

Australian Capital Territory

Electoral Amendment Regulation 2019 (No 1)

Subordinate law SL2019–9

made under the

Electoral Act 1992

EXPLANATORY STATEMENT

Overview

The *Electoral Amendment Regulation 2019 (No 1)* amends the *Electoral Regulation 1993* to allow the Commissioner for Australian Capital Territory Revenue (the Commissioner for Revenue) to access the ACT Electoral Roll for the purpose of the administration and enforcement of tax laws.

Section 65 of the *Electoral Act 1992* provides that the ACT Electoral Commissioner may give a copy of a roll or information contained on a roll to a prescribed authority if they are satisfied that the authority requires the copy or information for a prescribed purpose. The Regulations may provide for how a prescribed authority may deal with material provided under this provision.

The Commissioner for Revenue uses information from multiple Government databases to support the administration of tax laws which the ACT Revenue Office is responsible for, such as rates, land tax, conveyance duty, landholder duty, motor vehicle duty, home buyer assistance (grants, concessions, land rent, deferrals) etc.

While the information from the Electoral Roll may already be available to the Commissioner for Revenue on a case by case basis, access to the Electoral Roll will assist with cross checking and verification. All other Australian state revenue offices have access to data from their respective state electoral commissions.

The information obtained from the Electoral Roll will be collated with other information the Revenue Office holds, such as tax return data from the Australian Taxation Office and vehicle registration data, to help with administration and compliance of ACT tax laws.

Access to the Electoral Roll, will be for the prescribed purpose of the administration of ACT taxation laws. No other secondary use is permitted and criminal offences apply to the misuse of this information (s 65(2) Electoral Act).

This amendment will allow the ACT Revenue Office to significantly improve its data quality, taxpayer verification and enable more efficient administrative and operational services, including compliance programs and activities.

Human Rights Implications

This Regulation is compatible with the *Human Rights Act 2004*. Although it limits the right to privacy, that limitation is reasonable, necessary and proportionate.

Nature of the right affected

Section 12 of the *Human Rights Act 2004* provides that ‘everyone has the right not to have his or her privacy ... interfered with unlawfully or arbitrarily’.

The UN Human Rights Committee, commenting on the right to privacy, noted that ‘as all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society’.¹ Information privacy is an important right but may be limited by reasonable and proportionate laws in the public interest.

The Electoral Roll contains each elector’s name, address, sex, and date of birth, and may include information about each elector’s occupation, former surname, previous addresses, postal address, or information prescribed by the regulations.

In recognition of the private nature of this information, the *Electoral Act 1992* contains several restrictions on access and use of the information contained on the roll. For example, section 65(2) states that a person shall not use information from the roll except in accordance with the regulations. The maximum penalty for breaching section 65(2) is 50 penalty units, imprisonment for 6 months, or both.

Importance of the purpose of the limitation

The *Electoral Act 1992* provides for information from the electoral roll to be used for prescribed purposes, which are specific and narrow. Section 62 requires the Commissioner for Revenue to provide extracts of the roll to members of the Legislative Assembly and registered officers of a registered political party. Other purposes are prescribed by regulations, such as the chief health officer using the information for maintaining the cancer register, contacting women to offer breast cancer screening and prevention services, and contacting people aged 45 to 49 years for health assessment. The roll is also used for the purpose of selecting jurors under the *Juries Act 1967*.

¹ UN Human Rights Committee, General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art 17), UN Doc CCPR General Comment 16 (1988), para.7

The regulation provides that the Commissioner for Revenue will be able to access information on the electoral roll for the limited purpose of administering ACT tax laws.

Government services depend upon the revenue from effective administration and enforcement of taxation laws, meaning that the commissioner for revenue needs the best available information on the identifying details of ACT residents. Accurate data supporting effective tax enforcement is also important for improving public trust in the fair administration and enforcement of taxation laws.

Nature and extent of the limitation

This regulation concerns the use of existing personal information. It does not create a new capacity to collect personal information about electors. It also does not impose a duty on citizens to divulge more information. The extent of the limitation is therefore restricted only to information already held by the Government, and already available to them on a case by case basis.

Only information relevant to the administration of tax laws can be accessed. The scope of the limitation is demonstrably justifiable to support fair tax administration within the ACT as a free and democratic society.

The *Electoral Act 1992* states that it is an offence to use information from the roll other than for a prescribed purpose. This provides a safeguard that the information will only be used for administration of tax laws.

The ACT Revenue Office already holds personal information about ACT residents. It has safeguards in place to ensure information is not used or disclosed unlawfully. This includes secrecy provisions are contained in Division 9.4 of the *Taxation Administration Act 1999* (TAA), which provides the framework of a tax officer's obligation to respect confidentiality, obligations of non-disclosure of personal information and includes penalties for disclosure.

The relationship between the limitation and its purpose

The limitation on the right to privacy is directly connected to its purpose of improving the efficiency and effective administration of taxation laws. Reducing the likelihood of incorrect notices benefits taxpayers generally, and better information to support compliance activities means that all taxpayers can be confident that other residents are also paying the correct tax.

Any less restrictive means reasonably available to achieve the purpose

There are no other efficient methods for undertaking the same cross checking of data that would have a reduced engagement with the right to privacy.

As the limitation is proportionate, necessary, and reasonable, and as the purpose of the limitation is justifiable, this Regulation is compatible with the *Human Rights Act 2004*.

Detail

Clause 1 – Name of regulation

This is a technical clause that establishes the name of the Regulation as the *Electoral Amendment Regulation 2019 (No 1)*.

Clause 2 – Commencement

This provision specifies when the Regulation will commence. The Regulation will commence on the day after its notification day.

Clause 3 – Legislation amended

This clause provides that the Regulation amends the *Electoral Regulation 1993*.

Clause 4 – New section 4AB

This clause inserts a new section 4AB into the *Electoral Regulation 1993*. New section 4AB specifies that the Commissioner for Revenue is a prescribed authority, and can access information in the electoral roll for the prescribed purpose of the administration or enforcement of a tax law. It further specifies that the Commissioner for Revenue may only provide roll information to another person or entity, and the other person or entity may only use the information, for the prescribed purpose.

Clause 5 – Dictionary, note 2

This clause inserts the term ‘commissioner for revenue’ into the dictionary to facilitate interpretation.

Clause 6 – Dictionary, new definition of *tax law*

This clause inserts the term ‘tax law’ into the dictionary to facilitate interpretation and to ensure consistency with the definition of ‘tax law’ in s 4 of the *Taxation Administration Act 1999*. Tax law includes laws about rates, land tax, conveyance duty, landholder duty, motor vehicle duty, home buyer assistance (grants, concessions, land rent, deferrals) etc.