

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY AMENDMENT
BILL 2020**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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Minister for Aboriginal and Torres Strait Islander Affairs**

ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY AMENDMENT BILL 2020

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill responds to the commitment made by ACT Government and the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) to support the ACT Aboriginal and Torres Strait Islander communities in actively influencing and participating in social, economic and cultural life.

The Bill has several purposes, to:

- a) strengthen the ability of the Aboriginal and Torres Strait Islander Elected Body to advocate for Aboriginal and Torres Strait Islander people in the ACT, including on a national level and with non-government organisations;
- b) enable and protect a broadcasting service in relation to ATSIEB public hearings;
- c) impose reporting timeframes to enable more timely reporting and response processes; and
- d) clarify the application of the *Electoral Act 1992* to ATSIEB election processes.

The Bill makes amendments to acknowledge the advocacy role of ATSIEB at a national level as a member of the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and its involvement with the COAG Joint Council on Closing the Gap.

The Bill will establish the ability to enter into agreements for the purpose of broadcasting ATSIEB public hearings. The Bill will also ensure protection from liability for those who provide broadcasting services for ATSIEB public hearings.

The Bill imposes timeframes on the ATSIEB's report following public hearings and consultation processes. It also shortens the timeframe for the relevant Minister(s) to respond to consultation reports.

Part 3 of the Bill covers the consequential amendments needed if the *Electoral Legislation Amendment Bill 2019* is enacted. The next ATSIEB election is scheduled to commence on 18 May 2020. The ATSIEB Act modifies the *Electoral Act 1992* in order to conduct the election.

CONSULTATION ON THE PROPOSED APPROACH

ATSIEB was consulted on drafting the Amendment Bill. The Co-Chairs of the United Ngunnawal Elders Council have been briefed on the Bill and the wider Council will be updated on the Amendments at their first meeting in 2020, which is yet to be determined.

ACT Government Solicitor's Office was consulted regarding the broadcasting of public hearings held by the Elected Body.

Justice and Community Safety Directorate was consulted on the Human Rights Compatibility Statement.

ACT Parliamentary Counsel's Office was consulted regarding the drafting instructions of the Amendment Bill.

ACT Insurance Authority was consulted about any liability attached to the Territory.

All ACT Government Directorates were consulted on the development of the Amendment Bill through the policy approval circulation considered by Cabinet [19/542/CAB].

The consultations undertaken will ensure the proposed changes support an elected Aboriginal and Torres Strait Islander voice to Government and respond to systemic issues facing Aboriginal and Torres Strait Islander people in the ACT.

CONSISTENCY WITH HUMAN RIGHTS

The amendments are supported by Article 3 of the *United Nations Declaration of the Rights of Indigenous People*. The Bill supports the cultural and other rights of Aboriginal and Torres Strait Islander peoples as it protects their right to maintain, control, protect and develop their cultural heritage and knowledge; and to have their material and economic relationships recognised and valued.

Rights engaged

The right to privacy and reputation is protected under section 12 of the *Human Rights Act 2004 (ACT)*, which provides that 'Everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and not to have his or her reputation unlawfully attacked.'

The Bill engages the right to privacy and reputation as it requires the collection of information such as cultural identity, names, addresses, dates of birth and gender to establish a certified list of electors.

However, while these measures may interfere with an individual's privacy, they do not limit the right to privacy because the interference is neither arbitrary nor unlawful, in that the Bill places protections around the collection and use of this personal information for the purpose of conducting ATSIEB elections.

Elections ACT obtains electoral roll information for ACT electors from the Australian Electoral Commission (AEC). The AEC compiles the Commonwealth electoral roll under the *Commonwealth Electoral Act 1918*. The Commonwealth Electoral Act contains privacy protections regarding the use or disclosure of electoral roll information. Under the Commonwealth Electoral Act, the AEC has entered a joint roll arrangement with Elections ACT to share ACT electoral roll information for the following purposes:

- in connection with an election or referendum or
- for monitoring the accuracy of information contain in the Roll.

Any personal information collected by an ACT Government agency is also subject to the limitations on use and disclosure imposed by section 6 of Schedule 1 of the *Information Privacy Act 2014* (ACT).

These provisions prevent the arbitrary use or disclosure of any personal information collected or obtained for the purposes of the register.

This means that the right to privacy is engaged by the bill, but it is not limited because it does not meet the threshold of being arbitrary or unlawful.

The right to reputation is also supported by these measures, because the protected collection and use of personal information supports a transparent and accountable electoral system that ensures the integrity of ATSIEB elections, identifies eligible voters and protects against voter fraud.

