

2000

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELECTORAL AMENDMENT BILL 2000 No 2

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries, Attorney-General**

OUTLINE

This Bill provides for the *Electoral Act 1992* and the *Referendum (Machinery Provisions) Act 1994* to be amended to allow for electronic voting and vote counting.

At present the Electoral Act and the Referendum (Machinery Provisions) Act allow elections and referendums to be conducted using manual processes which include handwritten ballots and a manual scrutiny of those paper ballots. While continuing to maintain these manual processes, the provisions of this bill will allow electors to vote electronically where approved electronic voting devices are provided and will allow the Electoral Commission to conduct an electronic scrutiny of an election or referendum. The amendments envisage electronic voting information will be captured directly at some polling places while the majority of electors will continue to use paper ballots which will be entered into a computer program after the close of poll.

The main provisions of this Bill allow for:

- electronic ballot papers;
- electronic capture of ballot information; and
- electronic counting of ballots.

The bill also allows for the use of electronic data to determine outcomes for recounts and for the filling of casual vacancies.

In addition, the bill allows for:

- the security of electronic voting and vote counting processes;
- processes for disputed elections where electronic voting and counting have been used;
- offences related to interfering with electronic voting or vote counting; and
- publication of electronic voting statistics or programs.

Financial Implications

The introduction of electronic voting and vote counting for the 2001 election will cost an estimated \$405,000 over the next two years. The Government has provided supplementation to the Electoral Commission from the Electronic Services Delivery budget for \$235,000. The Commission will fund the remaining \$170,000 from existing resources.

DETAILED EXPLANATION

PART 1 - PRELIMINARY

Formal clauses

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill and commencement. The Act is to commence on a day fixed by the Minister by notice in the *Gazette*.

Principal Act

PART 2 – AMENDMENTS TO THE *ELECTORAL ACT 1992*

Act amended by pt 2

Clause 3 refers to the Electoral Act being amended.

Interpretation

Clause 4 amends section 3 of the Electoral Act by inserting definitions of “approved computer program”, “ballot paper”, and “electronic voting”. These definitions refer to terms used to describe electronic voting and vote counting.

Ballot papers

Clause 5 amends section 114 of the Electoral Act to allow a ballot paper to be in electronic form. This clause also provides that the Commissioner may approve changes to the electronic form of the ballot paper to facilitate its display. As well, the clause provides that the regulations may specify the headings or directions to be contained, rather than printed or endorsed, on ballot papers to be used for declaration voting.

Insertion

Clause 6 adds a new Division 9.2A - Electronic voting devices and vote counting programs.

Insertion – Approval of computer program for electronic voting and vote counting

New section 118A of the Electoral Act allows the Electoral Commissioner to approve a computer program for electronic voting and perform steps in the scrutiny of votes in an election. It sets out standards which must be met by those computer programs before they can be approved by the Commissioner. These standards are that:

- the proper use of the computer scrutiny program in an election would give the same result as a manual scrutiny for the same election;
- the voting program will allow an elector to show consecutive preferences starting at “1”;

- the voting program would allow an elector to correct any mistakes in their vote before processing it;
- the voting program will allow an elector to submit an informal vote showing no preferences for any candidate;
- the program will not permit any person to determine how a particular elector has cast his or her vote;
- where Schedule 4 requires the Electoral Commissioner to determine any matter by lot (for example, determining which candidate is excluded where candidates are tied), the program must pause while the Electoral Commissioner makes the appropriate determination; and
- the program is able to produce indicative distributions of preferences at any time after the close of polls and before the declaration of the poll.

The new section also allows the Electoral Commission to approve a process to be used to enter preferences shown on paper ballots into the computer program and for counting those preferences to determine the number of unrejected ballot papers on which a first preference is recorded for each candidate and the number of informal ballot papers for each electorate.

Insertion – Security of electronic voting devices and related material

New section 118B of the Electoral Act provides that the Commissioner must keep electronic devices and computer programs used, or intended for use, in the election secure at all times. The Commissioner must also retain backup copies of electronic data produced at a polling place or scrutiny centre at least until the commencement of the pre-election period for the next election.

Administrative Arrangements

Clause 7 amends section 120 of the Electoral Act to allow the Commissioner to make arrangements for electronic voting to be available at a polling places and to approve the devices on which electronic voting will take place.

Procedures for voting

Clause 8 amends section 131 of the Electoral Act to provide that where electronic voting is available, voters will retain the option to use paper ballots.

Voting in private

Clause 9 amends section 134 of the Electoral Act to ensure that where a voter uses an electronic ballot paper, there is no requirement to fold the ballot paper and put it in the ballot box.

