

Queensland



ELECTORAL AND OTHER ACTS AMENDMENT ACT 2001

Act No. 25 of 2001

Queensland



ELECTORAL AND OTHER ACTS AMENDMENT ACT 2001

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Queensland



Electoral and Other Acts Amendment Act 2001

Act No. 25 of 2001

**An Act to amend the *Electoral Act 1992*, the *Local Government Act 1993*
and the *Referendums Act 1997***

[Assented to 25 May 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Electoral and Other Acts Amendment Act 2001*.

PART 2—AMENDMENT OF ELECTORAL ACT 1992

2 Act amended in pt 2 and sch 1

This part and schedule 1 amend the *Electoral Act 1992*.

3 Amendment of s 82 (Extension of time limits in writ)

(1) Section 82, heading, ‘**Extension**’—

omit, insert—

‘**Change**’.

(2) Section 82(1)(b)—

renumber as section 82(1)(c).

(3) Section 82(1)(a)—

omit, insert—

‘(a) for a day mentioned in section 80(1)(a) to (d)—substitute a later day for the day stated in the writ; or

(b) for the day mentioned in section 80(1)(e)—substitute an earlier or later day for the day stated in the writ; or’.

(4) Section 82(2) and (3)—

renumber as section 82(3) and (4).

(5) Section 82—

insert—

‘(2) A substitution may be made under this section either generally or for a stated electoral district.’.

4 Amendment of s 97 (Supply of ballot papers and electoral rolls)

Section 97(2)(g)(i) and (ii)—

omit, insert—

- (i) if the register of political parties includes an abbreviation of the party’s name—the abbreviation; or
- (ii) otherwise—the party’s full name included in the register of political parties.’.

5 Amendment of s 128 (Election may be disputed under this division)

(1) Section 128, heading, ‘**division**’—

omit, insert—

‘**part**’.

(2) Section 128(1)—

omit, insert—

‘(1) The election of a person may be disputed by an application to the Court of Disputed Returns under this division or an appeal under division 4.¹’.

6 Amendment of s 134 (How petition is to be dealt with by court)

Section 134(2)—

omit, insert—

‘(2) The court is not bound by technicalities, legal forms or rules of evidence.’.

1 Division 4 (Appeals)

7 Amendment of s 141 (Decisions and orders to be final etc.)

Section 141, 'A decision'—

omit, insert—

'Subject to division 4,² a decision'.

8 Insertion of new pt 8, div 4

Part 8, after section 148—

insert—

Division 4—Appeals**'148A Appeal to Court of Appeal on question of law**

'An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns on a question of law.

'148B Time for appealing

'The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

'148C Commission is a party to appeal

'The commission is a party to the appeal, whether or not it is the appellant.

'148D How appeal is dealt with by Court of Appeal

'(1) In deciding the appeal, the Court of Appeal—

- (a) is not bound by technicalities, legal forms or rules of evidence; and

2 Division 4 (Appeals)

- (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and
- (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.

‘(2) The court must use its best efforts to ensure that the appeal is heard, and the court’s final decision is made or order is given, as quickly as is reasonable in the circumstances.’

‘148E Application for dismissal of appeal

‘(1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.’

‘(2) The court may make an order on the application it considers appropriate.’

‘148F Copy of final court orders to be sent to Clerk of Parliament

‘The Court of Appeal must arrange for a copy of its final orders to be sent to the Clerk of the Parliament as soon as possible after they are made.’

‘148G Right of commission to have access to documents

‘Unless the Court of Appeal otherwise orders, the filing of the notice of appeal does not deprive the commission of any right to have access to a document for the purpose of performing its functions.’

9 Amendment of s 161 (Author of election matter must be named)

(1) Section 161(1), ‘Subject to subsection (3), a’—

omit, insert—

‘A’.

(2) Section 161—

insert—

‘(4) Also, subsection (1) does not apply to distributing, or permitting or authorising another person to distribute, a how-to-vote card.’

‘(5) In this section—

“**distribute**”, for subsection (4), see section 161A(6).

