

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts,  
Sport, the Environment, Tourism and Territories,  
Senator the Hon Graham Richardson)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE  
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED



## AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) BILL 1988

### OUTLINE

This Bill provides for the electoral system which will apply to elections for the Legislative Assembly ('the Assembly') for the Australian Capital Territory ('the Territory'). Elections for the Assembly will be conducted by the Australian Electoral Commission ('the Electoral Commission'). The Bill forms part of a package of legislation to provide self-government for the Territory and should be read in conjunction with the Australian Capital Territory (Self-Government) Bill 1988, and in particular Part VIII of that Bill.

The Bill has as its linchpin the application of the Commonwealth Electoral Act 1918 ('the Electoral Act') to Assembly elections subject to necessary modifications. In its application to Assembly elections the Bill divides the Electoral Act into three categories.

The first category consists of provisions which, as modified by Schedule 1 to the Bill, provide the machinery for the conduct of Assembly elections.

The second category consists of those provisions which relate to matters such as the Electoral Commission and the creation of Divisions and rolls. These provisions exist primarily for Commonwealth elections but without them the provisions relating to Assembly elections could not work. To shorten and simplify the Bill, these provisions apply without modification but have their operation generally limited.

The third category consists of those Parts of the Electoral Act which are irrelevant for the purpose of Assembly elections. The Bill declares these Parts inapplicable.

As a result of the adoption of the approach outlined above, certain provisions of the Electoral Act, similar to those in the Parts in the second category applying generally, have been produced as substantive provisions in the Bill. Provisions relating to matters such as the Electoral Roll, the Australian Capital Territory Electoral Officer, the Divisional Returning Officer, staff of the Electoral Commission and Qualifications of electors are dealt with in this manner.

The bulk of the modifications to the Electoral Act arise as a result of the Bill's introduction of an electoral system under which the members of the Assembly are elected from a single Territory electorate using the d'Hondt system of allocating votes. The d'Hondt system is a direct proportional representation system which in its application to the Territory will enable an elector to:

- . express a first preference for a single independent candidate; or
- . in relation to a single registered party, express a first preference for the party and/or one candidate of the party;

and, in addition, express subsequent preferences for such of the remaining parties or candidates as the elector wishes.

To allocate seats among the parties and independent candidates, the votes for each independent candidate and the votes for each party, and where no such vote is cast the primary votes for candidates of that party, are totalled.

Parties attracting insufficient votes to have a candidate elected and independent candidates attracting insufficient votes to be elected are identified as those who do not receive a 'droop quota', being the figure arrived at by dividing the total number of votes received by each party and independent candidate by one more than the number of Assembly members.

Unsuccessful parties and independent candidates are then excluded from participation in the distribution of seats and the votes they have attracted are transferred to the next preferred party or candidate who has not been so excluded. The voting preference by which these votes are re-allocated is either expressed by the voter on the ballot paper, or if the elector votes for only one excluded party which has submitted a voting ticket, in accordance with that party's ticket.

Once votes have been transferred the respective totals of votes for continuing parties and independent candidates 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 provided at the end of this outline. 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 used for Senate elections.

The principal modifications to the Electoral Act which follow the adoption of the d'Hondt system relate to:

- . the registration of parties where there will be no membership requirements before a party can be registered on the Australian Capital Territory Register of Political Parties;
- . the form of the nomination where the order within the party in which each candidate is to appear on the ballot paper must be indicated;

- . the registration of a party voting ticket;
- . the minimisation of informal voting;
- . the detailed rules which regulate the indication of preferences within the party list; and
- . the rules governing the scrutiny of votes.

The other principal features of the Bill are as follows:

- . the Assembly is elected for a 4 year fixed term.
- . only persons whose names are on the Territory Roll and who would be entitled to vote in a House of Representatives election on polling day are eligible to vote. Persons who live in the Jervis Bay Territory and itinerant electors will not be able to vote at Assembly elections.
- . provision is made for eligible Territory overseas electors who are on the Territory Roll and who intend to resume residing in the Territory.
- . elections for the Assembly will be conducted without election writs. The various time limits usually determined by reference to the issue of election writs will be set by reference to the date fixed for polling.
- . candidates may not group for the purposes of Assembly elections.
- . the Australian Capital Territory Supreme Court is the Court of Disputed Returns for Assembly elections.

