

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electoral Amendment Bill 2003

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(Attorney-General)

Electoral Amendment Bill 2003

A Bill for

An Act to amend the *Electoral Act 1992*

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

1 **1 Name of Act**

2 This Act is the *Electoral Amendment Act 2003*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Act amended**

8 This Act amends the *Electoral Act 1992*.

9 **4 Application for registration of political party**
10 **Section 89**

11 *omit*

12 An application

13 *substitute*

14 (1) An application

15 **5 Section 89 (e)**

16 *substitute*

17 (e) be accompanied by a copy of the party's constitution; and

18 (f) be accompanied by a list of the names and addresses of at least
19 100 members of the party who are electors.

20 **6 New section 89 (2)**

21 *insert*

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

- 1 **7 Further information about application for political party**
2 **registration**
3 **Section 90 (2) and (5)**
- 4 *omit*
- 5 **8 Section 90**
- 6 *renumber subsections when Act next republished under Legislation*
7 *Act*
- 8 **9 Refusal of applications for registration**
9 **Section 93 (1) (a)**
- 10 *substitute*
- 11 (a) for an application for registration of a political party—the
12 commissioner believes on reasonable grounds that, when it
13 made the application, the party did not have at least 100
14 members who were electors; or
- 15 **10 New section 95B**
- 16 *insert*
- 17 **95B When certain action cannot be taken**
- 18 (1) This section applies if, in the period beginning 1 July in a year when
19 an ordinary election must be held and ending when the pre-election
20 period for the election begins, the commissioner receives an
21 application—
- 22 (a) to register a political party or ballot group; or
- 23 (b) to change the name or abbreviation of a political party or ballot
24 group.
- 25 (2) The commissioner must not take any action under this part in that
26 period in relation to the application.

1 **11 Section 97A**

2 *substitute*

3 **97A Information about political parties**

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

9 (2) Without limiting subsection (1), the commissioner may, under that
10 subsection, require the registered officer to give the commissioner a
11 list, as at a stated date, of the names and addresses of at least
12 100 members of the party who are electors.

13 (3) The commissioner may use the information obtained under
14 subsection (2) only to find out whether the party is entitled to be
15 registered.

16 **12 Grouping of candidates' names**
17 **Section 115 (1)**

18 *omit*

19 (1) If

20 *substitute*

21 If

22 **13 Section 115 (2) and (3)**

23 *omit*

14 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.

15 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.

- 1 (2) The application must be—
- 2 (a) signed and dated by the eligible voter in the presence of an
- 3 authorised witness; and
- 4 (b) signed and dated by the witness; and
- 5 (c) received by an authorised officer before 8 pm on the day
- 6 before polling day.
- 7 *Note* If a form is approved under s 340A (Approved forms) for an
- 8 application, the form must be used.
- 9 (3) If an authorised officer receives an application under this section
- 10 from a person claiming to be an eligible voter for an election (the
- 11 ***applicant***), the officer must—
- 12 (a) if satisfied that the applicant's name is on the certified list of
- 13 electors for an electorate—post postal voting papers for the
- 14 electorate to the applicant; or
- 15 (b) if not so satisfied—post postal voting papers for the electorate
- 16 in which in the applicant claims to be enrolled to the applicant.
- 17 (4) However, the authorised officer must not post postal voting papers
- 18 to the applicant—
- 19 (a) if the applicant has nominated a postal address outside
- 20 Australia—if the application is received by the officer after
- 21 5 pm on the Friday 8 days before polling day; or
- 22 (b) in any other case—if the application is received by the officer
- 23 after the last mail clearance, at the post office nominated by the
- 24 commissioner in the postal voting papers, on the last Thursday
- 25 before polling day; or
- 26 (c) in any case—if the officer has reason to believe that the
- 27 applicant is at a place where the normal transmission of mail
- 28 has been significantly disrupted or curtailed or is otherwise
- 29 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.

16 Issue of voting papers to registered declaration voters

Section 141, new note

insert

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

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).

- 1 (2) To cast a postal vote—
- 2 (a) the person must show the unsigned declaration and certificate,
- 3 and the unmarked ballot paper to an authorised witness; and
- 4 (b) the person must complete and sign the declaration in the
- 5 presence of the witness; and
- 6 (c) the witness must complete and sign the certificate as witness;
- 7 and
- 8 (d) the person must, in the presence of the witness but so that the
- 9 witness cannot see the vote, mark his or her vote on the ballot
- 10 paper, fold the ballot paper, place it in the envelope addressed
- 11 to the commissioner and fasten the envelope; and
- 12 (e) the person must—
- 13 (i) post the envelope and contents to the commissioner
- 14 before polling day; or
- 15 (ii) give the envelope and contents to the commissioner or
- 16 another officer on or before polling day.
- 17 *Note* For restrictions on sending completed ballot and voting papers by fax,
- 18 see s 329.
- 19 (3) This section is subject to section 156 (Assistance to voters).

