

## CLAUSE NOTES

### Electoral Matters (Miscellaneous Amendments) Bill 2022

#### PART 1 - PRELIMINARY

Clause 1

##### Short title

This clause provides that, once passed, the Bill will be cited as the *Electoral Matters (Miscellaneous Amendments) Act 2022*.

Clause 2

##### Commencement

This clause provides for the amendments to commence on a day or days to be proclaimed.

#### PART 2 – CONSTITUTION ACT 1934 AMENDED

Clause 3

##### Principal Act

This clause provides that the Act to which the amendments in Part 2 apply is the *Constitution Act 1934*.

Clause 4

##### Section 3 amended (Interpretation)

This clause amends section 3 of the *Constitution Act 1934* to insert a new definition for the term 'Augmented Electoral Commission' and remove the definition of 'Redistribution Tribunal'. This reflects the change in name of the body currently established under the *Legislative Council Electoral Boundaries Act 1995* as the Redistribution Tribunal to its new name - 'Augmented Electoral Commission'.

Clause 5

##### Section 18AA amended (Application of Division)

This clause amends section 18AA of the *Constitution Act 1934* to reflect the change in name of the Redistribution Tribunal to the 'Augmented Electoral Commission'.

#### PART 3 – ELECTORAL ACT 2004 AMENDED

Clause 6

##### Principal Act

This clause provides that the Act to which the amendments in Part 3 apply is the *Electoral Act 2004* (the Act).

Clause 7

##### Section 3 amended (Interpretation)

This clause amends section 3 of the Act to insert a number of new definitions as follows:

**carriage service provider:** this term is defined by reference to the *Telecommunications Act 1997* (Cth). The term is used in the new authorisation provisions (see below at clause notes for clauses 22 - 25).

**communicate:** this definition sets out the ways in which electoral matter can be communicated including by printing, publishing, displaying, producing or broadcasting by any means including electronically, by social media or by the internet, by electronic phone or by a communication sent to an electronic address. This term is used in the new definition of electoral matter (see below at clause 8) and in the new authorisation provisions (see below at clause notes for clauses 22-25).

**constitutional documents:** this definition establishes that a party's constitutional documents means the written set of principles and rules under which the party is governed. Under amendments to the party registration provisions, an application for registration is to be accompanied by the party's constitutional documents (see clause note for clause 9 below).

**disclosure entity:** this term is used in the definition of 'electoral matter' and in the new authorisation provisions. Under the new definition, a disclosure entity includes:

- a candidate in relation to an election to which the electoral matter relates;
- a registered party;
- a Member;
- a significant political donor (within the meaning of the new *Electoral Disclosure and Funding Act 2022*) in relation to an election to which the electoral matter relates (for example, a person who was a donor in past is not included in the definition in future periods when the person is no longer a donor);
- an associated entity (within the meaning of the new *Electoral Disclosure and Funding Act 2022*);
- a third party campaigner (within the meaning of the new *Electoral Disclosure and Funding Act 2022*) ) in relation to an election to which the electoral matter relates (for example, a person who was a third party campaigner in past is not included in the definition in future periods when the person is no longer a third party campaigner);
- a candidate in a House of Assembly election (in the previous 5 years) or in a Legislative Council election (in the previous 7 years).

**electoral matter:** indicates that the definition of 'electoral matter' is set out in section 4 of the Act (see clause note for clause 8 below).

**entity:** under this definition, 'entity' means an incorporated or unincorporated body or the trustee of a trust. The term 'entity' is used in the definition of 'disclosure entity'.

**how to vote card:** this definition sets out what is meant by the term 'how to vote card' including clarifying that it includes cards, handbills or pamphlets and electronic documents or electronic representations of cards, handbills or pamphlets.

**inspector:** indicates that the term 'inspector' refers to a person appointed as an inspector under the proposed new section 200D (see clause note in relation to clause 29).

**listed carriage service:** as with 'carriage service provider', this term is defined by reference to its definition in the *Telecommunications Act 1997* (Cth). The term 'listed carriage service' is used in the proposed new authorisation provisions (see clause notes in relation to clauses 22 – 25)

**social media:** under this definition, 'social media' means internet-based or mobile broadcasting-based technology or applications if:

- (a) the sole or primary purpose of the technology or application is to enable social interaction between two or more end-users;
- (b) the technology or application allows end-users to link to or interact with other end-users; and
- (c) the technology or application is a means by which a person may create and share content.