Rights Promoted

The Bill engages and promotes the following rights under the *Human Rights Act 2004*:

- a) section 16 – freedom of expression
- b) section 17 – taking part in public life
- c) section 27 – cultural rights

The Bill enhances the right to take part in public life as it strengthens the Aboriginal and Torres Strait Islander community's opportunity to take part in public affairs and vote and be elected at periodic elections. The Bill formalises the role of ATSEIB to advocate on behalf of the Aboriginal and Torres Strait Islander community in the ACT at a national level and engage with non-government organisations. In addition, it provides greater clarity about the conduct of ATSIEB elections and the application of the *Electoral Act 1992* in relation to these elections.

The Bill ensures ATSIEB has the necessary access and protections to carry out their public functions, including advocating and advising on issues that affect the Aboriginal and Torres Strait Islander community in the ACT. ATSIEB will support this right in relation to broadcasting public hearings by notifying individuals who are addressing the hearings that they are being recorded and including a notice at the beginning of online broadcasts stating that it contains videos and images of Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of the Act

This is a technical clause and sets out the name of the Act as the *Aboriginal and Torres Strait Islander Elected Body Amendment Act 2020*.

Clause 2 Commencement

This clause enables the Act (other than part 3) to commence on 1 July 2020.

Part 3 of the Bill may commence the day after the Act is notified on the Legislation Register, or the commencement of the *Electoral Legislation Amendment Act 2020*, part 2 – whichever occurs later.

Clause 3 Legislation Amended

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

Clause 4 Functions of ATSIEB

Section 8 (a)

This clause amends the functions of the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) to include the ability to provide advice to any Minister about the views of the Aboriginal and Torres Strait Islander community in the ACT.

Clause 5 Section 8 (b)

This clause ensures ATSIEB may provide a voice for Aboriginal and Torres Strait Islander people in the ACT at a national level.

Clause 6 Discussions etc with non-government entities on systemic issues

Section 10 (1)

This clause reflects changes that ensure ATSIEB may provide a voice for Aboriginal and Torres Strait Islander people in the ACT at a national level, including with non-government organisations.

Clause 7 New section 10AA

This clause inserts a new section to enable public hearings of ATSIEB to be broadcast and ensures those broadcasting the hearings are protected from civil liability.

Clause 8 Reports from ATSIEB

Section 10B (1)

This clause imposes a timeframe on ATSEIB to produce a report to the Minister following a public hearing.

Clause 9 Section 10B (3) (b)

This clause reduces the time the Minister has to respond to an ATSIEB report from 6 months to 4 months.

Clause 10 Reporting on consultation

Section 13A (3) and (4)

This clause requires ATSIEB to provide copies of consultation reports to relevant Ministers and make the report available online. It also requires the relevant Minister to respond within 2 months of receiving the consultation report.

Clause 11 New section 30 A

This clause establishes a caretaker requirements prior to an ATSIEB election.

Clause 12 Application of Electoral Act provisions

Table 31, item 6

Table 31 provides a summary of provisions in the *Electoral Act 1992* that apply to ATSIEB elections. This clause removes item 6 from Table 31 (section 80 closed rolls).

Clause 13 Modifications of Electoral Act as applied to ATSIEB elections

Schedule 1, modification 1.4

Schedule 1 modifies the application of certain provisions of the Electoral Act as they relate to ATSIEB elections. This clause modifies the application of section 80 (closed rolls) to ATSIEB elections.

Clause 14 Schedule 1, modification 1.30

This clause inserts a new section 120A that requires the Commissioner to prepare and distribute a certified extract of electors and a certified list of electors.

Clause 15 Schedule 1, modification 1.40

This clause applies a modified version of section 133 (claims to vote).

Clause 16 Schedule 1, new modification 1.42A

This clause applies modified versions of section 135(1)(a) and (b).

Clause 17 Schedule 1, new modification 1.80A

This clause inserts a new modification of section 268(1)(b) that omits the term 'preliminary'.

Clause 18 Schedule 1, new modification 1.99

This clause modifies Schedule 3, clause 6(2).

Clause 19 Schedule 1, new modification 1.99A

This clause modifies the application of Schedule 3, clause 9(a).

Clause 20 Schedule 1, new modifications 1.103A and 1.103B

This clause inserts definitions of 'certified extract of electors' and 'certified list of electors'.

Clause 21 Schedule 1, modification 1.105

This clause inserts a new definition of 'liaison officer', removes time constraints in the definition of 'official error', and inserts a new definition of 'partial failure'.

Clause 22 Schedule 1, new modification 1.106B

This clause omits the definitions of 'preliminary certified extract of electors' and 'preliminary certified list of electors'.

Clause 23 Schedule 1, new modification 1.108

This clause omits the definition of 'supplementary certified list of electors'.