

Electoral Legislation Amendment Bill 2003

Explanatory Memorandum

General Information

This Act introduces a number of important electoral amendments that need to be put in place well in advance of the next conjoint State general elections, which could be held any time within the next 9 to 20 months. The key aspects of this Act are the introduction of electoral funding, fixed election dates and clarification of the qualifications for nominating as a candidate. Other provisions include a minor revision of the counting method for the Council, simplified early voting procedures, increased voting rights for prisoners and general provisions that improve electoral administration.

Clause 1 – Short title

The short title of this amendment Act is the *Electoral Legislation Amendment Act 2003*.

Clause 2 – Commencement

All amendments other than those relating to the introduction of electoral funding come into operation on the day on which the Act receives the Royal Assent. The electoral funding amendments come into operation on a day fixed by proclamation. This allows for flexibility in determining the first election at which the funding provisions will apply.

Clause 3

The Act amends the *Electoral Act 1907*, the *Constitution Acts Amendment Act 1899* and the *Salaries and Allowances Act 1975*. Part 2 amends the *Electoral Act 1907*.

Clause 4

Section 4 of the Act is amended to modify or incorporate changes to definitions to facilitate the introduction of fixed election dates. The election that would ordinarily occur on a fixed election date is identified as a periodic election for the purposes of the Act.

Clause 5

Writs for the Assembly are now to be issued within 10 days of dissolution if an Assembly is dissolved before 1 November in the year before it was due to expire.

Otherwise, writs for the Assembly are to be issued on the third Wednesday in the year of expiry, leading to a fixed date election under section 71 (see clause 7).

Writs for the Council are to be issued on the third Wednesday in January in the year of expiry. This will ordinarily lead to a conjoint election where the writ for the Assembly is issued on the same day.

If the Assembly is dissolved, and a conjoint election is not held, there is the possibility that future periodic elections for the Assembly will be held in a different year from that of the Council. This would continue for a period until such time as the elections are again brought into line.

Clause 6

The date for close of nominations for a periodic election is set as the second Friday following the date of the writ. This is consistent with the current practice of setting the date for close of nominations. In

the case of the Council, closing nominations on a Friday allows candidates and political parties to use the weekend to complete ticket voting preference forms.

Clause 7

The date for a periodic (fixed date) election is the third Saturday in February in the election year unless that day is excluded from being an election day. With the previous provisions this creates a standard election period. Excluded days include an election of the Senate, a general election for the House of Representatives or a Commonwealth referendum.

Clauses 8 and 9

The last day for the return of the writ for a periodic (fixed date) election is 21 March after polling day. This provides sufficient time for the return of the writ for the Assembly and Council, with the next term of the Council commencing on that 22 March. Bringing the date forward two months from the current date, means that the Assembly and Council will commence sitting at approximately the same time.

Clause 10

In certain circumstances under the Act, a vacancy in the Council may be filled by the conduct of a fresh election. A writ for such an election shall not now be issued on or after 1 November in the year before the term of office would have normally expired. In the case of such a vacancy, the position will remain unfilled and is considered to lapse on 21 March in the year when it would have ordinarily expired.

1 November in the year before the end of a Council term is the trigger for the issue of a writ in the following January. As this process will already be in place it is not considered necessary to run a similar process to fill a vacancy, the term of which will last less than five months at the most. The position for which the vacancy occurred would be subject to a general election on the third Saturday in February in any case.

Clause 11

The heading to Part VI is amended to read "Electoral funding and disclosure of gifts, income and expenditure".

Clause 12

This clause provides for the introduction of electoral funding to parliamentary elections in Western Australia. The amendments have been developed from legislation contained in the Queensland *Electoral Act 1992*, which itself was based on Commonwealth legislation at the time of its introduction.

The key features of this proposed model are:

- a "threshold" of 4% of formal first preference vote;
- subject to the 4% "threshold", that \$1.28106 is to be paid to a candidate for each formal first preference vote received in an election for the Assembly or Council;
- that if a candidate is a member of a group, the 4% threshold for the Council is payable on the total proportion of votes received by the group;
- that payment be reimbursed at the level of actual "electoral expenditure" or the amount that would be paid on vote share times amount per formal vote, whichever is the lesser;
- that payment is to be made following the production of a claim for the payment based on electoral expenditure;
- that payment will be made to the party or candidate agent (an independent candidate is considered to be the agent if no one else is appointed);

- that the amount to be paid per valid vote be adjusted annually, according to CPI increases;
- for the purposes of the Act, that “electoral expenditure” will be consistent with the definition provided in the disclosure provisions, that is principally expenses associated with electoral advertisements; and
- that the amount payable shall be appropriated from the Consolidated Fund.

Clause 13

The income that consists of a payment for electoral funding should not to be included in the annual return for a political party. The amount payable to a political party for electoral funding purposes is based on the claim lodged by the agent of the party, which is already a public document.