It includes internet forums, blogs, wikis, text messaging and online or mobile broadcasting social networks. This term is referenced in the definition of 'communicate' above and is also used in the proposed new authorisation provisions (see below at clause notes for clauses 22-25).

## Clause 8

### Section 4 substituted

This clause repeals the current definition of 'electoral matter' and replaces it with a new definition which is based upon the equivalent definition in the *Commonwealth Electoral Act 1918* (Cth).

Under the new definition, 'electoral matter' is matter communicated, or intended to be communicated, for the dominant purpose of influencing the way electors vote in an election, including by promoting or opposing a political entity or Member.

The new definition applies a 'dominant purpose' test which is intended to capture matter that seeks to influence the formation of voters' political judgment in relation to the act of voting. This may include the order in which

the voter indicates their preferences on a ballot paper and/or the voter's decision as to whether to cast a formal ballot paper.

The new definition (proposed new section 4(4)) makes it clear that the communication of matter which expressly promotes or opposes a political entity (such as a political party or candidate) or a Member is presumed to be for the dominant purpose of influencing the way electors vote in an election unless the contrary is proved.

Under the proposed new section 4(5), there is a non-exhaustive list of matters that must be considered in determining the dominant purpose of the communication or intended communication of matter, including:

- (a) Whether the communication is or would be to the public or a section of the public;
- (b) Whether the communication is or would be by or on behalf of a disclosure entity;
- (c) Whether the communication contains an express or implied comment on a political entity or a Member;
- (d) Whether the communication is or would be received by electors near a polling place;
- (e) How soon an election is to be held after the creation or communication of the matter;
- (f) Whether the communication is or would be unsolicited.

The proposed new section 4(6) sets out a number of exceptions, providing that the following types of matter or communication do not constitute 'electoral matter':

- (a) News reporting, presenting of current affairs or any genuine editorial content of news media;
- (b) A communication for a dominant purpose that is satirical, artistic or academic;
- (c) A private communication by a person to someone that person knows;
- (d) A communication by a person in their capacity as a public official (public official is defined in the new section 4(1) and includes the Governor, a Minister or parliamentary ;
- (e) A private communication to a political entity in relation to public policy administration;
- (f) A communication that occurs or would occur in the House of Assembly or Legislative Council or to a parliamentary committee.

This clause makes two amendments to section 44(1) of the Act. Section 44 of the Act establishes the requirements for an application to register a party.

The first amendment is to insert a new provision into section 44(1) requiring that an application for registration is to be accompanied by the party's constitutional documents. 'Constitutional documents' is defined as the written set of principles and rules under which the party is governed (see clause note for clause 7 above). This requirement is consistent with party registration requirements in other Australian jurisdictions. There are transitional provisions in the Bill to require parties that are already registered to supply their constitutional documents to the Commission within 6 months (refer to the clause note for clause 30 below).

The second amendment relates to Section 44(1)(g) which requires an application for party registration to be accompanied by statutory declarations from each of the 100 or more members of the party declaring that the person is a member of the party and supports the application for party registration.

The proposed amendment to section 44(1)(g) requires such a statutory declaration to have been made within the 12 month period prior to the application for registration being lodged with the Commission. This requirement is being added to ensure that the statutory declarations are relatively up-to-date and to make it easier for the Commission to verify the members of the party.

#### **Clause 10**

##### **Section 52A (Public access to information about registered parties) inserted**

This clause inserts a new provision – section 52AA - to provide for public access to information about registered parties.

This new provision will replace the current public access provisions in section 52(6) (see clause note for clause 11 below).

Under the new section 52AA, the Commission is to ensure that the party register and a copy of a registered party's constitutional documents are available for inspection free of charge on request. The Commission is also to ensure that a list of the names of all registered parties is published on the Commission's website.