Distribution of seats under d'Hondt

Number of seats to be distributed: 17

No. of votes cast for each Party	Party X	Party Y	Party Z
	12000	8000	3000
No of votes			
div by 1	12000 1st	8000 2nd	3000 6th
div by 2	6000 3rd	4000 4th	1500 14th
div by 3	4000 5th	2666 8th	1000
div by 4	3000 7th	2000 10th	750
div by 5	2400 9th	1600 13th	600
div by 6	2000 11th	1333 16th	500
div by 7	1714 12th	1142	428
div by 8	1500 15th	1000	375
div by 9	1333 17th	888	333
	<b>-9 seats</b>	<b>-6 seats</b>	<b>-2 seats</b>

**FINANCIAL IMPACT STATEMENT**

The Commonwealth is providing the funding for the first Assembly election. The estimated cost to the Commonwealth is \$620,000. In relation to the first election, the Commonwealth has the power to recover amounts paid by the Commonwealth where the recipient is not entitled to payment and to recover amounts equal to the amount or value of an unlawful gift.

## NOTES ON CLAUSES

### Clause 1 : Short title

This clause cites the short title of the Act.

### Clause 2 : Commencement

This clause provides that the Act commences on the commencement of section 65 of the Australian Capital Territory (Self-Government) Act 1988 ('the Self-Government Act').

### Clause 3 : Interpretation

This clause provides the definitions for the purposes of the Act. Of particular significance are the following definitions:

- . 'pre-election period' which means a period of 36 days immediately before polling day for a general election and was included because general elections will be conducted without election writs;
- . 'Roll for the Territory' which means the Roll of electors for the Territory required by section 81 of the Electoral Act;
- . 'this Act' which is expressed to include, except in clause 4, the Electoral Act.

Sub-clause 3(2) gives to expressions in the Act the same meaning as in the Self-Government Act.

### Clause 4 : This Act and Electoral Act to be read as one Act

This clause establishes the essential relationship between the Electoral Act and the Act by providing that subject to contrary intention the Act and the Electoral Act as modified should be read as if they were one Act.

### Clause 5 : Jervis Bay Territory excluded

This clause has the effect of excluding the Jervis Bay Territory from the operation of the Act.

### Clause 6 : Act to bind Crown

This clause provides that the Act binds the Crown in right of the Territory. Nothing, however, makes the Territory liable to be prosecuted for an offence.

**Clause 7 : Territory to be single electorate**

This clause provides that for the purposes of general elections, the Territory shall be one electorate.

**Clause 8 : Electoral Roll**

Sub-clause 8(1) provides that the Roll for the Territory shall be the Roll of the electors of the Territory for the purposes of general elections.

Sub-clause 8(2) sets out the following circumstances where, for the purposes of the Act (other than clause 20 which deals with the provision of Rolls and habitation indexes to political parties), a person shall not be taken to be on the Roll for the Territory:

- (a) the person lives in the Jervis Bay Territory;
- (b) the person is an eligible overseas elector under sections 94 or 95 of the Electoral Act but is not an eligible Territory overseas elector, the distinction being that the latter must intend to resume residing in the Territory [note however that sub-clause 25(3) has the effect of deeming all current Commonwealth eligible overseas electors who are on the Electoral Roll for the Territory to be eligible Territory overseas electors];
- (c) the person is an itinerant elector under section 96 of the Electoral Act; or
- (d) the person's name was added to the Roll by way of a claim for enrolment received by a Divisional Returning Officer after 6.00 pm 29 days before the polling day for a general election.

The effect of this last circumstance is to:

- (i) close the Roll 29 days prior to the polling date, and is a necessary departure from the Electoral Act because section 155 of the Electoral Act fixes the date for the close of the Rolls by reference to the writ; and
- (ii) expand the certified list of voters under section 208 of the Electoral Act to include persons who have made a claim for enrolment that had not been processed at the close of the Roll.

**Clause 9 : Times of general elections**

This clause provides that the Commonwealth Minister is to specify a day for the holding of the first ordinary election (sub-clause 9(3)).

The second ordinary election is to be held on the third Saturday in February 1993 (sub-clause 9(4)) and subsequent ordinary elections are to be held on the third Saturday in February in the fourth year after the last ordinary election is held (sub-clause 9(5)).

Sub-clause 3(1) defines these fixed term elections as "ordinary elections".