“**how-to-vote card**” see section 161A(6).’.

10 Insertion of new s 161A

After section 161—

insert—

‘161A Distribution of how-to-vote cards

‘(1) During the election period for an election, a person must not distribute, or permit or authorise another person to distribute, a how-to-vote card that does not comply with subsections (2) to (4).

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.

‘(2) A how-to-vote card must state the following particulars—

- (a) the name and address of the person who authorised the card;
- (b) if the card is authorised—
 - (i) for a registered political party or a candidate endorsed by a registered political party—the party’s name; or
 - (ii) for a candidate who is not endorsed by a registered political party—the candidate’s name and the word ‘candidate’.

Example for paragraph (b)(i)—

‘Authorised P. Smith, 100 Green Street Brisbane for [*name of registered political party*]’.

Example for paragraph (b)(ii)—

‘Authorised R. Jones, 1 Green Street Brisbane for R. Jones (candidate)’.

‘(3) For subsection (2)(a), the address must not be a post office box.

‘(4) The particulars mentioned in subsection (2) must appear—

- (a) at the end of each printed face of the how-to-vote card; and
- (b) in prominent and legible characters in print no smaller than—
 - (i) if the card is not larger than A6—10 point; or

(ii) if the card is larger than A6 but not larger than A3—14 point; or

(iii) if the card is larger than A3—20 point.

‘(5) During the election period for an election, a person must not distribute, or permit or authorise another person to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsection (2) on the card are false.

Maximum penalty—

(a) for an individual—20 penalty units; or

(b) for a corporation—85 penalty units.

‘(6) In this section—

“**distribute**” a how-to-vote card—

(a) includes make the card available to other persons; but

(b) does not include merely display the card.

Examples—

1. A person “distributes” how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
2. A person does not “distribute” how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

“**how-to-vote card**” means a card, handbill or pamphlet that—

(a) is or includes—

(i) a representation of a ballot paper or part of a ballot paper; or

(ii) something apparently intended to represent a ballot paper or part of a ballot paper; or

(b) lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of the candidates; or

(c) otherwise directs or encourages the casting of preference votes, other than first preference votes, in a particular way.

“**name**”, of a registered political party, means—

(a) if the register of political parties includes an abbreviation of the party’s name—the abbreviation; or

- (b) otherwise—the party’s full name included in the register of political parties.’.

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

11 Act amended in pt 3

This part amends the *Local Government Act 1993*.

12 Amendment of s 3 (Definitions)

Section 3—

insert—

‘ **“distribute”** a how-to-vote card—

- (a) includes make the card available to other persons; but
- (b) does not include merely display the card.

Examples—

1. A person “distributes” how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
2. A person does not “distribute” how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

“how-to-vote card” means—

- (a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—
 - (i) is or includes—
 - (A) a representation of a ballot paper or part of a ballot paper; or
 - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
 - (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting

preference against the names of any or all of the candidates;
or

(iii) otherwise directs or encourages the casting of preference votes, other than first preference votes, in a particular way;
or

(b) a card, handbill or pamphlet, relating to an election for which first-past-the-post voting applies, that—

(i) is or includes—

(A) a representation of a ballot paper or part of a ballot paper; or

(B) something apparently intended to represent a ballot paper or part of a ballot paper; or

(ii) directs or encourages the casting of a vote for a number of particular candidates equal to the number of candidates to be elected.’.

13 Amendment of s 392 (Responsibility for election matter)

Section 392—

insert—

‘(4) Also, subsection (1) does not apply to distributing, or permitting or authorising someone else to distribute, a how-to-vote card.’.

14 Insertion of new s 392A

After section 392—

insert—

‘392A Distribution of how-to-vote cards

‘(1) During the election period for an election, a person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card that does not comply with subsections (2) to (5).

Maximum penalty—

(a) for an individual—20 penalty units; or

(b) for a corporation—85 penalty units.

‘(2) A how-to-vote card must state the name and address of the person who authorised the card.