#### **Clause 11**

##### **Section 52 amended (Party register)**

This clause removes section 52(6). Section 52(6) requires the Commission to ensure that the party register is available for inspection and to provide a copy of all or part of the party register on request. The requirement to provide a copy of the party register has been removed as it potentially raises privacy issues given that the party register contains the names and addresses of all registered members and it is not considered to be necessary, given that

the party register is available for public inspection under the proposed new section 52AA (see clause note for clause 10 above).

**Clause 12                    Section 58 amended (Review of party register)**

This clause amends section 58(4) to require that a review of party registration form be accompanied by a copy of the party's constitutional documents. This is to ensure that the Commission is provided with an up-to-date copy of the constitutional documents during the review process.

**Clause 13                    Section 96 amended (Preparation and printing of ballot papers)**

This clause amends section 96(2) to provide that the ballot papers that are to be counted with postal votes under section 134 of the Act are to have the word 'postal' on them.

The Act allows the Commission to approve procedures enabling electors to vote at an election whilst outside of Tasmania, including in Antarctica. In the past, the Commission has approved procedures allowing voting at pre-polling places provided by interstate electoral commissions or via express votes using fax or email. Section 134 provides that any votes cast in this way are to be counted with the postal votes.

The proposed amendment will require that these ballots are printed with the word 'postal' on them so that they are less easily identifiable when counted, ensuring the secrecy of the ballot.

**Clause 14                    Section 100 substituted**

This clause replaces section 100 with a new provision to clarify that a ballot paper is to include instructions that are consistent with the requirements in section 102. Section 102 sets out the requirements in relation to the marking of ballot papers.

**Clause 15                    Section 124 amended (Adjournment of polling)**

This clause amends section 124(3) to clarify that where polling is adjourned at a polling place, for example, due to a polling place having to be closed on polling day for safety reasons such as storm damage or bushfire, only electors (who have not already voted) who are entitled to vote at that election in the Division in which the polling place is situated, are entitled to vote in the adjourned polling.

**Clause 16                    Section 128 amended (Issue of postal votes)**

This clause amends section 128 of the Act to allow postal vote material to be provided in person (i.e., hand delivered) to an elector. This would include the

postal vote material being issued to a third party, such as a family member, who is approved by the Commission to deliver the material to the elector.

## **Clause 17**

### **Section 139 amended (Preliminary scrutiny of postal votes)**

This clause amends section 139(1) of the Act.

Section 139 provides for the preliminary scrutiny of postal votes. Under section 139(1), the returning officer is to admit a postal vote declaration envelope for further scrutiny if satisfied that:

- (a) the declaration on the envelope is signed and dated before the close of poll;
- (b) the signature on the postal vote declaration envelope is the same as on the application for a postal vote;
- (c) the postal vote declaration envelope was received at a polling place that is open for polling at that election or by the returning officer by post or other approved method no later than 10am on the second Tuesday after polling day;
- (d) the voter is entitled to vote at that election.

This clause adds an additional matter that the returning officer is to be satisfied of in admitting a postal vote declaration envelope for further scrutiny, namely that the voter has not already voted at that election.

## **Clause 18**

### **Section 171A inserted**

This clause inserts a new provision into the Act – new section 171A – as a consequence of amendments made to section 128 to allow postal vote material to be delivered by hand by a third party (see clause note for clause 16 above).

Under the proposed new section 171A, a person who has been provided with postal vote material under the new section 128(1A)(c) must not fail to immediately deliver it to the elector. There is a penalty of a fine not exceeding 10 penalty units for breaching this provision.

It is noted that the proposed new section 171A is consistent with the current section 171, which imposes a penalty of up to 10 penalty units on a person who has been entrusted by an elector with a postal vote application or postal vote declaration envelope to post or deliver but who fails to do so immediately.

## **Clause 19**

### **Section 186 amended (Offences relating to voting)**

This clause proposes a number of amendments to section 186 of the Act.

Section 186 sets out a number of offences in relation to voting, including:

- destroying a nomination form or ballot paper;
- forging a ballot paper; or uttering a ballot paper knowing it to be forged;
- forging a declaration required by the Act or uttering a declaration knowing it to be forged;
- removing a ballot paper from a polling place without authority;
- fraudulently depositing a ballot paper (or purported ballot paper) in a ballot box;
- supplying a ballot paper without authority;
- taking, opening, destroying or interfering with a ballot paper, declaration vote envelope, postal vote declaration envelope or ballot paper without authority;
- impersonating an elector for the purpose of voting at the election;
- voting more than once at an election;
- having voted at an election, applying for another ballot paper in respect of the election;
- applying to vote in the name of a fictitious person or in the name of any other person (whether living or dead);
- depositing more than one ballot paper in a ballot box that is being used for the purpose of the election;
- voting at the election after having voted at an election in respect of another division held contemporaneously with the first-mentioned election.

