ELECTORAL AND OTHER ACTS AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to amend the *Electoral Act 1992* (the Act), *Referendums Act 1997*, *Local Government Act 1993* and *Criminal Code* and make consequential amendments to the *Legislative Assembly Act 1867* and *Parliament of Queensland Act 2001* to:

(a) implement electoral reforms contained in the document, *Restoring Integrity – The Beattie Good Government Plan for Queensland* which was released by the Premier in Barcaldine on 21 January 2001 (the Barcaldine Reforms); and

(b) give effect to recommendations of the Legal, Constitutional and Administrative Review Committee (LCARC) Report No. 23: May 2000: *Issues of Queensland electoral reform arising from the 1998 State election and amendments to the Commonwealth Electoral Act 1918.*

REASONS FOR THE OBJECTIVES AND HOW THEY WILL BE ACHIEVED

Implementation of the Barcaldine Reforms

In 2000, three separate inquiries were initiated into the issues of electoral fraud and the integrity of the electoral roll. These resulted in the following reports:

- The Legal, Constitutional and Administrative Review Committee (LCARC) Report No 28: *The prevention of electoral fraud: Interim Report* which was tabled in the Queensland Parliament on 14 November 2000;

- The *Shepherdson Inquiry: An Investigation Into Electoral Fraud* which was tabled in the Queensland Parliament on 1 May 2001; and
- The Joint Standing Committee on Electoral Matters (JSCEM) report, *User friendly, not abuser friendly: Report of the Inquiry into the Integrity of the Electoral Roll* which was tabled in the Commonwealth Parliament on 18 June 2001.

In response to the political and community concerns regarding these issues, the Premier, the Honourable Peter Beattie MP, in his Barcaldine Statement on

21 January 2001, committed the Government to a range of electoral reforms to eliminate electoral fraud and restore public faith in the electoral process.

The key elements of this package were: that:

- registered political parties would have a community-based membership with the right to control their parties through proper democratic processes overseen by the Electoral Commission of Queensland (the Commission)
- registered political parties that breached the new requirements would be prohibited from receiving public funding;
- electoral rorters would be banned from running for political office and being members of political parties;
- the Commission would supervise the preselection process and conduct random audits of balloting and voting procedures;
- voting in preselections was to be restricted to Queensland electors;
- there would be new public disclosure requirements for parties and candidates in relation to preference arrangements and loans and gifts;
- there would be new measures to improve voter participation;
- the Commission would have responsibility to oversee the integrity of the electoral roll;
- provisions requiring cleansing of the special postal voter register would be strengthened; and
- penalties for electoral offences under the *Electoral Act* and the *Criminal Code* would be the toughest in Australia.

The Bill will achieve these objectives through the following amendments to the Act:

New Registration Requirements for Political Parties

Only political parties that have constitutions that meet certain standards will be eligible for registration under the Act and accordingly, for public funding. This will make parties more accountable to their members and the public and ensure that party processes are open to appropriate scrutiny.

Constitutions must contain information regarding procedures for amendment of the constitution, and how the party manages its internal affairs. They must also contain rules for election of office bearers and preselection of candidates for party endorsement for Legislative Assembly and local government elections. The rules must prohibit people who have been convicted of a "disqualifying electoral offence" from becoming or remaining a member of the party for ten years. There will be a similar, though stricter, prohibition on people nominating as a candidate for a Legislative Assembly or local government elections. People who have been convicted of a "disqualifying electoral offence" (or an offence that would have been a "disqualifying electoral offence" if the conviction occurred before this Act commences) will not be able to nominate for the ten years following conviction.

Parties will be free to adopt whatever form of preselection process they wish, provided the rules are clearly stated in their constitutions. However, preselection ballots (as defined in the Bill) must satisfy the "*general principles of free and democratic elections"*.

There are ballots where members vote in their capacity as members of the party, rather than as a member of a committee (however described) and include ballots which are only one part of an overall preselection process, for example where the candidate selected by the ballot requires endorsement by some other group or person..

Registered parties will be required to regularly advise the Commission of any changes to their constitutions and provide the Commission with updated copies. These updated constitutions will be made available for public inspection.

Preselection Audits by the Electoral Commission of Queensland

There will be new controls on preselection ballots to ensure transparency and accountability in the preselection process.

Model procedures for the conduct of these ballots will be prescribed by regulation. Registered political parties will be required to comply and give the Commission at least seven days notice of any such ballot.