Spoilt ballot papers

Clause 10 amends the Electoral Act so that the existing provisions relating to the replacement of spoilt paper ballots do not apply to votes cast electronically.

Scrutiny

Clause 11 amends section 178 of the Electoral Act to ensure that data and electronic ballot papers are included in the list of articles, documents and data to be dealt with during the scrutiny for the election.

First count – ordinary ballot papers

Clause 12 amends section 182 of the Electoral Act so that section 182 applies only to the counting of paper ballots. A new subsection 182(8) is added which provides for information contained on paper ballots to be entered into the computer program.

Insertion

Clause 13 adds new section 183A.

Insertion – First count – electronic ballot papers

New section 183A of the Electoral Act provides that as soon as practicable after the poll closes, the OIC of the scrutiny centre must arrange for preferences recorded on electronic ballot papers to be entered into the scrutiny program for the counting of votes.

Second count – first preferences

Clause 14 amends section 184 of the Electoral Act to ensure that the second count of first preferences may be conducted manually for paper ballots, or by computer using the program approved by the Electoral Commissioner for electronic ballot papers and for any paper ballots that have been entered onto the computer. In either case, the Commissioner must determine the number of unrejected ballot papers on which a first preference is recorded for each candidate and the number of informal ballot papers for each electorate.

Ascertaining the results of the poll

Clause 15 amends the Electoral Act to provide that the result of the poll can be ascertained from the computerised count of electronic and paper ballots.

Insertion

Clause 16 adds a new section 187A of the Electoral Act.

Insertion – Recount of electronic scrutiny of ballot papers

New section 187A of the Electoral Act sets out the ways in which a recount of data from the electronic scrutiny of ballot papers may be conducted. A recount may be conducted:

- by recounting data from electronic ballot papers stored on a backup medium; or
- by running the computer program again or by reloading the data into a backup copy of the program and running that program; or
- where practicable, the accuracy of preference data entered into a computer program from paper ballots may be re-examined or a partial or full manual scrutiny of paper ballots or a combination of manual scrutiny of paper ballots and computerised scrutiny of electronic ballot papers may be used.

Validity may be disputed after election

Clause 17 amends section 256 of the Electoral Act to provide that any matter connected with electronic voting is a matter which can be taken as disputing the validity of an election.

Inquiries by court

Clause 18 amends section 269 of the Electoral Act to allow the Court of Disputed Elections to enquire into the accuracy of computer programs used in electronic voting and the electronic scrutiny of votes.

Insertion

Clause 19 adds a new Division 17.3A – Electronic voting offences.

Insertion – Interference with electronic voting devices

New section 306A of the Electoral Act makes it an offence to destroy or interfere with any electronic voting device or computer program that is used or intended for use in connection with electronic voting.

Insertion – Interference with electronic counting devices

New section 306B of the Electoral Act makes it an offence to destroy or interfere with any electronic voting device or computer program that is used or intended for use in counting votes electronically.

Voting statistics to be published

Clause 20 amends section 333 of the Electoral Act to allow for a fee to be determined for providing election statistics in paper or electronic form.

Omission

Clause 21 is a formal amendment that omits section 339 of the Electoral Act. The details of this section are now covered by the Interpretation Act.

Commissioner for Public Administration to provide assistance etc

Clause 22 amends section 340 of the Electoral Act to provide that the chief executive of the administrative unit responsible for Division 4 of Part III of the *Public Sector Management Act 1994* rather than the Head of Administration complies with a request for assistance. The heading of the section is also amended. The change reflects current terminology.

Substitution

Clause 23 substitutes section 341 of the Electoral Act with a new section 341 which updates the regulation making provisions of the Act in line with the Interpretations Act.

Renumbering

Clause 24 provides for the next publication of the Electoral Act to be renumbered as permitted under section 13 of the *Legislation (Replication) Act 1996*.

PART 3 – AMENDMENTS OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1994

Act amended by pt 3

Clause 25 refers to the Referendum (Machinery Provisions) Act 1994 being amended.

Interpretation

Clause 26 amends section 3 of the Referendum (Machinery Provisions) Act by inserting a definition of “printing” and amending the definition of “referendum ballot paper”. These definitions refer to the use of electronic referendum ballot papers.

Ballot papers

Clause 27 amends section 11 of the Referendum (Machinery Provisions) Act to allow the referendum ballot paper to be in electronic form.

Voting at a referendum

Clause 28 amends section 12 of the Referendum (Machinery Provisions) Act to omit the references to printed material to allow for the use of electronic referendum ballot papers.

Scrutiny

Clause 29 amends section 14 of the Referendum (Machinery Provisions) Act to allow for all sections of the Electoral Act which refer to the counting of preferences to apply to the counting of referendum options.