

Electoral and Other Legislation Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Electoral and Other Legislation Amendment Bill 2019.

Policy objectives and the reasons for them

The policy objectives of the Electoral and Other Legislation Amendment Bill 2019 (the Bill) are to:

- improve the integrity, transparency and public accountability of State elections by implementing the further legislative stage of the Government's response to certain recommendations in the Report of the Crime and Corruption Commission (CCC) titled *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Belcarra Report);
- facilitate operational improvements and support efficiencies in the State electoral system by implementing the Government's response to the Independent Panel's report, *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Independent Panel's Report);
- ensure that provisions of the *Electoral Act 1992* (Electoral Act) and related legislation reflect the adoption of four-year fixed terms in Queensland; and
- achieve improved consistency across the electoral system, including better alignment between State and local government elections and referendums, and make other minor improvements.

In response to complaints about the conduct of candidates in a number of 2016 local government elections, the CCC initiated Operation Belcarra to determine whether candidates committed offences under the *Local Government Electoral Act 2011* (LGEA) that could constitute corrupt conduct and to examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government. On 4 October 2017, the Belcarra Report was tabled in the Legislative Assembly. The report made 31 recommendations for change to reduce the risk of corruption and to provide for increased transparency, integrity and accountability in local government.

On 10 October 2017, the Government response to the Belcarra Report was tabled, which supported, or supported in principle, the recommendations. The Bill implements, in part, a further legislative stage of reforms in response to the Belcarra Report in relation to the State electoral system. This adds to those implemented by the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*, assented to on 21 May 2018.

In October 2016, an independent panel was appointed to undertake an inquiry into the conduct by the Electoral Commission Queensland (ECQ) of the 2016 Local Government elections, the referendum on four-year fixed terms and the by-election for the State seat of Toowoomba South. The resulting Independent Panel's Report was tabled in the Legislative Assembly on 15 June 2017, along with the Queensland Government response. The report made 74 recommendations, a number of which were of a policy and legislative nature including improved processes concerning postal voting and consideration of amendments to the Electoral Act and the LGEA to achieve a greater level of consistency. The Bill implements certain recommendations for which amendments to legislation are necessary.

On 2 December 2015, the Electoral (Constitutional) Amendment Bill 2015 was introduced by the then Shadow Attorney-General, Mr Ian Walker MP, but lapsed with the calling of the last general State election on 29 October 2017. The objective of the Bill was to align those provisions in the Electoral Act for the calling of elections with the changes made by the *Constitution (Fixed Term Parliament) Act 2015* (Fixed Term Act) to introduce four-year fixed terms. The Bill incorporates amendments based on the lapsed Bill to achieve alignment.

Achievement of policy objectives

The Bill will improve the integrity, transparency and public accountability of State elections by:

- expanding the ECQ's statutory functions to include administering and promoting compliance with the election funding and financial disclosure provisions of the Electoral Act and the corresponding provisions of the LGEA (recommendation 31 of the Belcarra Report);
- placing an obligation on donors to notify a recipient of the true source of a gift (recommendation 6 of the Belcarra Report);
- amending and introducing new offence and penalty provisions within the Electoral Act to improve consistency with the LGEA and the *Referendums Act 1997* (the Referendums Act) to support compliance (recommendation 30 of the Belcarra Report); and
- increasing the period over which funding and disclosure prosecutions can be brought from three years to four years from commission of the offence.

The Bill will make operational improvements and support efficiencies in the State electoral system by:

- enabling the ECQ (rather than the Governor in Council) to appoint returning officers and assistant returning officers, consistent with the approach under the LGEA (recommendation 4 of the Independent Panel's Report);

- moving the deadline for postal vote applications to be submitted to the ECQ to no later than 12 days prior to the election (i.e. by 7pm on the Monday two weeks prior to polling day) as a consequence of changes to the frequency and reliability of postal services and to ensure that postal ballots applied for can realistically be delivered to voters prior to polling day (recommendations 41, 43, and item 13 of recommendation 74 of the Independent Panel's Report);
- allowing the preliminary processing of declaration envelopes for postal votes to commence before polling day to allow such ballot papers to be included in the preliminary count and allow the ECQ to better disperse its workload over the election period (recommendation 61 and item 11 of recommendation 74 of the Independent Panel's Report). However, preliminary processing will not be permitted on polling day so that ECQ staff can focus on the conduct of the poll;
- enabling the ECQ to issue replacement ballot papers on polling day if they are spoilt, and replacement lost or spoilt postal ballot papers accompanied by a declaration by the elector (item 2 of recommendation 74 of the Independent Panel's Report);
- removing the requirement for polling booths, pre-poll centres and mobile polling booths to be notified in the gazette and instead allowing them to be notified on the ECQ website and as considered appropriate by the ECQ (item 3 of recommendation 74 of the Independent Panel's Report);
- enabling candidates to make their nomination payments by cash, cheque or electronic payment methods to minimise transaction costs and risks of fraud and achieve procedural efficiencies (item 9 of recommendation 74 of the Independent Panel's Report);
- adjusting the timeframes for retention of election papers and financial records by the ECQ (items 4 and 5 of recommendation 74 of the Independent Panel's Report);
- abolishing the requirement for each ballot paper to be attached to a butt that has a unique number for the electoral district to reduce excess printing costs with no corresponding security advantage (item 12 of recommendation 74 of the Independent Panel's report); and
- enabling absentee voters to be marked off the electoral roll at the polling booth and issued with an ordinary vote, to make voting faster and easier for absentee voters and achieve efficiencies for the ECQ (item 14 of recommendation 74 of the Independent Panel's Report).

The Bill will ensure that provisions of the Electoral Act and other legislation reflect the adoption of four-year fixed parliamentary terms in Queensland, and make related amendments, by:

- amending the Electoral Act, *Acts Interpretation Act 1954* and *Parliament of Queensland Act 2001* to align with changes made by the Fixed Term Act;
- varying those provisions around electoral redistributions to reflect four-year fixed terms and to provide that a redistribution does not affect a by-election before the Legislative Assembly is next dissolved or expired;
- amending the disclosure periods applying to candidates to reflect four-year fixed terms; and
- providing discretion for the Speaker of the House or the Governor to not fill a vacancy in the Legislative Assembly in the last three months before dissolution day.