The Commission will have the power to conduct an inquiry, either of its own initiative or on complaint, at any time during or after a ballot. This will apply in relation to preselection of candidates for both Legislative Assembly and local government elections.

In addition, there will be a comprehensive random audit by the Commission following each general State election. This will apply to preselection ballots for candidates for Legislative Assembly elections which have been notified to the Commission in the period between the preceding two general elections.

The Commission will be required to report the results of these inquiries and the post-general election random audit to the Minister and the reports will be tabled in Parliament.

New Public Disclosure Requirements

There will be new requirements for how-to-vote cards to be lodged in advance with the Commission along with declarations as to any financial contributions received from or on behalf of another political party or candidate for the production of how-to- vote cards. The Commission and Returning Officer of the relevant district will be required to make the cards which have been lodged available for public inspection before polling day. So far as is practicable, the cards will also be made available for public inspection on polling day at polling places in the relevant districts.

Cards which have not been lodged in accordance with the legislative requirements will not be able to be distributed on polling day.

There will be additional obligations on candidates to disclose loans, as well as gifts, in the election-related returns they are presently required to make under the Act.

There will also be amendments to overcome the "Greenfields Foundation" situation (namely, tightening the definition of "associated entity" and imposing restrictions on loans other than from financial institutions, unless certain information including the terms and conditions of the loans are disclosed).

New Measures to maintain the integrity of the roll

The functions of the Commission will include the implementation of strategies to encourage people, particularly those in groups with

traditionally low participation rates, to enrol as electors and the implementation of strategies to maintain the integrity of the electoral roll.

There will be more rigorous review procedures for special postal voters. These reviews will require voters to sign a declaration to establish continuing eligibility and a proportion of the responses will be selected for signature check against the original enrolment claims.

The Commission is also given authority under the Bill to obtain electoral roll-related data from State government entities and local governments prescribed by regulation. This data will be used by the Australian Electoral Commission (AEC) for data matching with data obtained from federal sources in its continuous roll updating activity.

Tougher Penalties for electoral offences

The most serious electoral offences, including bribery, forging or uttering electoral papers, giving false or misleading information and voting if not entitled, will be removed from the Act and relocated in the *Criminal Code***.** The penalties for these electoral offences have been increased to levels exceeding, or equal to, the penalties for commensurate offences in other Australian jurisdictions.

Implementation of the Legal, Constitutional and Administrative Review Committee (LCARC) Report No. 23: May 2000: *Issues of Queensland electoral reform arising from the 1998 State election and amendments to the Commonwealth Electoral Act 1918.*

The Bill also implements recommendations for electoral reform contained in the Legal, Constitutional and Administrative Review Committee (LCARC) Report No. 23: May 2000: *Issues of Queensland electoral reform arising from the 1998 State election and amendments to the Commonwealth Electoral Act 1918.* These are largely amendments proposed by the Electoral Commissioner to overcome anomalies in the Act and improve operational efficiency.

These recommendations relate to:

- Enrolment entitlements for Members of the Legislative Assembly following an electoral redistribution;
- Removal of anomalies in relation to the return of deposits to accompany nominations;
- Giving the ECQ responsibility for the distribution of how-to-vote cards in declared institutions;

- Clarification of the ECQ authority to re-schedule mobile polling;
- Relaxation of the restrictions on canvassing in or near polling places in relation to pre-poll voting;
- Adopting new registration criteria for "special postal voters" to achieve consistency with the Commonwealth;
- Clarification of aspects of the "non-voter" process;
- Ensuring publications on the internet are covered by the offence of "misleading voters";
- Amending election funding and financial disclosure provisions to achieve greater consistency with the Commonwealth requirements; and
- Enhancement of roll maintenance by authorising the ECQ to obtain roll-related data from State government department and agencies.

The Government Response to Parliament, tabled on 5 September 2000, stated that the LCARC recommendations would be adopted.

The Bill fully implements the recommendations with one modification. The LCARC recommendation (Recommendation 7) was that the registration criteria for "special postal voters" be the same as the criteria for "general postal voters" in the *Commonwealth Electoral Act 1918*. The Bill provides for the Commonwealth criteria to be adopted in part. This is because the Act permits certain voters, who are eligible to be registered as "general postal voters" under the Commonwealth criteria, to be electoral visitor voters and have their votes taken at home. To avoid duplication, these voters are not included in the new registration criteria for special postal voters.

