

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
the Arts, Tourism and Territories,
The Hon David Simmons MP)



AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

OUTLINE

This Bill amends the *Australian Capital Territory (Electoral) Act 1988* as amended by the *Arts, Territories and Environment Legislation Amendment Act 1989* (together 'the Principal Act'). This Bill and the Principal Act provide for the electoral system which will apply to elections for the Legislative Assembly ('the Assembly') for the Australian Capital Territory. Elections for the Assembly are conducted by the Australian Electoral Commission ('the Commission'). This Bill and the Principal Act form part of a package of legislation for the Australian Capital Territory and should be read in conjunction with the *Australian Capital Territory (Self-Government) Act 1988*, and in particular Part VIII of that Act.

This Bill and the Principal Act have as their linchpin the application of the *Commonwealth Electoral Act 1918* as in force on 1 October 1988 ('the Electoral Act') to Assembly elections subject to necessary modifications.

The amendments to the Principal Act are being made to implement the following decisions:

- (a) to introduce a new Australian Capital Territory Electoral System based on the d'Hondt system;
- (b) to implement the following recommendations of the Joint Standing Committee on Electoral Matters Inquiry into the ACT Election and Electoral System:
 - (i) the level of deposit required for a candidate nominating for election to the Australian Capital Territory Assembly be raised to \$250;
 - (ii) the registration of political parties within the Australian Capital Territory be conditional on the demonstration of a minimum party membership of one hundred eligible Australian Capital Territory electors; and
 - (iii) individuals be prevented from being the registered officer of more than one political party in the Australian Capital Territory;
- (c) to refine the rules relating to the formality and informality of ballot-papers;
- (d) to close the period allowed for the receipt of postal votes at the time of the close of the polls on polling day; and

- (e) to implement a number of minor technical and drafting changes.

The Australian Capital Territory Electoral System is a proportional representational system which will enable an elector to vote either for a single independent candidate, or for a single registered party, or choose the order of as many of the candidates of one registered party as he or she wishes.

To allocate seats among the parties and independents, the votes for each independent are totalled and the votes for each party (which includes first preference votes for any candidate of that party) are totalled. The respective totals are then divided consecutively by one, two, three and so on, with the seats allocated in accordance with the highest numbers resulting from this process of division. An example of a distribution of seats under this system is at Schedule 2 to the Principal Act as amended at sub-clause 7(5). The candidates of a party are then elected to the seats allocated to a party by distributing the votes among the candidates by a method similar to that currently used for Senate elections.

FINANCIAL IMPLICATIONS

This Bill does not place additional costs on the Commonwealth. By simplifying the electoral system the Bill should help to reduce the cost of conducting future Australian Capital Territory general elections.

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NOTES ON CLAUSES

Clause 1 : Short title etc.

This clause provides that the Bill may be cited as the *Australian Capital Territory (Electoral) Amendment Act 1991* and provides that the Principal Act is the *Australian Capital Territory (Electoral) Act 1988* as amended by the *Arts, Territories and Environment Legislation Amendment Act 1989*.

Clause 2 : Commencement

This clause provides that the Bill commence on the day on which it receives the Royal Assent.

Clause 3 : Repeal of section 5

Clause 3 repeals section 5 of the Principal Act. Section 5 provides for the determination of the next available preference (for the purposes of sections 19 and 21) when the same number appears in more than one square on the ballot-paper. Section 5 is no longer necessary because sections 19 and 21 relate to requirements of the existing electoral system which will not continue and are repealed by clause 6.

Clause 4 : Registration of political parties

Clause 4 amends subsection 13(2) of the Principal Act by omitting "political party" and substituting "eligible political party within the meaning of Part XI of the Electoral Act". The effect of this amendment is to require the Commission to register any eligible political party upon application. "Eligible political party" is defined in subsection 123(1) of the Electoral Act. This new definition is inserted into Schedule 1 to the Principal Act by a substituted modification detailed in Schedule 2 to this Bill. The purpose of the amendment is to preclude the registration of parties that are neither a Parliamentary party, nor have at least 100 members in line with the recommendation of the Joint Standing Committee on Electoral Matters Inquiry into the ACT Election and Electoral System. A "member" in relation to a political party is defined to mean a person who is a member of the political party and entitled to vote at an election of the Assembly.

Clause 5 : Voting at general elections

Clause 5 amends section 18 of the Principal Act by substituting a new subsection (d). The purpose of this amendment is to provide that voters have the choice of either voting for an independent candidate, a registered party, or a candidate of a registered political party. If a voter chooses to vote for a candidate of a party, he or she can express further preferences for other candidates listed under the same party. The amendment precludes voters from expressing valid preferences for more than one party or independent candidate, or for candidates of more than one party.