However, other elections may be held as follows:

First, where an ordinary election is to be held on the third Saturday in February in a particular year and that Saturday is the polling day for a Commonwealth election, the ordinary election shall be held 6 weeks later on the first Saturday in April in that year (sub-clause 9(6)).

Secondly, the Commonwealth Minister is required to call a general election of the Assembly where the Governor-General dissolves the Assembly under section 15 of the Self-Government Act. If such an election is held within 6 months before an ordinary election is due to be held, the newly elected Assembly will serve the remainder of the term of the old Assembly together with the following four year term (sub-clause 9(7)).

Thirdly, the Commonwealth Minister is required to call a general election of the Assembly under section 47 of the Self-Government Act if the Assembly passes a motion of no confidence in the Chief Minister and the Assembly does not within 30 days elect a Chief Minister. An early election under section 47 may not be held during the period of 6 months before the normal 4 year general election is due to be held, and does not affect the holding of the next ordinary election.

**Clause 10 : Qualifications of electors**

This clause provides that a person is entitled to vote at a general election if on that day:

- (a) the person's name is on the Roll for the Territory; and
- (b) the person would be entitled to vote at a House of Representatives election.

**Clause 11 : Functions of Electoral Commission in relation to general elections**

This clause directly confers the following functions relating to general elections on the Electoral Commission:

- (a) functions under the Act other than those expressly reposed in a particular person, body or office holder or that consist of appointing a person to an office; and
- (b) the promotion of public awareness of matters relating to the Assembly and general elections through, amongst other means, education and information programs.

This approach is envisaged by paragraph 7(1)(g) of the Electoral Act which provides that the Electoral Commission may perform functions conferred on it by Commonwealth law.

**Clause 12 : Registration of political parties**

This clause requires the Electoral Commission to establish and maintain a register to be called the Australian Capital Territory Register of Political Parties. The Electoral Commission is required to register the name of a political party where the party makes the appropriate application.

'Political party' is defined to mean an organisation the object or activity, or one of the objects or activities, of which is the promotion of the election to the Assembly of a candidate or candidates enclosed by it and which is established on the basis of a written constitution (however described) that sets out the aims of the organisation (sub-clause 3(1)).

**Clause 13 : Australian Capital Territory Electoral Officer**

Sub-clause 13(1) provides that the Electoral Commission shall for each general election appoint an Australian Capital Territory Electoral Officer ('the Territory Electoral Officer'). This appointment terminates upon the completion of the election.

Sub-clause 13(2) enables the Territory Electoral Officer, subject to the direction of the Electoral Commission, to direct officers with respect to the performance of their functions and the exercise of their powers under the Act.

**Clause 14 : Divisional Returning Officers**

Sub-clause 14(1) charges the Divisional Returning Officers for each part of the Territory which represents a Division for Commonwealth electoral purposes with the duty of giving effect to the Act within his or her Division subject to the directions of the Electoral Commissioner or the Territory Electoral Officer.

Sub-clause 14(2) enables a Territory Divisional Returning Officer, subject to the direction of the Electoral Commissioner or the Territory Electoral Officer, to direct officers with respect to the performance of their functions and the exercise of their powers under the Act in, or in relation to, the Division.

**Clause 15 : Application of Commonwealth Electoral Act**

Sub-clause 15(1) sets out the general principle that the Electoral Act applies in relation to general elections. Sub-clauses 15(2), (3), (4) and (5) then proceed to vary the application of the Electoral Act in the following manner.

Sub-clause 15(2) lists those Parts of the Electoral Act which, as modified by Schedule 1, will provide the machinery for the conduct of general elections. These Parts are:

- Part I - Preliminary;
- Part V - Subdivisions and Polling Places;
- Part VII - Qualifications and Disqualifications for Enrolment and for voting;
- Part XI - Registration of Political Parties;
- Part XIV - The Nominations;
- Part XV - Voting by Post;
- Part XVI - The Polling;
- Part XVII - Special Provisions relating to the polling in Antarctica;
- Part XVIII - The Scrutiny;
- Part XIX - The Return of the Writs;
- Part XX - Election Funding and Financial Disclosure;
- Part XXI - Electoral Offences;
- Part XXII - Court of Disputed Returns; and
- Part XXIII - Miscellaneous.