Currently, the Act provides that these offences are crimes, punishable on indictment.

This clause proposes amendments to section 186 to allow a court of summary jurisdiction (i.e., the Magistrates Court) to deal with an alleged offence under section 186 if the court is satisfied it is appropriate to do so and the defendant and prosecutor agree. This will allow for less serious infringements or breaches to be dealt with as summary offences rather than proceeded with on indictment. Where a person is convicted by a court of summary jurisdiction, the penalty is a fine not exceeding 50 penalty units.

More serious offences will still be able to be prosecuted on indictment. Under the proposed amendments, there is no penalty specified in respect of a conviction under the Criminal Code. The general sentencing provisions under the Criminal Code will apply.

## Clause 20

### Section 187 amended (Electoral bribery)

This clause amends section 187 (Electoral bribery) of the Act.



Section 187 prohibits a person from directly or indirectly promising, offering, giving, asking for or receiving any property or benefit of any kind with the intention of influencing a person's election conduct at an election. 'Election conduct' is defined as including various types of conduct such as whether or not the person votes, who the person votes for, whether or not the person nominates as a candidate or withdraws their nomination, whether or not the person expresses support for or opposition to a candidate or group of candidates, whether or not an application to dispute an election is made or withdrawn and the performance or exercise of functions or powers under the Act (by a member of the Commission, a returning officer, an election official or a member of the staff of the Commission).

This clause introduces a 'fault element' to section 187(1) by amending it to provide that a person must not, dishonestly, or for an improper purpose, directly or indirectly, promise, offer etc any property or benefit with the intention of influencing a person's electoral conduct. This clarifies that the offence does not apply to ordinary public election promises and is in line with the common law definition of bribery which requires some dishonest conduct or purpose.

Section 187(5)(a) provides an exception to the electoral bribery offence for a declaration of public policy or promise of public action. This clause makes an amendment to this exception to clarify that the exception is for a public declaration of public policy or promise of public action.

This clause also removes the penalty provision (section 187(4)), meaning that the general penalty provision under the *Criminal Code* will apply.

## Clause 21

### Section 188 amended (Electoral treating)

This clause amends section 188 of the Act.

Under section 188(1), a person must not directly or indirectly supply food, drink or entertainment, or offer, promise or give a gift, donation or prize with the intention of influencing a person's election conduct at an election. This offence is known as 'electoral treating'.

As with clause 20 (see clause note above), this clause introduces a fault element to section 188(1) by amending it to provide that a person must not, dishonestly or for an improper purpose, directly or indirectly supply food, drink or entertainment or offer, promise or give a gift, etc, with the intention of influencing a person's election conduct at an election.

This clause also removes the penalty provision (section 188(4)), meaning that the general penalty provision under the *Criminal Code* will apply.

## Clause 22

### Sections 190 and 191 substituted

This clause repeals sections 190 and 191 of the Act and substitutes new provisions.

The new provisions establish the framework for the authorisation of the communication of electoral matter.

### **Proposed new section 190 (Interpretation of Division 5)**

The proposed new section 190 defines terms and concepts used in the provisions relating to authorisation (in Division 5).

A key term for the purpose of these provisions is '*authorisation particulars*' which is defined as meaning:

- (a) the name and address of the person who is the author or who authorised the communication of the electoral matter;
- (b) a statement to the effect that the person is the author or authorised the communication of the electoral matter;
- (c) if the communication was made on behalf of a disclosure entity a statement to this effect. Disclosure entity is defined as a candidate, registered party, Member, associated entity, significant political donor, third party campaigner or person who was a candidate in a House of Assembly election in the previous 5 years or a Legislative Council election in the previous 7 years (see clause note for clause 7 above); and
- (d) any other prescribed matters.