ADMINISTRATIVE COST TO GOVERNMENT OF IMPLEMENTATION

A number of the reforms contained in the Bill have resource implications for the Commission. Specifically these are:

- Administration and supervision of the new registration procedures for political parties;
- Conduct of inquiries and audits of preselection ballots;

- Administration of the new scheme for registration of how-to-vote cards;
- Auditing of returns required by new financial disclosure provisions;
- Conduct of special postal voter reviews;
- Development and implementation of strategies to encourage people, particularly those in groups with traditionally low participation rates, to enrol as electors and also strategies to maintain the integrity of the electoral roll; and
- Facilitation of flow of electoral roll related data to the AEC for data-matching.

The Government has approved additional funding of $0.5M per annum to the Commission to carry out these functions and responsibilities.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Fundamental Legislative Principles are defined in *the Legislative Standards Act 1992* as principles relating to legislation that underline a Parliamentary democracy based on the rule of law. The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals.

The Bill will prohibit people who have been convicted of a "disqualifying electoral offence" from being a member of a registered political party for 10 years. This has an element of retrospectivity in that it applies to convictions after the commencement of the relevant provisions of the Act regardless of when the offence was committed.

A similar, though stricter, prohibition will apply in relation to nomination as a candidate for Legislative Assembly or local government elections. This will apply to convictions before the commencement of the Act. This is consistent with the current approach of the section 64 of the *Parliament of Queensland Act 2000.* It is necessary to ensure those who seek to be the elected representatives of the community are able to meet appropriate standards of honesty and respect for the democratic process.

Accordingly, the Bill restricts the capacity of registered political parties to determine their own membership criteria and deprives people who have a right to vote of the right to participate in certain aspects of the democratic process. This raises issues regarding infringement of the right to freedom

of association and the right of citizens to take part in the conduct of public affairs.

Article 22 of the *International Covenant on Civil and Political Rights* recognises that there may be restrictions on the right to freedom of association if they are necessary in a democratic society in the interests of public order.

The proposed restriction on party membership is such a measure. It is specific and limited. The regulation of political party membership and candidature for Legislative Assembly and local government elections is a justifiable limitation on the right of citizens to take part in aspects of public affairs. It is a necessary measure to maintain the integrity of the electoral process and to diminish the opportunity for electoral fraud. Accordingly, the restrictions are justifiable as being in the public interest.

CONSULTATION

There was no specific community consultation on the Barcaldine Reforms. However, issues relating to some of the reforms (ie the integrity of the electoral roll and measures to prevent electoral fraud) were publicly canvassed in the conduct of the LCARC Inquiry into the Prevention of Electoral Fraud and the Commonwealth JSCEM Inquiry into the Integrity of the Electoral Roll.

In relation to LCARC Report No. 23, LCARC called for public submissions by writing directly to identified stakeholders and advertising in the Courier Mail.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides the short title of the Act.

Clause 2 provides that sections 28, 54 (2) and 58 of the Act will commence on 6 June 2002. The remaining provisions of the Act will commence on a date to be fixed by proclamation.

PART 2—ELECTORAL ACT 1992

Clause 3 provides that this part amends the *Electoral Act 1992*.

Clause 4 inserts a new section 2 which states that a note in the text of the Act is part of the Act.

Clause 5 amends section 3 by defining words and phrases used in the Bill. In particular, the clause inserts new definitions for "broadcaster", "complying constitution", "disqualifying electoral offence" and "preselection ballot". The definitions for "distribute" in relation to a how-to-vote card and "how-to-vote card" which were in section 161A have been relocated to section 3 because they will now have wider application to other sections of the Act.

Clause 6 amends section 8 by extending the functions of the Commission. It provides that the functions of the Commission include the implementation of strategies to encourage people, particularly those in groups with traditionally low enrolment rates to enrol and implementation of strategies to maintain the integrity of the electoral roll.

Clause 7 inserts a new section 33A to ensure that information obtained because of a person's involvement in the administration of the Act is treated confidentially.

Clause 8 amends section 58 by enabling the Commission to obtain certain electoral-roll related information from government entities prescribed under a regulation. The Queensland Police Service and the Crime and Misconduct Commission are expressly excluded from the definition of "government entity". The information is to be obtained specifically for the purposes of the Act and is protected by the confidentiality requirements of the new section 58A. This amendment was recommended by LCARC and was a commitment of the Barcaldine Reforms. The purpose is to facilitate data-matching carried out by the AEC to enhance the accuracy and integrity of the electoral roll.