Paragraph 15(2)(a) is included to make it clear that the substantial amendments to these Parts of the Electoral Act proposed by the Electoral and Referendum Amendment Bill 1988 will have no automatic application to general elections.

Sub-clause 15(3) applies the following Parts of the Electoral Act which exist principally for Commonwealth elections but without which the provisions applying by virtue of sub-clause 15(2) could not work, without modification:

- Part II - Administration;
- Part IV - Electoral Divisions;
- Part VI - Electoral Rolls;
- Part VIII - Enrolment;
- Part IX - Objections; and
- Part X - Review of Decisions.

However, the operation of these Parts is limited by the fact that they apply only to the extent to which they are necessary for the Electoral Commission to perform its functions under clause 11, or are necessary for the operation of the provisions identified in sub-clause 15(2).

Sub-clause 15(4) declares inapplicable:

Part III - Representation in Parliament; and  
Part XIII - Writs for elections

as they are irrelevant for the purposes of general elections.

The Commonwealth is providing the funding for the first election of the Assembly. Sub-clause 15(5) therefore only applies Division 3 of Part XX of the Electoral Act (which relates to election funding) to the first general election. Clause 19 provides that the Assembly may by enactment provide for the funding of subsequent elections.

Sub-clause 15(6) facilitates the application of the Electoral Act to general elections by providing that certain references in the Electoral Act should be read as if they were references to particular features of the Bill ie references to the Australian Electoral Officer for a Territory includes references to the Territory Electoral Officer.

Sub-clause 15(7) provides that in Part 11 of the Electoral Act references to electoral matters include references to general elections. This has the effect of conferring upon the Electoral Commission a function particularly relevant to the Territory.

#### Clause 16 : Nominations

Sub-clause 16(1) states the broad principle that a person cannot be elected as a member unless duly nominated by a registered party or as an independent candidate in accordance with the Electoral Act applying in the manner provided by clause 15.

Sub-clause 16(2) fixes the date for the nomination of candidates as 22 days prior to polling day, a provision necessary because it is not proposed to use a writ, while sub-clause 16(3) provides that where a candidate dies after being nominated and before noon on the day for nomination, the day for nomination will be the following day.

**Clause 17 : Voting at general elections**

This clause sets out the principles that are to apply to voting at general elections. The principles are:

- (a) voting shall be compulsory;
- (b) voting shall be by secret ballot;
- (c) an elector shall not vote more than once; and
- (d) an elector shall:
  - express a first preference for a single independent candidate; or
  - in relation to a single registered party, express a first preference for the party and/or one candidate of the party;

and, if the elector wishes, express subsequent preferences for such of the remaining candidates or parties as the elector wishes.

**Clause 18 : Counting votes: distribution of seats among parties and independent candidates**

This clause describes the following procedure for allocating seats among the parties and independent candidates:

- (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 of the candidates of a party or for both, the party is deemed to have received only one vote (sub-clause 18(1));
- (b) divide the sum of the total of votes for each party and independent candidate by one more than the number of Assembly members, and increase that figure by one (sub-clause 18(2));
- (c) exclude from participation in the distribution of seats all parties and independent candidates whose total number of votes calculated at (a) is less than the number calculated at (b) (sub-clause 18(3));
- (d) transfer the votes of an excluded party or independent candidate to the unexcluded party, party candidate or independent candidate receiving the elector's next available preference (if any) (sub-clause 18(4));
- (e) add any transferred votes to the original votes for each party or independent candidate (sub-clause 18(7));

- (f) divide the totals for each remaining party and independent candidate by 1, 2, 3 and so on (sub-clause 18(8));
- (g) 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 worked out by dividing the totals by two are 'quotients' on the 'second rank' and so on (sub-clause 18(9));
- (h) 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 (sub-clause 18(12)).

