

⁸ <https://manilvaextranjeros.com/which-nationalities-can-vote-in-spanish-municipal-elections/> and <https://www.portaldoeleitor.pt/en/Faqs/ER/Pages/default.aspx>

⁹ D.C. Law 24-242. Local Resident Voting Rights Amendment Act of 2022. <https://code.dccouncil.gov/us/dc/council/laws/24-242>

¹⁰ See <https://www.melbourne.vic.gov.au/elections> Please note that this bill does not reflect on the appropriateness of voting rights being connected to business directorships.

electors. Such information can be misused or exposed to data breaches. This impacts the right to privacy (s12).

Our compulsory voting system incorporates penalties for a failure to enrol and to vote, which can result in either a prosecution or a fine as a consequence of not voting. Expanding these rights exposes the risk of facing these penalties to the new categories of voters, with correlating risks under the right to a fair trial (s21) where the trial process might be mishandled, and in particular with respect to children in recognition of the rights of children in the criminal process (s20).

The nature and extent of the limitation (s28(2)(c))

Expanding the right to vote will add a new scope of voters to the roll who may have their personal information exposed to possible misuse and have their right to privacy impacted (s12).

The size of the penalty for a failure to enrol or vote is low, currently limited to a maximum of \$80, and only \$20 if a person agrees to pay a fine, received in the form of a default notice. This significantly limits the social and financial impact of a failure to vote, making the penalty more frustrating than life-impacting for the vast majority of eligible voters. Having a valid excuse for not voting can also result in the fine being waived.

In the case of a failure to enrol, a fine is almost never incurred due to the proactive steps taken by electoral commissions to enrol people – it takes a clear and wilful effort to resist enrolment for a person to be charged with this offence.

Only if the efforts of the commission to engage a person on issues of enrolment and non-voting fail over multiple attempts does the offence escalate to a prosecution, at which point the right to a fair trial (s21) is enlivened.

In the case of people younger than 18 years old, who are legally children and hold rights regarding children in the criminal process (s20), the size of the penalties (including the fine) have been halved. This is based on advice received from the Human Rights Commission in preparation of a similar bill during the 10th Assembly, giving consideration to a young person's reduced capacity to earn an income and pay a penalty.

The relationship between the limitation and its purpose (s28(2)(d))

The expansion of the roll is an unavoidable consequence of expanding the right to vote. Without an electoral roll, there are no elections, and there would be no democracy. This limitation on the right to privacy (s12) is a long-standing accepted cost of a democratic system which itself enables the right to take part in public life (s17).

It is a long-accepted position that, in a system of compulsory voting, there must be a form of consequence for the failure to enrol and vote. Otherwise, voting ceases to be seen as compulsory. Functionally, the fine serves as a reminder of the obligation to vote in elections, and the risk of exposure to a prosecution in which the right to a fair trial is enlivened (s21), including for children (s20), serves as a meaningful disincentive to disregard the laws on compulsory enrolment and voting.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s28(2)(e))

Less restrictive means of administering an election in the interests of privacy (s12) while also maintaining the integrity of the poll and the right to take part in public life (s17) would

fundamentally alter the nature of democratic elections and are beyond the scope of this bill. Nonetheless, it can be noted that the Electoral Commission is alert to the security risks associated with the roll and is considering options to improve the safeguards against their misuse.¹¹

This bill's proponent, in the 10th Assembly, proposed an alternative disincentive system for a failure to vote in the form of a warning letter being issued where a person fails to vote at their first election after becoming eligible to enrol.¹² This would remove the exposure to prosecution for a person under the age of 18 and as a result not enliven the rights of children in the criminal process (s20), because they would inherently never be eligible to vote in their second Territory election before turning 18 years old. The suggested reform would have also supported migrants who are less familiar with Australia's compulsory voting system and reduced the risk of exposure to prosecution for benign mistakes and thereby limit the enlivenment of the right to a fair trial (s21). However, the 10th Assembly expressed doubts about its compatibility with the concept of compulsory voting, which is a strict requirement under the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. These doubts were admittedly not fully tested. Due to the lack of evident support, this alternative approach not been replicated in this Bill, but would be welcomed in prospective amendments to the Bill should the 11th Assembly wish to reconsider such a less restrictive approach.

Of note, this Bill does not extend the obligation to serve on a jury to a person under the age of 18, limiting the potentially stressful and trauma-inducing scenarios to which they could be exposed, eliminating that element of a risk in the exposure of children to the criminal process (s20).

CLIMATE IMPACT

While climate change is something we will all live with, young people will live with more of the consequences. Migrant communities who hold permanent residency in some cases will include climate refugees, or other persons who have a more diverse exposure to the global consequences of climate change. The Australian Government has begun entering into bilateral agreements which will support Pacific Island countries facing the consequences of climate change, and which include pathways to permanent residency in Australia.¹³

Providing these groups of voters with the right to vote will elevate the importance of climate change as a political issue, and encourage politicians to take more decisive action to reduce emissions, limiting the impacts, and to adapt to the changes our society is already facing.

CLAUSE NOTES

Clause 1 – Name of the Act

This identifies the bill, once it is prospectively passed, as being the *Electoral (Eligibility) Amendment Act 2026*.

