

ELECTORAL AMENDMENT BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

1. The proposed Bill seeks to:

- (a) provide that a non-voter may elect to pay a penalty of 50% of one penalty unit if the elector does not have a valid and sufficient reason for failing to vote, prior to a notice being issued under the Self-Enforcing Ticketable Offence Notice System (SETONS) process, access to which system is planned to be provided for in the Justices (Offence Notices) Regulation 1994.
- (b) give the Electoral Commission a discretion not to issue non-voter notices to those who are aged, infirm etc.
- (c) provide for certain evidentiary presumptions to assist in proving routine matters.
- (d) implement a range of miscellaneous amendments to the *Electoral Act*, principally of an administrative character, including:
 - (i) the protection of certain prisoners' right to vote;
 - (ii) prohibitions on inappropriate (e.g., confusing) names under which candidates may nominate;
 - (iii) clarification of provisions relating to the registered names of political parties;
 - (iv) assistance to be allowed for electoral visitor voters.
 - (v) a requirement that only declaration votes (and not ordinary votes) of assisted electors at polling booths be returned unopened to respective returning officers;

- (vi) ordinary votes be permitted at designated joint booths and at Brisbane City Hall;
 - (vii) electoral visitor voting to be by way of ordinary voting.
 - (viii) the Commission to be enabled to determine the manner in which how to vote material supplied by a candidate is made available to electoral visitor voters;
 - (ix) canvassing to be permitted beyond six metres of the place where voting takes place;
 - (x) appointment of a deputy electoral commission to be discretionary;
 - (xi) provision be made for a notional distribution of preferences on polling night;
 - (xii) widening of prohibition on display of political badges etc in a polling place;
 - (xiii) allowing unused ballot papers and other unused material to be destroyed.
- (e) provide for the disclosure of political donations and other income received by candidates, political parties and other persons together with electoral expenditure incurred by them.
 - (f) establish a system of partial public funding for electoral campaigns.

Reasons for the Bill

The need for this legislation arises primarily from the imperative to eliminate the potential for corrupt practices associated with political donations, especially in those situations where practices connected with the giving of such donations has led to perceptions that government administration may have been inappropriately influenced by them.

The concept of partial public funding for electoral campaigns has been developed as a balance to the requirements placed on participants in the electoral process to make full disclosure of political donations and other income received by them together with electoral expenditure which they have incurred.

The Bill also seeks to put in place a range of administrative amendments designed to make the legislation more efficient, effective and equitable.

Estimated Cost for Government Implementation

Costs associated with the initiatives relating to the disclosure of political donations and electoral expenditure together with a system of partial public funding for electoral campaigns may be tabulated as follows:

Period	Projected Costs (based on funding level of \$1.05395 per eligible vote)
1994-95 (6 months)	\$85,750
1995-96	\$2,102,800
1996-97	\$171,000

Consultation

During the development of the initiatives outlined in this Bill, the following agencies were consulted on matters relative to their administrative responsibilities:

- Queensland Treasury
- Electoral Commission of Queensland
- Australian Electoral Commission
- It should also be noted that, in preparing their reports on public registration of political donations, public funding of election campaigns and related issues, both the Electoral and Administrative Review Commission and the Parliamentary Committee for Electoral and Administrative Review consulted widely through public submissions and hearings.

Details of specific clauses are as follows:

Clause 1 sets out the citation of the Act.

Clause 2 states that this Act amends the *Electoral Act 1992*.

Clause 3 amends section 3 of the Act by inserting a definition of the expression “ordinary vote”, which definition distinguishes that category of vote from declaration votes.

Clause 4 provides that the making of an appointment to the position of Deputy Electoral Commissioner is discretionary, rather than mandatory, as was previously the case.