The following additional rules apply to this procedure:

- (a) if the next available preference cannot be determined because numbers are duplicated on the ballot paper, the same general principles which seek to minimise informal voting are applied, namely:
  - where only one of those duplicated numbers is above the ballot line, that number is taken to express the next available preference;
  - where 2 or more of those duplicated numbers are above the ballot line, the vote is not transferred;
  - where the duplicated numbers are all expressed for the candidates of a particular party, the next available preference is given to that party; and
  - where the duplicated numbers are all below the ballot line and range across party lists, the vote is not transferred (sub-clause 18(5)).
- (b) where:
  - a party is excluded;
  - an elector who has voted for that party has not voted outside that party list; and
  - the excluded party has a party voting ticket indicating a next available preference for an unexcluded party or candidate;

then the vote is transferred in accordance with that preference (sub-clause 18(6));

- (c) if 2 quotients on different ranks are equal, the quotient on the highest rank is taken to be the highest quotient (sub-clause 18(10));
- (d) if 2 or more quotients on the same rank are equal (a circumstance which could only arise if parties or independent candidates received exactly the same number of votes) the Territory Electoral Officer is required by ballot to determine their order for the purpose of allocating the seats (sub-clause 18(11)); and
- (e) 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 candidate must be disregarded (sub-clauses 18(13) and (14)).

To assist in the understanding of the above process, Schedule 2 gives an illustration of a distribution of seats.

**Clause 19 : Counting votes: election of candidates**

This clause provides for the election of the candidate once the seats have been allocated.

Sub-clause 19(1) provides that if an independent candidate is allocated a seat the candidate is elected.

Sub-clause 19(2) provides that if a party is allocated the same number of seats as it has nominated candidates, that candidate or those candidates are elected.

Sub-clause 19(3) sets out the general principle that where a party has nominated more candidates than it has received seats, the candidates are elected to those seats by distributing the votes by a method similar to that used for Senate elections. Section 273 of the Electoral Act, which provides for the scrutiny of votes in Senate elections, applies for this purpose, subject to the modifications described in Schedule 1.

**Clause 20 : Provision of Rolls and habitation indexes to political parties etc**

Sub-clause 20(2) requires the Electoral Commission to provide a copy of the latest print of the Territory Electoral Roll to each registered party and each member of the Assembly within 3 1/2 years of a general election other than an election held under section 47 of the Self-Government Act. The exception in relation to section 47 is made because an election under that section does not affect the holding of the next fixed term election. If however requested by a party or member, the Commission may provide a copy of the latest print in tape or disk form (sub-clause 20(3)).

Sub-clause 20(4) also requires the Commission to provide to each registered party, so far as practicable, after each general election (other than an election held under section 47 of the Self-Government Act) a tape or disk of the habitation index for the Territory.

Sub-clause 20(5) provides that a copy, tape or disk provided under the section will be free of charge, while sub-clause 20(6) provides that copies of habitation indexes provided to parties shall not include the addresses of people who are registered under section 104 of the Electoral Act as silent electors.

**Clause 21 : Election funding**

This clause provides that the Assembly may legislate to provide for funding for elections other than the first general election.

Electoral funding for the first general election will be provided for by the Commonwealth in accordance with the provisions of Division 3 of Part XX of the Electoral Act applying as modified by Schedule 1.

**Clause 22 : Report by Electoral Commission**

As the Commonwealth is funding the first election, sub-clause 22(1) provides that in relation to the first election the Electoral Commission shall report to the Commonwealth Minister on the operation of Division 3 of Part XX of the Electoral Act. The Minister must table a copy of this report before each House of the Parliament within 15 sitting days of receiving the report (sub-clause 22(2)).

**Clause 23 : Staff**

Section 35 of the Electoral Act authorises the Electoral Commission to employ staff. Clause 23 provides that staff so employed by the Electoral Commission for the sole purpose of a general election of the Assembly are taken to be employed on behalf of the Territory. Sub-clause 23(2) provides that the terms and conditions of employment of such staff are set by the Electoral Commission.

**Clause 24 : Regulations**

Clause 24 enables the Governor-General to make regulations for the purposes of the Act. The regulations may deal with matters permitted by the Act to be prescribed by the regulations or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

**Clause 25 : Transitional**

Sub-clause 25(1) is a general transitional provision which provides that, subject to contrary intention, anything done for the purposes of the Electoral Act that was in effect at the commencement of the Act shall be taken to have been done for the purposes of both the Electoral Act and the Act. The effect of this provision is to ensure, for example, that voters who are presently on the Register of general postal voters, who are presently Antarctic electors or who are presently silently enrolled retain these characteristics for the purpose of general elections.

Sub-clause 25(2) expressly preserves for the purposes of the Electoral Act and the Act delegations and directions by the Electoral Commission under sections 16 and 18 of the Electoral Act and delegations by the Electoral Commissioner under section 28 of the Electoral Act.

