

2011

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELECTORAL LEGISLATION AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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Electoral Legislation Amendment Bill 2011

Outline

The Electoral Legislation Amendment Bill 2011 enacts a number of amendments to the *Electoral Act 1992* and the *Electoral Regulation 1993*, and makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

The amendments primarily arise from recommendations made by the ACT Electoral Commission in its report on the conduct of the 2008 ACT Legislative Assembly general election. Another amendment to lower the age of provisional enrolment arises from changes made in 2010 to the *Commonwealth Electoral Act 1918*.

The Bill:

- Lowers the age of entitlement to provisionally enrol to vote from 17 years old to 16 years old, to bring the ACT into line with recent changes to Commonwealth entitlements (the requirement that an elector be 18 years old before they can vote is not affected);
- Limits the number of candidates that may be nominated for an election in an electorate to no more than the number of members of the Legislative Assembly to be elected for the electorate;
- Provides for the return of a candidate's deposit to the person who paid it, or to a person authorised in writing by the person who paid it;
- Provides that the certified list of electors used in polling places contain the year of birth and gender of each elector, to assist in correctly identifying electors as they vote, and provides that the extract of the certified list of electors provided to candidates will not contain the year of birth and gender of electors in order to protect their privacy;
- Allows the Electoral Commissioner to provide the extract of the certified list of electors to candidates in electronic form on request (currently only printed copies are provided);
- Removes the requirement for a person to sign as witness when a voter is casting a postal vote; and
- Provides flexibility to the Electoral Commissioner as to where the word "declaration" is to be printed in relation to the words "ballot paper" on declaration ballot papers.

The Bill also makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, which applies various provisions of the Electoral Act to the conduct of elections for the Elected Body.

The amendments made by this Bill will assist in the continuing improvement of electoral processes for ACT Legislative Assembly elections and electoral administration in the ACT.

Summary of clauses

Clause 1 - Name of Act

This clause names the Act as the *Electoral Legislation Amendment Act 2011*.

Commencement

This clause states that the Act will commence on the day after its notification in the Legislation Register.

Legislation amended

This clause states that the Act amends the *Electoral Act 1992* and the *Electoral Regulation 1993*, and makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

Notice of registered deaths

This clause amends section 68 of the Electoral Act to provide that the Electoral Commissioner can request the Registrar-General to provide details related to the death of persons aged 16 years or older, rather than persons aged 17 years or older as at present. This amendment is consequential to the amendment made by clause 6 to lower the age of provisional enrolment to 16 years of age.

Age 16 enrolment

This clause amends the heading to section 75 of the Electoral Act to refer to age 16 enrolment, rather than age 17 enrolment as at present. This amendment is consequential to the amendment made by clause 6 to lower the age of provisional enrolment to 16 years of age.

Section 75(1)(a)

This clause amends section 75(1)(a) of the Electoral Act to lower the age at which a person may provisionally enrol on the ACT electoral roll from 17 to 16 years of age, bringing this entitlement into line with a change made to the *Commonwealth Electoral Act 1918* in 2010. The age at which an elector may vote will continue to be 18 years of age.

The intent of this change is to increase the proportion of young people enrolled to vote when they turn 18. It is well established that a significant number of young people are not enrolled to vote when they turn 18. Lowering the age at which young people can provisionally enrol to 16 rather than 17 will mean that more young people can be encouraged to enrol during electoral education programs at schools and other electoral enrolment initiatives aimed at school students.

This change to the ACT's Electoral Act will not make a material difference to the current enrolment regime, as anyone who is enrolled on the Commonwealth electoral roll is automatically taken to be enrolled for ACT purposes. However, making this amendment will remove an apparent inconsistency between the ACT's Electoral Act and the Commonwealth Electoral Act.

Candidates to be nominated

This clause inserts a new section 105(2A) of the Electoral Act to prevent a political party from nominating more candidates for an electorate than the number of members of the ACT Legislative Assembly to be elected in the electorate.

