



Australian Capital Territory

Electoral Amendment Act 2004

A2004-26

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Australian Capital Territory

Electoral Amendment Act 2004

A2004-26

An Act to amend the *Electoral Act 1992* and the *Referendum (Machinery Provisions) Act 1994*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Electoral Amendment Act 2004*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Act amended

This Act amends the *Electoral Act 1992*.

4 New section 3A

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- section 143

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**5 Application for registration of political party
Section 89**

omit

An application

substitute

- (1) An application

6 Section 89 (e)

substitute

- (e) be accompanied by a copy of the party's constitution; and
(f) be accompanied by a list of the names and addresses of at least 100 members of the party who are electors.

7 New section 89 (2)

insert

- (2) The commissioner may use information obtained under subsection (1) (f) only to find out whether the party has at least 100 members who are electors.

**8 Further information about application for political party
registration
Section 90 (2) and (5)**

omit

9 Section 90

renumber subsections when Act next republished under Legislation Act

**10 Refusal of applications for registration
Section 93 (1) (a)**

substitute

- (a) for an application for registration of a political party—the commissioner believes on reasonable grounds that, when it made the application, the party did not have at least 100 members who were electors; or

11 New section 95B

insert

95B When certain action cannot be taken

- (1) This section applies if, in the period beginning 1 July in a year when an ordinary election must be held and ending when the pre-election period for the election begins, the commissioner receives an application—
- (a) to register a political party; or
- (b) to change the name or abbreviation of a political party.
- (2) The commissioner must not take any action under this part in that period in relation to the application.

12 Section 97A

substitute

97A Information about political parties

- (1) The commissioner may, by written notice given to the registered officer of a registered party, require the officer to give the commissioner information stated in the notice that is reasonably necessary for the commissioner to find out whether the party is entitled to be registered.

- (2) Without limiting subsection (1), the commissioner may, under that subsection, require the registered officer to give the commissioner a list, as at a stated date, of the names and addresses of at least 100 members of the party who are electors.
- (3) The commissioner may use the information obtained under subsection (2) only to find out whether the party is entitled to be registered.

13 Section 136

substitute

136 Definitions for div 10.4

- (1) In this division:

authorised delivery service means—

- (a) Australia Post; or
- (b) if, under subsection (2), the commissioner decides that a delivery service be used instead of Australia Post—that delivery service; or
- (c) if, under subsection (2), the commissioner decides that a delivery service be used in addition to Australia Post—Australia Post or that delivery service.

eligible elector, for an election, means an elector who is entitled to vote at the election and—

- (a) who expects to be unable to attend at a polling place on polling day; or
- (b) whose address is a suppressed address.

post means send using an authorised delivery service.

- (2) For subsection (1), definition of *post*, the commissioner may, in writing, decide that a delivery service be used instead of or in addition to Australia Post.

14 Section 136A

substitute

136A Applications for postal voting papers

- (1) An eligible elector for an election may apply to an authorised officer for declaration voting papers for postal voting (*postal voting papers*) for the election.
- (2) The application must be—
- (a) signed and dated by the eligible voter in the presence of an authorised witness; and
 - (b) signed and dated by the witness; and
 - (c) received by an authorised officer before 8 pm on the day before polling day.

Note If a form is approved under s 340A (Approved forms) for an application, the form must be used.

- (3) If an authorised officer receives an application under this section from a person claiming to be an eligible voter for an election (the *applicant*), the officer must—
- (a) if satisfied that the applicant's name is on the certified list of electors for an electorate—post postal voting papers for the electorate to the applicant; or
 - (b) if not so satisfied—post postal voting papers for the electorate in which in the applicant claims to be enrolled to the applicant.
- (4) However, the authorised officer must not post postal voting papers to the applicant—