Sub-clause 25(3) addresses the issue of current eligible overseas electors under the Electoral Act who are on a Territory Sub-divisional Roll by providing that where there is an annotation to this effect there shall also be taken to be an annotation indicating that the person is an eligible Territory overseas elector.

**Schedule 1 - Modifications of Commonwealth Electoral Act**

Schedule 1 modifies the Electoral Act so as to provide the machinery for the conduct of general elections of the Assembly.

The following represents the most important features of these modifications. The references to sections are references to sections of the Electoral Act.

**Modifications of Part I - Preliminary**

The main modifications to this Part involve the omission of those definitions and interpretation provisions inapplicable in the context of elections for the Assembly.

A definition of 'preference mark' is included to mean the number 1, a tick or a cross, and a definition of 'continuing party' is included to mean a party not excluded under section 18 of the Territory Electoral Act.

**Modifications of Part V - Subdivisions and Polling Places**

As the Territory is not to be divided into Divisions or Subdivisions for the sole purpose of general elections, section 79 (Subdivisions) is omitted.

**Modifications of Part VII - Qualifications and disqualifications for enrolment and voting**

Section 93 (Persons entitled to enrolment and to vote) is modified to take account of the fact that the principal statement of the qualifications for voting at a general election is contained in clause 10 which determines eligibility on the basis of a person's entitlement to vote at a House of Representatives election.

Section 94 (Enrolled voters) and 95 (Eligibility of spouse or child of eligible overseas elector) are modified to provide that to be an eligible Territory overseas elector, a person must intend to resume residing in the Territory.

Section 96 (Itinerant electors) is omitted as inappropriate for the Territory.

**Modifications of Part XI - Registration of political parties**

The definition of 'Eligible political party' has been modified to omit a membership requirement.

Section 124 (Registration of political parties) and section 125 (Register of political parties) are omitted as provision is made for registration of parties in clause 12.

Section 126 (Application for registration) is modified to provide that an application for the registration of a political party may only be made by the secretary of the party.

Section 128 (Only Parliamentary parties to be registered during initial period) is modified to reduce the period from 3 months to 30 days in which an application by a political party represented in the Commonwealth Parliament is the only application which can be considered. The reduction in time is necessary to enable the first election to be held in February 1989. Similarly to ensure the first election can be held in February, section 132 (Publication of notice of application) is amended to reduce the time within which a person may object to an application for registration from 1 month to 7 days.

#### Modifications of Part XIV - Nominations

The following sections of Part XIV have been omitted because inapplicable in the context of elections for the Assembly:

- . Section 163 (Qualifications of members);
- . Section 165 (Multiple nominations prohibited);
- . Section 168 (Grouping of candidates);
- . Section 169 (Notification of party endorsement);
- . Section 169A (Notification of independent candidacy); and
- . Section 169B (Verification of party endorsement).

Section 166 (Mode of nominations) is modified by altering the requirements relating to signature of the nomination, and by requiring the nominations of party candidates to specify the order in which each candidate is to appear on the ballot paper.

Section 173 (Deposit to be forfeited in certain cases) is modified to provide that a deposit (which is set at \$100) is liable to forfeit in the case of the first election to the Commonwealth and in the case of subsequent elections to the Territory.

Section 177 (Withdrawal of consent to nomination) is modified to reflect the role of the registered party officer in the nomination of a party candidate by providing that the registered officer may cancel the nomination of a candidate at any time before the hour of nomination.

#### Modifications of Part XV - Voting by post

There is no separate system of registering general postal voters for the purpose of general elections. The system established by the Electoral Act for Commonwealth elections is relied upon so that a person who is on the Register of General Postal Voters in respect of a Territory Division will by virtue of clause 25 be registered as a general postal voter for general elections.

#### Modifications of Part XVI - The Polling

The following sections of Part XVI have been omitted because inapplicable to elections for the Assembly:

- . Section 211 - Group voting tickets;
- . Section 211A - Individual voting tickets;

- . Section 212 - Ballot papers for House of Representatives;
- . Section 214 - Printing of political names on ballot papers;
- . Section 216 - Group voting tickets to be displayed;
- . Section 227 - Remote Divisions;
- . Section 240 - Marking of votes in a House of Representatives election; and
- . Section 244 - Arrangements where elections held in some Divisions only.