Clause 9 amends section 64 to ensure that Members of the Legislative Assembly are not disadvantaged in relation to their enrolment entitlements following a State redistribution which affects the district which the member represents. Members are presently entitled to be enrolled for the district which they represent, even if they do not satisfy the residency requirements of section 64. The clause provides that a member of the Legislative Assembly may be enrolled for an electoral district other than the one that he or she represents if, because of an electoral redistribution, the district

contains at least half of the electors who were enrolled in the district which he or she previously represented. This amendment was recommended by LCARC.

Clause 10 amends section 73 by providing that the Commission must refuse to register a political party if the party's constitution does not comply with the requirements of section 73A.

Clause 11 inserts a new section 73A which requires a political party's constitution to contain certain information if the party is to be eligible for registration. The purpose is to ensure transparency and accountability by political parties to their members and the public. The constitution must include the procedure for amendment of the constitution, membership rules, a statement about how the party manages its internal affairs, including the process for dispute resolution, and election rules for office bearers and preselection of a candidate for party endorsement in a State or local government election. In particular, the constitution must include a rule which prohibits a person from becoming or remaining as a member of the party for 10 years if he or she has been convicted of a "disqualifying electoral offence". The constitution must require a preselection ballot, as defined in section 3, to satisfy the "general principles of free and democratic elections".

The definition of "preselection ballot" makes it clear that this will apply to any such ballot, whether conducted as part of a collegiate system of preselection, or whether or not the candidate selected by the ballot is subject to endorsement by some other representative group or person.

Clause 12 amends section 75 by extending the circumstances in which the Commission may cancel the registration of a political party. The registration will be cancelled if the party's constitution does not comply with the requirements of section 73A or the party's registered officer fails to comply with the new sections 76A(1) or (2).

Clause 13 inserts a new section 76A which imposes an obligation on the registered officer of each registered political party to make quarterly reports to the Commission of any changes to the party's constitution since the previous reporting date. Where there have been changes, the registered officer must give the Commission a copy of the updated constitution, plus a summary of the changes. The Commission is required under existing sections 69(1) and section 76 to keep a register of all information relating to registered political parties and make it publicly available.

Clause 14 amends section 85 by overcoming a practical anomaly regarding the return of nomination deposits. Section 85 presently provides

that where a candidate is eligible for the return of a nomination deposit, the deposit must be returned to the candidate. However, most candidates are nominated by the registered political party to which they belong and the nomination deposit is paid concurrently with the nomination. This amendment will enable nomination deposits to be refunded to registered political parties. In addition, the clause provides that, in the case of candidates not nominated by a registered political party, nomination deposits will be able to be returned to a person authorised in writing by the candidate. This amendment was recommended by LCARC.

Clause 15 amends section 94 by inserting new subsections 94(4A) and 94(4B). These provide new arrangements for the distribution of how-to-vote material at institutions which have been declared as mobile polling booths under section 94(4). The amendments were recommended by LCARC to overcome a problem that frequently arises after elections. Allegations are often made that people in charge of institutions have distributed only the voting material of particular parties. The amendment will shift responsibility for the distribution of this material to the Electoral Commissioner. The Commissioner will have a discretion to require the officer visiting a declared institution to give how-to-vote cards to the voters and to present it in a particular way.

The clause also inserts new subsections 94(7), (8) and (9) to enable the Commission to change arrangements for mobile polling booths in remote ares at any time. The Commission, the Returning Officer or issuing officer is required to take such steps as are practical and appropriate to give public notice of the changed arrangements. The amendments are necessary to overcome problems that have arisen in the past where, due to exigent circumstances such as inclement weather or hazardous landing conditions for aircraft, Commission staff are unable to visit a remote area where arrangements have been made to have a mobile polling booth. The amendments will permit flexibility in re-scheduling these arrangements so that the affected votes can be taken at another time or place. They ensure that an election result is not invalidated only because an issuing officer fails to visit a mobile polling booth as arranged. These amendments were recommended by LCARC.

