

ELECTORAL AND OTHER ACTS AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives are to amend the *Electoral Act 1992* to:

- (1) Impose additional party/candidate identification requirements on how-to-vote material distributed at State elections;
- (2) Provide for appeals on questions of law from the Court of Disputed Returns to the Court of Appeal;
- (3) Provide a mechanism to allow an earlier date for the return of the writ for an election to be substituted for the specified date; and
- (4) Make minor technical amendments to remove anomalies and achieve greater consistency in terminology.

and to amend the *Local Government Act 1993* to:

- (1) Impose party/candidate identification requirements similar to those inserted in the *Electoral Act* on how-to-vote cards distributed at Local Government elections;

and to amend the *Referendums Act 1997* to achieve consistency with the *Electoral Act 1992*.

Reasons for the objectives and how they will be achieved

On 17 September 1999, the Legal, Constitutional and Administrative Review Committee tabled Report No 18: Issues of electoral reform raised in the Mansfield Decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns (the Report).

The Report resulted from the Committee's inquiry into two suggestions for electoral reform by Mr Justice Mackenzie, sitting as the Court of Disputed Returns in *Re Carroll v the Electoral Commission of Queensland and Reeves* (1998) CSC 190 (the Mansfield decision).

The Report made six recommendations which broadly supported and expanded on the suggestions of Justice Mackenzie that:

- (a) There be additional regulation of how to vote cards to try to minimise the conduct complained of in the Mansfield dispute; and
- (b) Consideration be given to re-introducing a right of appeal from the Court of Disputed Returns.

As foreshadowed in the Ministerial Responses to Parliament in relation to the Report (tabled 29 February 2000) the Bill implements three key recommendations of the Report. Consistent with those recommendations, the *Electoral Act 1992* and the *Local Government Act 1993* are amended to impose party/candidate identification requirements on how-to-vote cards distributed at State and local government elections. This will be in addition to the present requirement that the name and address (other than post office box) of the person authorising the material must be stated on a wide range of electoral material (including how-to-vote cards). The purpose is to reduce the potential for voters to be misled and to give voters the means to make informed decisions by ensuring that the political source of how-to-vote material is clearly stated.

The Bill also amends the *Electoral Act 1992* to provide a right of appeal on questions of law from decisions of the Court of Disputed Returns. The purpose for this is to ensure greater procedural justice to the parties and to enhance the public's confidence that the outcomes of potentially significant electoral disputes are arrived at in a just and satisfactory manner.

The Bill contains a number of minor technical amendments to the *Electoral Act 1992* which do not arise from the Report, and also provides a mechanism to allow an earlier date for the return of a writ for an election to be substituted for the specified date. The reason for this amendment is to enable an early recall of the Legislative Assembly in situations where this may be necessary or desirable – for example, if, following an election, there is political uncertainty, a new government may wish to confirm it has the confidence of Parliament by testing its position in the House. At present, this would not be possible due to section 2 of the *Constitution Amendment Act 1890* which provides that the term of the Legislative Assembly continues for three years from the day appointed for the return of the writ for an election.

The Bill also amends the *Referendums Act 1997* to mirror, when appropriate, the amendments to the *Electoral Act 1992* which establish a new appeal regime. This was not recommended in the Report but, as the

machinery provisions of the *Referendums Act 1997* substantially replicate the *Electoral Act 1992*, amendments are necessary to maintain consistency.

Administrative cost to Government of implementation

There are no financial implications for the Government in the Bill.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

The Department of Justice and Attorney-General has consulted with the following entities on the amendments to the *Electoral Act* (which are mirrored in the *Referendums Act*):

- Electoral Commission of Queensland
- Chief Justice] in relation to appeals
- President, Court of Appeal] provisions only

The Department of Local Government and Planning has consulted with the Local Government Association of Queensland on the amendments to the *Local Government Act 1993*.

In preparing Report No 18 (the key recommendations of which are implemented in the Bill) the Legal, Constitutional and Administrative Review Committee called for public submissions by advertising in the Courier Mail and writing directly to a number of stakeholders, inviting them to make a submission.

NOTES ON PROVISIONS

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Part 2—Amendment of *Electoral Act 1992*

Clause 2 states that Part 2 and Schedule 1 amend the *Electoral Act 1992*.

Clause 3 amends section 82 to enable an earlier date for the return of a writ for an election to be substituted for the specified date.

Clause 4 amends section 97(2)(g) to clarify that the requirement to print the abbreviation of the name of a registered political party on the ballot paper applies in relation to amended abbreviations which appear on the register and not only abbreviations which were included in the application for registration under section 70.

