

Queensland



**ELECTORAL (RESIGNATION
OF MEMBERS) AMENDMENT
BILL 2002**

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ELECTORAL (RESIGNATION OF MEMBERS) AMENDMENT BILL 2002

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AMENDMENTS TO COMMENCE ON 6 JUNE 2002

2002

A BILL

FOR

An Act to amend the *Electoral Act 1992*

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The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Clause 1 Short title

3

This Act may be cited as the *Electoral (Resignation of Members) Amendment Act 2002*.

4

5

Clause 2 Commencement

6

The schedule commences on 6 June 2002.

7

Clause 3 Act amended

8

This Act amends the *Electoral Act 1992*.

9

**PART 2—AMENDMENTS TO COMMENCE ON ROYAL
ASSENT**

10

11

Clause 4 Insertion of pt 9A

12

After section 177—

13

insert—

14

‘PART 9A—RESIGNATION OF MEMBERS

15

‘Division 1—Preliminary

16

‘177A Definitions

17

‘In this part—

18

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“member” means a member of the Legislative Assembly.	1
“resignation because of a personal emergency” see section 177D.	2
“resignation because of ill health” see section 177C.	3
“resignation without due cause” see section 177B.	4
 ‘177B Meaning of “resignation without due cause”	 5
‘If a member resigns the member’s seat, the resignation is a	6
“resignation without due cause” unless 1 of the following applies—	7
(a) the resignation is because of ill health;	8
(b) the resignation is because of a personal emergency;	9
(c) the resignation is for the purpose of seeking election for the	10
Parliament of the Commonwealth and the member satisfies the	11
<i>Legislative Assembly Act 1867</i> , section 8A(a) and (b); ¹	12
(d) the member is taken to have resigned under the <i>Local</i>	13
<i>Government Act 1993</i> , section 224. ²	14
 ‘177C Meaning of “resignation because of ill health”	 15
‘(1) A member’s resignation is a “resignation because of ill health”	16
only if—	17
(a) the member is in a state of ill health that prevents the member	18
attending any sitting of the Legislative Assembly without gravely	19
endangering the member’s health; and	20
(b) when tendering the resignation, the member gives the Speaker—	21
(i) written notice that the member is resigning because of ill	22
health; and	23
(ii) certificates from 3 doctors, including a government doctor,	24
stating that, in the doctor’s opinion, the member is in a state	25
of ill health that prevents the member attending any sitting	26

1 *Legislative Assembly Act 1867*, section 8A (Vacancy occurring by reason of resignation to contest Commonwealth election)

2 *Local Government Act 1993*, section 224 (Termination of membership of Legislative Assembly on becoming councillor)

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of the Legislative Assembly without gravely endangering the member's health.	1 2
‘(2) In this section—	3
“government doctor” means a doctor appointed as—	4
(a) a health service employee under the <i>Health Services Act 1991</i> ; or	5
(b) a government medical officer.	6
‘177D Meaning of “resignation because of a personal emergency”	7
‘(1) A member's resignation is a “resignation because of a personal emergency” only if—	8 9
(a) the member, because of a personal emergency, is prevented from attending any sitting of the Legislative Assembly without serious adverse consequences to the member or the member's family; and	10 11 12 13
(b) when tendering the resignation, the member gives the Speaker—	14
(i) written notice that the member is resigning because of a personal emergency; and	15 16
(ii) written statements from 3 qualified persons—	17
(A) detailing the member's personal emergency, including when it began and when the member became aware of it; and	18 19 20
(B) stating that, in the person's opinion, because of the emergency the member is prevented from attending any sitting of the Legislative Assembly without serious adverse consequences to the member or the member's family.	21 22 23 24 25
‘(2) In this section—	26
“personal emergency” , for a member, does not include a personal emergency caused by—	27 28
(a) circumstances applying, and of which the member was aware, when the member took the oath or made the affirmation under the <i>Constitution Act 1867</i> , section 4 or 5; ³ or	29 30 31

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(b) a criminal investigation, or a criminal proceeding, involving the member.	1 2
“psychologist” see <i>Psychologists Act 1977</i> .	3
“qualified person” means a religious leader, doctor or psychologist.	4
“religious leader” means a person acknowledged by a recognised religion as a minister, member of the clergy or similar leader for the religion.	5 6
 <i>‘Division 2—Recovery of by-election costs</i>	 7
 ‘177E Member liable to pay by-election costs	 8
‘(1) This section applies if an election, other than a general election, is required to fill a vacancy in the membership of the Legislative Assembly because a member’s seat has become vacant—	9 10 11
(a) under the <i>Legislative Assembly Act 1867</i> , section 7; ⁴ or	12
(b) because of a resignation without due cause.	13
‘(2) The member is liable to pay to the State an amount equal to the amount of the commission’s expenditure for the election for the seat.	14 15
 ‘177F Evidence of commission’s expenditure	 16
‘A certificate signed by a commissioner stating the amount of the commission’s expenditure for an election for a seat is evidence of the commission’s expenditure for the election.	17 18 19
 ‘177G Member’s salary and superannuation may be retained to satisfy liability	 20 21
‘(1) If the Premier and the Leader of the Opposition consider a member who has resigned will be liable under section 177E to pay an amount to the	22 23

3 *Constitution Act 1867*, section 4 (No member to sit or vote until the member has taken the following oath of allegiance) or 5 (Affirmation may be made instead of oath)

4 *Legislative Assembly Act 1867*, section 7 (Vacating seats of members of Assembly in certain cases)