‘(3) For subsection (2)—

- (a) the address must not be a post office box; and
- (b) if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.

‘(4) A how-to-vote card must also state—

- (a) if the card is authorised for a political party or a candidate endorsed by a political party—the party’s name; or
- (b) if paragraph (a) does not apply and the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group’s name; or
- (c) otherwise—the candidate’s name and the word ‘candidate’.

Example for paragraph (a)—

‘Authorised P. Smith, 100 Green Street Brisbane for [name of political party]’.

Example for paragraph (c)—

‘Authorised R. Jones, 1 Green Street Brisbane for R. Jones (candidate)’.

‘(5) The particulars mentioned in subsections (2) and (4) must appear—

- (a) at the end of each printed face of the how-to-vote card; and
- (b) in prominent and legible characters in print no smaller than—
 - (i) if the card is not larger than A6—10 point; or
 - (ii) if the card is larger than A6 but not larger than A3—14 point; or
 - (iii) if the card is larger than A3—20 point.

‘(6) During the election period for an election, a person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsections (2) and (4) on the card are false.

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.

‘(7) In this section—

“**group of candidates**” means a group of candidates, within the meaning given by section 426, that has a name.

“**name**”, of a political party, means—

- (a) if the register includes an abbreviation of the party’s name—the abbreviation; or
- (b) otherwise—the party’s full name included in the register.

“**register**” means the register of political parties kept under the *Electoral Act 1992*.’.

PART 4—AMENDMENT OF REFERENDUMS ACT 1997

15 Act amended in pt 4 and sch 2

This part and schedule 2 amend the *Referendums Act 1997*.

16 Insertion of new pt 5 div 1 hdg

Part 5, before section 47—

insert—

‘Division 1—Disputing referendums’.

17 Amendment of s 47 (Referendum may be disputed under this division)

(1) Section 47, heading, ‘**division**’—

omit, insert—

‘**part**’.

(2) Section 47(1)—

omit, insert—

‘(1) The result of a referendum may be disputed by an application to the Court of Disputed Returns under this division or an appeal under division 2.’³.

18 Amendment of s 53 (How petition is to be dealt with by court)

Section 53(2)—

omit, insert—

‘(2) The court is not bound by technicalities, legal forms or rules of evidence.’.

19 Amendment of s 61 (Decisions and orders to be final etc.)

Section 61, ‘A decision’—

omit, insert—

‘Subject to division 2, a decision’.

20 Insertion of new pt 5, div 2

Part 5, after section 62—

insert—

‘Division 2—Appeals

‘62A Appeal to Court of Appeal on question of law

‘An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns on a question of law.

‘62B Time for appealing

‘The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

‘62C Commission is a party to appeal

‘The commission is a party to the appeal, whether or not it is the appellant.

‘62D How appeal is dealt with by Court of Appeal

‘(1) In deciding the appeal, the Court of Appeal—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and
- (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.

‘(2) The court must use its best efforts to ensure that the appeal is heard, and the court’s final decision is made or order is given, as quickly as is reasonable in the circumstances.

‘62E Application for dismissal of appeal

‘(1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.

‘(2) The court may make an order on the application it considers appropriate.

‘62F Copy of final court orders to be sent to Clerk of Parliament

‘The Court of Appeal must arrange for a copy of its final orders to be sent to the Clerk of the Parliament as soon as possible after they are made.

‘62G Right of commission to have access to documents

‘Unless the Court of Appeal otherwise orders, the filing of the notice of appeal does not deprive the commission of any right to have access to a document for the purpose of performing its functions.’

SCHEDULE 1**MINOR AMENDMENTS OF ELECTORAL ACT 1992**

section 2

1 Section 3, definition “candidate”, ‘88(4)’—*omit, insert—*

‘88(3)’.

2 Section 73(1), ‘party body name’—*omit, insert—*

‘public body name’.

3 Sections 130 (heading), 130(1), 130(2)(c)(i), 133(1) and 142, ‘a petition’—*omit, insert—*

‘an application’.