18 Section 187

substitute

187 Recount of ballot papers

- 23 (1) The commissioner may, at any time before the declaration of the
- 24 result of an election, arrange for a recount of some or all of the
- 25 ballot papers for the election—
- 26 (a) on the commissioner's own initiative; or
- 27 (b) on application under section 187A by a candidate for the
- 28 election.

- 1 (2) The commissioner must, if directed by the electoral commission
2 under section 187B (Review of decision of commissioner to refuse
3 to arrange for recount), arrange for a recount of some or all of the
4 ballot papers for the election.
- 5 (3) In recounting ballot papers, the commissioner—
6 (a) may reverse a decision made earlier in the scrutiny; but
7 (b) must deal with the ballot papers in a way that is consistent with
8 this part.
- 9 (4) Before a recount is conducted, the commissioner must tell each
10 candidate, in writing, the date, time and place fixed for the recount.

11 **187A Application for recount of ballot papers etc**

- 12 (1) A candidate for an election may apply to the commissioner for a
13 recount of some or all of the ballot papers for the election.
- 14 (2) The application must—
15 (a) be in writing; and
16 (b) set out the reasons for the requested recount.
- 17 (3) The commissioner must—
18 (a) arrange for the requested recount; or
19 (b) refuse to arrange for the requested recount.

20 **187B Review of decision of commissioner to refuse to arrange**
21 **for recount**

- 22 (1) This section applies if—
23 (a) a candidate for an election applies to the commissioner under
24 section 187A for a recount of some or all of the ballot papers
25 for an election (the *requested recount*); and
26 (b) the commissioner refuses to arrange for the requested recount.

- 1 (2) The candidate may apply to the electoral commission for review of
2 the commissioner's decision.
- 3 (3) The application to the electoral commission must—
4 (a) be in writing; and
5 (b) set out the applicant's reasons for making the application.
- 6 (4) On review of the decision, the electoral commission may—
7 (a) confirm the commissioner's decision; or
8 (b) set the decision aside and direct the commissioner to arrange
9 for—
10 (i) the requested recount; or
11 (ii) another recount of some or all of the ballot papers.
- 12 (5) In considering the application, the electoral commission may have
13 regard to the commissioner's reasons for refusing to arrange for the
14 requested recount.
- 15 (6) Unless the decision to refuse to arrange for the requested recount
16 was made by a delegate of the commissioner, the commissioner
17 must not—
18 (a) be present during any deliberation of the electoral commission
19 in relation to the application; or
20 (b) take part in any decision of the electoral commission in relation
21 to the application.

22 **19 Section 187A**

23 *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 ballot group of which the candidate is a member.

21 Section 198, definition of *non-party group*

omit

22 Disclosure periods**Section 201 (2) (c), (d) and (e)**

substitute

- (c) for a person to whom, or body to which, section 220 (Disclosure of gifts by persons incurring political expenditure) or section 221 (Disclosure of gifts to candidates) applies—the 31st day after polling day for the last election.

23 Appointed agents**Section 203 (1)**

substitute

- (1) A party, MLA or candidate may appoint a reporting agent.

24 Section 203 (3) (b) (ii) and (iii)

substitute

- (ii) in any other case—by the MLA or candidate making the appointment; and

- 1 **25 Non-appointed agents**
2 **Section 204 (3)**
- 3 *omit*
- 4 **26 Section 204**
- 5 *renumber subsections when Act next republished under Legislation*
6 *Act*
- 7 **27 Registers of reporting agents**
8 **Section 205 (2)**
- 9 *substitute*
- 10 (2) The commissioner must keep a register called the register of
11 candidate reporting agents.
- 12 **28 Section 206**
- 13 *substitute*
- 14 **206 Who eligible votes are cast for**
- 15 For this division, an eligible vote cast for a party candidate or ballot
16 group candidate is taken to be cast for the party or ballot group and
17 not for the candidate.
- 18 **29 Entitlements to funds**
19 **Section 207 (2)**
- 20 *substitute*
- 21 (2) The prescribed amount is payable for each eligible vote cast for a
22 party, ballot group or candidate in an election.
- 23 **30 Threshold**
24 **Section 208 (3)**
- 25 *omit*

**31 Making of payments
Section 212 (2) and (3)**

substitute

- (2) If an amount is payable under this division for votes cast in an election for a candidate who was not endorsed by a party or ballot group for the election, the commissioner must make the payment to the candidate.

32 Section 212

renumber subsections when Act next republished under Legislation Act

**33 Death of candidate
Section 214 (2)**

substitute

- (2) If a candidate mentioned in subsection (1) was not endorsed by a party or ballot group for the election, the payment may be made to the legal personal representative of the candidate.