The new section 190 clarifies that a person authorises the communication of electoral matter:

- if the person approves the content of the matter (before it is communicated); or
- where the content of the matter has not been approved prior to being communicated, the person communicates it.

Under clause 7 of this Bill (see clause note for clause 7 above), '*communicate*' is defined as meaning print, publish, display, distribute, produce, or broadcast electoral matter including electronically, by social media, by the internet, by electronic phone or by a communication sent to an electronic address.

### **New section 191 (Campaign material to be authorised)**

The new section 191 prohibits a person from communicating (or permitting or authorising another person to communicate) electoral matter unless the authorisation particulars are displayed in the applicable manner. This applies during the period between the issue of the writ for an election and the close of the poll at that election. There are penalties for not complying with the authorisation requirements of a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

The applicable manner for displaying authorisation particulars depends upon the type of communication:

- for a hard copy document or object – the authorisation particulars are to be legibly shown on the document or object;
- for publication of electoral matter on an internet website (that is not social media) – the authorisation particulars are to be legibly shown as part of the electoral matter;
- for electronic mail – the authorisation particulars are to be legibly shown in the electronic mail;
- for an electronic message sent to an electronic address in connection with a telephone account, e.g., a text message – the authorisation particulars are to be legibly shown at the end of the electronic message or at an electronic address that is included at the end of the communication;
- for social media (note the term '*social media*' is defined in clause 7) – the authorisation particulars are to be legibly shown at the end of the communication or, if too many characters, at an electronic address included at the end of the communication or as part of the information commonly included under the "About us" or "Contact us" section of the social media account;
- for a telephone call (e.g., robocalls) – the authorisation particulars must be spoken at the beginning of the telephone call;
- for any other type of communication – the authorisation particulars are to be displayed in the prescribed manner if any (this will allow any other forms of communication to be added by regulation).

## Clause 23

### Section 193 repealed

This clause repeals section 193 of the Act. Section 193 provides exceptions from current authorisation requirements for electoral matter in newspaper and periodical reportage and commentary in certain circumstances. This provision is no longer required as the proposed new definition of 'electoral matter' (see clause note for clause 8 above) specifically excludes the reporting of news, the presenting of current affairs or any genuine editorial content in news media.

## Clause 24

### Section 194A inserted

This clause inserts a new provision – section 194A (Additional communications to which section 191 does not apply).

There are already some exceptions from the authorisation requirements in section 192 of the Act which states that section 191 does not apply to an item of clothing, lapel button or badge, pen, pencil or balloon, business or visiting

card promoting the candidacy of a person in an election, and a letter or card on which the name and address of the sender appears.

The new section 194A provides exceptions for:

- a communication for personal purposes;
- an opinion poll or research relating to voting intentions that is not intended to encourage a person to vote for or against a particular party or candidate;
- a communication by way of social media that forms part of a natural person's individual personal political views (if the person is not paid to express those views and is not a candidate or Member);
- an internal communication;
- a communication at a meeting if the identity of the person communicating, and the disclosure entity on whose behalf they are communicating, can reasonably be identified by the persons they are communicating to;
- A live communication of a meeting referred to above (e.g., a meeting online etc);
- An announcement of a meeting;
- A communication that is within a prescribed class of communications (i.e, any additional communications prescribed in regulations);
- A communication on radio or television by a licence holder under the *Commonwealth Broadcasting Services Act 1992* that is subject to conditions relating to election advertisements.

## Clause 25

### Section 195 substituted

This clause repeals section 195 of the Act and substitutes a new provision.

The new section 195 prohibits the communication of electoral matter that is paid for or for which any reward or compensation (or promise of reward or compensation) is made unless the word 'advertisement' is displayed on the communication (in the same manner as the authorisation particulars for that form of communication). There is a penalty for breach of this provision of a fine not exceeding 50 penalty units.

As with authorisation requirements, this applies during the period from the issue of the writ for an election to the close of poll at that election.

## Clause 26

### Section 196 amended (Candidate names not to be used without authority)

This clause amends section 196 of the Act.

Section 196 prohibits the printing, publishing or distribution of advertisements, how to vote cards, handbills, pamphlets, posters or notices that contain a

candidate's name, photograph or likeness, without that candidate's written consent.

