



Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Amendment Act 2020

A2020-36

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Australian Capital Territory

# Aboriginal and Torres Strait Islander Elected Body Amendment Act 2020

A2020-36

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An Act to amend the *Aboriginal and Torres Strait Islander Elected Body Act 2008*

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Aboriginal and Torres Strait Islander Elected Body Amendment Act 2020*.

### 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 Legislation amended

This Act amends the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

## Part 2                      Amendments to Act, pt 2

### 4                      **Functions of ATSIEB** **Section 8 (a)**

*substitute*

- (a) to receive, and pass on to the Minister and any other Minister responsible for the matter that is the subject of concern, the views of Aboriginal and Torres Strait Islander people living in the ACT on issues of concern to them;
- (aa) when asked by the Minister, to give the Minister information or advice about the views of Aboriginal and Torres Strait Islander people living in the ACT on matters stated by the Minister;

### 5                      **Section 8 (b)**

*after*

represent

*insert*

, including nationally,

### 6                      **Discussions etc with non-government entities on** **systemic issues** **Section 10 (1)**

*after*

communicate

*insert*

, including nationally,

**7 New section 10AA***insert***10AA Broadcasting of public hearings**

- (1) The Territory may enter into an agreement with a suitably qualified and experienced person (the *broadcaster*), for the person to provide a broadcasting service in relation to a public hearing of ATSIEB.
- (2) The broadcaster may broadcast, or record for broadcast, all or part of a public hearing of ATSIEB in accordance with the terms of the agreement.
- (3) The broadcaster is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under subsection (2); or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under subsection (2).
- (4) Any liability that would, apart from this section, attach to the broadcaster attaches instead to the Territory.
- (5) An agreement must be entered into for the Territory by the director-general.
- (6) In this section:

*broadcast*—see the *Legislative Assembly (Broadcasting) Act 2001*, dictionary.

*conduct* means an act or omission to do an act.

*record*, a public hearing of ATSIEB, means make a sound or visual recording of the hearing.

**8 Reports from ATSIEB  
Section 10B (1)**

*after*

section 10A

*insert*

within 4 months after the day the public hearing ends

**9 Section 10B (3) (b)**

*omit*

6 months

*substitute*

4 months

**10 Reporting on consultation  
Section 13A (3) and (4)**

*substitute*

- (3) ATSIEB must give a copy of the report to the Minister, and any other Minister responsible for the matter that is the topic of the consultation, within 2 months after the day the consultation ends.
- (4) At least 1 of the Ministers mentioned in subsection (3) must give ATSIEB a response to the report not later than 2 months after the day the report is received under subsection (3).
- (5) ATSIEB must publish the response on the ATSIEB website.

**11 New section 30A***insert***30A Caretaker period**

- (1) In the caretaker period for an ATSIEB election, ATSIEB must not take any action or make a decision that binds or limits the freedom of action of the incoming ATSIEB.

- (2) In this section:

*caretaker period*, for an ATSIEB election, means the period—

- (a) starting on the election start day; and
- (b) ending at the end of the day when the result of the election is declared under section 14 (2) (a) (ii).

*incoming ATSIEB* means the ATSIEB that will hold office after the end of the caretaker period.

## Part 3                      Amendments to Act, pt 3 and sch 1

### **12                      Application of Electoral Act provisions Table 31, item 6**

*omit*

### **13                      Modifications of Electoral Act as applied to ATSIEB elections Schedule 1, modification 1.4**

*substitute*

### **[1.4]                      New section 80**

*insert*

### **80                      Closed rolls**

- (1) This section applies in relation to an ATSIEB election.
- (2) For this Act, the roll for an ATSIEB election is closed during the period—
  - (a) starting at 5 pm on the Monday 12 days before the polling start day for the ATSIEB election; and
  - (b) ending at the close of polling at the election.
- (3) While a roll is closed, subject to subsections (4), (5) and (6) and section 66—
  - (a) a person must not be enrolled; and

- (b) a person must not be taken to be enrolled under section 73 (5) or section 75 (2) if the person's enrolment on the Commonwealth roll is effected during the closure; and
  - (c) a name must not be removed; and
  - (d) an annotation in relation to the roll must not be made or cancelled under section 74; and
  - (e) a change of address must not be recorded.
- (4) Subsection (3) (c) must not be taken to prevent the removal, while a roll is closed, of the name of a person who the commissioner believes on reasonable grounds made a statement in a claim for enrolment or transfer of enrolment that was false or misleading in a material particular.
- (5) If the Australian Postal Corporation notifies the commissioner in writing that the delivery of a posted claim for enrolment or transfer of enrolment has been delayed by an industrial dispute and, apart from the dispute, would have been delivered to the commissioner before the close of the roll for an election—
- (a) subsection (3) (a) and (c) must not be taken to prevent the enrolment of an elector or the removal of an elector's name from another roll as a consequence of such an enrolment; and
  - (b) if the claimant is enrolled in accordance with the claim—the enrolment must be taken, in relation to any vote cast by the claimant in the election, to have been effected before the roll closed.

- (6) This section does not prevent the enrolment of an elector, during a period when a roll is closed, if the elector's claim for enrolment or transfer of enrolment was received before the beginning of that period by—
- (a) an officer appointed under section 33 (Officers); or
  - (b) a member of the commission's staff; or
  - (c) a person authorised by the commissioner for this section; or
  - (d) an employee of the Australian Electoral Commission.