Clause 16 amends section 105 in a number of ways. Firstly, it extends the eligibility criteria for ordinary postal voters, which are contained in subsection 105(2), to include voters whom a doctor has certified in writing to be so physically incapacitated as to be incapable of signing their name. The Act does not presently make provision for this category of voter.

Secondly, the clause changes the criteria for registration as a "special postal voter" under subsection 105(3). This amendment partially implements Recommendation 7 of LCARC Report No 23. The recommendation was that Queensland adopt the same criteria for special postal voters as apply for general postal voters under the *Commonwealth Electoral Act*. The amendment ensures the criteria will be the same apart from voters who are eligible under section 105(4) of the Act to be electoral visitor voters. The electoral visitor voting arrangements provided for under section 111 will continue. To avoid confusion, these voters will not be eligible to register as "special postal voters".

Thirdly, the clause introduces more rigorous procedures for review of the special postal voter register. The amendment to subsection 105(5) provides that the Commissioner will be required to review the special postal voter register not less than 18 months after the return of the writ for an election but not more than three years. At present the register must be reviewed not later than 2 years after the return of the writ. As a result there is no certainty that a review will be conducted reasonably close to an election. The present review requirement therefore does not ensure the integrity of the roll at the critical time. This amendment will ensure that the register is reviewed within a more meaningful timeframe before each general election. The review will only apply to voters who qualify for inclusion in the register because of their address. Under the new review procedures, voters will be required to advise in an approved form as to whether they still live at the address shown on the electoral roll and the Commissioner will be required to make random checks of the signatures on the responses received against the original applications for enrolment.

Clause 17 inserts a new PART 8A – COMMISSION OVERSIGHT OF PRESELECTION BALLOTS – which establishes new controls on preselection ballots. The definition of "preselection ballot" in section 3 makes it clear that these new requirements will apply to preselection ballots in which party members vote for the candidate as a members of the party rather than as a member of a committee (however described).

The new section 148H requires the Commission to provide the registered officer of each registered political party with model procedures for the conduct of a preselection ballot. These will be prescribed by regulation.

The new section 148I requires the registered officers to give the Commission at least 7 days written notice of when a preselection ballot is to be held.

The new section 148J empowers the Commission to conduct an inquiry into preselection ballots. It can act on its own initiative or on complaint by

a candidate or a member eligible to vote in the preselection. The section also sets out the obligations of the registered officer when such an inquiry is held and requires the Commission to provide a report to the Minister of the result. Such inquiries can occur in relation to preselection of candidates for Legislative Assembly and local government elections.

Section 148K creates an offence of making a frivolous or vexatious complaint which has a maximum penalty of 85 penalty units or 1 years imprisonment. The purpose is to deter abuse of the complaint process by disaffected candidates who seek to make the same or substantially the same complaint to the Commission after having been advised that it will not be investigated..

Sections 148L –148N establish a scheme for an overall random audit of preselection ballots by the Commission following a general State election. This applies only to ballots to select Legislative Assembly, not local government, candidates.

Section 148L requires registered political parties to notify the Commission not later than 30 days after polling day as to whether the selection of the candidate involved a preselection ballot. This is necessary because there is the possibility that preselection ballots notified under the new section 148I may not proceed.

Section 148M sets out the process by which a proportion of preselection ballots conducted by each of the registered parties will be selected for audit. Section 148N requires the Commission to give the registered officers written notice of the ballots that are to be audited. The section sets out the obligations of the registered officer in relation to such an audit. The Commission is required to give the Minister a report on whether the ballots audited were conducted in accordance with the model procedures and the relevant party's constitution.

Section 148O makes it clear that an election is not invalid only because the Commission has identified a contravention in its report.

Clauses 18 and 19 omit certain serious electoral offences. These offences are section 153 (False or misleading statements); section 154 (False, misleading or incomplete documents); section 155 (Bribery); section 156 (Providing money for illegal payments); and section 159 (Forging or uttering electoral papers). These are re-enacted in the *Criminal Code* with increased penalties.

Clause 20 amends Section 161 by providing a new definition of "publish" to clarify that the section applies to material published on the internet even if the internet site is located outside Queensland.

Clause 21 amends section 161A by omitting the definition of "how-to-vote card" and "distribute". This is because these definitions are now included in section 3.