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State, the Premier and the Leader of the Opposition may jointly do either or both of the following—	1 2
(a) give the Treasurer a written direction to retain an amount from any salary payable to the member under the <i>Parliamentary Members' Salaries Act 1988</i> ;	3 4 5
(b) give the trustees of the Parliamentary Contributory Superannuation Fund established under the <i>Parliamentary Contributory Superannuation Act 1970</i> (the “ fund ”) a written direction to retain an amount from the State-financed component of any entitlement for the member under that Act.	6 7 8 9 10
‘(2) However—	11
(a) if the Premier and the Leader of the Opposition give 1 direction only, the amount directed to be retained must not be more than the estimated amount of the commission’s likely expenditure for the election required because the member’s seat has become vacant; and	12 13 14 15 16
(b) if the Premier and the Leader of the Opposition give 2 directions, the amounts directed to be retained must not total more than the estimated amount of the commission’s likely expenditure for the election required because the member’s seat has become vacant.	17 18 19 20
‘(3) If the Premier and the Leader of the Opposition consider that the retention will cause, or is causing, financial hardship to the member, the Premier and the Leader of the Opposition may direct the Treasurer or the trustees of the fund to pay to the member, from the amount retained, an allowance for living expenses.	21 22 23 24 25
‘(4) Despite any other law or other requirement, the Treasurer and the trustees of the fund must comply with a direction under this section.	26 27
‘(5) In this section—	28
“CPI” means the all groups consumer price index for Brisbane published by the Australian Statistician.	29 30
“estimated amount”, of the commission’s likely expenditure for the election required because a member’s seat has become vacant, means \$250 000 or an amount prescribed by regulation that is not more than \$250 000 increased by the percentage increase in the CPI since the commencement of this section.	31 32 33 34 35

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‘177H Speaker to give documents to Premier and Leader of the Opposition	1 2
‘(1) This section applies if a member resigns and, when tendering the resignation, the member gives the Speaker the documents mentioned in section 177C(1)(b) or 177D(1)(b).	3 4 5
‘(2) The Speaker must give a copy of the documents to the Premier and the Leader of the Opposition.	6 7
‘177I Retained salary and superannuation may be used to satisfy liability	8 9
‘(1) This section applies if a court makes an order that a member is liable under section 177E to pay an amount (the “ amount ordered ”) to the State.	10 11
‘(2) If a copy of the order is given to the Treasurer, any amount retained by the Treasurer under section 177G in relation to the member is to revert to the treasury and be paid to the consolidated fund.	12 13 14
‘(3) If a copy of the order is given to the trustees of the Parliamentary Contributory Superannuation Fund established under the <i>Parliamentary Contributory Superannuation Act 1970</i> (the “ fund ”), any amount retained by the fund under section 177G in relation to the member is to be paid to the consolidated fund.	15 16 17 18 19
‘(4) However—	20
(a) the amount to be paid to the consolidated fund under this section must not be more than the amount ordered; and	21 22
(b) any amount retained after payment to the consolidated fund that, except for a direction under section 177G is currently payable to the member, is to be paid to the member immediately.	23 24 25
‘177J When retained salary and superannuation must be paid to member	26 27
‘(1) This section applies if—	28
(a) the Premier and the Leader of the Opposition give a direction under section 177G; and	29 30
(b) either—	31

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(i)	within 30 days after the direction is given, the State has not started court proceedings against the member in relation to the member's liability under section 177E; or	1 2 3
(ii)	a court, in disposing of proceedings against the member in relation to the member's liability under section 177E, does not make an order that the member is liable to pay an amount to the State.	4 5 6 7
	‘(2) Any amount retained under the direction that, except for the direction is currently payable to the member, is to be paid to the member immediately.	8 9 10
	‘177K Preservation of confidentiality	11
	‘(1) This section applies if, in relation to a member, a person is given a document mentioned in section 177C(1)(b)(ii) or 177D(1)(b)(ii) because of being the Premier, the Leader of the Opposition or the Speaker.	12 13 14
	‘(2) The person must not make a record of any information contained in the document or intentionally or recklessly disclose the information to anyone except—	15 16 17
	(a) for this Act; or	18
	(b) for a court proceeding; or	19
	(c) if authorised by the member.	20
	Maximum penalty—100 penalty units.’.	21

SCHEDULE

1

AMENDMENTS TO COMMENCE ON 6 JUNE 2002

2

section 3

3

1 Section 177B(c), from ‘satisfies’—

4

omit, insert—

5

‘satisfies the *Parliament of Queensland Act 2001*, section 76(1)(a) and (b);⁵ or’.

6

7

2 Section 177B(d)—

8

omit.

9

3 Section 177D(2), definition “personal emergency”, paragraph (a), from ‘under’—

10

11

omit, insert—

12

‘under the *Constitution of Queensland 2001*, section 22;⁶ or’.

13

5 *Parliament of Queensland Act 2001*, section 76 (Vacancy because of resignation to contest Commonwealth election)

6 *Constitution of Queensland 2001*, section 22 (No member to sit or vote without first taking oath or making affirmation)

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4	Section 177E(1)(a)—	1
	<i>omit, insert—</i>	2
	‘(a) under the <i>Parliament of Queensland Act 2001</i> , section 72, other	3
	than section 72(1)(e) or (g);’.	4
5	Section 177G(1)(a), from ‘under’—	5
	<i>omit, insert—</i>	6
	‘under the <i>Parliament of Queensland Act 2001</i> ’.	7
		8

⁷ *Parliament of Queensland Act 2001*, section 72 (Vacating seats of members in particular circumstances). Section 72(1) provides that ‘[a] member’s seat in the Assembly becomes vacant if any of the following happens—

- (e) the member becomes a member of the Commonwealth Parliament or of a legislature of another State;
- (g) the member is elected or appointed as mayor or a councillor of a local government of the State or another State’.