This amendment was recommended by the Electoral Commission in its report on the 2008 ACT Legislative Assembly election. The Commission noted that the current scheme for printing ballot papers using the Robson rotation method anticipated that parties would not nominate more candidates for election than the number of vacancies in an electorate. The Commission stated: "it can be argued that it would not be in a party's interests to nominate more candidates than vacancies: as the ballot paper instructions specify that voters should as a minimum show as many preferences as there are vacancies, a party that nominates more candidates than vacancies runs a significant risk that votes for that party will be lost through exhaustion of preferences, given that a very high proportion of voters only show as many preferences as there are vacancies."

The Commission noted that the main reason why a party may wish to nominate more candidates in an electorate than the number of vacancies would be where a party expected to win seats in the Assembly and the party wanted to ensure that it had a sufficient number of unelected candidates available to contest any subsequent casual vacancies. The Commission suggested that, rather than allow parties to nominate an unlimited number of candidates, it would be appropriate to deal with this issue by explicitly providing for the case where a casual vacancy occurs and a candidate from the party of the vacating MLA was not available to fill the vacancy using the current countback method. (See pages 27-28 of the Commission's Report for more discussion on this issue.)

This amendment therefore complements the changes proposed to be made to the casual vacancy procedures by the Electoral (Casual Vacancies) Amendment Bill 2011. Should the amendments of that Bill be accepted, there will be no need for a party to nominate more candidates than there are vacancies in an electorate.

Invalid candidate nominations

This clause substitutes an amended section 106 of the Electoral Act to provide that, if a party registered officer has nominated more candidates in an electorate than the number of vacancies in the electorate, then the nomination of all the candidates by that party for the electorate is made invalid.

This amendment is consequential to the amendment made by clause 7.

Deposit – return or forfeiture

This clause amends section 113 of the Electoral Act to provide that where a candidate qualifies for the return of a nomination deposit, the deposit may be returned to the person who paid it, or a person authorised in writing by the person who paid it. Currently, the deposit is returned to the candidate, regardless of who may have paid it. In most cases a nomination deposit for a candidate endorsed by a political party is paid by the party on behalf of the candidate.

This amendment was recommended by the Electoral Commission in its report on the 2008 ACT Legislative Assembly election. This change brings ACT practice into line with Commonwealth elections.

Printing of ballot papers

This clause omits section 116 (3) and (4) of the Electoral Act as a consequence of the amendments at clauses 7 and 8. If the amendments of clause 7 and 8 are accepted, then there will be no requirement for the provision to split a group of party candidates across two or more columns on the ballot paper. The provision that specifies the arrangement for the splitting of groups of party candidates across columns only applies where there are more candidates in a party group than there are vacancies for the electorate.

Certified extracts and certified lists of electors

This clause amends section 121 of the Electoral Act to provide that the certified list of electors for an election used in polling places will include each elector's year of birth and gender.

The inclusion of these details on the certified list will enable polling officials to more accurately identify the correct elector's name on the list in situations where there are two or more people with the same or similar name living at the same address, for example a father and son with the same name. This change will also reduce the possibility of an elector voting in another person's name as the voter would need to be of a similar age to the elector in whose name the person is attempting to vote.

This amendment was recommended by the Electoral Commission in its report on the 2008 ACT Legislative Assembly election. This change will make ACT practice similar to Commonwealth elections, where certified lists include each elector's date of birth and gender. The Commission recommended that only year of birth should be used in the ACT to protect the private nature of electors' birth dates.

This clause also amends sections 121 of the Electoral Act to provide that the extract of the electoral roll given to candidates (which currently consists of the certified list containing only names and addresses) will not include the additional year of birth and gender details for privacy reasons. To ensure the year of birth and gender of each elector is not made public, the amendment will create a new certified extract of electors that will contain only the elector's name and address from the certified list of electors, for the purpose of providing these extracts to candidates upon request.