Clause 22 inserts the new section 161B which imposes a new obligation on registered political parties and candidates to lodge samples of how-to-vote cards with the Commission (or alternatively, in the case of candidates not endorsed by a political party, with the relevant returning officer) at least 7 days before polling day. The person lodging the card must, at the same time, make a statutory declaration as to any financial contribution received from, or on behalf of, a registered political party or candidate in relation to the production of how-to-vote cards. "Financial contribution" is widely defined to capture any form of valuable consideration. The clause requires the Commissioner or the returning officer for the relevant district to make the how-to-vote cards which have been lodged available for public inspection before polling day. In addition, the Commission or returning officer must, to the extent that it is reasonably practicable, make the cards available for public inspection at each polling place in the relevant electoral district. The clause prohibits the distribution on polling day of cards which have not been lodged in accordance with the section.

Clause 23 amends section 163 by providing a definition of "publish" similar to section 161 to ensure that the prohibition applies to misleading publications on the internet. There are also technical amendments to the section to provide that the maximum penalty of 40 penalty units applies to each of the offences covered by (1) (2) and (3).

Clause 24 amends section 164 to make clear in which magistrates court proceedings for failure to vote must be commenced. This amendment was recommended by LCARC to overcome procedural difficulties which could arise regarding prosecutions for failure to vote, because of the likely difference between boundaries of an electoral district and a magistrates court district. As a result, Clause 23 provides that the place where failure to vote is committed is taken to be office of the returning officer of the electoral district in which the elector lives.

Clause 25 amends section 166 to overcome practical difficulties faced by workers at pre-polling day voting places. Section 166 prohibits canvassing and other activities within 6 metres of the entrance to a building with voting compartments, but in relation to pre-polling, these restrictions can cause unnecessary hardship for party workers. These workers may be forced to occupy positions for many days before polling day often in unpleasant weather conditions and often outside buildings with non-standard access/entrance areas. The amendment gives the Commission the

discretion to vary the 6 metre from the entrance requirement in section 166 in relation to pre-poll voting only.

Clauses 26 and 27 omit certain serious electoral offences from the Act. These offences, section 168 (Influencing voting) and section s170 (Voting if not entitled) are re-enacted in the *Criminal Code.*

Clause 28 omits Part 9, Division 4. This provision will commence when section 64 of the *Parliament of Queensland Act* commences. This is because section 64 and section 72 of that Act will cover the matters provided for under this Part.

Clause 29 amends section 179 to ensure that if a person is so incapacitated as to be unable to sign his or her name or to make a mark, the person is not disenfranchised. The person will be able to make a vote in accordance with other provisions of the Act by having another person sign or make the necessary mark on the incapacitated person's behalf. This amendment is complementary to the amendment to section 105(2).

Clause 30 inserts new Part and Divisional headings to distinguish the transitional provisions relating to the *Electoral and Other Acts Amendment Acts* 2001 from the new transitional provisions required by the *Electoral and Other Acts Amendment Acts 2002.*

Clause 31 inserts new Part 11 Division 2 which contains section 184. This section provides transitional arrangements for political parties which are already registered under the Act. It requires the registered officer to give the Commission a copy of the party's constitution which must be a complying constitution within the meaning of section 74A, within 6 months of the commencement of the Act. Non-compliance will result in cancellation of the party's registration.

The new section 184(3) ensures that during the 6 month transitional period preselection ballots by an existing registered party will not be investigated or audited until the party has lodged a complying constitution with the Commission.

Clause 32 amends section 287 of the Schedule to the Act by inserting a new definition for "loan" and amending the definition of "associated entity".

Clause 33 amends s287AA of the Schedule to account for the new requirement in s305A for candidates to lodge election-related returns detailing loans received.

Clause 34 amends section 292 of the Schedule by providing that the circumstances in which the particulars of a person who has been appointed

as an agent by a registered political party will be removed from the register, include the event of the party's registration being cancelled.

Clause 35 amends the Schedule by inserting a new section 304A which requires candidates to submit particulars of loans received in an election-related return to the Commission. The return must include certain specified particulars of loans of $200 or more.

Clause 36 amends the Schedule by replacing sections 305A and 305B. The new section 305A requires donors to candidates to lodge an election-related return with the Commission. This will enable cross-checking with information contained in the candidates' returns. Similarly, the new section 305B requires donors to registered political parties to make an annual return to the Commission which can be cross-checked against parties' returns. These amendments mirror similar financial disclosure requirements in the *Commonwealth Electoral Act*. The section 305B amendment was expressly recommended by LCARC.