The Bill will improve consistency across the electoral system and make other minor improvements by:

- aligning Queensland's position on prisoner voting with the Commonwealth position post the High Court decision in *Roach v Electoral Commission* [2007] HCA 43;
- providing for the online publication of all returns consistent with ECQ practice (whilst also ensuring that certain information can be withheld for privacy or other reasons by way of regulation);
- requiring the ECQ to publish election information in relation to first preference votes and the distribution of preferences, and provide elector information to a registered political party or independent member on request for a purpose related to an election;
- ensuring that prescribed entities receiving electoral roll information for a prescribed purpose are empowered to use that information for that purpose;
- allowing the returning officer to temporarily suspend polling at a polling booth for up to four hours in the case of an emergency that will temporarily interrupt or obstruct the taking of the poll, including a serious threat of a riot or open violence, or a serious risk to the health and safety of persons at the polling booth or other emergency;
- expanding the types of emergencies for which a poll may be adjourned; and
- making amendments to the Referendums Act to align with the Electoral Act.

In accordance with section 4A of the *Constitution of Queensland 2001*, the Bill is required to be passed by an absolute majority of the Legislative Assembly. This is due to the inclusion of amendments in the Bill which provide discretion for the Governor or Speaker to not issue a writ for a by-election in the three months before dissolution day.

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as the objectives require amendment of existing legislation.

Estimated cost for government implementation

The State Government will incur an additional cost in the implementation of the measures contained in the Bill. Funding for the ECQ to administer these measures will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

Potential breaches of the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* are addressed below.

Returning officers and assistant returning officers – termination of appointments

Returning officers or assistant returning officers (the officers) are currently appointed by the Governor in Council pursuant to section 31 or 32 of the Electoral Act. The appointments do not have an end date and are usually terminated by the Governor in Council at the same time that the new appointments are made. The officers typically carry out their functions in a six week election period, over which they are remunerated. For the remainder of their appointment, they do not receive remuneration.

The Bill provides for these roles to be filled by the ECQ instead of the Governor in Council and terminates existing appointments. Clause 73 (new section 429) of the Bill could potentially be inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. However, the termination will have no practical effect given incumbents are appointed on the understanding that fresh appointments would be made before commencement of the next election.

Prisoner voting

Under section 106 of the Electoral Act, a person who is serving a sentence of imprisonment is not entitled to vote at an election for an electoral district. This aligns with the position under the *Commonwealth Electoral Act 1918* prior to the High Court decision in *Roach v Electoral Commission* [2007] HCA 43 which found the previous corresponding Commonwealth provision invalid because it cast the net of disqualification too widely without regard to the culpability of the offender. Clause 27 amends section 106 to provide that only persons serving a sentence of three years or longer are disqualified from voting. This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. However, the Bill moderates the current position in favour of a broad class of prisoners, aligns with the current Commonwealth position and has regard to the culpability of a person's offending in disqualifying them from voting.

Clause 34 of the Bill amends section 115 of the Electoral Act to provide that persons in detention (which includes those held on remand and those who are sentenced to a term of imprisonment) must vote by way of postal voting. These amendments could potentially be inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. The amendment reflects operational considerations and current practice for prisoners who are eligible to vote.

Prescribed procedures for counting of absentee votes

Clause 46 of the Bill inserts new section 130A in the Electoral Act, and clause 101 inserts new section 41A in the Referendums Act. The clauses contain a delegation of legislative power by requiring the ECQ to make procedures about how absentee votes are to be counted. The amendment could potentially be inconsistent with the fundamental legislative principle that legislation only allows the delegation of legislative power in appropriate cases. The delegation of legislative power in this instance is necessary given the detailed operational considerations. The delegation of legislative power has been mitigated by clearly setting out in the section the subject matter for the procedures and providing that the procedures do not take effect until approved by regulation and must be tabled in the Legislative Assembly with the regulation and published on the ECQ website.

ECQ to provide electoral information

Clause 47 inserts new section 133A in the Electoral Act which provides that the ECQ must:

- publish information about first preference votes and the distribution of votes; and
- give a registered political party or an independent member elector information (that is, names and addresses; method of voting; and in some instances, location of voting) on request.

The proposal is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties by allowing political parties and independent members increased access to the personal information of voters. Making this information available will assist the analysis of the demographics and patterns of voting at polling booths and changes in those demographics and patterns over time. It will also assist in communicating relevant information to electors (for example, where the location of polling booths change between elections). The information will also assist political participants to communicate with electors.

The provision is also consistent with the approach in New South Wales, Victoria and the Commonwealth. As an additional safeguard, the related offence provision is cast broadly providing that a person must not use, disclose to another or allow another person to access elector information unless the use, disclosure or giving of access is for a purpose related to an election.

Misuse of restricted information

Clause 50 amends section 177 to expand “permitted purposes” in which a person may use information obtained from the electoral roll under section 61 to include a purpose prescribed under relevant regulation made under section 61(2). This is potentially inconsistent with the fundamental legislative principles that legislation should not adversely affect the rights and liberties of individuals, and have sufficient regard to the institution of Parliament.

The Electoral Act currently provides that a regulation may prescribe persons or organisations to whom the ECQ can give a copy of electoral roll information and the circumstances in which the information may be given. The information that can be provided is limited to the publicly available part of the electoral roll.

While currently no persons or organisations are prescribed as recipients of electoral roll information, the amendment will ensure that any persons or organisations prescribed in the future are able to use that information for any prescribed purpose for which it is given.

Application for postal vote to be made at least 12 days before polling day

Under section 119 of the Electoral Act, the ECQ must send a ballot paper and declaration envelope to an elector who requests a postal vote if the request is received not later than 7pm on the Wednesday before polling day. However, this does not reflect current postal service delivery standards and it is unlikely that persons who request a postal ballot paper so close to polling day will receive it before polling day, particularly if in remote and regional areas.

Clause 38 of the Bill amends section 119 to provide that an elector's postal vote request must be received by the ECQ or returning officer not later than 7pm on the day that is 12 days before the polling day for the election (which would normally be the second Monday before polling day). This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals.

The 12 day cut-off for postal vote applications for all electors will mean that those who request a postal vote have the reasonable prospect of the postal ballot being received before polling day. Those electors who are likely to require a postal vote will need to make their request earlier than they presently do. An elector whose address is more than 20 kilometres from a polling booth may apply to be included on the register of special postal voters in advance of an election and will automatically be sent a postal ballot once the election period commences. Electors in many electoral districts have access to pre-poll voting. Telephone voting is also available to a wide cohort of persons. The earlier cut-off is intended to minimise electors being unexpectedly disenfranchised due to the practical limitations of reliance on the postal network.

Extending the timeframe for commencing prosecutions

Clause 67 of the Bill amends section 307(14) to increase the period over which prosecutions for offences against the funding and disclosure provisions (false or late lodgement or failure to lodge) can be brought from three years to four years from commission of the offence. This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals.