Under the proposed amendment, the prohibition on the use of a candidate's name, likeness or photograph will only apply in relation to how to vote cards. In addition to prohibiting the printing, publishing or distribution of a how to vote card containing a candidate's name, photograph or likeness without consent, this clause also proposes an amendment to section 196 to prohibit a person from keeping on display a how to vote card that contains a candidate's name etc without their written consent.

## Clause 27

### Section 197 substituted

This clause repeals section 197 of the Act and substitutes a new provision to clarify the prohibitions around misleading or deceptive electoral matter.

Currently, section 197 prohibits electoral matter that is intended, likely or has the capacity to mislead or deceive an elector in relation to the recording of their vote. The proposed new section 197 retains the general prohibition on communicating electoral matter that is intended, likely or has the capacity to mislead or deceive an elector in relation to the casting of their vote but also makes it clear that it is unlawful to communicate electoral matter:

- containing incorrect or misleading information about whether a person is a candidate, a candidate for a particular division, a registered member of, or nominated/endorsed by, a registered party;
- that uses the name, an abbreviation or acronym of or the derivative of a name of a registered party in a way intended or likely to mislead an elector;
- that uses the word "independent" and the name or an abbreviation, acronym or derivative of the name of a registered party in a way that suggests or indicates an affiliation with that party;
- that could result in an elector casting an informal vote;
- that contains a statement (express or implied) to the effect that voting is not compulsory;
- that contains a statement intended or likely to mislead an elector that the material is an official communication from the TEC or Commissioner.

There is a penalty for breach of this provision of a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months or both.

## Clause 28

### Section 198 amended (Campaigning on polling day)

This clause makes a minor, technical change to section 198 of the Act to replace the reference to "*how to vote*" card with *how to vote card*, i.e., removing the quotation marks.

## Clause 29

### Part 7, Division 8 inserted

This clause inserts a new division in Part 7 (Offences) to provide the TEC with investigation powers.

#### **Proposed new section 200A (Interpretation of Division 8)**

Section 200A defines the term 'relevant document' for the purposes of the new Division 8.

'relevant document' is defined to include documents in written, electronic or another form.

#### **Proposed new section 200B (Power to require provision of documents and information)**

Section 200B gives the Commission powers to require a person to provide information, answer questions and produce relevant documents or things that the Commission reasonably requires for the purposes of enforcement of the Act. The Commission can exercise these powers, by written notice to the person, if it has reason to believe that the person is in possession of information or a relevant document or thing that may be relevant to the enforcement of the Act. The new section 200B(5) allow a written notice to be given to a person in respect of a matter which occurred or is located outside of the State or where the person or information, document or thing is outside the State.

The Commission can also require a person to attend at a specified place and time (which is reasonable in the circumstances) to answer questions or produce relevant documents or things (proposed new section 200B(1)(d)) and to make a statement providing an explanation of any relevant document if the person was a party to its compilation (proposed new section 200B(1)(e)). The Commission may make copies of any relevant documents provided and must return any document or thing and destroy a copy of any document as soon as practicable after the document, thing or copy ceases to be required for the purposes of enforcement.

Under the proposed new section 200B(4), the person can only be required to produce existing documents or things that are in the person's possession or within their power to obtain lawfully and is not obliged to provide any information, produce a document or thing, answer questions or provide a statement unless the Commission or an inspector has informed them of the requirement to do so (section 200B(6)).

#### **Proposed new section 200C (Offences and proceedings in relation to notice)**

Section 200C establishes offences for:

- failure (without reasonably excuse) to comply with a requirement made under section 200B;
- providing information, a document or an answer under section 200B that the person knows, or ought to know, is false or misleading in a material particular

The penalty for both offences is a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years or both.

The provision also clarifies the following matters in relation to proceedings for an offence under section 200B:

- a copy of a document made under section 200B(7) is admissible in evidence in proceedings relating to one of the above offences (i.e., failure to comply with a requirement or providing false or misleading information etc) and in the absence of evidence to the contrary, the contents of the copy are presumed to be the same as the original document;
- any information provided, answer given or statement made in response to a requirement under section 200B may not be used in any proceedings against that person except in relation to one of the above offences (i.e., failure to comply with a requirement or providing false or misleading information etc);
- the Commission may retain any documents or things provided under section 200B that it has reason to believe are evidence of an offence under the legislation until the proceedings have been heard and determined.