Clause 37 amends the Schedule by inserting a new section 306A which makes it unlawful for registered political parties and candidates to receive loans of certain specified value from an entity other than a financial institution unless certain particulars are recorded. For a political party, the obligation applies to loans of $1500 or more and, for a candidate, to loans of $200 or more. The particulars which must be recorded include the terms and conditions of the loan. The clause provides that, if a person receives a loan without recording the required particulars, an amount equal to the amount or value of the loan may be recovered by the State as a debt due to the State by action in a court of competent jurisdiction.

Clause 38 amends section 307 of the Schedule to provide for the fact that, by virtue of the new section 304A, candidates are now required to lodge an election-related return in relation to loans as well as gifts. If the candidate has not received any loans, a statement to this effect must still be lodged with the Commission.

Clause 39 amends the definition of "electoral expenditure" in section 308(1) in a number of ways. It omits the reference to "telecasting" in subsection (a) because the new definition of "broadcaster" in section 3 makes this redundant. It inserts a new subsection (b)(a) to ensure that advertisements that are published on the internet must be disclosed. It also substitutes a new subsection (f) which is consistent with the form of the Commonwealth *Electoral Act* and which makes it clear that expenditure on mailouts is included.

Clause 40 amends the Schedule by replacing sections 310 and 311. The new sections 310 and 311 require broadcasters and publishers to make election-related returns. These amendments were recommended by LCARC and mirror similar provisions in the Commonwealth *Electoral Act*.

Clause 41 amends section 314AA of the Schedule by including "loan" in the definition of "amount". This amendment was recommended by LCARC and will ensure that the obligations of parties to disclose amounts received under Division 5A of the Schedule in annual returns will include loans.

Clause 42 amends section 314AC (2) of the Schedule by increasing the prescribed amount from $500 to $1500. The prescribed amount sets a threshold for amounts received which need not be counted in calculating the sum of all amounts received by or for the party from a person or organisation during a financial year This amendment was recommended by LCARC to achieve consistency with the Commonwealth legislation.

Clause 43 amends section 314AD (2) of the Schedule by increasing the prescribed amount from $500 to $1500. The prescribed amount sets a threshold for amounts which need not be counted in calculating the sum of all amounts paid by, or for, a party to a person or organisation during a financial year.

Clause 44 amends section 317 of the Schedule to ensure that the obligation to keep records also extends to registered political parties and other entities required to make annual returns. The provision as it stands is anomalous in that it relates only to returns or claims about an election.

Clause 45 amends section 320 of the Schedule by omitting references to "notice" which is redundant and amending subsection 320(4)(b) and subsection 320(5) to provide that the annual returns by donors to parties will be available for perusal or purchase after February in the calendar year in which the return is given.

Clause 46 amends section 333 to ensure that an authorised officer may operate equipment such as a computer as part of the investigation.

Clause 47 amends the Schedule by inserting a new section 336A to ensure that, having seized a thing, an authorised officer has the same powers for operating, copying, examining, etc that apply when these functions are carried out on the premises that have been entered. The purpose of this amendment is to overcome any problems that may arise when evidence is stored on a computer and the authorised officer removes the computer or other equipment from the premises for examination.

PART 3

CRIMINAL CODE

Clause 48 provides that this part amends the *Criminal Code*.

Clause 49 inserts a new heading "Chapter Division 1 – Definitions for Chapter 14".

This is necessary because Chapter 14 has been restructured to facilitate the relocation of certain electoral offences from the *Electoral Act* to the *Criminal Code*.

Clause 50 amends section 98 by omitting the definition of "parliamentary election" and amending the definition of "election". This is necessary because the effect of these definitions was to apply the existing offences in chapter 14 to referenda conducted under the *Referendums Act 1997*. Offences relating to referenda are now contained in Division 2.

Clause 51 omits section 98A which had the effect of restricting the application of Chapter 14. It creates a new Division 2 which contains offences which apply to elections for the Legislative Assembly and the Brisbane City Council and to referenda conducted under the *Referendums Act 1997* and a new Division 3 which applies to elections other than Legislative Assembly and local government elections.

Division 2 contains the new section 98B (False or misleading information) section 98C (Bribery), section 98D (Forging or uttering electoral or referendum paper), section 98E (Influencing voting), new section 98F (Providing money for illegal payments) and section 98G {Voting if not entitled).