The amendment is justified on the basis of the increased period for keeping financial records widening the window in which contraventions can be detected (see clause 69); and accords with the longer period between elections, given the move to four-year fixed parliamentary terms. Further, this change will apply only to offences committed after commencement so as to not operate retrospectively.

Changes to timeframes for retaining financial records

Clause 69 of the Bill amends section 309 of the Electoral Act to change the period over which financial records are to be kept by the ECQ, candidates, parties and third parties in relation to electoral funding and expenditure (such as receipts and returns) from three years to five years from the date of the claim or return (to which the record relates) was made, or required to be made. This amendment could potentially impact the rights and liberties of individuals by requiring them to retain records for an extended period. This amendment is justified as:

- it accords with the move to four-year fixed parliamentary terms and provisions in the LGEA;
- complements the proposals to increase the period over which proceedings can be initiated for offences against the funding and disclosure provisions of the Electoral Act (discussed above); and
- five years is a reasonable period for keeping important documents (by comparison, receipts would be kept for 7 years for taxation purposes).

Publication of returns

The ECQ has been publishing returns online in addition to those specifically authorised to be published under section 316 of the Electoral Act since the 2009 State election.

Clauses 71 and 72 amend section 316 (Publishing of returns) and section 317 (Inspection and supply of copies and returns) to reflect the current practice. Clause 73 inserts new section 433 (Publication of returns) in the Electoral Act to validate the past publication of returns by the ECQ.

The proposal is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. However, publishing of the information improves the integrity, transparency and accountability of the electoral system and is consistent with the returns being publicly available and public knowledge of the ECQ's practices.

New offence and penalty provisions

The Bill amends various offence and penalty provisions as well as introducing new offence and penalty provisions which could potentially adversely affect the rights and liberties of individuals:

- clause 8 (new section 32A) - returning officers or assistant returning officers to notify the ECQ if they become a member of a political party - 40 penalty units;
- clause 47 (new section 133A(6)) - use, disclosure or giving access to stated information obtained under the section other than for a purpose related to an election - 200 penalty units;
- clause 52 (new section 188A) - displaying a badge or emblem of a political party during voting hours in a polling booth - one penalty unit;
- clause 59 (new section 260B)- failure to give notice of true source of gift – 20 penalty units;
- clause 67 (section 307) - failure to give notice under section 312A (Notifying particulars of incomplete returns) - 20 penalty units; and false and misleading claims or returns under divisions 4, 7 or 10 of part 11 - increase from 50 to 100 penalty units; and

- clause 68 (new section 307D) - false or misleading information about a gift – 20 penalty units.

These provisions could potentially be inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

These changes are for the purpose of achieving greater consistency between offence and penalty provisions in the Electoral Act and the LGEA (as contemplated in recommendation 31 of the Independent Panel's Report); and to address emerging areas of concern. The offences are appropriate and the penalties proportionate to the nature of the offending and comparable existing provisions in the Electoral Act and the LGEA.

The Bill also amends the Referendums Act to align various offence and penalty provisions with comparable provisions of the Electoral Act. The amendments involve modernising wording and terminology (section 72); small increases for maximum penalties applying to individuals from 9 penalty units to 10 penalty units (sections 73, 76, 77 and 78); and provision of specific corporate penalties (sections 72, 73 and 76). The individual penalty increases are minimal and align with comparable offences in the Electoral Act. The proposed new corporate penalties accord with the penalties under the Electoral Act and are less than the penalties which would otherwise apply given the operation of section 181B(3) of the *Penalties and Sentences Act 1992* (which provides that if a body corporate is found guilty of the offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual).

Requirements to disclose the true source of a gift or loan

Clause 59 inserts new section 260B which requires an entity that makes a gift or loan to a registered political party or candidate equal to or exceeding the gift threshold amount of \$1,000, who is not the true source of the gift or loan, to give the recipient notice of that fact and provide the relevant particulars of the entity that is the source. This requirement also applies to an entity making a gift to third parties who incur expenditure for political purposes. The relevant particulars of the true source of a gift or loan are required to be given in returns to the ECQ (clauses 60 to 65) and published by the ECQ, with addresses of silent electors deleted (clause 71).

This could be potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. Although making a gift or loan is voluntary, it may require an individual to disclose information that he or she may reasonably wish to keep private (specifically, name and address information).

This impact on an individual's privacy is necessary to allow for increased transparency of the electoral system and support electors to make informed decisions. Without this information, which supplements that already required under the Electoral Act by those who give disclosable gifts or loans, the information would not be meaningful enough to provide the degree of transparency to support this objective. In addition, a safeguard applies so that the silent electors will not have their addresses published by the ECQ. Individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety. This ensures that the disclosure required for transparency is appropriately balanced with measures to ensure that the privacy of the address information of vulnerable individuals is protected.

Consultation

No consultation with the community has been undertaken in the preparation of the Bill.

Operation Belcarra was initiated by the CCC following receipt of more than 30 complaints about the conduct of candidates for several councils in the 2016 local government elections. The CCC conducted nine days of public hearings, and took evidence from 40 witnesses, including candidates, donors, the Queensland Electoral Commissioner and the Local Government Association of Queensland (LGAQ). In addition, the CCC invited written submissions from a range of key stakeholders including registered political parties, the LGAQ and academic experts. Written submissions were also received.

The panel conducting the inquiry which resulted in the Independent Panel's Report issued invitations for feedback to approximately 2,000 stakeholders including candidates, mayors, local government Chief Executives, returning officers, polling officers, the LGAQ and Local Government Managers Australia (Queensland). The panel completed close to 60 interviews, attended 15 meetings and considered 171 written submissions.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that, when enacted, the Bill will be cited as the *Electoral and Other Legislation Amendment Act 2019*.

Clause 2 Commencement

Clause 2 states that the Bill is intended to commence on a day fixed by proclamation.

Part 2 Amendment of Electoral Act 1992

Clause 3 Act amended

Clause 3 states that part 2 amends the Electoral Act.

Clause 4 Amendment of s 2 (Definitions)

Clause 4 omits, inserts and amends definitions in section 2 of the Electoral Act. These amendments ensure alignment with section 6(2), update references to amended provisions and assist with the interpretation of other provisions.

Clause 5 Amendment of s 7 (Functions and powers of commission)

Clause 5 amends section 7, which sets out the functions of the ECQ, to include a new function to administer and promote compliance with part 11, and part 6 of the LGEA which concern electoral funding and financial disclosure. This amendment implements recommendation 31 of the Belcarra Report.