- (7) In this section:

*enrolment* includes the enrolment of a person who is taken to have been enrolled under this part.

*particulars*—a reference (express or implied) to *particulars* relating to a person includes a reference to particulars taken to be recorded on the roll under this part.

**14 Schedule 1, modification 1.20, section 110A heading**

*substitute*

**110AA Retention of nomination papers**

**15 Schedule 1, new modification 1.20A**

*insert*

**[1.20A] Candidate information to be published  
Section 110A (8)**

*omit*

**16 Schedule 1, modification 1.30***substitute***[1.30] New section 120A***insert***120A Certified extracts and certified lists of electors for ATSIEB election**

- (1) As soon as practicable after the roll for an electorate closes, the commissioner must—
- (a) prepare—
    - (i) a certified extract of electors; and
    - (ii) a certified list of electors; and
  - (b) give a copy of the certified list to the OIC for each polling place.
- (2) In this Act:

*certified extract of electors*, for an election in an electorate, means an extract from the roll for the electorate, certified by the commissioner, for each elector enrolled who will be at least 18 years of age on polling day.

*certified list of electors*, for an election in an electorate, means a list, certified by the commissioner, that contains—

- (a) a certified extract of electors; and
- (b) each elector's year of birth and gender.

**17 Schedule 1, modification 1.40***substitute***[1.40] Section 133***substitute***133 Claims to vote**

- (1) This section applies if a person attends before an officer at a polling place during the polling period for an ATSIEB election and claims to vote at the election.
- (2) The officer (the *issuing officer*) must give the person a ballot paper if satisfied that—
  - (a) the certified list of electors—
    - (i) states the person's name; and
    - (ii) states an address for the person or indicates that the person's address is suppressed; and
    - (iii) has not been marked in a way that indicates that a ballot paper has already been issued to the person; and
  - (b) no challenge has been made under section 133A in relation to the person.
- (3) Despite subsection (1), an officer must not issue a ballot paper to a person who indicates that they have already voted at the election.
- (4) Immediately after issuing a ballot paper to a claimant, the officer must record the issue on the certified list of electors.

**18 Schedule 1, new modification 1.42A**

*insert*

**[1.42A] Declaration voting at polling places  
Section 135 (1) (a) and (b)**

*substitute*

- (a) the certified list of electors for the electorate does not specify the person's name; or
- (b) the certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to the person but the person claims not to have voted already at the election.

**19 Schedule 1, new modification 1.80A**

*insert*

**[1.80A] Immaterial delays and errors  
Section 268 (1) (b)**

*omit*

preliminary

**20 Schedule 1, modification 1.84**

*substitute*

**[1.84] Dissemination of unauthorised electoral matter  
Section 292 (1) (b) (iii)**

*substitute*

- (iii) if the matter is disseminated for a candidate for election or a person who has publicly indicated that the person intends to be a candidate for election—a statement to the effect that the matter is disseminated for the candidate or person; and

**21 Schedule 1, modification 1.99**

*substitute*

**[1.99] Clause 6 (2)**

- (2) This clause applies to a set of declaration voting papers if the officer is satisfied that—
  - (a) the signature on the declaration is that of the elector; and
  - (b) the certificate by the witness is in accordance with the relevant provision; and
  - (c) for a postal vote if the papers were posted to the commissioner—the papers were posted before the close of the poll; and
  - (d) for a declaration vote under section 133B (3) or a postal vote under section 136A (Applications for postal voting papers)—the review panel or a member of the review panel has decided that the elector is an Aboriginal or Torres Strait Islander person.

**22 Schedule 1, new modification 1.99A**

*insert*

**[1.99A] Clause 9 (a)**

*substitute*

- (a) the elector who signed the declaration was, when the roll closed for the election, entitled to be enrolled; and

**23 Schedule 1, new modifications 1.103A and 1.103B**

*insert*

**[1.103A] Definitions of *certified extract of electors* and *certified list of electors***

*substitute*

*certified extract of electors*, for an election in an electorate—see section 120A.

*certified list of electors*, for an election in an electorate—see section 120A.

**[1.103B] New definition of *closed***

*insert*

*closed*, in relation to a roll, means closed in accordance with section 80.

**24 Schedule 1, modification 1.105**

*substitute*

**[1.105] New definition of *liaison officer***

*insert*

*liaison officer* means an Aboriginal and Torres Strait Islander liaison officer appointed under section 33 (2A).

**[1.105A] Definition of *official error***

*omit*

6pm on the first day of the pre-election period for

*substitute*

the roll closed for the purpose of

**[1.105B] New definition of *partial failure***

*insert*

*partial failure*, for part 13 (Casual vacancies)—see section 190.

**25 Schedule 1, new modification 1.106B**

*insert*

**[1.106B] Definitions of *preliminary certified extract of electors* and *preliminary certified list of electors***

*omit*

**26 Schedule 1, new modification 1.108**

*insert*

**[1.108] Definition of *supplementary certified list of electors***

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 20 February 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 5 August 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2020, which was passed by the Legislative Assembly on 30 July 2020.

Clerk of the Legislative Assembly

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