- (a) if the applicant has nominated a postal address outside Australia—if the application is received by the officer after 5 pm on the Friday 8 days before polling day; or
 - (b) in any other case—if the application is received by the officer after the last mail clearance, at the post office nominated by the commissioner in the postal voting papers, on the last Thursday before polling day; or
 - (c) in any case—if the officer has reason to believe that the applicant is at a place where the normal transmission of mail has been significantly disrupted or curtailed or is otherwise unreliable.
- (5) Despite subsections (3) and (4), the authorised officer may give the postal voting papers to the applicant using a courier or other agent (other than an authorised delivery service), if the officer believes on reasonable grounds that—
- (a) the applicant is a person to whom subsection (4) applies; and
 - (b) the papers are likely to reach the applicant in sufficient time for the applicant's ballot paper to be completed and posted or given in accordance with section 144A (Requirements for casting postal votes) if the papers are sent to the applicant using the agent.
- (6) Despite subsections (3) and (5), the authorised officer must not post or give postal voting papers to the applicant earlier than the 19th day before polling day.
- (7) If postal voting papers are sent or given to the applicant in accordance with this section, neither the authorised officer nor the commissioner is responsible for ensuring that the papers reach the applicant.

Note Section 144A deals with how to cast a postal vote.

**15 Issue of voting papers to registered declaration voters
Section 141, new note**

insert

Note Section 144A deals with how to cast a postal vote.

16 Section 143

substitute

143 Soliciting applications for postal declaration votes

- (1) A person commits an offence if the person does anything to induce someone else—
 - (a) to complete an application form for declaration voting papers for postal voting; and
 - (b) to return the completed form to an address that is not an address authorised by the commissioner.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if the person does anything to induce someone else to complete an application form for declaration voting papers for postal voting that is not the form approved under section 340A for the application form.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

17 New section 144A*insert***144A Requirements for casting postal votes**

- (1) This section applies to a person if the person has received declaration voting papers for an election under section 136A (Applications for postal voting papers) or section 141 (Issue of voting papers to registered declaration voters).
- (2) To cast a postal vote—
 - (a) the person must show the unsigned declaration and certificate, and the unmarked ballot paper to an authorised witness; and
 - (b) the person must complete and sign the declaration in the presence of the witness; and
 - (c) the witness must complete and sign the certificate as witness; and
 - (d) the person must, in the presence of the witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope addressed to the commissioner and fasten the envelope; and
 - (e) the person must—
 - (i) post the envelope and contents to the commissioner before polling day; or
 - (ii) give the envelope and contents to the commissioner or another officer on or before polling day.
- (3) This section is subject to section 156 (Assistance to voters).

Note For restrictions on sending completed ballot and voting papers by fax, see s 329.

18 Section 187

substitute

187 Recount of ballot papers

- (1) The commissioner may, at any time before the declaration of the result of an election, arrange for a recount of some or all of the ballot papers for the election—
 - (a) on the commissioner's own initiative; or
 - (b) on application under section 187A by a candidate for the election.
- (2) The commissioner must, if directed by the electoral commission under section 187B (Review of decision of commissioner to refuse to arrange for recount), arrange for a recount of some or all of the ballot papers for the election.
- (3) In recounting ballot papers, the commissioner—
 - (a) may reverse a decision made earlier in the scrutiny; but
 - (b) must deal with the ballot papers in a way that is consistent with this part.
- (4) Before a recount is conducted, the commissioner must tell each candidate, in writing, the date, time and place fixed for the recount.

187A Application for recount of ballot papers etc

- (1) A candidate for an election may apply to the commissioner for a recount of some or all of the ballot papers for the election.
- (2) The application must—
 - (a) be in writing; and
 - (b) set out the reasons for the requested recount.
- (3) The commissioner must—

- (a) arrange for the requested recount; or
- (b) refuse to arrange for the requested recount.

187B Review of decision of commissioner to refuse to arrange for recount

- (1) This section applies if—
 - (a) a candidate for an election applies to the commissioner under section 187A for a recount of some or all of the ballot papers for an election (the *requested recount*); and
 - (b) the commissioner refuses to arrange for the requested recount.
- (2) The candidate may apply to the electoral commission for review of the commissioner's decision.
- (3) The application to the electoral commission must—
 - (a) be in writing; and
 - (b) set out the applicant's reasons for making the application.
- (4) On review of the decision, the electoral commission may—
 - (a) confirm the commissioner's decision; or
 - (b) set the decision aside and direct the commissioner to arrange for—
 - (i) the requested recount; or
 - (ii) another recount of some or all of the ballot papers.
- (5) In considering the application, the electoral commission may have regard to the commissioner's reasons for refusing to arrange for the requested recount.
- (6) Unless the decision to refuse to arrange for the requested recount was made by a delegate of the commissioner, the commissioner must not—

- (a) be present during any deliberation of the electoral commission in relation to the application; or
- (b) take part in any decision of the electoral commission in relation to the application.