Section 209 (Ballot papers) is modified to describe the form of the ballot papers to be used in general elections. The principal features of the ballot paper are:

- (a) above the horizontal line and from left to right are the names of each registered party nominating a candidate or candidates followed by the names of each independent candidate; and
- (b) below the line, and below the name of each registered party, is the name of the candidate, or a vertical list of the names of the candidates nominated by the party.

A new section 211, dealing with party voting tickets, is included.

Sub-section 211(1) provides that the registered officer of a party fielding a candidate or candidates for a general election may lodge a statement showing how the party wishes voters who vote for the party to indicate subsequent preferences for such other parties or candidates as specified in the statement.

Sub-section 211(2) provides that this statement may take the form of a statement which sets out the names of the other parties and candidates in their ballot paper order with squares opposite each name and numbers in the squares showing the order of preferences.

Sub-section 211(3) provides that where a statement is lodged the party is taken to have a registered voting ticket.

Sub-section 211(4) requires that a statement under sub-section (1) be signed by the party's registered officer.

A new section 216, requiring the Territory Electoral Officer to display registered voting tickets at each polling booth, is also included.

Section 239 (Marking of votes in Senate elections) is modified to follow clause 17 so that in a general election a person should mark his or her vote on the ballot paper by:

- . placing the number 1 in the square opposite the name of a single party, a single party candidate or a single independent candidate; or
- . placing the number 1 in the square opposite the name of a single party and opposite the name of a single candidate of that party (sub-clause 239(1)).

In addition to marking a ballot paper in the way described above, a person may mark it by placing the number 2 or the numbers 2, 3 (and so on as the voter wishes) in squares opposite the names of as many parties or candidates as the voter wishes (sub-clause 239(2)).

#### Modifications to Part XVIII - The scrutiny

Section 268 (Informal ballot papers) is modified to provide the following circumstances where a ballot paper is informal:

- (a) it has no vote indicated on it;
- (b) a preference mark is placed in a square opposite the name of a political party or independent candidate and a preference mark is placed in another square opposite the name of a political party or independent candidate;
- (c) subject to the rules described below, a preference mark is placed in a square opposite the name of a candidate of a political party and a preference mark is placed in a square opposite the name of a candidate of another political party.

Section 269 (Formal votes according to group voting ticket) is omitted and a new section 269 included, the purpose of which is to minimise informal voting. Subsection 269(1) describes the following circumstances where the ballot paper is deemed not to have been marked below the ballot line:

- (a) where the voter (i) has placed a preference mark in a square opposite the name of a political party and has made no other preference mark above the ballot line and (ii) has placed a preference mark in a square opposite the name of a candidate of a different party; and

- (b) where the voter (i) has placed a preference mark in a square opposite the name of an independent candidate and has made no other preference mark above the ballot line and (ii) has placed a preference mark in a square opposite the name of a party candidate.

Subsections 269(2) and (3) describe the following circumstance where a number is deemed not to have been placed:

- (a) where a voter has placed (i) a preference mark in only one square opposite the name of a continuing party candidate and (ii) a number indicating preferences in a square opposite the name of a candidate of a different party;
- (b) where a voter has placed (i) a preference mark in a square next to the name of a continuing party and has made no other preference mark above the ballot line and (ii) a number, other than the number 1, in a square opposite the name of a candidate of a different party.

Section 270 (Certain votes with non-consecutive numbers to be formal) is omitted and a new section 270 included the purpose of which is to lay down the following rules which apply to the indication of preferences in the party list by a formal ballot paper:

- (a) where a voter has placed a preference mark in the square opposite the name of a continuing party and has not marked any square below the ballot line, the voter is deemed to have indicated his or her preferences for the candidates of that party in the order in which they appear on the ballot paper;
- (b) where a vote is transferred to a party because of the expression of a next available preference for that party above the ballot line, the number expressing that preference is taken to be the number 1. This places the voter in the same position for the purpose of the election of candidates as if he or she had expressed a first preference for that party;
- (c) where a vote is transferred to a party in accordance with a party voting ticket, the voter is taken to have indicated his or her preferences for the candidates of the party in the order indicated by that ticket;
- (d) where a voter has indicated his or her preferences for candidates of a particular continuing party but has not expressed the preferences in strict consecutive numerical sequence the preferences will be allocated in accordance with the general sequence of numbers;

- (e) where a voter has indicated his or her preference for a candidate or a particular continuing party and has left unmarked squares opposite the names of the other candidates of that party (i) preferences will be allocated in accordance with the general sequence of numbers indicated and then (ii) preferences in relation to a candidate or candidates whose square is, or squares are, unmarked will be allocated in the order in which they appear on the ballot paper; and
- (f) where a voter's allocation of preferences within a party list contains duplicated numbers opposite the names of candidates of a particular continuing party, preferences, while allocated to the point of duplication, will not be allocated to those candidates and no further preferences will be allocated.