The amendment also allows the Electoral Commissioner to provide the certified extract of electors to candidates in electronic form, instead of in printed form, if this is requested by a candidate. Currently, certified lists are only provided to candidates in paper form.

Use of information from certified extracts or certified lists

This clause substitutes a new heading for section 121A of the Electoral Act to refer to the new certified extract of electors created by the amendment to section 121 made by clause 11.

Definition of *protected information*

This clause substitutes a new definition of “protected information” in section 121A of the Electoral Act to refer to the new certified extract of electors created by the amendment to section 121 made by clause 11.

Meaning of *authorised witness*

This clause omits the definition of “authorised witness” in section 127 of the Electoral Act. This amendment is consequential to the amendments made by clauses 15 and 16, which remove references to authorised witnesses for postal voting.

Requirements for casting postal votes

This clause amends section 144A(2) of the Electoral Act to remove the requirement for an authorised witness to a postal vote certificate.

This amendment was recommended by the Electoral Commission in its report on the 2008 ACT Legislative Assembly election. The Commission noted that new procedures introduced for the 2008 election meant that the signatures of electors on postal vote declarations were checked where possible with the signatures of the electors on their enrolment forms. The Commission noted that this check provided a more secure check against fraudulent voting than previous methods. The Commission suggested that, in light of this change, the requirement for an authorised witness to sign a postal vote certificate did not add significant value to the process of verifying a voter’s identity. By contrast, the requirement for an authorised witness has led to votes being rejected in cases where a witness’ signature was not obtained.

This amendment will simplify the postal voting process and should reduce the number of postal votes rejected for technical errors.

Assistance to voters

This clause amends section 156(2)(a) of the Electoral Act to remove a reference to an authorised witness to a postal vote certificate. This amendment is consequential to the amendment made by clause 15.

Activities of campaign committees

This clause amends section 200(1) of the Electoral Act to correct a drafting omission.

Immaterial delays and errors

This clause amends section 268(1)(b) of the Electoral Act as a consequence of the amendments made by clause 11.

Correcting delays, errors and omissions

This clause amends section 332(1) of the Electoral Act as a consequence of the amendments made by clause 11.

Dictionary, definition of *authorised witness*

This clause amends the Dictionary of the Electoral Act to omit the definition of *authorised witness* as a consequence of the amendment at clause 14

Dictionary, definition of *certified list of electors*

This clause amends the Dictionary of the Electoral Act to insert a reference to the new certified extract of electors created by the amendment at clause 11.

Dictionary, definition of *declaration voting papers*

This clause amends the Dictionary of the Electoral Act to alter the definition of *declaration voting papers* as a consequence of the amendment at clause 15.

Electoral Regulation 1993: Printing of declaration ballot papers

This clause amends section 5A of the Electoral Regulation to allow for the word “declaration” to be printed next to, rather than above, the words “ballot paper” on the declaration vote ballot paper. This amendment will provide the Electoral Commission some flexibility in the placement of the words, and is particularly relevant to the efficient operation of the ballot paper scanning system used at the 2008 ACT Legislative Assembly election.

This amendment was recommended by the Electoral Commission in its report on the 2008 ACT Legislative Assembly election.

Schedule 1

***Aboriginal and Torres Strait Islander Elected Body Act 2008* – Consequential amendments**

The *Aboriginal and Torres Strait Islander Elected Body Act 2008* applies various provisions of the *Electoral Act 1992* to the conduct of elections for the Elected Body and makes modifications to the applied Electoral Act provisions where appropriate.

[1.1] - Modification 1.7: Candidates to be nominated

This amendment alters the application of modification 1.7 as a consequence of the amendment made at clause 7, in order to keep its original intent.

[1.2] - Modification 1.30: Certified list of electors

This amendment alters the application of modification 1.30 as a consequence of the amendment made at clause 11, in order to keep its original intent.