

Explanatory Statement

LOCAL GOVERNMENT AMENDMENT BILL 2021

SERIAL NO. 20

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LOCAL GOVERNMENT

GENERAL OUTLINE

This Bill amends the *Local Government Act 2019*.

The purpose of this Bill is to:

- enable 'on the day' voting for local government elections; and
- simplify the donation and loan disclosure requirements so that only candidates who receive reportable donations or loans will be required to complete a campaign donation return; and
- generally align donation disclosure period timeframes with the *Electoral Act 2004*; and
- make minor changes to electoral terminology to further align with the *Electoral Act 2004*.

NOTES ON CLAUSES

Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Local Government Amendment Act 2021*.

Clause 2. Commencement

This clause sets out how the amendment Act will be commenced. In this case commencement will be the day after the day on which the Administrator's assent to the Act is declared.

Clause 3. Act amended

This is a formal clause which indicates that the *Local Government Act 2019* is being amended by this Bill.

Clause 4. Section 7 amended (Definitions)

This clause amends section 7, which contains definitions for terms used within the Act. The clause updates the definition of 'elector' to better clarify the linkage with the *Electoral Act 2004* definition. The clause also inserts some electoral and donation disclosure related definitions of terms that were previously undefined in the Act.

Clause 5. Section 30 amended (Considerations for determination)

This clause replaces the phrase 'polling day' with 'election day', which aligns with the terminology used in the *Electoral Act 2004*.

Clause 6. Section 136 amended (By-elections)

This clause corrects a referencing error at section 136(4)(a)(ii), by replacing '56(3)' with '56(7)'. This clause also replaces the note for subsection (6), to refer to section 141 as to the requirements for conducting an election or poll of electors. The current note lacks clarity in describing the operation of section 141.

Clause 7. Section 138 replaced

This clause replaces section 138 to provide that a person is entitled to vote if: they are an elector for the relevant area or ward on the date on which the electoral roll for the election or poll closes; or they are entitled to be enrolled as an elector for the relevant area or ward.

The purpose of this amendment is to enable a person who is not enrolled as an elector for the area, or not enrolled at all, to cast vote at an election and for that vote to be admitted if they are confirmed as entitled to be enrolled. This applies to voting at an election day voting centre, an early voting centre or a mobile voting centre. This entitlement is subject to any requirements or limitations prescribed under the regulation making power inserted at sections 343(2)(c)-(d) by clause 20.

Clause 8. Section 147 amended (Definitions)

This clause amends section 147 to replace the definitions of 'donation' and 'disclosure period' and insert definitions of terms related to donation disclosure periods.

The clause amends the heading of the section from 'Definitions' to 'Interpretation'.

The definition of 'corporation' links to the definition of that expression in the *Corporations Act 2001* (Cth).

The definitions of 'disposition of property', 'entity' and 'loan' link to the definitions for those expressions in the *Electoral Act 2004*.

The definition of 'disclosure period' is a signpost to the substantial definition in section 149.

'Donation' is defined as any disposition of property or provision of a service made to a candidate for inadequate or no consideration. It does not include dispositions by will, volunteer labour in specified circumstances or a donation such as a gift made in a private capacity that is intended for the candidate's personal use and, irrespective of the donor's intentions, has not been or will not be used, wholly or substantially for an election related purpose. Substantial use of a donation does not have a percentage threshold, rather it requires that the amount used be more than nominal or trivial.

The clause also inserts a subsection (2) which provides that regulations may be made in relation to: methods or processes for determining the value of a donation; and broadening or narrowing the definition of 'donation'. This regulation making power is being inserted to provide an avenue for addressing any unforeseen consequences or uncertainties that may arise in the future regarding the definition of 'donation' or determining the value of a donation.

Clause 9. Section 148 amended (Campaign donation return)

This clause amends section 148 to no longer require all candidates in an election to submit a campaign donation return. A candidate will not be required to submit a campaign donation return if the candidate receives donations totalling less than \$200 from the same donor during the disclosure period for the election. Similarly, a candidate will not be required to submit a campaign donation return if the candidate receives a loan from an authorised deposit-taking institution, or otherwise if the value of the loan is less than \$1500.

Clause 10. Section 149 replaced

This clause replaces section 149 to amend the disclosure period to which a campaign donation return relates.

For periodic general elections and other general elections held in the same year in which a periodic general election is scheduled to be held, the disclosure period begins on 1 July in the calendar year immediately preceding the calendar year in which the election is to be held and ends 30 days after election day. Accordingly, the disclosure period will be approximately 15 months for scheduled general elections, which occur every four years in late August.