Clause 6 Amendment of s 31 (Returning officers)

Clause 6 amends section 31 to allow the ECQ, rather than the Governor in Council, to appoint the returning officer for an electoral district, and require the ECQ to terminate such an appointment where the officer becomes a member of a political party. The clause also validates any actions or decisions taken by the officer, and ensures that the election remains valid during any period in which an officer becomes a member of a political party before their appointment is officially terminated. These amendments implement recommendation 4 and item 1 of recommendation 74 of the Independent Panel's Report.

Clause 7 Amendment of s 32 (Assistant returning officers)

Clause 7 amends section 32 to allow the ECQ, rather than the Governor in Council, to appoint the assistant returning officer for an electoral district, and require the ECQ to terminate such an appointment where the officer becomes a member of a political party. The clause also validates any actions or decisions taken by the officer, and ensures that the election remains valid during any period in which an officer becomes a member of a political party before their appointment is officially terminated. This amendment complements the amendment to section 31 and implements recommendation 4 and item 1 of recommendation 74 of the Independent Panel's Report.

Clause 8 Insertion of new s 32A Obligation to notify membership of political party

Clause 8 inserts new section 32A which requires a returning officer or assistant returning officer to notify the ECQ if the officer becomes a member of a political party. This will assist the ECQ to perform its duties to terminate appointments under sections 31 and 32. Failure to notify immediately is an offence with a maximum penalty of 40 penalty units.

Clause 9 Replacement of s 35 (Distribution, and redistribution, of State into electoral districts)

Clause 9 amends section 35 in relation to when an electoral redistribution must be deferred. If the last general election was an ordinary general election, the redistribution must be deferred where the need for it arises more than 28 months after the writ was returned. If the last general election was an extraordinary general election, the redistribution must be deferred where the need for it arises less than 20 months before the normal polling day for the next ordinary general election. If a writ has been issued but not yet returned, or is issued while the commissioner is undertaking a redistribution, the redistribution must be deferred.

Clause 10 Replacement of s 38 (Electoral redistribution after certain number of elections and minimum period)

Clause 10 amends section 38 to specify when the need for an electoral distribution arises as a consequence of the introduction of four-year fixed terms - the later of: the day that is one year after the writ is returned for the second general election held after the previous redistribution becomes final; or the day that is 7.5 years after the previous redistribution becomes final.

Clause 11 Amendment of s 52 (When redistribution takes effect)

Clause 11 amends section 52 to omit spent transitional provisions and provide that a final electoral redistribution does not affect a by-election to fill a vacancy in the membership of the Legislative Assembly. An electoral redistribution does not take effect until the Legislative Assembly is next dissolved or expires by the passage of time.

Clause 12 Amendment of s 59 (Preparation of electoral rolls)

Clause 12 amends section 59(1)(c) as a result of the introduction of four-year fixed parliamentary terms to provide that the ECQ must prepare the electoral roll as soon as practicable after three years pass after the day on which the writ for the last general election was returned. The clause also amends section 59(3) to clarify that the electoral rolls may be prepared in an electronic form and omits section 59(4) so that the ECQ is not required to provide a printed electoral roll for every electoral district to every polling place.

Clause 13 Amendment of s 64 (Entitlement to enrolment)

Clause 13 amends section 64 to provide which electoral district a person who is serving a sentence of imprisonment is entitled to be enrolled. This will be, by default, the electoral district for which the person was enrolled, or entitled to be enrolled, immediately before starting to serve their sentence. However, if the person was not previously entitled to be enrolled, the relevant district will be the district where any of their next of kin are enrolled, where they were born, or where they have the closest connection, in that order of priority. If a person is otherwise detained in lawful custody, they will remain entitled to be enrolled in the electoral district in which they last lived before they were detained in lawful custody.

Clause 14 Amendment of s 81 (Writs for elections)

Clause 14 amends section 81(2) to require the ECQ to conduct an election in accordance with the writ and subject to the *Constitution of Queensland 2001* and part 7 of the Electoral Act.

Clause 15 Replacement of ss 82 and 83

Clause 15 omits and replaces section 82 to provide a list of the writs that the Governor is to issue under the Electoral Act and the Constitution. Section 82(1)(b) is omitted but moved to section 83. The clause also omits and replaces section 83 which specifies the circumstances when the Governor or Speaker must issue a writ for an election to fill a vacancy in the membership of the Legislative Assembly. Where there is a vacancy in the membership of the Legislative Assembly within three months before the next normal dissolution day under the Constitution, a writ need not be issued (at the discretion of the Speaker or Governor, whichever applies).

Clause 16 Amendment of s 84 (Form and content of writs)

Clause 16 amends section 84 so that the writ for a general election must set out the polling day for the election under section 19B or 19F of the Constitution.

Clause 17 Amendment of s 86 (Change of time limits in writ)

Clause 17 amends section 86 so that, for an ordinary general election, the Governor or Speaker may not substitute a later day for a day stated in the writ. Section 19B of the *Constitution of Queensland 2001* provides for the postponement of the polling day once the writ for an ordinary general election has been issued.

Clause 18 Amendment of s 89 (Deposit to accompany nomination)

Clause 18 amends section 89 to broaden payment methods of nomination deposits to credit card and electronic funds transfer.

Clause 19 Amendment of s 98 (Setting up and operating polling booths)

Clause 19 amends section 98 to require the ECQ to advertise specific information about each polling booth for an election in the way it considers appropriate, rather than in the gazette. This implements item 3 of recommendation 74 of the Independent Panel's Report.

The clause also allows absentee voters to make ordinary votes if they attend a polling booth outside their electoral district on polling day. This implements item 14 of recommendation 74 of the Independent Panel's Report. For each polling booth, the ECQ must advertise those electoral districts for which an elector may make an ordinary vote at the booth. If the ECQ chooses to do so, it could advertise that all polling booths will accept ordinary votes for all districts, or it could be selective.

Clause 20 Amendment of s 99 (Kinds of polling booths)

Clause 20 amends section 99 to allow the ECQ to declare mobile polling booths by notice published on the ECQ's website, rather than by gazette. The notice can also declare the electoral districts for which electors may make an ordinary vote at the mobile polling booth. This implements item 3 of recommendation 74 of the Independent Panel's Report. It also complements item 14 of recommendation 74 of the Independent Panel's Report so that absentee votes cast at mobile polling booths may be made by ordinary vote at the discretion of the ECQ (with the ECQ notifying whether the mobile polling booth is to accept ordinary votes for other districts).