Clause 52 amends section 552B by including offences against Chapter 14 Division 2 in the offences which must be dealt with summarily unless the defendant informs the Magistrates Court that he or she wants to be tried by jury.

PART 4

CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Clause 53 provides that this part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

Clause 54 amends section 9A to ensure that candidates for Legislative Assembly and local government elections and applicants for membership of a registered political party can be required to make the necessary disclosure about conviction for a "disqualifying electoral offence " under the *Electoral Act 1992* or (in the case of candidates for Legislative Assembly and local government elections) an offence which would have been a "disqualifying electoral offence" if the *Electoral and Other Acts Amendment Act 2002* had commenced at the time of conviction.

PART 5

LEGISLATIVE ASSEMBLY ACT 1867

Clause 55 provides that this part amends the *Legislative Assembly Act 1867.*

Clause 56 amends section 7 by effectively providing that a member's seat will become vacant if convicted of a "disqualifying electoral offence" within the meaning of the *Electoral Act.* This is a transitional measure until 6 June 2002 when the *Parliament of Queensland Act 2001* and the *Constitution of Queensland 2001* commence.

PART 6

LOCAL GOVERNMENT ACT 1993

Clause 57 provides that this part amends the *Local Government Act 1993*.

Clause 58 amends section 221 by providing that a person cannot nominate as a candidate for an election if convicted within 10 years beforehand of a "disqualifying electoral offence" within the meaning of the *Electoral Act 1992*. The clause also provides that a person is disqualified from being a councillor if convicted of a "disqualifying electoral offence".

Clause 59 amends section 854A by removing the reference to section 161A in the definition of "how-to-vote card". This is because the definition of "how-to-vote card" in the *Electoral Act* is now in section 3 and has been removed from section 161A.

PART 7

PARLIAMENT OF QUEENSLAND ACT 2001

Clause 60 provides that this part amends the *Parliament of Queensland Act 2001*.

Clause 61 amends section 64 by providing an additional circumstance of disqualification for nomination as a candidate for election to the Legislative Assembly. The circumstances are where a person has been convicted within 10 years before the day of nomination of a "disqualifying electoral offence". It also omits the note to subsection 64(2)(h) which contains a reference to section 176 of the *Electoral Act*. This is because section 176 will be repealed when section 64 of the *Parliament of Queensland Act* commences.

Clause 62 amends section 72 by providing that a member's seat will become vacant if the member is convicted of a "disqualifying electoral offence". The note to section 72(1)(n) is also omitted because it refers to section 176 of the *Electoral Act* which is to be repealed.

PART 8

REFERENDUMS ACT 1997

Clause 63 provides that this part amends the *Referendums Act 1997*.

Clause 64 amends section 16 to achieve consistency with the amendments to section 94(7),(8) and (9) of the *Electoral Act*.

Clause 65 amends section 25 to mirror the amendment to section 105(2)(g) of the *Electoral Act*.

Clauses 66 and 67 omit certain offences from the *Referendums Act*. This is because they are re-enacted in Chapter 14 of the *Criminal Code*. The offences which are removed are section 64 (False and misleading statements), section 65 (False, misleading or incomplete documents), section 66 (Bribery), section 67 (Providing money for illegal payments) and section 70 (Forging or uttering referendum papers, etc).

Clause 68 amends section 74 to mirror the amendment to section 163 of the *Electoral Act.*

Clause 69 amends section 75 to mirror the amendment to section 164 of the *Electoral Act*.

Clause 70 amends section 77 to mirror the amendment to section 166 of the *Electoral Act.*

Clauses 71 and 72 omit certain offences. This is because they have been relocated to the *Criminal Code*. These offences are section 79 (Influencing voting) and section 81 (Voting if not entitled, etc).

Clause 73 inserts a new Part 7A – RETURNS BY BROADCASTERS AND PUBLISHERS.

This Part imposes new obligations on broadcasters and publishers to lodge returns with the Commission providing particulars of advertisements relating to referenda held under the *Referendums Act*. The provisions mirror provisions in the *Referendum Machinery Provisions Act 1984 (Cwth)* and complement amendments to the *Electoral Act* requiring broadcasters and publishers to lodge election-related returns.

Clause 74 amends section 98 to reflect amendments to section 179 of the *Electoral Act.*

Clause 75 amends Schedule 3 (Dictionary) by inserting new definitions for "broadcast", "broadcaster" and "journal."