4 Section 130(2), ‘The petition’—*omit, insert—*

‘The application’.

5 Sections 130(2)(c)(ii) and 132(1), ‘petitioner’—*omit, insert—*

‘applicant’.

SCHEDULE 1 (continued)

- 6 Sections 130(3), 130(4), 131, 133 (heading), 133(2), 133(3), 134 (heading), 134(1), 134(3), 134(4)(a), 136(1), 136(2)(d), 137(1A), 138(1), 138(2), 140(1) and 141, ‘petition’—**

omit, insert—

‘application’.

- 7 Section 134(7), ‘petitions’—**

omit, insert—

‘applications’.

- 8 Section 134(7), ‘petitioners’—**

omit, insert—

‘applicants’.

- 9 Section 135—**

omit, insert—

‘135 Application for dismissal of application disputing election

‘(1) The commission may apply to the court for an order dismissing the application disputing the election on the ground that there has been excessive delay by the applicant in relation to the application.

‘(2) The court may make the order on the application under subsection (1) that the court considers appropriate.’.

- 10 Section 140(2)—**

omit, insert—

‘(2) If costs are awarded against the applicant, the deposit filed with the application must be applied towards payment of the costs.’.

SCHEDULE 1 (continued)

11 Section 143(1), ‘Dispute’—

omit, insert—

‘Disputed’.

12 Section 180(1), item 5, ‘is a special’—

omit, insert—

‘is not a special’.

13 After section 182—

insert—

‘183 Transitional provision—petition disputing election

‘(1) If, immediately before the commencement day, there was a petition filed under section 130 that had not been finally dealt with by the Court of Disputed Returns, the petition is taken to be an application under that section.

‘(2) In this section—

“**commencement day**” means the day that the amendments of this Act in the *Electoral and Other Acts Amendment Act 2001*, schedule 1, commenced.’.

SCHEDULE 2**MINOR AMENDMENTS OF REFERENDUMS ACT 1997**

section 15

- 1 Sections 49 (heading), 49(1), 49(2)(c), 52(1) and 62, ‘a petition’—**
omit, insert—
‘an application’.
- 2 Section 49(2), ‘The petition’—**
omit, insert—
‘The application’.
- 3 Section 49(2)(c)(ii), ‘member’—**
omit, insert—
‘member or elector’.
- 4 Section 49(3), ‘commission or member’—**
omit, insert—
‘person’.
- 5 Sections 49(3), 49(4), 50, 52 (heading), 52(2), 53 (heading), 53(1), 53(3), 53(4)(a), 55(1), 55(2)(d), 56(2), 57(1), 57(2), 60(1) and 61, ‘petition’—**
omit, insert—
‘application’.

SCHEDULE 2 (continued)

6 Section 51(1), ‘petitioner’—

omit, insert—

‘applicant’.

7 Section 53(6), ‘court for this part’—

omit, insert—

‘Court of Disputed Returns’.

8 Section 53(7), ‘petitions’—

omit, insert—

‘applications’.

9 Sections 53(7), ‘petitioners’—

omit, insert—

‘applicants’.

10 Section 54—

omit, insert—

‘54 Application for dismissal of application disputing referendum

‘(1) The commission may apply to the court for an order dismissing the application disputing the referendum on the ground that there has been excessive delay by the applicant in relation to the application.

‘(2) The court may make the order on the application under subsection (1) that the court considers appropriate.’.

11 Section 60(2)—

omit, insert—

‘(2) If costs are awarded against the applicant, the deposit filed with the application must be applied towards payment of the costs.’.

SCHEDULE 2 (continued)

12 After section 100—

insert—

‘101 Transitional provision—petition disputing referendum

‘(1) If, immediately before the commencement day, there was a petition filed under section 49 that had not been finally dealt with by the Court of Disputed Returns, the petition is taken to be an application under that section.

‘(2) In this section—

“**commencement day**” means the day that the amendments of this Act in the *Electoral and Other Acts Amendment Act 2001*, schedule 2, commenced.’.