Clause 21 Insertion of new ss 99A and 99B

Clause 21 inserts new section 99A (replacing section 111) which allows the ECQ to declare pre-poll voting offices in the way the ECQ considers appropriate. It also allows the ECQ to declare those electoral districts for which ordinary votes may be cast at each pre-poll office. This implements items 3 and 14 of recommendation 74 of the Independent Panel's Report. An ECQ office will be notified as a pre-poll office if the ECQ decides to allow electors to cast votes at the office, giving the ECQ greater control over polling locations and services to be provided.

The clause also inserts new section 99B which allows a returning officer to suspend the poll at a polling booth for up to four hours in limited circumstances.

Clause 22 Replacement of s 100 (Adjournment of poll)

Clause 22 replaces section 100 to expand the circumstances of emergency where it may be appropriate for a returning officer to adjourn the poll at a polling booth. The clause also provides that only electors who are enrolled in the electoral district for which the polling booth is established and who have not already voted may vote at the adjourned poll. The clause also clarifies when the adjourned poll is taken to have occurred. These provisions align with equivalent provisions in the Referendums Act.

Clause 23 Insertion of new s 101A

Clause 23 inserts new section 101A which requires the ECQ to ensure that a sufficient number of certified copies of the electoral roll and ballot papers for each electoral district are available at a polling place. A certified copy of the electoral roll is available if it can be accessed electronically and an issuing officer can make an electronic record of the persons to whom the officer issues ballot papers. A ballot paper for an electoral district is available if it can be reproduced at the place in accordance with the relevant requirements. This new clause replaces section 102(1).

Clause 24 Amendment of s 102 (Supply of ballot papers and electoral rolls)

Clause 24 amends section 102 to:

- reflect content being incorporated into new section 101A;
- remove the requirement for ballot papers to be attached to a butt with a number unique to the electoral district, which implements item 12 of recommendation 74 of the Independent Panel's Report; and
- require ballot papers to direct voters to number every square in the order of their preference.

Clause 25 Insertion of new s 102A

Clause 25 inserts new section 102A to allow ballot papers to be reproduced by an issuing officer if a polling place does not have, or runs out of, ballot papers for an electoral district. This will permit ballot papers to be printed on demand and integrates with other amendments allowing electronic roll mark-off so that the ECQ does not need to supply pre-printed ballot papers for every electoral district to every polling booth.

Clause 26 Amendment of s 104 (Scrutineers)

Clause 26 amends section 104(2) to remove an unnecessary reference to other offices staffed by an issuing officer. This complements other amendments which remove the requirement for the ECQ to provide polling services at all of its offices. Instead, the ECQ will have discretion to decide which of its offices will provide polling services and will advertise those as pre-poll voting offices or polling booths.

Clause 27 Amendment of s 106 (Who may vote)

Clause 27 amends section 106(3) so that a person who is serving a sentence of imprisonment of three years or longer is not entitled to vote at an election.

Clause 28 Insertion of new pt 7, div 5, sdiv 1AA

Clause 28 inserts new section 106A (Particular references relating to an electoral district) which is an interpretive provision relevant to division 5 of part 7. This provision makes it clear that references in relation to an electoral district or a returning officer in relation to an elector, or a polling booth in relation to an elector, will have the particular meaning set out in the section. This will streamline those provisions which use such references.

Clause 29 Amendment of s 107 (Procedure for voting)

Clause 29 amends section 107 to:

- clarify that the procedures it contains do not apply to pre-poll ordinary voting, declaration voting or electronically assisted voting;
- indicate that to make an ordinary vote an elector is to enter a polling booth at which an ordinary vote may be made for the electoral district for which the elector is enrolled; and
- require the issuing officer to be satisfied the person is entitled to vote at the election for the electoral district for which the elector is enrolled before issuing a ballot paper for that district.

These amendments implement item 14 of recommendation 74 of the Independent Panel's Report so that absentee voters can cast an ordinary vote at a polling booth that the ECQ has advertised for that purpose.

Clause 30 Amendment of s 110 (Pre-poll ordinary voting)

Clause 30 amends section 110(2) to reflect that electors may make a pre-poll ordinary vote at any pre-poll voting office at which an ordinary vote is available for the electoral district for which the elector is enrolled.

Clause 31 Omission of s 111 (Pre-poll voting offices)

Clause 31 omits section 111, which allows the ECQ to declare pre-poll voting offices for the electoral district, as it is replaced by new section 99A.

Clause 32 Amendment of s 112 (Procedure for pre-poll ordinary voting)

Clause 32 amends section 112 to reflect that ballot papers issued must relate to the electoral district for which the voter is enrolled. This amendment is consistent with amendments to section 107 to allow absentee voters to cast ordinary votes at certain polling booths and implements item 14 of recommendation 74 of the Independent Panel's Report.

Clause 33 Amendment of s 114 (Who may make a declaration vote)

Clause 33 amends section 114 to use the definition of "silent elector" included in section 2. It also removes the defined term "ordinary postal voter" which is now included in section 119.

Clause 34 Amendment of s 115 (Who must make a declaration vote)

Clause 34 amends section 115 to clarify that an elector only needs to make a declaration vote if they attend a polling booth that has not been established for the elector's electoral district. This amendment complements other amendments which allow absentee voters to cast an ordinary vote at a polling booth that the ECQ has advertised for that purpose. The clause also provides that an elector must make a declaration vote if for any reason the elector cannot make an ordinary vote at a polling booth on polling day. This provides a safeguard to ensure that in the event that electronic roll mark-off is unavailable or, if the elector's entitlement to vote cannot be determined, the elector is able to cast their vote using a declaration envelope. These amendments implement item 14 of recommendation 74 of the Independent Panel's Report.

Consistent with the amendment to section 106 in clause 27 (which has the effect of not precluding persons serving a sentence of less than three years from voting), the clause also provides that persons who are detained in custody (whether on remand or imprisoned) and who are eligible to vote must make a declaration vote. This amendment enables prisoners who are entitled to vote to do so using postal ballots.

Clause 35 Amendment of s 116 (Ways in which an elector may make a declaration vote)

Clause 35 amends section 116 to remove separate references to ECQ offices which will be declared as pre-poll voting offices or polling booths at the discretion of the ECQ. Such offices may be located in the State, interstate or overseas. The clause also amends section 116(d) which is consequential to the insertion of the new section 123B relating to spoilt ballot papers.

Clause 36 Amendment of s 117 (Making a declaration vote at a polling booth)

Clause 36 amends section 117 so that a request for a declaration vote must be complied with unless the elector is enrolled for an electoral district for which an ordinary vote may be made at the polling booth. This amendment complements other amendments which allow absentee voters to cast ordinary votes at certain polling booths, implementing item 14 of recommendation 74 of the Independent Panel's Report.