Clause 6 : Repeal of sections 19, 20, 21, 22 and 23 and
insertion of new sections

Clause 6 repeals sections 19, 20, 21, 22 and 23 of the Principal Act and inserts new sections 19 and 20. Sections 19, 20, 21, 22 and 23 of the Principal Act set out the methodology for the counting of votes and the election of candidates based on those votes.

The new section 19 provides a simplified procedure for allocating seats among the parties and independent candidates as follows:

- (a) count the total number of votes for each independent candidate and for each party. For the purpose of the party count where a vote is cast for a party or for one or more candidates of a party, the party is deemed to have received only one vote (subsection 19(1));
- (b) divide the totals for each party and independent candidate by 1, 2, 3 and so on (subsection 19(2));
- (c) the numbers worked out by each division of the totals are 'quotients' on a 'rank', so that the numbers ascertained by dividing the totals by one are 'quotients' on the 'first rank', the numbers ascertained by dividing the totals by two are 'quotients' on the 'second rank' and so on (subsection 19(3)); and
- (d) the party or independent candidate who receives the highest quotient on the first rank receives the first seat, the party or independent candidate who receives the next highest quotient receives the second seat and so on until all 17 seats have been distributed (subsection 19(6)).

The following additional rules apply to this procedure:

- (a) if 2 quotients on different ranks are equal, the quotient on the higher rank is taken to be the higher quotient (subsection 19(4));

- (b) if 2 or more quotients on the same rank are equal the Australian Capital Territory Electoral Officer is required to determine by ballot their order for the purposes of allocating the seats (subsection 19(5)); and
- (c) when a party receives the same number of seats as it has nominated candidates, and when an independent candidate receives a seat, any further quotient received by that party or independent candidate must be disregarded (subsections 19(7) and (8)).

To assist in the understanding of the above process, Schedule 2 to the Principal Act as amended by sub-clause 7(5) of this Bill gives an illustration of a distribution of seats.

The new section 20 provides for the election of the individual candidates once seats have been allocated to the parties and/or independent candidates (under the new section 19).

Subsection 20(1) provides that if an independent is allocated a seat (under the new section 19) the candidate is elected.

Subsection 20(2) provides that if a party is allocated the same number of seats as it has nominated candidate(s) (under the new section 19), that candidate or those candidates are elected.

Subsection 20(3) provides that where a party has received fewer seats than it has nominated candidates, candidates are elected to those seats by distributing votes by a method similar to that currently used for Senate elections.

Section 273 of the Electoral Act, which provides for the scrutiny of votes in Senate elections, applies for this purpose, as detailed in section 16 of the Principal Act, subject to the modifications described in Schedule 1 to the Principal Act as amended by the Schedules to this Bill.

Clause 7 : Amendments to Schedules to the Principal Act

Clause 7 amends Schedule 1 to the Principal Act as set out in the four Schedules to this Bill. Schedule 2 to the Principal Act, which consists of an example of a distribution of seats, is amended to refer to the appropriate section of the Principal Act (Section 19, as substituted by clause 6 of this Bill).

Clauses 8 and 9 set out the transitional provisions which will apply on the commencement of the Bill.

Clause 8 : Transitional - certain registered parties to provide membership list

Sub-clause 8(1) defines for the purposes of this clause the terms "information period" and "reviewable party".

Sub-clauses 8(2) and (3) allow each existing registered party (other than a parliamentary party as defined in Part XI of the Electoral Act) to give the Commission, within 30 days of the commencement of the Bill, a written list of at least 100 members of the party. The Commission is required to de-register those parties that do not appropriately demonstrate a minimum of 100 members (as defined in section 123 of the Electoral Act).

Clause 9 : Transitional - certain registered parties liable to de-registration

Clause 9 requires the Commission to give notice to a person who is the registered officer of two or more parties, that the parties are liable to de-registration if at the end of a period of 30 days after the notice is issued, the person remains the registered officer of two or more parties. If a party becomes so liable to de-registration the Commission must de-register the party and publish a notice of the de-registration in the Commonwealth Gazette.

SCHEDULES

The Schedules to this Bill modify the application of the Electoral Act, so as to provide the machinery for the conduct of general elections of the Assembly.

Section 16 of and Schedule 1 to the Principal Act contain the existing modifications of the Electoral Act. Schedule 1 to the Bill amends existing modifications; Schedule 2 substitutes new modifications for existing modifications; Schedule 3 omits existing modifications; and Schedule 4 inserts further modifications in Schedule 1 to the Principal Act.

For the purposes of clarity and ease of understanding the explanatory material below has been consolidated in a manner consistent with the Electoral Act.

The following are the most important features of the amendments made by the Schedules to this Bill to Schedule 1 to the Principal Act. The references to parts and sections are references to parts and sections of the Electoral Act.

General Amendments of Schedule 1 to the Principal Act

Certain applications of the Electoral Act which applied only to the first Australian Capital Territory general election are omitted; principally the modifications to paragraph 126(2)(d), subparagraph 133(1)(a)(iv), subsection 133(2) and paragraph 134(1)(f) and subsection 293(2) to section 302 inclusive.