**34 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.

**35 Disclosure of gifts—non-party groups
Section 218**

omit

- 1 **36 Certain loans not to be received**
2 **Section 218A (1)**
- 3 *omit*
4 , non-party group
- 5 **37 Section 218A (6)**
- 6 *omit*
- 7 **38 Section 218A (8), definition of *relevant person*,**
8 **paragraph (c)**
- 9 *omit*
- 10 **39 Section 218A**
- 11 *renumber subsections and paragraphs when Act next republished*
12 *under Legislation Act*
- 13 **40 Section 221 heading**
- 14 *substitute*
- 15 **221 Disclosure of gifts to candidates**
- 16 **41 Section 221 (1)**
- 17 *substitute*
- 18 (1) If, during the disclosure period for an election, a person (other than
19 a party, a candidate or an associated entity) makes gifts totalling
20 \$1 500 or more to the same candidate in the election or the same
21 specified body, the person must give the commissioner a return
22 within 15 weeks after the polling day for the election.
- 23 *Note 1* If a form is approved under s 340A (Approved forms) for a return, the
24 form must be used.
- 25 *Note 2* For how a return may be given, see Legislation Act, pt 19.5.

42 Section 221 (4)

omit

non-party groups or

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

substitute

(b) a gift made by a party, ballot group, MLA, candidate or associated entity.

**44 Anonymous gifts
Section 222 (1)**

omit

, non-party group

45 Section 222 (2) (b)

substitute

(b) for a candidate—to gifts received during the disclosure period.

46 Section 222 (3)

omit

, non-party group

47 Section 222 (6)

omit

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

substitute

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

- 1 **49 Section 222 (7), definition of *relevant person*,**
2 **paragraph (c)**
- 3 *omit*
- 4 **50 Section 222**
- 5 *renumber subsections and paragraphs when Act next republished*
6 *under Legislation Act*
- 7 **51 Definitions for div 14.5**
8 **Section 223, definition of *participant*, paragraph (a)**
- 9 *substitute*
- 10 (a) a party, ballot group or candidate; or
- 11 **52 Returns of electoral expenditure**
12 **Section 224 (2)**
- 13 *omit*
- 14 **53 Section 224 (4)**
- 15 *omit*
- 16 , non-party group
- 17 **54 Section 224 (5)**
- 18 *substitute*
- 19 (5) A person is not required to give the commissioner a return under
20 subsection (4) in relation to an election if the amount of the electoral
21 expenditure incurred in relation to the election by or with the
22 person's authority is less than \$1 500.
- 23 **55 Section 224**
- 24 *renumber subsections when Act next republished under Legislation*
25 *Act*

- 1 **56 Nil returns**
2 **Section 225 (2)**
- 3 *omit*
- 4 **57 Section 225**
- 5 *renumber subsections when Act next republished under Legislation*
6 *Act*
- 7 **58 Returns by broadcasters and publishers**
8 **Section 226 (2) (b) and (c)**
- 9 *substitute*
- 10 (b) the name and address of the person at whose request the
11 advertisement was broadcast or published;
- 12 (c) the name and address of the participant in the election with
13 whose authority the advertisement was broadcast or published;
- 14 **59 Offences**
15 **Section 236 (3)**
- 16 *omit*
- 17 **60 Section 236**
- 18 *renumber subsections when Act next republished under Legislation*
19 *Act*
- 20 **61 Noncompliance with pt 14**
21 **Section 241 (2)**
- 22 *substitute*
- 23 (2) Without limiting subsection (1)—
- 24 (a) if the reporting agent of a party or ballot group that endorsed a
25 candidate elected in an election fails to comply with this part in
26 relation to the election, the failure does not invalidate the
27 candidate's election; and

- 1 (b) if the reporting agent of a candidate elected in an election fails
2 to comply with this part in relation to the election, the failure
3 does not invalidate the candidate's election.

4 **62 Preliminary scrutiny of declaration voting papers**
5 **Schedule 3, clause 6 (1), definition of *relevant provision*,**
6 **paragraphs (b) to (d)**

7 *substitute*

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

13 **63 Dictionary, new definition of *authorised delivery service***

14 *insert*

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

17 **64 Dictionary, definition of *declaration vote*, paragraphs (b)**
18 **to (d)**

19 *substitute*

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

- 1 **65 Dictionary, definition of *eligible elector***
- 2 *substitute*
- 3 *eligible elector*, for division 10.4 (Voting otherwise than at a polling
- 4 place)—see section 136.
- 5 **66 Dictionary, definition of *non-party group***
- 6 *omit*
- 7 **67 Dictionary, new definition of *post***
- 8 *insert*
- 9 *post*, for division 10.4 (Voting otherwise than at a polling place)—
- 10 see section 136.
- 11 **68 Dictionary, definition of *postal vote***
- 12 *substitute*
- 13 *postal vote* means a declaration vote to which section 144A
- 14 (Requirements for casting postal votes) applies.

Endnote

Republications of amended laws

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

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