Clause 37 Omission of s 118 (Making a declaration vote at a commission office)

Clause 37 omits section 118. ECQ offices will be declared as pre-poll voting offices if appropriate. The ECQ will no longer be required to provide declaration voting services at all of its offices and will instead control which offices to make available for such services.

Clause 38 Amendment of s 119 (Making a declaration vote using posted voting papers)

Clause 38 amends the deadline by which applications for postal votes must be made. Requests must be received by the ECQ or the returning officer not later than 7pm on the day that is 12 days before polling day for a ballot paper or declaration envelope to be posted, delivered or sent. This day will normally fall on the second Monday before polling day, allowing the ECQ 10 business days to send the postal ballot papers to the elector.

An elector may make a request by calling the ECQ directly, or by completing the approved form (for example, by submitting the form electronically on the ECQ's website). An elector may ask another person to give their completed written request form to the ECQ on their behalf. Someone else cannot call the ECQ to make the request on behalf of the elector. If an elector makes a request after the deadline, the ECQ must notify the elector (for example, by text or email).

The ECQ or the returning officer must post, deliver or send the ballot paper or declaration envelope as soon as practicable after receiving the request. These amendments implement recommendations 41, 43, and item 13 of recommendation 74 of the Independent Panel's Report.

Clause 39 Amendment of s 120 (Electoral visitor voting)

Clause 39 amends section 120 to clarify how an elector may make a request to vote as an electoral visitor voter. An elector must make the request in writing in the approved form (for example, by submitting the form electronically on the ECQ's website). The completed form may be given to the ECQ or returning officer directly or the elector may ask someone else to give it on their behalf. Unlike postal voting, an elector cannot call the ECQ to request to be an electoral visitor voter over the phone.

Clause 40 Insertion of new pt 7, div 5, sdiv 5

Clause 40 inserts new sections 123A and 123B. New section 123A allows an issuing officer, in certain circumstances, to give an elector another ballot paper where they provide their spoiled ballot paper to the issuing officer. New section 123B allows postal voters to request a replacement postal ballot paper if they do not receive their ballot paper or if they receive it but it is damaged. The elector must make additional declarations on the declaration envelope that the ballot paper was lost or damaged. These amendments implement item 2 of recommendation 74 of the Independent Panel's Report.

Clause 41 Amendment of s 124 (Votes to be counted in accordance with division)

Clause 41 amends section 124 to provide that ballot boxes must only be opened in accordance with part 7, division 6.

Clause 42 Amendment of s 125 (Preliminary processing of declaration envelopes and ballot papers)

Clause 42 amends section 125 to clarify that the examination of declaration envelopes can occur before or after polling day (but not on polling day). This amendment implements recommendation 61, and item 11 of recommendation 74 (in part) of the Independent Panel's Report.

Clause 43 Amendment of s 126 (Preliminary and official counting of votes)

Clause 43 amends section 126 to provide that votes must be counted in accordance with the ECQ's procedures for counting absentee votes made under section 130A.

Clause 44 Replacement of s 127 (Preliminary counting of ordinary votes)

Clause 44 replaces section 127 to allow for any absentee votes that have been cast as ordinary votes at a polling booth, together with any postal votes that have been preliminarily processed under section 125 to be counted in the preliminary count. The section also ensures that the staff must follow the procedures approved under new section 130A in order to ensure that the secrecy of the vote is maintained.

Clause 45 Amendment of s 128 (Official counting of votes)

Clause 45 amends section 128 as a consequence of the amendments to section 127 which result in different parcels being made for each electoral district.

Clause 46 Insertion of new s 130A

Clause 46 inserts new section 130A which requires the ECQ to make procedures about how absentee votes at an election are to be counted. Absentee votes are votes cast by electors at a polling booth that is located outside of the elector's electoral district. The procedures must provide for a number of specific issues, including ensuring votes are counted at polling places in a way that does not compromise the secrecy of voting.

Clause 47 Insertion of new se 133A

Clause 47 inserts new section 133A which requires the ECQ to publish particular information on its website concerning first preference votes and the distribution of preference votes, and to provide certain elector information to a registered political party or independent member upon request. The elector information is the names and addresses of electors who voted, whether they voted in person, by post or another way, and the location of the polling place at which they voted, if applicable. Elector information must not be given about a silent elector. It is an offence with a maximum penalty of 200 penalty units to use, disclose or allow another person to access elector information, unless it is for a purpose related to an election.

Clause 48 Amendment of s 136 (Storage of ballot papers and declaration envelopes)

Clause 48 amends section 136 to change the period for which formal and informal ballot papers for the election, certified copies of electoral rolls and declaration envelopes must be kept following the polling day for the election. The minimum time period that these records must be kept is for one year after the polling day for the election, or longer if the material relates to an application to dispute an election or appeal or it is being used for authorised analysis or research. This implements item 4 of recommendation 74 of the Independent Panel's Report.

Clause 49 Amendment of s 147 (Restrictions on certain orders)

Clause 49 makes a consequential amendment to section 147 to reflect amendments to section 102.

Clause 50 Amendment of s 177 (Misuse of restricted information)

Clause 50 amends section 177 to provide that use, disclosure to another person or allowing another person to access information in a copy of the electoral roll is prohibited, unless it is for a permitted purpose. The permitted purposes are expanded to include a purpose prescribed under a relevant regulation made under section 61(2).

Clause 51 Amendment of s 188 (Canvassing etc. in or near polling places)

Clause 51 makes a consequential amendment to section 188 to reflect the omission of section 118.

Clause 52 Insertion of new s 188A

Clause 52 inserts new section 188A which provides that a person must not wear or display a badge or emblem of a political party or candidate in an election during voting hours in a polling booth. This is an offence with a maximum penalty of one penalty unit. This amendment implements recommendation 30 (in part) of the Belcarra Report.

Clause 53 Amendment of s 191 (Offences relating to ballot papers)

Clause 53 makes a consequential amendment to section 191 to reflect the changes to section 119 without altering its operation.

Clause 54 Replacement of s 192 (Failure to post, fax or deliver documents for someone else)

Clause 54 omits and replaces section 192 as a consequence of changes to sections 119 and 120. The offence applies to a person given a request under section 119 or 120 or a declaration envelope under section 199(8)(d)(ii) who fails to promptly give, post or send (as applicable) to the ECQ or returning officer. The person will not be liable for the offence if they have a reasonable excuse.

Clause 55 Amendment of s 194 (Breaking seals on parcels)

Clause 55 makes a consequential amendment to section 194 without altering its operation.

Clause 56 Amendment of s 195 (Duty of witness to signing of declaration voting papers)

Clause 56 makes a consequential amendment to section 195 without altering its operation.