Clause 5 amends section 128 to take account of the fact that elections will now also be able to be disputed on an appeal, as provided for under the new Division 4.

Clause 6 amends section 134 to achieve consistency with the language of section 148D by providing that the Court can disregard technicalities, legal forms and rules of evidence.

Clause 7 amends section 141 to provide that a decision or order of the Court of Disputed Returns is final and conclusive and cannot be appealed against, subject to the right of appeal to the Court of Appeal.

Clause 8 inserts a new Part 8, Division 4 in the Act which establishes a right of appeal to the Court of Appeal from the Court of Disputed Returns on a question of law. To expedite resolution of the appeal, the new section 148B of the Act provides that the notice must be filed within seven days after the date of the decision or order appealed from and the new section 148D imposes an obligation on the Court of Appeal to use its best efforts to ensure that the appeal is heard and a final decision or order is given as quickly as is reasonable in the circumstances.

Clause 9 amends section 161 to exclude the distribution (including the permitting or authorising of distribution) of how to vote cards from the requirements of the section. This is because the particulars which must appear on this material are specifically provided for in the new section 161A.

Clause 10 inserts a new section 161A which imposes new party/candidate identification requirements on how-to-vote cards distributed during an election period. If a card is authorised for a registered political party or a candidate endorsed by a registered political party, the name of the party on whose behalf or on whose candidate's behalf it is being

distributed must now be stated on the card. To maintain consistency with other provisions of the Act, if a party has registered an abbreviation of its name, it is the abbreviation that must be stated on the card, not the full name of the party. If a card is authorised for a candidate who is not a party candidate, the card will have to state the candidate's name and the word "candidate". This is in addition to the authorisation requirements which presently apply. "How-to-vote cards" is broadly defined to encompass all cards, handbills and pamphlets whether they represent part or all of a ballot paper or are narrative in nature. Under the section it will be an offence to:

- distribute (or permit or authorise distribution of) a how-to-vote card which does not contain the party/candidate identification requirement where applicable;
- distribute (or permit or authorise distribution of) a how-to-vote card if the person knows or ought reasonably to know that the "authorisation" particulars stated on the card are false.

Part 3—Amendment of *Local Government Act 1993*

Clause 11 provides that Part 3 amends the *Local Government Act 1993*.

Clause 12 amends section 3 of the Act by inserting definitions for "distribute 'a how-to-vote card'", and "how-to-vote card". The definition of "distribute" mirrors definitions inserted into the *Electoral Act 1992* by clause 10 above. The definition of "how-to-vote-card" includes how-to-vote cards used at local government elections where either optional preferential or first-past-the-post voting applies.

Clause 13 amends section 392 of the Act by inserting a new subsection into section 392 (Responsibility for election matter). The amendment matches a similar provision inserted into the *Electoral Act 1992* by clause 9 above.

Clause 14 inserts a new section dealing with the distribution of how-to-vote cards. The amendment is similar to a provision inserted into the *Electoral Act 1992* by clause 10 above, apart from a variation in relation to groups of candidates who are not endorsed by a registered political party. The maximum penalty for a breach of this provision by either an individual or a corporation is equivalent to the maximum penalty imposed for the same offence under the provision of *the Electoral Act 1992*.

The authorisation of a how-to-vote card for a group of candidates must include the name of the group. For example, in an undivided local government area, a group of candidates contesting the election for councillors other than the mayor may decide to issue a how-to-vote card that is a representation of the ballot paper. One of the candidates in the group must be included in the authorisation. There is no need for the card to contain authorisation details of all the members of the group.

Part 4—Amendment of *Referendums Act 1997*

Clause 15 states that Part 4 and Schedule 2 amend the *Referendums Act 1997*.

Clause 16 inserts a new heading in Part 5 “Division 1- Disputing referendums” to achieve consistency with the structure of the *Electoral Act 1992*.

Clause 17 amends section 47 to take account of the fact that the results of referendums will now be able to be disputed on appeal, under the new Part 5 Division 2.

Clause 18 and *19* amend sections 53(2) and 61 to maintain consistency with the amendments to sections 134 and 141 of the *Electoral Act 1992*.

Clause 20 inserts a new Part 5 Division 2 in the *Referendums Act* which establishes a new appeal regime consistent with the provisions of the *Electoral Act*.

Schedule 1

Schedule 1 makes minor amendments to the *Electoral Act* to correct certain anomalies and achieve greater consistency in terminology relating to court practices and procedures.

Schedule 2

Schedule 2 makes similar minor amendments to the *Referendums Act 1997*.

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