



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Jeremy Hanson MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair)

Mr Andrew Braddock MLA

## Submission Cover Sheet

### Inquiry into Electoral Amendment Bill 2021

**Submission Number: 13**

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## Chris Steel MLA

Minister for Transport and City Services

Minister for Skills

Special Minister of State

Member for Murrumbidgee

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Mr Jeremy Hanson CSC MLA

Chair

Standing Committee on Justice and Community Safety

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mr Hanson

Thank you for the opportunity to make a submission to the Committee's Inquiry into the *Electoral Amendment Bill 2021*.

I write to provide the Committee with information on the implementation considerations associated with lowering the voting age for Territory elections to 16 years of age, as proposed by the *Electoral Amendment Bill 2021*.

The Government is committed to increasing voter participation in the Territory, and to increasing the engagement of young people in our democratic processes.

The Government notes that the Committee recently considered the proposal to lower the voting age in the ACT as part of its Inquiry into the 2020 ACT Election and Electoral Act. Recommendation 49 of Report 2 of this Inquiry recommended that the voting age be retained at 18 years.

As you will be aware, the Government *Noted* this recommendation in our response to the inquiry report. While the Government appreciated the Committee's consideration of the option to allow 16- and 17-year-olds to enrol and vote on a voluntary basis, the Government believes there is merit in further exploring lowering the voting age within the context of compulsory voting.

The Government notes that the Electoral Amendment Bill 2021, the subject of this current Inquiry, proposes to lower the voting age to 16 on a compulsory basis. While the Government is satisfied that there are no legislative barriers to lowering the voting age on a compulsory basis in the ACT, we note

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the proposal presents a number of policy and implementation considerations. These are detailed below for the Committee's consideration.

### Confusion across jurisdictions

Currently, voting in all Australian jurisdictions is based on a compulsory voting age of 18 years. If the voting age is lowered in the Territory, there is potential for this to lead to confusion amongst voters. This would be a particular risk where Territory and Commonwealth elections are held over a similar timeframe, or where voters move between jurisdictions.

An education and communication campaign would be required to support a change to the voting age, which may have additional financial implications and would require consultation with the Electoral Commission.

### Failure to vote penalty

Compulsory voting has been enforced in each Australian jurisdiction under offence provisions in legislation. Therefore, compulsory voting does not compel the performance of duty to vote, but rather provides penalties for non-performance of the duty. In the ACT, the penalty is created under s129 of the ACT *Electoral Act 1992* (Electoral Act).

The Government considers there are potential human rights implications with the proposal to impose a penalty for failure to vote on minors, which need further consideration. This particularly relates to section 11(2) of the *Human Rights Act 2004* (Human Rights Act) which protects the right of every child to be afforded the protection needed by the child by virtue of being a child, without distinction or discrimination of any kind. Separately, section 17 protects the right to take part in public life. The introduction of a failure to vote penalty for young people may create a tension between these two human rights. That is, while lowering the voting age to increase political engagement of young people aims to enhance young people's right to take part in public life, the imposition of penalties for failure to vote may result in a limitation on the rights of children to be protected without discrimination. Section 28 of the Human Rights Act requires that any limitation on human rights must be reasonable and proportionate. A penalty on 16- and 17-year-olds for failing to vote may be difficult to justify as reasonable and proportionate.

The Government notes the explanatory statement of the Electoral Amendment Bill 2021 outlines the Bill's attempt to address this issue by decreasing the penalty for failure to vote that would apply to minors. The Government also notes the ACT Human Rights Commission's observation that the Electoral Commissioner could decide to exercise his discretion under section 161(1) of the Electoral Act and waive fines for non-voting by minors on a case-by-case basis. This may be one way to protect the rights of the child under section 11(2) of the Human Rights Act while ensuring the requirement for voting to be compulsory in the Territory, as required by the *ACT Proportional Representation (Hare-Clarke) Entrenchment Act 1994*, is not compromised. However, further policy assessment on the scope and application of this discretion is required, noting it would not be enshrined in legislation and is currently exercised by the independent Electoral Commissioner.

### Voter accessibility

Consideration needs to be given to potential barriers to voter access for 16- and 17-year-olds in the ACT. The location of polling booths might present an issue with many 16- and 17-year-olds who are reliant on public transport or family members to transport them to a polling booth.

Additionally, some people in this cohort may not yet have readily available identification (such as a driver's licence) that they can use to enrol.

### Financial implications

Finally, as identified by the Electoral Commission in its supplementary submission to the Inquiry into the 2020 ACT Election and Electoral Act, there are likely to be cost implications for the Territory related to the Australian Electoral Commission (AEC) maintaining a separate ACT-only electoral roll. There would also potentially be an additional cost per election to cover the increased running costs of supporting a larger number of voters.

I trust this information will assist the Committee in its important work. I look forward to receiving the Committee's report and recommendations.

Yours sincerely



Chris Steel MLA  
Special Minister of State  
28 January 2022