Clause 57 Amendment of s 197 (Definitions)

Clause 57 inserts new definitions into section 197 for “disclosure period” (which refers to section 198) and “source” (which refers to section 260A).

Clause 58 Replacement of s 198 (Meaning of disclosure period)

Clause 58 omits and replaces section 198. This amendment ensures that the period for disclosure is consistent with the introduction of four-year fixed terms. The effect of the provision is to ensure that the disclosure period for a candidate in an election runs from 30 days after the last general election or intervening by-election in which the person was a candidate. In addition, in circumstances where a candidate in an election was not previously a candidate in a general election or by-election, disclosure will apply from the earliest of nomination or indication of an intention to be a candidate. For a third party, the disclosure period for an election starts 30 days after the polling day for the last general election and ends 30 days after the polling day for the election.

Clause 59 Insertion of new ss 260A and 260B

Clause 59 inserts new sections 260A and 260B. These amendments implement recommendation 6 of the Belcarra Report.

New section 260A specifies the circumstances in which an entity is the source of a gift or loan. This provides that where a first person or entity provides a gift or loan through an intermediary with the main purpose of enabling that intermediary to make an ultimate gift or loan, the first person or entity is considered to be the “source” of the gift or loan.

New section 206B requires an entity making a gift or loan to a registered political party or candidate equal to or exceeding the gift threshold amount who is not the source of the gift or loan to give the recipient notice of that fact and provide the relevant particulars of the entity that is the source of the gift or loan. This requirement also applies to an entity making a gift to a third party to which section 263 applies. Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units.

Clause 60 Amendment of s 261 (Disclosure by candidates of gifts)

Clause 60 amends section 261 to require relevant particulars of the entity that is the source of the gift, if applicable, to be included in a candidate's return about the gift.

Clause 61 Amendment of s 262 (Loans to candidates)

Clause 61 amends section 262 to require relevant particulars of the entity that is the source of the loan, if applicable, to be included in a candidate's return about the loan.

Clause 62 Amendment of s 263 (Disclosure of gifts by third parties that incur expenditure for political purposes)

Clause 62 omits section 263(4). It also amends section 263(5) to require relevant particulars of the entity that is the source of a gift, if applicable, in the return of gifts received by third parties that incur expenditure for political purposes.

Clause 63 Amendment of s 264 (Disclosure by third parties of gifts to candidates)

Clause 63 amends section 264 to require relevant particulars of the entity that is the source of a gift, if applicable, to be included in a third party's return relating to a gift to a candidate, if applicable.

Clause 64 Amendment of s 265 (Gifts to political parties)

Clause 64 amends section 265 to require relevant particulars of the entity that is the source of the gift, if applicable, to be included in returns relating to a gift to a registered political party.

Clause 65 Amendment of s 272 (Particular loans not to be received)

Clause 65 amends section 272 to require a record to be kept of the relevant particulars of the entity that is the source of the loan to a political party or candidate, if applicable.

Clause 66 Amendment of s 283 (Returns of electoral expenditure)

Clause 66 amends section 283 to require returns of electoral expenditure in relation to a candidate in an election to include details of the name and business address of the person who supplied the goods or service to which the expenditure relates, a description of the goods or service and the amount of the expenditure.

Clause 67 Amendment of s 307 (Offences)

Clause 67 amends section 307 to:

- insert new subsection 307(2A) which provides an offence with a maximum penalty of 20 penalty units for failing to provide information required to be given under section 312A;
- increase the maximum penalty to 100 penalty units for a person who lodges a claim under division 4 or gives a return under division 7 or 10 that contains particulars that are, to the knowledge of the person, false or misleading in a material particular; and
- allow a prosecution for an offence against a provision of section 307 to be started at any time within 4 years after the offence was committed.

These amendments implement recommendation 30 (in part) of the Belcarra Report.

Clause 68 Insertion of new section 307D

Clause 68 inserts new section 307D which prohibits a person from publishing information about a gift made to, or received by, a candidate in an election, registered political party and third party that the person knows is false or misleading in a material particular. A person will not have committed an offence if the information is a true copy or fair summary of information on the gifts register maintained by the ECQ. The offence has a maximum penalty of 20 penalty units. This amendment implements recommendation 30 (in part) of the Belcarra Report.

Clause 69 Amendment of s 309 (Records to be kept)

Clause 69 amends section 309 to require certain records relating to claims or returns under part 11 to be kept for a period of at least five years from the day on which the claim or return was made or required to be made. This amendment implements item 5 of recommendation 74 (in part) of the Independent Panel's report.

Clause 70 Insertion of new s 312A

Clause 70 inserts new section 312A. This section requires a person who was unable to obtain certain particulars required to complete a return, lodged an incomplete return pursuant to section 312, and subsequently obtains the particulars within 5 years, to give notice to the ECQ identifying the relevant return and the particulars.

Clause 71 Amendment of s 316 (Publishing of returns)

Clause 71 amends section 316 to provide that the ECQ must publish a return given to it under part 11 on its website within five business days after it is given to the ECQ. However, if the return contains the addresses of silent electors or other information that is prescribed, a copy of the return must be published with that information deleted.

Clause 72 Amendment of s 317 (Inspection and supply of copies of claims and returns)

Clause 72 amends section 317 to reflect that returns given to the ECQ will be published on the ECQ's website (pursuant to section 316) and therefore the timeframe for preventing perusal or obtaining a copy at the ECQ's office is no longer relevant.

Clause 73 Insertion of new pt 13, div 10

Clause 73 inserts new transitional provisions sections 428 to 435.

New section 428 provides definitions used in part 13, division 10.

New section 429 provides that any incumbents appointed as returning officers or assistant returning officers under section 31 or 32 of the Act are terminated upon commencement. Amendments to those sections provide that the ECQ will manage the appointments in the future.

New section 430 provides that, for the purposes of amended sections 35 and 38, a reference to a general election or the return of a writ for an election includes either of those events before commencement. It also provides that, for the purposes of amended section 38, a reference to an electoral redistribution includes one that happened before commencement.

New section 431 provides that the disclosure period for an election under previous section 198 applies in relation to the first general election after commencement and any other election preceding this general election.

New section 432 provides that new section 312A does not apply to a notice given under section 312 before commencement.

New section 433 provides that returns to which section 316 did not apply to before commencement and were published by the ECQ on its website were, and continue to, be published for the purposes of the Act.

New section 434 provides that if a person was required to keep a record under section 309 (for at least three years) and this period has not ended will be subject to amended section 309.

New section 435 provides that the change to the period for starting an offence only applies in relation to an offence committed after commencement.