19 Section 187A

renumber as section 187C

**20 Definitions for pt 14
Section 198, definition of *gift*, paragraph (d)**

substitute

- (d) for division 14.4 (Disclosure of donations) and in relation to a candidate—a gift made to or received by the candidate for the benefit of a party or non-party group of which the candidate is a member.

**21 Who eligible votes are cast for
Section 206 (a)**

substitute

- (a) an eligible vote cast for a party candidate is taken to be cast for the party and not for the candidate; and

**22 Entitlements to funds
Section 207 (2)**

substitute

- (2) The prescribed amount is payable for each eligible vote cast for a party, non-party group or candidate in an election.

23 **Threshold**
Section 208 (3)

omit

24 **Making of payments**
Section 212 (3)

omit

or ballot group

25 **Section 212**

renumber subsections when Act next republished under Legislation Act

26 **Death of candidate**
Section 214 (2) (a)

omit

or ballot group

27 **Disclosure of gifts**
Section 217 (3)

substitute

- (3) However, the reporting agent is not required to state the matters mentioned in subsection (2) (c) to (e) for a gift by a person if the amount of the gift and the total of all other gifts made to the candidate by the person is less than \$1 500.

28 **Section 221 (1)**

substitute

- (1) If, during the disclosure period for an election, a person (other than a party, a candidate or an associated entity) makes gifts totalling \$1 500 or more to the same non-party group or candidate in the

election or the same specified body, the person must give the commissioner a return within 15 weeks after the polling day for the election.

Note 1 If a form is approved under s 340A (Approved forms) for a return, the form must be used.

Note 2 For how a return may be given, see Legislation Act, pt 19.5.

29 Section 221 (4)

omit

non-party groups or

**30 Annual returns of donations
Section 221A (6), definition of *gift*, paragraph (b)**

substitute

(b) a gift made by a party, member of a non-party group, MLA, candidate or associated entity.

31 Section 222 (7), definition of *prescribed amount*

substitute

prescribed amount, for a gift made to or for the benefit of a party, MLA, associated entity, candidate or non-party group, means \$1 500.

**32 Definitions for div 14.5
Section 223, definition of *participant*, paragraph (a)**

substitute

(a) a party, non-party group or candidate; or

33 Section 224 (5)

substitute

- (5) A person is not required to give the commissioner a return under subsection (4) in relation to an election if the amount of the electoral expenditure incurred in relation to the election by or with the person's authority is less than \$1 500.

**34 Returns by broadcasters and publishers
Section 226 (2) (b) and (c)**

substitute

- (b) the name and address of the person at whose request the advertisement was broadcast or published;
- (c) the name and address of the participant in the election with whose authority the advertisement was broadcast or published;

**35 Noncompliance with pt 14
Section 241 (2) (a)**

omit

or ballot group

**36 Preliminary scrutiny of declaration voting papers
Schedule 3, clause 6 (1), definition of *relevant provision*,
paragraphs (b) to (d)**

substitute

- (b) for a vote under section 136B—section 135 (4) as applied by section 136B (18); or
- (c) for a vote under section 136C—section 135 (4) as applied by section 136C (8); or
- (d) for a vote under section 144A—section 144A (2).

37 Dictionary, new definition of *authorised delivery service*

insert

authorised delivery service, for division 10.4 (Voting otherwise than at a polling place)—see section 136.

38 Dictionary, definition of *declaration vote*, paragraphs (b) to (d)

substitute

- (b) section 136B (15) (Ordinary or declaration voting in ACT before polling day);
- (c) section 136C (Declaration voting outside ACT on or before polling day);
- (d) section 144A (Requirements for casting postal votes).

39 Dictionary, definition of *eligible elector*

substitute

eligible elector, for division 10.4 (Voting otherwise than at a polling place)—see section 136.

40 Dictionary, new definition of *post*

insert

post, for division 10.4 (Voting otherwise than at a polling place)—see section 136.

41 Dictionary, definition of *postal vote*

substitute

postal vote means a declaration vote to which section 144A (Requirements for casting postal votes) applies.