Clause 5 removes an anomaly in the Act, the effect of which has been to disqualify certain classes of prisoners, otherwise eligible to vote, from being entitled to enrol and brings the Queensland practice into line with arrangements under the *Commonwealth Electoral Act 1918* (CE Act). This amendment allows a prisoner to be enrolled for an electoral district even though the one month’s residency qualification presently prescribed by section 64(1)(b) of the Act is not met.

Clause 6 sets out the grounds for the Electoral Commission’s refusing to register a political party insofar as those grounds relate to the name of the party under which it has applied for registration.

Clause 7 inserts a new section 85A into the Act which sets out the various grounds for determining that a person is not properly nominated as a candidate for an election. The major thrust of this amendment is to avoid the potential for confusion created by certain types of names under which a candidate may be nominated.

Clause 8 amends section 103(4)(d) in order to make it clear it is only in those cases where an assisted elector has made an ordinary vote that the issuing officer is to open the envelope containing the vote and place the ballot paper in a ballot box.

Clause 9 allows an elector to make an ordinary vote at a joint polling vote established for the elector’s electoral district, even though the polling booth may be physically located outside the actual boundaries of that electoral district.

Clause 10 authorises the Electoral Commission to require issuing officers to present how to vote material to electoral visitor voters in a particular way and allows those electors using electoral visitor voting to seek assistance in the ways listed in the proposed sub-section (8).

Clause 11 enables a notional distribution of preferences to be made at any time after the closing of the polls, for example, on polling night.

Clause 12 amends section 125 of the Act in the following matters:

- the sending of notices to apparent non-voters by the Electoral Commission is to be made discretionary rather than mandatory, as is presently the case.
- electors who are prepared to acknowledge that they have failed to vote without a valid and sufficient reason may elect to pay half a penalty unit, prior to the matter being referred to the SETONS system, in order to finalise the issue.

Clause 13 requires the Electoral Commission to accept, and issue receipts for, payments made under section 125(1) and also provides no further action in respect of the failure to vote is to be taken against the person making the payment.

Clause 14, in effect, removes the requirement that the Electoral Commission keep unused and spoilt ballot papers and other unused material until the following election.

Clause 15 inserts a new Part 7 (“Electoral funding and financial disclosure”) into the Act, the substance of which Part is, in effect, contained in the Schedule (“Election Funding and Financial Disclosure Based on Part XX of the *Commonwealth Electoral Act*”) of this amending Act, inserted by *clause 21*.

Clause 16 inserts, in effect, a new paragraph (d) into section 129 of the Act to allow persons whose nomination has been rejected by the Commission under section 85A to dispute the election by a petition to the Court of Disputed Returns.

Clause 17 creates offences in respect of non-voting and allied matters and makes provision for certain evidentiary aids in respect of proceedings in relation to those offences.

Clause 18 amends section 166(1) of the Act to allow polling booth workers to stand beyond six metres of the place where voting takes place, which amendment is of particular relevance to those situations where, for example, the Electoral Commission has designated an entire school as the polling booth because the actual rooms within that school complex have not been allocated for use as polling booths by the school at the time of the designation. In those situations, polling booth canvassers, e.g. political party workers, have been required to stand outside the perimeter of the school as such, which interpretation did not give effect to the original intention of the

legislation which was for canvassing to be permitted at the prescribed distance from the door of the actual room where the polling occurs.

Clause 19 widens the previous prohibition in section 169 of the Act preventing the wearing or displaying of emblems or badges of a political party to include a prohibition on the display of all political statements within the specified area.

Clause 20 inserts a new Part 11 (“Transitional”) which is to be read in conjunction with the provisions contained in the Schedule (“Election Funding and Financial Disclosure based on Part XX of the *Commonwealth Electoral Act*”).