Section 273 (Scrutiny of votes in Senate elections) is extensively modified to detail the process of scrutinising votes in a general election. The modifications arise from the fact that the electoral system enables voters to vote for a political party and requires a double count; first, to distribute the seats among parties and independent candidates; and secondly, to allocate seats to candidates of a particular continuing party.

Of particular note is the requirement designed to facilitate the count that all ballot papers marked in the various ways so as not to alter the order of the party list appearing on the ballot paper be placed in a separate parcel under each parties name, and the requirement that for the purpose of electing the candidates a quota shall be determined for each party by dividing the sum of the total votes received by that party by a number equal to the sum of one and the number of seats won by that party and by increasing the result of that division by 1.

The following sections of Part XVIII have been omitted because they are inapplicable to elections for the Assembly:

- . Sections 274 (Scrutiny of votes in House of Representatives elections);
- . 276 (Provisional Scrutiny), 277 (Scrutiny for information); and
- . 279 (Re-count at House of Representatives elections).

Modification of Part XIX - The return of the writs

This Part is modified to take account of the fact that it is not proposed to use writs for the purpose of conducting general elections.

Section 283 (Return of writ for election of Senators) is modified to require the Territory Electoral Officer to notify, by instrument, in the case of the first election, the Commonwealth Minister, and in the case of every subsequent election, the Presiding Officer of the Assembly, of the names of the candidates elected.

Modification of Part XX - Election funding and financial disclosure

Section 287 (Interpretation) is modified to provide that 'division' in relation to a political party includes a branch of the party, to omit the definition of 'group', and to omit the definition of 'State branch'. For the purposes of Assembly elections, the breadth of the definition of 'State branch', which is designed to pick up a variety of organisational units not relevant to the Territory, is unnecessary.

As a result of these definitional modifications a large number of consequential amendments are made to Part XX.

In addition to these consequential amendments the following modifications are made.

Section 294 (General entitlement to funds) is modified to provide that there is payable in respect of each vote received by a registered party and for each vote received by an independent candidate the amount of 50¢.

Subsection 295(2) (Claims for payment) is modified to provide that a claim for payment for eligible votes given for a registered party may only be made by the agent of that party.

Section 304 (Disclosure of gifts) is modified to provide that in relation to the gift returns required to be filed after the first election, the disclosure period begins on the day of the commencement of section 65 of the Self-Government Act and ends on the polling day in the first election. Section 305 (Expenditure incurred for political purposes) is similarly modified to describe the disclosure period for the first election.

Section 306 (Certain gifts not to be received) is modified to provide that for the purposes of the second and subsequent general elections, the Territory may recover amounts equal to the amount or value of an unlawful gift.

**Modifications of Part XXI - Electoral Offences**

The principal modifications to this Part are necessary because of the introduction of an electoral system which enables voters to vote for parties ie section 340 (Prohibition of canvassing near polling booths) is modified to also make it an offence for a person to induce an elector not to vote for a particular registered party, while section 351 (Publication of matter regarding candidates) is modified to also make it an offence for a person without appropriate authority, to expressly or by implication advocate or suggest that a registered party is the registered party for whom the vote should be given.

**Modifications to Part XXII - Court of Disputed Returns**

Section 353 (Method of disputing elections) is modified to provide that the choice of a person to hold the place of a member by the Assembly under section 67 of the Self-Government Act (Casual vacancies) is deemed to be an election within the meaning of the section.

Section 354 (The Court of Disputed Returns) is modified to provide that the Supreme Court of the Australian Capital Territory shall be the Court of Disputed Returns, with the Courts jurisdiction in this respect exercised by a single Judge.

**Schedule 2 - Example of distribution of seats among parties and independent candidates**

Schedule 2 provides an example of a distribution of seats among parties and independents using the d'Hondt method of calculation.