**42 Referendum (Machinery Provisions) Act 1994,
section 17 (3) (a)**

omit

, registered ballot group

Schedule 1 Further amendments about ballot groups

[1.1] Part 7 heading

omit

and ballot groups

[1.2] Section 88 heading

substitute

88 Register of political parties

[1.3] Section 88 (1)

substitute

- (1) The commissioner must keep a register of political parties.

[1.4] Section 88 (2)

omit

A register

substitute

The register

[1.5] Section 88 (2) (c)

omit

party or group;

substitute

party.

[1.6] Section 88 (2) (d)

omit

[1.7] Section 88 (3)

omit

each register

substitute

the register

[1.8] Section 89A

omit

[1.9] Section 91 (2) (a) (iv)

omit

[1.10] Section 91 (2) (b)

omit

, for an application for registration of a political party,

[1.11] Section 91 (5)

omit

, for an application for registration of a political party,

[1.12] Section 92 heading

substitute

92 Registration of political parties

[1.13] Section 92 (4)

substitute

- (4) The commissioner must also give notice of the registration to the secretary of the political party.

[1.14] Section 93 (2) (c), (d) and (g)

omit

or a registered ballot group

[1.15] Section 93 (2) (h)

omit

[1.16] Section 93 (3) (a)

omit

, or the MLA who applied to register the group,

[1.17] Section 95 (2)

omit

[1.18] Section 95 (3)

substitute

- (3) This part (other than section 94 and this section) applies, with all necessary changes, to an application under subsection (1), as if it were an application for registration of the political party and any objection to the application were an objection to the registration.

[1.19] Section 97 (1) (b)

omit

or the sponsoring MLA of the group

[1.20] Section 98 heading

substitute

98 Cancellation of registration of political parties**[1.21] Section 98 (2)**

omit

[1.22] Section 98 (3)

omit

or (2)

[1.23] Section 98 (8)

substitute

- (8) For subsection (7) (a), the *relevant person* is the secretary, or last secretary, of the registered party.

[1.24] Section 98 (10)

omit

[1.25] Section 98 (14)

substitute

- (14) If the commissioner cancels the registration of a registered party under subsection (6), the commissioner must give a review statement about the decision to cancel the registration to the registered officer, or last registered officer, of the party.

[1.26] Section 99 heading

substitute

99 Use of party name after cancellation

[1.27] Section 99 (1) (b)

omit

, or a ballot group,

[1.28] Section 99 (2) and (3)

omit

[1.29] Section 105 (2) (b)

omit

[1.30] Section 117 (1), definition of *ballot group name*

omit

[1.31] Section 117 (2) (c) and (d)

omit

[1.32] Section 117 (2) (e)

omit

, ballot group or grouped

[1.33] Section 198, definition of *ballot group*

omit

[1.34] Section 198, definition of *reporting agent*

omit

, group

[1.35] Section 198A heading

substitute

198A Reference to things done by party etc**[1.36] Section 198A (2)**

omit

[1.37] Section 200 (1)

omit

or ballot group candidate

[1.38] Section 203 (2)

omit

[1.39] Section 203 (3) and (4)

omit

or (2)

[1.40] Section 205 (4) (c)

omit

[1.41] Section 205 (5)

omit

, secretary of the party, or sponsoring MLA of the ballot group

substitute

or secretary of the party

[1.42] Section 208 (2)

omit

or ballot group's

[1.43] Section 218A (3)

omit

[1.44] Section 218A (8), definition of *relevant person*, paragraph (b)

omit

[1.45] Section 222 (7), definition of *relevant person*, paragraph (b)

omit

[1.46] Section 230 heading

230 Annual returns by parties and MLAs

[1.47] Section 231 (1) (b)

omit

[1.48] Section 237 (8) (a)

omit

a ballot group or MLA

substitute

an MLA

[1.49] Section 237 (8) (b)

omit

ballot group or

[1.50] Section 292 (1) (b)

substitute

(b) if the matter was published for a registered party or candidate for election—the name of the party or candidate.