Clause 2 – Commencement

¹¹ ACT Electoral Commission, Report on the ACT Legislative Assembly Election 2024, p30-31.
https://www.parliament.act.gov.au/_data/assets/pdf_file/0009/2900763/D1-Electoral-Commission-report.pdf

¹² *Electoral Amendment Bill 2021*, revised explanatory statement.
https://www.legislation.act.gov.au/b/db_65354/

¹³ See, for example, the *Australia-Tuvalu Falepili Union Treaty*.
<https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty>

The commencement date is set to 1 February 2028, meaning that the reforms will be in place before the next Territory election in October 2028.

Clause 3 – Legislation Amended

The bill will primarily amend the *Electoral Act 1992*, with consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008* and the *Juries Act 1967*.

Clause 4 – Contents of the electoral roll

At present, the Territory's electoral roll is a copy of the federal roll. The practical consequence of the reforms in this bill is that the Electoral Commission will need to create and maintain an additional or augmented roll. Adding information on whether a person is enrolled as an Australian citizen or as a permanent resident will allow the commission to distinguish between the types of voters on the additional or augmented roll.

Clauses 5 & 6 – Entitlement for enrolment

Functionally, and consistent with Section 67C of the *Australian Capital Territory Self-Government Act*, all persons on the Commonwealth electoral roll and who are registered as resident in the ACT must be eligible to vote in a Territory election, but this can be added to by an electoral law. Section 72 of the Act therefore operates to expand the qualifications beyond the minimum federal-based eligibility.

These clauses modify the eligibility for enrolment, by adding eligibility for persons who are at least 16 years old and who are permanent residents.

The existing augmentation for persons serving a sentence of imprisonment is maintained.

Clause 7 – Compulsory enrolment, change of address

Section 73(4) of the Act provides that an Antarctic elector and a person under 18 years old does not need to provide an update to their enrolment details if their residential address changes. This clause removes that exemption for persons under the age of 18, consistent with the reform to allow people who are at least 16 years old to vote.

Clause 8 – Automatic replication from Commonwealth to Territory roll

Section 73(5) of the Act provides for updates to the Commonwealth roll to be automatically replicated as updates to the Territory roll. There is currently an exclusion for persons enrolled under section 100 of the *Commonwealth Electoral Act 1918*, which relates to claims for age 16 enrolment. This clause removes that exclusion, consistent with the objective of lowering the voting age.

Clause 9 – Penalty for failure to enrol

Section 73(6) of the Act provides for the penalty for failing to enrol. This halves the maximum penalty for a person younger than 18 years old from 0.5 penalty units (currently \$80) to 0.25 penalty units (currently \$40).

Clause 10 – Pre-eligibility enrolment

This reforms the current provisions for early enrolment by people when they turn 16, to instead allow for early enrolment at age 14, consistent with the objective of lowering the voting age.

Clause 11 – Eligibility to be an MLA

Recognising that the eligibility to vote is traditionally tied to the age of eligibility for nominate for public office, this clause expands the eligibility to be an MLA to permanent residents and persons who are at least 16 years old.

Clause 12 – Certified lists and extracts of electors

Section 121 of the Act provides for the production of lists of eligible electors for use at polling stations. It contains a definition of eligible electors which ensures that people who will not be eligible to vote on election day are not contained within the lists at polling booths. This clause updates the eligibility criteria to provide that people who are at least 16 years old will be eligible, inferring that people who are 14 or 15 years old (now able to register due to the reforms at clause 10) are to be excluded.

Clause 13 – Entitlement to vote

Section 128 of the Act provides for the age at which someone becomes eligible to vote at an election. This clause lowers it from 18 to 16 years old.

Clauses 14 & 15 – Penalty for failure to vote

Section 129(1) of the Act provides for the penalty for failing to vote. These clauses halve the maximum penalty for a person younger than 18 years old from 0.5 penalty units (currently \$80) to 0.25 penalty units (currently \$40), and from a fine of \$20 to \$10.

Note: The Government may be considering a separate reform to increase the penalty for a failure to vote. The intent of this bill is that the penalty for people under the age of 18 should be half of that of an adult rather than specifically 0.25 penalty units. Should the suggested reform to increase the maximum penalty proceed, an amendment to this bill to ensure compatibility should be anticipated.

Clause 16 – Dictionary

This clause provides for the definition of a permanent resident, which ties it to the *Australian Citizenship Act 2007* (Cwlth), in which section 5 describes it as follows.

- (1) For the purposes of this Act, a person is a permanent resident at a particular time if and only if:
 - (a) the person is present in Australia at that time and holds a permanent visa at that time; or
 - (b) both:
 - i. the person is not present in Australia at that time and holds a permanent visa at that time; and
 - ii. the person has previously been present in Australia and held a permanent visa immediately before last leaving Australia; or
 - iii. the person is covered by a determination in force under subsection (2) at that time.
- (2) The Minister may, by legislative instrument, determine that:
 - (a) persons who hold a special category visa or a special purpose visa; or
 - (b) persons who have held a special category visa; or
 - (c) persons who are present in Norfolk Island or the Territory of Cocos (Keeling) Islands;

and who satisfy specified requirements are, or are during a specified period, persons to whom this subsection applies.

Schedule 1 – Consequential Amendments

Part 1.1 maps the lowered voting and eligibility requirements over to the *Aboriginal and Torres Strait Islander Elected Body Act 2008* for elections to the Aboriginal and Torres Strait Islander Elected Body.

Part 1.2 recognises that the liability to serve as a juror is currently tied to the eligibility to vote under the Electoral Act. This amends the *Juries Act 1967* to retain the age of liability to serve as a juror at 18 years old. It will implicitly allow for permanent residents to serve as jurors in the ACT.