Clause 14

Offences relating to disclosure of information that is false or misleading in a material particular in an annual or election return have been broadened to also apply to claims made for electoral funding. Any person who provides such information to a person making a claim also commits an offence. Penalties range from \$1,500 to \$15,000.

Clause 15

If a payment is made for electoral funding and the recipient is not entitled to receive the whole or a part of the amount paid, an action in a court to recover the amount due to the State may be brought in the name of the State by the Electoral Commissioner. This is consistent with other provisions in the Act.

Clause 16

The current provisions that allow the Electoral Commissioner to appoint an “authorised officer” to find out whether a person has complied with the disclosure provisions has been extended to cover compliance with the new provisions for electoral funding. These investigative powers are wide-ranging in ensuring that the provisions of the legislation are met.

Clause 17

The amendment of section 175ZB provides for the Electoral Commissioner to amend formal defects and allows persons who lodge claims for electoral funding to correct errors or defects in their claim.

Clause 18

The public may view or obtain copies of claims for election funding from the Commission four weeks after the end of the period during which the claim was required to be lodged. A fee may be charged to cover the cost of copying. This is a similar basis to existing provisions for disclosure returns.

Clause 19

This clause provides that proceedings in relation to an offence related to electoral funding alleged to be committed by a political party that is not a body corporate, or in respect of an amount recoverable from such a party, may be taken against an officer or officers of the party and the proceeding is considered to be against all members of the party at the time.

Clause 20

The long title of the *Electoral Act 1907* is amended to read “An Act to regulate Parliamentary elections and for related purposes.”

Clause 21

Section 4 of the Act is amended to incorporate the definition of “authorised witness”, as stated in section 94, to apply to the whole Act. This has the effect of preventing candidates acting as an authorised witness for any activity under the Act in connection with an election.

Clause 22

The provision to appoint an Acting Deputy Electoral Commissioner ensures that there will be a person in the agency with statutory powers should the Electoral Commissioner or Deputy Electoral Commissioner not be available. An Acting Deputy Electoral Commissioner would be appointed under a process similar to that currently in place for the appointment of an Acting Electoral Commissioner, requiring appointment by the Governor after the Premier has consulted with the other parties in the Parliament.

Clause 23

There existed a deficiency in the power of the Electoral Commissioner to conduct non-parliamentary elections provided for or authorised under other written law. A technical amendment is required to confirm that the Electoral Commissioner is able to conduct such other elections. A minor adjustment to section 5F(1)(ea) of the Act, as provided under this clause, achieves this.

Clause 24

Prisoners serving sentences, detention or imprisonment not exceeding 5 years are now eligible to remain on the electoral roll and vote in elections. This brings the legislation into line with Commonwealth enrolment provisions.

Clause 25

As a result of an amendment to the *Constitutions Acts Amendment Act 1899* section 67(5) of the main Act has been amended to reflect a change in reference to section numbering.

Clause 26

Section 77(6) was included to require any person nominating for either House to be enrolled and entitled to vote for their nomination to be valid. This amendment, together with the requirement in the *Constitution Acts Amendment Act 1899* to be an Australian citizen, contained in clause 46 below, confirm a commitment by candidates to participation in the electoral process and representation of electors. This is consistent with provisions that exist in Queensland.

Clause 27

Section 84 has been amended to require candidates to achieve 4% of the first preference vote in order to have their deposit returned. This is a decrease from 10% for the Assembly and 5% for the Council and is consistent with the new electoral funding provisions that also operate with a 4% threshold.

Clause 28

Section 85 has been amended to make the time for close of nominations 12 noon instead of 6pm. This change is consistent with provisions for the Commonwealth and other States and assists the Electoral Commission with the processing of nominations and production of ballot papers.

Clause 29

Electors may now apply for an early vote at any time after polling day for an election has been publicly announced by the Government. This removes the requirement for electors to provide a reason for seeking an early vote. This increases the voting options for electors which should, in turn, lead to increased turnout at elections. The Australian Capital Territory has a similar provision.

Clause 30

Early ballot papers may now be received up until 9am on the Thursday following polling day, instead of Tuesday as is currently the case, providing the packages are postmarked prior to the close of poll. This provides more time for the return of packages and is more consistent with timeframes permitted in other Australian jurisdictions.

Clause 31

This clause clarifies that it is an offence for a person not authorised by the Electoral Commissioner to issue postal votes to patients, as well as inmates, in institutions.

Clause 32

Section 100 is amended to provide for voting in prisons. This has become necessary following the amendment in clause 24, allowing prisoners serving sentences, detention or imprisonment not exceeding 5 years to enrol and vote.

Clause 33

The generic term “institution” has been adopted to refer to a range of facilities including hospitals. Such a provision has been applied consistently throughout these amendments. Given the specific reference in section 110A(1)(b) to “approaching maternity”, the reference to “record his vote” has been amended to “vote”.