[1.51] Section 304 and 337 (1) (h) and (i)

omit

, registered ballot group

[1.52] Schedule 1, form of ballot paper, instructions 4 and 7

omit

or registered ballot group

[1.53] Dictionary, definition of *abbreviation*

substitute

abbreviation, of the name of a political party, includes an alternative name of the party.

[1.54] Dictionary, definition of *ballot group*

omit

[1.55] Dictionary, definition of *ballot group candidate*

omit

[1.56] Dictionary, definitions of *registered* and *registered ballot group*

substitute

registered, for an abbreviation of the name of a registered party, means an abbreviation included in the particulars for the party in the register of political parties.

[1.57] Dictionary, definition of *registered officer*

substitute

registered officer, for a registered party, means the person whose name is entered in the register of political parties as the registered officer of the party.

Schedule 1 Further amendments about ballot groups

Amendment [1.58]

[1.58] Dictionary, definition of *register of ballot groups*

omit

[1.59] Dictionary, definition of *sponsoring MLA*

omit

[1.60] Further amendments, mentions of ‘, ballot group’

omit

, ballot group

in

- section 4 (2) (d)
- section 198, definition of *register*, paragraph (a)
- section 198, definition of *reporting agent*
- section 205 (1)
- section 218A (1)
- section 220 (1)
- section 221A (1), (2) (b), (3) (c) and (5)
- section 221B (1)
- section 222 (1), (2) and (3)
- section 224 (4)
- section 230 (1), (2) and (4)
- section 231 (2)
- section 232 (1)
- section 234 (1)
- section 239 (2) and (3)
- section 242 (3) (b)

[1.61] Further amendments, mentions of ‘and ballot groups’

omit

and ballot groups

in

- section 95A (2) (b)
- section 203 (4)
- section 204 (2)
- section 245 (k)
- section 247 (3) (a) (i)
- dictionary, definition of *registered party*
- dictionary, definition of *related* political parties

[1.62] Further amendments, mentions of ‘or group’

omit

or group

in

- section 88 (2) (a) and (b)
- section 91 (2) (a) (ii) and (iii)
- section 92 (1)
- section 93 (1) (b), (c) and (2)
- section 97 (1) (a) and (1) (b) and (5)
- section 98 (6) (b), (7) (a) (i), (7) (b) (i) and (15) (a)
- section 105 (4) (f)
- section 200 (1)
- section 301 (3) (b)

[1.63] Further amendments, mentions of ‘or ballot group’

omit

or ballot group

in

- section 88 (2)
- section 91 (1) and (2) (a) (i)
- section 91A (1), (2) and (4)
- section 92 (1), (2) and (5)
- section 93 (1), (2), (3) and (4)
- section 94 (1) and (6)
- section 96
- section 201 (2), definition of *disclosure day*, paragraph (b) (i)
- section 203 (4)
- section 204 (1) and (2)
- section 208 (2)
- section 212 (1)
- section 220 (6) (c)
- section 224 (3)
- section 225 (3)
- section 230 (8)
- section 231 (2)
- section 236 (1), penalty, paragraph (a)
- section 237 (3) (b) and (6)
- section 245 (h), (i) and (k)

- section 247 (3) (a) (i)
- section 291, definition of *address*, paragraph (a)

[1.64] Further amendments, mentions of ‘, ballot groups’

omit

, ballot groups

in

- section 198, definition of *associated entity*
- section 231 (2)
- section 231B (4) (a)
- section 232 (1)

[1.65] Further amendments, mentions of ‘or registered ballot group’

omit

or registered ballot group

in

- section 93 (1) (b)
- section 95 (4)
- section 96A
- section 97 (1), (4) and (5)
- section 98 (6), (7), (11) and (15)
- section 105 (4) (f)
- section 109 (2) (b)
- section 115 (1)
- section 289 (1) (a)

Schedule 1 Further amendments about ballot groups

Amendment [1.66]

- section 291, definition of *address*, paragraph (a)
- section 301 (3) (a)

[1.66] Act—renumbering

renumber subsections, paragraphs and subparagraphs when Act next republished under Legislation Act

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 May 2003.

2 Notification

Notified under the Legislation Act on 21 May 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Electoral Amendment Bill 2004, which originated in the Legislative Assembly as the Electoral Amendment Bill 2003 and was passed by the Assembly on 15 May 2004 a.m.

Clerk of the Legislative Assembly

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