Amendment to the Modifications of Part I - Preliminary

The modification of subsection 4(1) inserting a definition of "Continuing party" is omitted and a definition of "Register of Political Parties" is inserted. "Continuing party" means a party that has not been excluded by the first stage of the election process under section 19 of the Principal Act. As section 19 of the Principal Act is repealed the definition of "Continuing party" is no longer applicable.

Amendments to the Modifications of Part XI - Registration of Political Parties

The modification of subsection 123(1) is amended to provide a revised definition of eligible political party. The purpose is to cover only parties that are either a Parliamentary party, or a party with at least 100 members in line with the recommendation of the Joint Standing Committee on Electoral Matters Inquiry into the ACT Election and Electoral System.

The modification of section 126 is amended to preclude an individual from being the registered officer of more than one party in line with the recommendation of the Joint Standing Committee on Electoral Matters Inquiry into the ACT Election and Electoral System.

The modification of section 137 is amended to give the Commission the power to institute proceedings for the de-registration of a party that it is satisfied is no longer an eligible political party or obtained its registration by fraud or misrepresentation.

Amendment to the Modifications of Part XIV - The Nominations

The modification of section 170 is amended to raise the level of deposit for the nomination of a candidate for election to the Australian Capital Territory Assembly to \$250 in line with the recommendation of the Joint Standing Committee on Electoral Matters Inquiry into the ACT Election and Electoral System.

Modification and Amendment to Modifications of Part XV - Voting by Post

Schedule 4 inserts modifications of subsections 194(3) and 200(1) to provide for the close of the period for the receipt of postal votes at the close of the poll. This will have the effect of reducing the time period required for the counting of votes following the close of the poll.

Amendments to the Modifications of Part XVI - The Polling

The modifications of sections 211, 211A, 212 and 216 are omitted. These sections are not appropriate for the new system of voting which will apply to Australian Capital Territory elections. They relate to party voting tickets being lodged with the returning officer and displayed at polling booths. Party tickets are excluded under the new Australian Capital Territory Electoral System which provides that preferences may be expressed only for candidates within the voter's chosen party (section 18 as amended at clause 5).

The modification of section 239 is amended to make the marking of votes on the ballot-paper consistent with the method of voting as provided in clause 5.

Amendments to the Modifications of Part XVIII - The Scrutiny

The modifications of paragraphs 268(1)(b) and (c) are amended to refine the rules relating to the formality and informality of ballot-papers, to be consistent with the method of voting (as provided in clause 5) and the counting of votes (as provided in clause 6).

Six general principles adopted by the Government and set out below have been applied to refine the rules relating to the formality and informality of ballot-papers:

- (a) Where more than one first preference mark is placed above the ballot line, a ballot-paper is informal.
- (b) Where more than one first preference mark is placed below the ballot line for candidates of different parties, a ballot-paper is informal.
- (c) Where one first preference mark is placed above the ballot line for a particular party or independent candidate, and another first preference mark is placed below the ballot line for a candidate of another party, a ballot-paper is informal.
- (d) Where one first preference mark is placed above the ballot line for a particular party, and another first preference mark is placed below the ballot line for a candidate of the same party, a ballot-paper is formal.
- (e) Where one first preference mark is placed above the ballot line for a particular party, and two or more first preference marks are placed below the ballot line for candidates of the same party, a ballot-paper is formal.
- (f) Where no first preference marks are placed above the ballot line, but two or more first preference marks are placed below the ballot line for candidates of the same party, a ballot-paper is formal.

The modification of section 269 is amended so that where a formal ballot-paper has been marked in an ambiguous manner then certain of those marks are taken not to be made. Where a formal ballot-paper has a preference mark in a square next to the name of a party and has a preference mark in a square opposite the name of a candidate of that party, the mark next to the name of that party is taken not to have been made.

The modification of section 270 is amended so that:

- (a) a formal ballot-paper having a preference mark for a party placed above the ballot line is taken to have indicated preferences for the candidates of that party in the same order as the order of their names on the ballot-paper; and
- (b) a formal ballot-paper having marks expressing preferences for candidate(s) of a particular party is taken to have indicated preferences for the candidate(s) in accordance with the general sequence of numbers indicated and in relation to candidate(s) whose squares are not marked is taken to have indicated preferences for the candidates in accordance with the same order as the order of their names on the ballot-paper.

The modification of section 273 is amended to be consistent with the method of voting (as provided in clause 5) and the counting of votes (as provided in clause 6) and to implement a number of technical changes principally of a minor nature. The modifications of subsections 273(5)(c) and (d) are amended so that Divisional Returning Officers will no longer need to count the first preference votes received by party candidates prior to transmitting material to the Australian Capital Territory Electoral Officer. In this way the allocation of seats to parties and independent candidates can be concluded prior to the election of individual party candidates.