#### **Proposed new section 200D (Appointment and identification of inspectors)**

Section 200D makes provision for the appointment of inspectors to carry out functions and powers under the Act (including the new powers provided by section 200B and 200E).

To appoint someone as an inspector, the Commission is to be satisfied that the person has the necessary expertise to exercise powers and functions under the Act and has satisfactorily completed the approved training.

The Commission may enter into arrangements with the Commissioner of Police for a police officer to exercise the functions and powers of an inspector.

The proposed new section 200D also requires the Commission to cause each inspector to be issued with identification in the approved form. An inspector must produce this identification for inspection if requested to do so during the course of carrying out functions or powers and must return the identification to the Commission within 14 days after the person's appointment as an inspector is revoked.

#### **Proposed new section 200E (Entry by inspector, &c., under warrant)**

Section 200E allows an inspector to apply to a magistrate for a warrant to enter and search specified land, premises, vessel, aircraft or vehicle and seize relevant documents or things.

The magistrate may issue the warrant if satisfied there are reasonable grounds to suspect:

- that a relevant document or thing that may provide evidence relating to a contravention of the Act may be at, on or in the land, premises, vessel, aircraft or vehicle at any time within the next 24 hours; and
- that the relevant document or thing might be concealed, lost, mutilated or destroyed if a notice under section 200B were given.

A search warrant issued to an inspector authorises the inspector (with assistance and with reasonable force) to enter and search land, premises, vessel, aircraft or vehicle specified in the warrant and seize relevant documents or things.

Section 200E(6) specifies the powers an inspector can exercise in order to ascertain whether the Act is being or has been contravened. These include powers to:

- enter land, premises, vessel, aircraft or vehicle (in accordance with a warrant) on or in which the inspector has reasonable grounds to believe relevant documents or things are kept at any reasonable time;
- request the owner or occupier of the land, premises, vessel, aircraft or vehicle to produce any relevant documents or things for inspection;
- request any person employed or engaged at the land, premises, vessel, aircraft or vehicle to produce for inspection any relevant documents or things that are in their custody or control;
- examine and inspect any relevant documents or things that are at, on or in the land, premises, vessel, aircraft or vehicle;
- copy or take extracts from any relevant documents at, on or in the land, premises, vessel, aircraft or vehicle.

Documents and things seized under a warrant can be retained for as long as is reasonably necessary for the purpose of investigating whether a contravention of the Act has occurred and must then be returned.

It is an offence for a person to refuse or intentionally delay admission to the land, premises, vessel, aircraft or vehicle, or to intentionally obstruct or fail to comply with a request of an inspector. There is a penalty of a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years or both.

**Proposed new section 200F (Warrant by telephone or other electronic means)**



Section 200F sets out the process by which an inspector can apply for a warrant by telephone, facsimile or other electronic means in urgent cases or where a delay by making an application in person would frustrate the effective execution of the warrant.

**Clause 30**                      **Section 244B inserted**

This clause inserts a transitional provision – section 244B – requiring an already registered party to provide its constitutional documents to the Commission within 6 months of commencement of this Bill.

**PART 4 – LEGISLATIVE COUNCIL ELECTORAL BOUNDARIES ACT 1995  
AMENDED**

**Clause 31**                      **Principal Act**

This clause provides that the Act to which the amendments in Part 4 apply is the *Legislative Council Electoral Boundaries Act 1995*.

**Clauses 32 to 75**              **Amendments to various sections**

Clauses 32 to 75 make amendments to various sections in the *Legislative Council Electoral Boundaries Act 1995* as a result of the name of the Redistribution Tribunal being changed to the 'Augmented Electoral Commission'. The amendments made by these clauses simply substitute the reference to 'Redistribution Tribunal' with 'Augmented Electoral Commission'.

**PART 5 – CONCLUDING PROVISION**

**Clause 76**                      **Repeal of Act**

This is a standard provision to provide for the automatic repeal of this Amendment Act (Bill) after the amendments have been incorporated into the Principal Acts – the Constitution Act, the Electoral Act and the Legislative Council Electoral Boundaries Act.