Clause 21 inserts the following extended schedule into the Act:

SCHEDULE

Election Funding and Financial Disclosure based on Part XX of the *Commonwealth Electoral Act*

Division 1—Preliminary

As noted in section 126B, as inserted by clause 15 of this Bill, the numbering in this Schedule generally has the same numbering as the corresponding provisions of the CE Act. The provisions in the Schedule are also generally based on the parallel provisions in the CE Act and, therefore, reference must also be made to the various Explanatory Memoranda tabled in the Parliament of the Commonwealth in conjunction with the relevant Commonwealth legislation, namely, the following Acts of the Commonwealth Parliament:

- No 144 of 1983
- No 45 of 1984
- No 67 of 1985

- No 35 of 1987
- No 24 of 1990
- No 167 of 1991
- No 203 of 1991
- No 45 of 1992.

Reference should also be made to the Explanatory Memorandum tabled in the House of Representatives on 9 November 1994 in conjunction with the Commonwealth Electoral Amendment Bill (No 2) 1994.

Details of specific clauses in this Schedule are as follows:

Division 1—Preliminary

Clause 287 sets out the definitions of particular expressions used in this Schedule.

Clause 287AA defines the expression “disclosure period” for the purposes of this Schedule.

Clause 287A provides that the campaign committee established by a registered political party is to be treated as part of that party for the purposes of this Schedule.

Division 2—Agents

Clause 288 imposes a requirement that a registered political party must have an agent for the purposes of this Schedule.

Clause 289 allows an individual candidate to appoint an agent for a particular election and, in the event of no such appointment being made, the candidate is to be taken to be his or her own agent.

Clause 290 lists the criteria necessary for appointment as an agent.

Clause 291 imposes a requirement on the Electoral Commission to keep a register of party agents and list the details to be shown in that register.

Clause 292 outlines the effect of registration by an agent of a registered political party together with ancillary matters, for example, the procedures which must be followed if a registered agent dies within a certain period.

Clause 292A allows entries in the Register of Party Agents to be taken as evidence of such status as an agent.

Section 292B imposes obligations on each member of the executive committee of a registered political party in the event of an agent of that party dying or the position of agent becoming vacant.

Clause 292C allows a candidate to revoke the appointment of an agent in writing.

Clause 292D imposes an obligation on a candidate's agent to notify the Electoral Commission in writing of the death or resignation of a candidate.

Division 3—Election funding

Clause 293 defines the meaning and implications of the expression "electoral expenditure" in the context of an election campaign.

Clause 294 provides the statutory basis for the general entitlement to funds as part of the election funding scheme established by this Act.

Clause 294A sets out the formula for determining the amount of reimbursement funding payable.

Clause 294B imposes a requirement on agents of political parties and on candidates not endorsed by registered political parties to give notice within the specified timeframe of whether the party or the candidate, as the case may be, intends to make a claim under section 295 for funding.

Clause 295 sets out the procedure necessary in order for a claim to be made to the Electoral Commission for payment of funding under this scheme.

Clause 296 imposes a requirement on the Electoral Commission to decide claims for payment made under this Division.

Clause 297 stipulates that a payment may only be made in respect of votes for a candidate where the total number of eligible votes polled for that candidate is more than 4% of the total number of eligible votes polled for all candidates in the election.

Clause 298 provides that payments made under this scheme are not to exceed electoral expenditure incurred by the claimant.

Clause 299 sets out certain administrative matters in relation to the making of payments under this arrangement.

Clause 299A allows the Electoral Commission to revoke certain decisions regarding payment in specified circumstances.

Clause 300 allows, in the situation where a candidate, otherwise eligible for funding, dies after the election, claims for payment to be made by, and the payment may be made to, the personal legal representative of the candidate, for example, the executor of his or her estate.

Clause 301 (As this provision in the Commonwealth legislation refers exclusively to arrangements pertaining to the Senate, it has not been necessary to replicate this provision in this legislation.)

Clause 302 (This section from the Commonwealth legislation, which provides for “automatic” appropriation of funding, has been omitted from this Act because it has been determined that the appropriation for the purposes of this Act will be considered as part of the normal Budget processes).

