

# **ELECTORAL AMENDMENT BILL 1996**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The objectives of the Bill are to accommodate a range of administrative amendments to the *Electoral Act 1992* (“the Act”) requested by the Electoral Commission of Queensland (“ECQ”) as well as further amendments proposed by Ambrose J while sitting as the Court of Dispute Returns in the Mundingburra and Greenslopes Petitions, decisions which he handed down in late 1995.

#### **Reasons for the objectives**

The proposals formulated by the ECQ are designed to enhance the effectiveness and efficiency of the administrative operation of the Act.

The amendments flowing from the 1995 Mundingburra and Greenslopes decisions by the Court of Disputed Returns are being implemented in accordance with the views expressed by Ambrose J in those decisions. (It should also be noted that other matters discussed in the decision pertaining to the Mundingburra Petition have been dealt with in the Justice Legislation (Miscellaneous Provisions) Bill 1996, introduced into the Legislative Assembly on 4 September 1996.)

#### **Administrative cost to Government of implementation**

In themselves, the proposed amendments do not have significant financial ramifications although their implementation will lead to certain efficiency enhancements within the ECQ. However, any savings which might result cannot be precisely quantified.

**Fundamental legislative principles**

The Bill is consistent with fundamental legislative principles.

**Consultation**

The ECQ has been extensively involved in the preparation of this Bill and endorses its contents.

In addition, the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly recently tabled its Report No 2 entitled “Matters pertaining to the Electoral Commission of Queensland”. That report deals with a range of matters contained in this legislation. The Bill is in conformity with the recommendations made in that Report.

**NOTES ON PROVISIONS****Short Title**

*Clause 1* sets out the Short Title of the Bill.

*Clause 2* provides for the resultant Act to commence on a day to be fixed by proclamation.

*Clause 3* provides for the amendment of the *Electoral Act 1992* by this Bill.

*Clause 4* amends the definition of the expression “registered officer” in section 3 of the Act by allowing for the creation of a position of deputy of a party’s registered officer.

*Clause 5* puts in place the necessary procedures for the nomination of the newly created office of a deputy registered officer of a registered party.

*Clause 6* amends section 99(3)(a) of the Act to allow scrutineers to be present prior to the conduct of the poll for the purpose of observing the scrutiny of declaration envelopes which have been lodged pre-poll.

*Clause 7* amends section 102(2), in effect, to enable an elector at an election for a casual vacancy in a particular electoral district to cast an ordinary vote at a polling booth actually located outside the geographical limits of that electoral district but which has been established by the

Electoral Commission for that electoral district. Until now, by virtue of the present s.106(2) and (3), ordinary votes have been able to be cast at general elections in these circumstances at joint polling booths. The first two amendments to clause 8, as set out below, are related also to this amendment.

*Clause 8* amends section 106 for the following purposes:

- firstly as a measure arising out of the amendment in clause 7 to s.102(2), to amend s.106(1)(a) by limiting the requirement, imposed on an elector wishing to vote on polling day at a polling booth geographically outside the electoral district for which he or she is enrolled that such an elector must cast a declaration vote, so that it applies only in respect of a polling booth not established by the Electoral Commission for the electoral district in which the elector is enrolled. In other words, expressing it in positive terms, an elector may cast an ordinary vote at any polling booth established by the Commission for the electoral district in which the elector is enrolled even though that polling booth may be outside the geographical boundaries of that electoral district. This will apply to both general elections and “by-elections”.
- to repeal s.106(2) and (3) because, as the above amendments to ss.102(2) and 106(1)(a) about the casting of ordinary votes at polling booths outside of particular electoral districts will result in those provisions being of general application, that is, they will cover both general elections and by-elections, these two subsections will be rendered superfluous.
- to enable absent declaration votes to be cast prior to polling day at mobile polling booths and declared institutions in conformity with such provision as sections 94(4) and (6) of the Act.

*Clause 9* amends section 110 of the Act to:

- allow requests for declaration envelopes to be lodged with the ECQ or the returning officer by means other than post or facsimile;
- allow the ECQ to send the ballot paper and declaration envelope to the postal voter by means other than the post and the voter to return the declaration envelope containing the ballot paper likewise by means other than the post;

- require a person requesting a postal vote to state the address to which the ballot paper and the declaration envelope is to be posted, delivered or sent to him or her by the ECQ.

*Clause 10* amends section 111 in a way similar to the amendments made by clause 9 to section 110 to allow, in the case of electoral visitor voting, requests for an electoral visitor vote to be forwarded to the ECQ or to a returning officer by means other than the post or facsimile. Likewise, that request must state the address the electoral visitor is to visit.

*Clause 11* amends section 114 of the Act by inserting the words “by the elector” into section 114(1)(c) after the words “ballot box” to indicate that the duty provided for in paragraph (c) is a duty imposed on the voter and, in accordance with the findings of Ambrose J in his 1995 decision in respect of the Greenslopes Petition, that this section has no relevance to the issue of how declaration votes are to be counted, which matter is dealt with in Division 6 of Part 6 of the Act.

*Clause 12* amends section 116(2)(d) to provide that the deadline for the receipt of postal votes is 6.00 p m on the tenth day after the polling day for the election.

*Clause 13* amends a reference in section 125(4) of the Act to rectify a previous drafting error and to accommodate renumbering of the paragraphs in section 106(1) effected by this Act.

*Clause 14* amends section 136 to declare that the Court of Dispute Returns, once it has determined a particular declaration is in order, has the power to open the relevant declaration envelope and admit the ballot paper to the count, provided the secrecy of the ballot is maintained. This provision specifically addresses doubts raised in other jurisdictions in relation to this procedure by such cases as *Dunbier v Mallam* [1971] 2 NSWLR 169 and *Varty v Ives* [1986] VR 1, although it should be noted that Ambrose J, in the Greenslopes Petition judgment referred to earlier, held that the position in this jurisdiction is the same as is declared in this amendment.

*Clause 15* amends section 137(1) of the Act to:

- remove an anomaly produced by reading the present section 136(2)(d) together with section 137(1)(b) which results in the effect that a petition cannot be dismissed in certain circumstances including where there is a trivial error made by the ECQ. The qualification to be contained in section 137(1A) will allow the

Court of Disputed Returns, under section 136, to dismiss a Petition in circumstances where such a trivial error has occurred.

- to preclude the Court of Disputed Returns, in circumstances where the details on a declaration envelope have been filled in by a polling official on information supplied by the elector, which declaration is subsequently signed by the elector, finding that defects in those details constitute official error on the part of the ECQ.

*Clause 16* removes the requirement in section 161(2) of the Act that particulars relating to the name and place of business of the printer of election material are to be stated in that material.

*Clause 17* amends section 172 to reflect the earlier amendments contained in clauses 9 and 10 of this Act to allow for the transmission of requests for a postal vote or an electoral visitor vote by means other than the post or by facsimile together with a similar extension in respect of the transmission of ballot papers.

*Clause 18* omits section 294B (“Notice of intention to claim election funding”) in the Schedule to the Act, which Schedule is founded upon the provisions of section 126B of the Act.