For other general elections and for by-elections, the disclosure period begins on 1 July immediately preceding the election day for the general or by-election and ends 30 days after election day.

Clause 11. Section 150 amended (Candidate to know details for donation or loan)

This clause amends section 150 to clarify that it applies to a donation or loan from a person or entity, not only a person.

Clause 12. Section 151 amended (Contents of return)

This clause amends section 151, which provides for the contents, publication requirements and related record keeping requirements for campaign donation returns.

Sub-clause (1) amends subsection (1) to clarify that the information required is only in relation to the disclosure period.

Sub-clause (2) removes subsection (2), which required a candidate that did not receive any donations or loans during the disclosure period to submit a return to that effect.

Sub-clauses (3) and (4) amends subsections (3) and (4) to replace instances of the term 'return' with 'campaign donation return'.

Clause 13. Section 152 amended (Incomplete return)

Sub-clauses (1) and (2) replace instances of the term 'return' with 'campaign donation return'.

Sub-clause (3) inserts paragraph (ab), which clarifies that an incomplete return, having been completed to the best extent possible, is to be given to the Electoral Commission.

Sub-clauses (4) and (5) replace instances of the term 'particulars' and the phrase 'give the particulars' with 'information' and 'provide the information' respectively.

Clause 14. Section 153 amended (Permission to amend return)

Sub-clauses (1) and (3) replace instances of the term 'return' with 'campaign donation return'.

Sub-clause (4) inserts subsection (2), which provides that amendment of a campaign donation return under this section does not affect the liability of a candidate for an offence against section 154(2) arising out of the giving of the campaign donation return. If an incomplete campaign donation return is given to the Electoral Commission, an offence is committed against section 154(2) unless a notice compliant with section 152(b) is given. A later request to amend a return under section 153 will not remove the liability for an incomplete return that has previously been given to the Electoral Commission.

Clause 15. Section 154 amended (Offences)

Sub-clause (1) inserts subsections (1)(aa) (2)(aa), which add another element to the offences, being that the candidate is required to give the Electoral Commission a campaign donation return for the disclosure period.

Sub-clause (2) amends subsection (1)(b) to replace the term 'return' with 'campaign donation return' and clarify that the campaign donation return must be given to the Electoral Commission in the time required under section 148.

Sub-clause (3) amends subsection (2)(b) to replace the term 'return' with 'campaign donation return'.

Clause 16. Section 179 amended (Offences for conflict of interest)

Sub-clause (1) amends subsections (1)(b) and (2)(b) to better clarify the provisions by replacing instances of the term 'member' with 'staff member'.

Sub-clause (2) amends subsections (5) and (6) to correct a referencing error.

Clause 17. Section 186 amended (Return of identity card)

This clause amends section 186 to align with the terminology used elsewhere in this Part, by replacing the term 'authorised officer' with 'authorised person'.

Clause 18. Section 291 amended (Content of annual report)

This clause amends subsection (1)(e) to correct a typographical error and replaces the term 'made' with 'paid'.

Clause 19. Section 336 amended (Misleading information)

This clause amends subsection (4)(f) to align with the terminology used in Part 9.7, by replacing the term 'authorised officer' with 'authorised person'.

Clause 20. Section 343 amended (Regulations)

Sub-clauses (2) and (3) insert regulation making powers on matters related to:

- determining a person's entitlement to vote at an election or a poll of electors; and
- how a person who is entitled to vote can do so at an election or a poll of electors.

Sub-clause (3) provides that the regulations may be made to differ in their application to different persons or matters or classes of persons or matters.

These regulation making powers are being inserted to provide avenues for: providing further detail in relation to administering voting entitlements; or addressing any unforeseen issues that may arise in the future.

Clause 21. Section 357 amended (Local authorities)

Sub-clause (1) amends subsection (2) to correct a typographical error and replaces the term 'is' with 'are'.

Sub-clause (2) amends subsection (4) to correct a referencing error.

Clause 22. Section 365 amended (Adoption of code of conduct and policies by councils)

Sub-clause (1) amends the heading of section 365 to remove the words 'code of conduct and'.

Sub-clause (2) amends subsection (1)(c) to correct a referencing error.

Clause 23. Schedule 3 amended (Information to be publicly available)

Sub-clause (1) amends Schedule 3 to replace all instances of 'polling day' with 'election day'.

Sub-clause (2) amends Schedule 3 to update the terminology by replacing the phrase 'early voting centres, absentee voting centres, mobile polling places and other polling places' with 'voting centres'.

Clause 24. Repeal of Act

This clause provides that the Amendment Act will be repealed on the day after it commences.