Division 4—Disclosure of donations

Clause 303 (As the various terms defined in the parallel Commonwealth section are already covered in the *Electoral Act 1992* (Qld), it has not been necessary to include this provision in this legislation.)

Clause 304 imposes a requirement on agents to submit a return disclosing the specified details in relation to gifts received during the disclosure period for an election.

Clause 305 imposes an obligation on persons, other than registered political parties, associated entities, or candidates, who incur expenditure for a political purpose during a disclosure period associated with an election, to submit to the Electoral Commission a return setting out the specified details contained in this provision.

Clause 306 makes it unlawful for political parties or persons acting on their behalf to receive anonymous gifts equal to, or in excess of, the specified amount.

Clause 307 imposes an obligation on a candidate who received no gifts of a kind required to be disclosed to submit a nil return under this Division.

Division 5—Disclosure of electoral expenditure

Clause 308 details the various categories of spending which are included within the ambit of the expression “electoral expenditure”.

Clause 309 outlines requirements pertaining to the submission of returns of electoral expenditure.

Clauses 310, 311 and 311A indicate that the corresponding provisions in the Commonwealth legislation are not replicated in the legislation of this jurisdiction.

Clause 313 provides that, where appropriate, nil returns must be made in situations where no expenditure was incurred.

Clause 314 allows, in the event that two or more elections take place on the same day, for example, two or more by-elections, for the relevant returns to be combined into one return.

Division 5A—Annual returns by registered political parties and associated entities

Clause 314AA defines, in an inclusive style, the term “amount”.

Clause 314AB imposes the requirement for annual returns to be made to the Electoral Commission setting out specified details relating to receipts, expenditure and the total outstanding amount of all debts.

Clause 314AC imposes a requirement that if an amount received is equal to or exceeds the prescribed amount, the return must include details of that particular amount.

Clause 314AD sets out the requirement that, if the sum of all amounts paid by an entity during a financial year is equal to or exceeds the prescribed amount, the relevant return must include details of that particular sum.

Clause 314AE provides that if the total of all outstanding debts incurred by an entity during a financial year is equal to or exceeds the prescribed amount the relevant return must include particulars of that sum.

Clause 314AEA imposes a requirement on associated entities, which expression is defined in clause 287, to submit annual returns to the Electoral Commission setting out the specified financial details.

Clause 314AF provides that returns submitted in relation to this scheme are not to include lists of party membership.

Clause 314AG creates a regulation-making power for this scheme.

Division 6—Miscellaneous

Clause 314A provides that a reference in this Division to a return made under Division 4, 5, 5A or this Schedule generally includes a reference to particulars contained in subsection 318(2).

Clause 315 sets out the various offences created in relation to this election funding and financial disclosure regime.

Clause 315AA applies the provisions in the Criminal Code relating to attempts to commit offences to offences against this Schedule.

Clause 315A allows claims for amounts owing to the State under section 299(6) or 306(5) to be brought in the name of the Electoral Commission.

Clause 316 (This clause is omitted because the provisions in the Commonwealth legislation in section 316 of the CE Act are now provided for in clauses 322 to 348 of this Schedule. These matters relate to the powers etc of persons investigating offences against this Act. It was determined that these questions should be provided for by legislation which is of a standard type and style based on analogous provisions in other contemporary Queensland Acts and in conformity with present drafting practices in this jurisdiction.)

Clause 317 imposes a requirement that records pertaining to this scheme are to be kept for a period of at least three years from the date of the relevant election.

Clause 318 excuses a person who is required to submit returns under this scheme where that person is unable to obtain requisite particulars, provided that person notifies the Electoral Commission in the specified manner.

Clause 318A (This provision from the CE Act is omitted because it relates to the Australian Electoral Commission's different reporting requirements.)

Clause 319 provides that, in general, non-compliance with this Schedule does not affect the outcome of the particular election in connection with which the non-compliance occurred.

