

CLAUSE NOTES

Electoral Amendment Bill 2009

CLAUSE 1 SHORT TITLE

This provides the short title to be used when citing the Act for any legal purpose.

CLAUSE 2 COMMENCEMENT

This Act commences on a day to be proclaimed.

CLAUSE 3 PRINCIPAL ACT

This provides that the Principal Act in this Part is the *Electoral Act 2004*.

CLAUSE 4 SECTION 32 AMENDED (ENROLMENT)

Substitutes a new subsection (3) which provides that despite the joint roll arrangement with the Commonwealth, enrolment of state electors will continue during the period of a Federal election. This correction is necessary due to the unintended effect of section 32 as currently drafted, under which state enrolment would be suspended during a Federal election.

(Note: There have been no changes to subsection 3(a) which deals with prisoner voting.)

CLAUSE 5 SECTION 70 AMENDED (POLLING DAY)

Subclause (a) amends subsection (1)(a) to provide that polling day for an House of Assembly election is to be not less than 15 days after nomination day, rather than 14.

Subclause (b) amends subsection (1)(c) to provide that polling day for a Legislative Council by-election is to be not less than 15 days after nomination day, rather than 14.

These amendments will allow for the announcement of candidates on a Friday rather than a Saturday, thus enabling ballot paper printing to commence and candidate names to be advertised in Saturday's newspapers.

CLAUSE 6 SECTION 75 AMENDED (PERSONS WHO MAY BE NOMINATED AND ELECTED)

Clause 6 omits paragraphs (a) and (b) and substitutes them with new paragraphs (a), (b) and (c):

New paragraph (c) provides that a candidate must have attained the age of 18 years. This amendment will close a loophole that was inadvertently created with the enactment of the Principal Act. The effect of the the automatic enrolment of electors on the Commonwealth Roll, including provisional electors aged 17 and section 14 of the *Constitution Act 1934* which provides that a person is eligible to be a candidate if that person is (amongst other things) an elector have caused this problem.

Note: New paragraphs (a) and (b) are the same as the current paragraphs (a) and (b).

CLAUSE 7 SECTION 78 SUBSTITUTED (DECLARATION BY CANDIDATE)

Repeals section 78, which currently provides that a candidate's declaration as to eligibility is to be in the prescribed form, and replaces it with a new section. The new provision sets out the basic requirements of the declaration and provides that it is to be in an approved form. This will enable the declaration to be simplified.

CLAUSE 8 SECTION 115 AMENDED (ENTITLEMENT TO VOTE – ABSENT FROM DIVISION)

Section 115 currently only allows absent voting *before* polling day by electors who are voting by way of mobile polling. The amendment to section 115 will extend mobile polling to allow mobile polling for absent electors on polling day, if required.

CLAUSE 9 SECTION 130 AMENDED (POSTAL VOTING PROCEDURE)

Amends section 130 to allow the Commission to approve reasonable and appropriate procedures to assist an elector who, when voting by postal vote, is unable to vote without assistance. This is similar to section 113 of the Principal Act, which provides for assistance at polling places.

CLAUSE 10 SECTION 153 AMENDED (NOTICE OF FAILURE TO VOTE)

Paragraphs (a) and (c), amend section 153 so that the notice sent under this section is now described as a “notice of failure to vote”, to more clearly distinguished it from an infringement notice.

Paragraph (b) amends subsection (2)(d) as follows:

The notice states that if the elector does not provide particulars of any valid or sufficient reason for the apparent failure to vote or pay the penalty, they will be issued with an infringement notice sent under the new section 157A, rather than have the matter dealt with by a court at this stage.

Note: If an infringement notice is issued, the elector can still elect to have the matter dealt with by a court under the provisions of the *Monetary Penalties Enforcement Act 2005*.

CLAUSE 11 SECTION 154 AMENDED (SECOND NOTICE – NO RESPONSE)

Paragraph (a) amends section 154 so that the second or reminder notice that is sent under this section to an elector who has not responded to a notice under section 153, is now described as a “second notice of failure to vote”, to more clearly distinguished it from an infringement notice sent under the new section 157A.

