

Explanatory Memorandum

General Information

The main tenet of this Act is the introduction of fixed election dates. Other provisions include the clarification of the qualifications for nominating as a candidate, minor revision of the counting method for the Legislative 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 and Constitution Amendment Act 2003*.

Clause 2 – Commencement

All amendments come into operation on the day on which the Act receives the Royal Assent.

Clause 3

The Act amends the *Electoral Act 1907*, the *Constitution Acts Amendment Act 1899* and the *Salaries and Allowances Act 1975*. Part 2 amendments are concerned with fixed election dates.

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 amendments in Division 2 are to the *Constitution Acts Amendment Act 1899*.

Clauses 12 to 15

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

Clauses 12 and 13 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 14 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 15 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.

Clauses 16 and 17

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.

Clause 18 and Clause 19

The amendments in Part 3 are general amendments to the *Electoral Act 1907*. The long title of the *Electoral Act 1907* is amended to read “An Act to regulate Parliamentary elections *and for related purposes*.”

Clause 20

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 21

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 22

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 23

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 24

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 25

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 40 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 26

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 27

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 28

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 29

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 30

Section 100 is amended to provide for voting in prisons. This has become necessary following the amendment in clause 23, allowing prisoners serving sentences, detention or imprisonment not exceeding 5 years to enrol and vote.

Clause 31

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 100A(1)(b) to “approaching maternity”, the reference to “record his vote” has been amended to “vote”.

Clause 32

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.

Clause 33 and Clause 34

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 35

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 30.

Clause 36

The removal of the need to provide a reason when applying for an early vote, as provided under clause 27, 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 37

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 38

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

Clause 39

Clauses 39 to 41 are amendments to the *Constitution Acts Amendment Act 1899*.

Clause 40

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 41

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 42 and 43

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.