Clause 34

In the past the Returning Officer has been responsible for writing to each candidate to advise of the place and times for mobile polling. Administratively, in many cases this can be better handled centrally by the Electoral Commissioner. This amendment allows the Returning Officer or Electoral Commissioner to undertake this task.

Clauses 35 and Clause 36

These clauses continue use of the term “institution” to refer to hospitals, prisons and other institutions. The lack of specificity provides greater flexibility and easier understanding of provisions contained in the Act.

Clause 37

In relation to the prohibition of canvassing near a polling place, the terminology has been changed to refer to institutions generally, rather than prisons and hospitals, given that polling may take place in prisons pursuant to clause 32.

Clause 38

The removal of the need to provide a reason when applying for an early vote, as provided under clause 29, potentially broadens the number of people who will claim such a vote and the situations in which these people may complete their ballot papers. Penalties for bribery, undue influence and other illegal practices have been increased generally, and also in particular relation to early ballot papers or early votes, to discourage possible increased incidences of these offences. Increasing the standard penalty for bribery or undue influence from \$400 to \$12,000 is consistent with provisions under the *Sentencing Act 1995* that generally provide a penalty of \$1,000 for each month of imprisonment applicable to that offence. Similarly, increasing the penalty for other illegal practices from \$200 to \$6,000 was undertaken for the same reason. In both cases the penalty for bribery or undue influence or other illegal practices was doubled where the offence related to early ballot papers or votes.

Clause 39

Amendments to Schedule 1 of the Act modify the counting provisions for the Council to remove the possible situation in which a ballot paper may increase in value during the count. This revised method

ensures that each ballot paper reduces in value when transferred as part of a surplus. The new method, also referred to as the Weighted Inclusive Gregory method, is an improvement on the current Inclusive Gregory method. The process will be more detailed but is not expected to take longer to count as it will be completed using computers.

Clause 40

A number of minor amendments have been made in this clause to correct errors or omissions in the *Electoral Act 1907*.

Clause 41

Clauses 41 to 47 are amendments to the *Constitution Acts Amendment Act 1899*.

Clauses 42 to 45

These clauses apply to amendments to the *Constitutions Acts Amendment Act 1899* about fixed election dates.

Clauses 42 and 43 amend this Act to change the term of office for members of the Council to cease on 21 March, where it was previously 22 May. Provision has been made for persons who are members of the Council on 21 March 2005 and continue to be a member of the Council on 22 March 2005 to continue to receive ordinary salary and superannuation entitlements as if they were a member until 21 May 2005.

Members of the Council holding the position of President of the Council or Chairman or Deputy Chairman of Committees in the Council also retain their entitlements for these positions until 21 May 2005, on the above basis.

Clause 5 provides for the writs for a periodic election to be issued on the third Wednesday in January in the year that the term is due to expire. Clause 44 ensures that the Assembly ceases and determines on the day before the issue of the writ.

Under section 36 of this Act, holders of certain offices or places are required to vacate their position before being entitled to take their seat as a member. The amendment in clause 45 confirms that the office for a member of the Council in such a situation becomes vacant on 22 March, instead of 22 May, unless they have resigned or otherwise ceased to hold such an office or place.

Clause 46

A person must now be an Australian citizen in order to qualify for membership of the Assembly or Council. Saving provisions mean that this requirement does not apply to current members. However, any current member wishing to seek re-election would need to ensure Australian citizenship prior to renominating. This provision will make it imperative for all candidates to confirm their enrolment prior to roll close and close of nominations.

Clause 47

A person who has been convicted of an offence which includes a penalty of imprisonment for life or imprisonment for a period that may exceed 5 years is disqualified from membership of either House. Saving provisions have been included so that any current member of the Assembly or Council will not be affected by these provisions when they commence. Should this provision apply to a current member it may affect their ability to be re-elected.

In addition, the provision will disqualify on the basis of offences committed within Australia only, rather than the British Commonwealth as at present.

Clauses 48 and 49

These clauses amend the *Salaries and Allowances Act 1975* to ensure that anyone elected to the Council at the next general election will not be entitled to any payment before the new commencement date of 22 March next following the election unless they were a member of the Council immediately prior to the election or were declared elected following a re-count to fill a term that expired immediately before that 22 March.

Clauses 50 and 51

The provisions in sections 5 and 6 of the *Electoral (Political Finance) Amendment Act 1992* to insert sections 191A and 191C in the *Electoral Act 1907* have never been proclaimed. Section 191A prohibits the publishing of Government advertising during the election period and section 191C imposes restrictions on air travel by members of Parliament during that period. Section 191A was considered unworkable and section 191C had some serious difficulties in implementation. Administration arrangements have since been put in place to deal with these matters, as recommended by COG.