Paragraph (b) amends subsection (2)(c) to provide that the second notice states that if the elector does not provide particulars of any valid or sufficient reason for the apparent failure to vote or pay the penalty, they will be issued

with an infringement notice, rather than have the matter dealt with by a court at this stage.

Note: If an infringement notice is issued, the elector can still elect to have the matter dealt with by a court under the provisions of the *Monetary Penalties Enforcement Act 2005*.

CLAUSE 12 SECTION 156 AMENDED (DETERMINATION NOTICE – REASON NOT ACCEPTED)

As with the notice of failure to vote and second notice of failure to vote sent under sections 153 and 154 respectively, section 156 is amended so that a Determination notice, advising that a reason provided is not valid and sufficient, is to state that if the elector does not wish to be issued with an infringement notice, they may pay the penalty in accordance with section 157.

CLAUSE 13 SECTION 157 SUBSTITUTED

(157 OPTION TO PAY PENALTY

157A INFRINGEMENT NOTICE

157B PENALTY IN RESPECT OF INFRINGEMENT NOTICE)

Repeals section 157 and substitutes three new sections: 157, 157A and 157B.

The new **section 157** is the same as the current section 157, with one extra provision contained in subsection (c) providing that if an elector pays the penalty, an infringement notice is not to be issued in respect of the failure to vote.

Section 157A provides for the new process of issuing infringement notices, which are to be in accordance with the *Monetary Penalties Enforcement Act 2005*.

Such a notice is to be sent to an elector who has been sent a second notice of failure to vote under section 154 or a determination notice under section 156, and who has failed to respond to the notice by the date specified.

Subclause (3) clarifies that notices sent under section 153, 154 and 156 are not infringement notices for the purposes of the *Monetary Penalties Enforcement Act 2005*.

New **section 157B** sets the penalty for the purposes of an infringement notice issued under section 157A.

CLAUSE 14 SECTION 187 AMENDED (ELECTORAL BRIBERY)

Inserts a new (1A), the effect of which is that inexpensive items up to the value of one fee unit (currently \$1.28) are excluded from the offence of electoral bribery.

CLAUSE 15 SECTION 188 AMENDED (ELECTORAL TREATING)

Subclause (a) inserts a new (1A), the effect of which is that inexpensive food, drink or entertainment, and gifts, donations and prizes up to the value of one fee unit (currently \$1.28) are excluded from the offence of electoral treating.

Subclauses (b) and (c) contain amendments which clarify the intention of the defence to electoral treating when making donations during an election campaign. It has been argued that this defence as currently drafted may be relied upon if the body regularly receives gifts etc from any person, and not just the person charged. Following legal advice, the equivalent provision of the *Local Government Act 1993* was amended in 2007 to close the same loophole.

CLAUSE 16 SECTION 191 SUBSTITUTED (CAMPAIGN MATERIAL TO BE AUTHORISED)

Section 191 has been broadened to include that it is an offence to “keep on display” unauthorised electoral matter. This will cover the situation where a sign or poster, which is not authorised, is printed and distributed before the writ is issued but is kept on display after. The equivalent provision in the Local Government Act was recently amended in a similar manner.

CLAUSE 17 SECTION 195 AMENDED (ADVERTISEMENTS AND ADVERTORIALS)

Section 195 does not currently prescribe a specific period for the requirement that the word “advertisement” be printed as a headline to paid advertising, which has led to some confusion. This amendment will apply the same period as for the authorisation of campaign material contained in section 191.

CLAUSE 18 SCHEDULE 3 AMENDED (PRINTING AND COLLATION OF BALLOT PAPERS)

The new subclause 1A will have the effect of doubling the current number of rotations of names on ballot papers by adding another “batch” or set of rotations. In this second batch of rotations, the order of names under the top position will be in the reverse order as in the original batch.

This will help to further alleviate the effects of “linear” or “donkey” voting

CLAUSE 19 APPLICATION OF AMENDMENTS EFFECTED BY ACT

This clause provides that the amendments do not effect any elections that are already underway prior to the commencement of the Act.