Clause 319A allows for the Electoral Commissioner and for persons who have lodged claims and submitted returns under this Schedule to amend such documentation for the purpose of correcting an error or omission.

Clause 320 sets out the various categories of documents which the Electoral Commission must keep at its office and which members of the public may be permitted to peruse or copy.

Clause 321 (This clause has been deleted because it refers to the indexation formula applied in the Commonwealth legislation which is covered in section 294A of this Schedule.)

Division 7—Authorised officers

Clause 322 outlines the reasons for the appointment of authorised persons under this Act in order to ensure compliance with it and provides for the conferral of power on those persons.

Clause 323 sets out the eligibility criteria for appointment as an authorised person.

Clause 324 provides that the powers of an authorised person may be limited by the specified mechanisms.

Clause 325 provides for conditional appointment of an authorised person.

Clause 326 requires an authorised person to be given an identity card and stipulates what that card must contain.

Clause 327 requires, in general, an authorised person to produce the identity card before exercising powers.

Division 8—Power of authorised officers to ask questions or require documents

Clause 328 endows authorised persons with the power to require information from certain persons.

Clause 329 gives authorised persons the power to require persons to produce certain documents.

Division 9—Powers of authorised officers for places

Clause 330 confers a power of entry to a place on an authorised person on certain conditions.

Clause 331 allows for an application for a warrant to enter a place and sets out the requirements in relation to those warrants.

Clause 332 allows for applications for warrants to be made by means other than in person.

Clause 333 itemises the powers of an authorised person in relation to the entry of a place.

Division 10—Authorised officer's power to seize

Clause 334 sets out the powers of an authorised officer to seize things, including things from places that officer has lawfully entered.

Clause 335 allows an authorised officer to require a person in charge of a thing, which that officer is seeking to seize, to do certain things such as transporting the item to a specified location to assist in its seizure.

Clause 336 generally requires an authorised officer to issue a receipt for the seizure of any thing.

Clause 337 generally requires an authorised officer to allow an owner of a seized thing to inspect it and, if applicable, make a copy of it.

Clause 338 sets out the conditions relating to the return of a seized thing to its owner.

Clause 339 provides that an unreturnable seized item, otherwise required to be returned to its owner, is forfeited to the State.

Division 11—Other enforcement matters

Clause 340 creates an offence arising out of the giving of false or misleading information to an authorised person.

Clause 341 provides for an offence based on the giving of a document containing information which the person giving it knows is false, misleading or incomplete.

Clause 342 requires an authorised person who damages property when exercising powers under this Schedule to notify the apparent owner of that property concerning the damage.

Clause 343 authorises the claiming and payment of compensation to cover damage caused by the exercise or purported exercise of a power under this Schedule.

Clause 344 sets out the procedures required for the consent of an occupier of a place to be given to an authorised person seeking to enter that place.

Clause 345 provides that in determining whether an occupier of a place gave consent to an authorised person to enter that place, there is a rebuttable presumption that the consent was not given.

Clause 346 creates an offence of obstructing, hindering or resisting an authorised person in the exercise of a power under this Act.

Clause 347 prohibits the impersonation of an authorised person.

Division 12—Evidence

Clause 348 sets out evidentiary provisions relating to proceedings generally under this Act.

SCHEDULE

Other Amendments

Clause 1 provides an amended definition of the term “Commonwealth Electoral Act”.

Clause 2 authorises a person to act as Electoral Commissioner in certain circumstances.

Clause 3 authorises the appointment of an acting Deputy Electoral Commissioner in specified circumstances.

Clause 4 contains a consequential amendment to section 70, following upon the related amendment to section 73 inserted by clause 6 contained in the substantive part of this amending Act.

Clauses 5—12 contain various consequential amendments for drafting reasons such as the renumbering of Parts and sections in the Act and also restate some specific amendments to the Act previously effected under the *Reprints Act 1992* and originally inserted into Reprint No 1 of the *Electoral Act*.