Part 3 Amendments of Referendums Act 1997

Clause 74 Act amended

Clause 74 provides that part 3 amends the *Referendums Act 1997*.

Clause 75 Insertion of new pt 4, div 1AA

Clause 75 inserts new section 14A (Particular references relating to an electoral district) which is an interpretive provision relevant to part 4. This provision makes it clear that references in relation to an electoral district or a returning officer in relation to an elector, or a polling booth in relation to an elector, will have the particular meaning set out in the section. This will streamline those provisions which use such references.

Clause 76 Amendment of s 15 (Setting up and operating polling booths)

Clause 76 amends section 15 to require the ECQ to advertise specific information about each polling booth for a referendum in the way it considers appropriate, rather than in the gazette, consistent with the amendments to section 98 of the Electoral Act.

The effect of this amendment will be to allow absentee voters to make ordinary votes if they attend a polling booth outside their electoral district on polling day. For each polling booth, the ECQ must advertise those electoral districts for which an elector may make an ordinary vote at the booth. If the ECQ chooses to do so, it could advertise that all polling booths will accept ordinary votes for all districts, or it could be selective.

Clause 77 Amendment of s 16 (Kinds of polling booths)

Clause 77 amends section 16 to allow the ECQ to declare mobile polling booths by notice published on the ECQ's website rather than by gazette. The notice can also declare the electoral districts for which electors may make an ordinary vote at the mobile polling booth. This is consistent with the amendments to section 99 of the Electoral Act.

Clause 78 Insertion of new ss 16A and 16B

Clause 78 inserts new section 16A (replacing section 24B) which allows the ECQ to declare pre-poll voting offices and publish the declaration in the way the ECQ considers appropriate. It also allows the ECQ to declare those electoral districts for which ordinary votes may be cast at each pre-poll office. This is consistent with the amendments to section 99A of the Electoral Act. An ECQ office will be notified as a pre-poll office if the ECQ decides to allow electors to cast votes for the referendum at the office, giving the ECQ greater control over polling locations and services to be provided.

The clause also inserts new section 16B which allows a returning officer to suspend the poll at a polling booth in limited circumstances. This is consistent with the insertion of new section 99B into the Electoral Act.

Clause 79 Amendment of s 17 (Adjournment of poll at polling booth)

Clause 79 expands the circumstances of emergency where it may be appropriate for a returning officer to adjourn the poll at a polling booth.

Clause 80 Insertion of new s 17A

Clause 80 inserts new section 17A which requires the ECQ to ensure that a sufficient number of certified copies of the electoral roll and ballot papers for each electoral district are available at a polling place. A certified copy of the electoral roll is available if it can be accessed electronically and an issuing officer can make an electronic record of the persons to whom the officer issues ballot papers. A ballot paper for an electoral district is available if it can be reproduced at the place in accordance with the relevant requirements. This new clause replaces section 18(1). The amendment is consistent with the insertion of new section 101A into the Electoral Act.

Clause 81 Amendment of s 18 (Ballot papers and electoral rolls)

Clause 81 amends section 18 to:

- reflect content being incorporated into new section 17A;
- remove the requirement for ballot papers to be attached to a butt numbered in a regular arithmetical sequence from one and instead require the butt to contain the name of the electoral district; and
- require the ballot paper to contain the name of the State, the name of the electoral district and the day of the referendum.

This amendment is consistent with amendments to section 102 of the Electoral Act.

Clause 82 Insertion of new s 18A

Clause 82 inserts new section 18A (Ballot papers may be reproduced if required) to allow ballot papers to be reproduced by an issuing officer if a polling place does not have, or runs out of, ballot papers for an electoral district. This will permit ballot papers to be printed on demand and integrates with other amendments allowing electronic roll mark-off so that the ECQ does not need to supply pre-printed ballot papers for every electoral district to every polling booth. This amendment is consistent with the insertion of new section 102A into the Electoral Act.

Clause 83 Amendment of s 19 (Scrutineers)

Clause 83 amends section 19(2) to remove an unnecessary reference to other offices staffed by an issuing officer. This complements other amendments which remove the requirement for ECQ to provide polling services at all of its offices. Instead, the ECQ will have discretion to decide which of its offices will provide polling services and will advertise those as pre-poll voting offices or polling booths. This amendment is consistent with the amendments to section 104 of the Electoral Act.

Clause 84 Amendment of s 21 (Who may vote)

Clause 84 amends section 21(3) so that a person who is serving a sentence of imprisonment of three years or longer is not entitled to vote at a referendum. This amendment is consistent with the amendments to section 106 of the Electoral Act.

Clause 85 Amendment of s 22 (Procedure for voting)

Clause 85 amends section 22 to:

- clarify that the procedures it contains do not apply to pre-poll ordinary voting, declaration voting or electronically assisted voting;
- indicate that to make an ordinary vote an elector is to enter a polling booth at which an ordinary vote may be made for the electoral district for which the elector is enrolled; and
- require the issuing officer to be satisfied the person is entitled to vote at the referendum for the electoral district for which the elector is enrolled before issuing a ballot paper for that district.

This amendment is consistent with the amendments to section 107 of the Electoral Act so that absentee voters can cast an ordinary vote at a polling booth that the ECQ has advertised for that purpose.

Clause 86 Amendment of s 24A (Pre-poll ordinary voting)

Clause 86 amends section 24A(2) to reflect that electors may make a pre-poll ordinary vote at any pre-poll voting office at which an ordinary vote is available for the electoral district for which the elector is enrolled. This amendment is consistent with the amendments to section 110 of the Electoral Act.

Clause 87 Omission of s 24B (Pre-poll voting offices)

Clause 87 omits section 24B, which allows the ECQ to declare pre-poll voting offices for the electoral district, as it is replaced by new section 16A. This amendment is consistent with the omission of section 111 of the Electoral Act.

Clause 88 Amendment of s 24C (Procedure for pre-poll ordinary voting)

Clause 88 amends section 24C to reflect that ballot papers issued must relate to the electoral district for which the voter is enrolled. This amendment is consistent with amendments to section 22 to allow absentee voters to cast ordinary votes at certain polling booths, and the amendments to section 112 of the Electoral Act.

Clause 89 Amendment of s 25 (Who may make a declaration vote)

Clause 89 amends section 25 to remove the defined term “ordinary postal voter” which is now included in section 30. This amendment is consistent with the amendments to section 114 of the Electoral Act.

Clause 90 Amendment of s 26 (Who must make a declaration vote)

Clause 90 amends section 26 to clarify that an elector only needs to make a declaration vote if they attend a polling booth that has not been established for the elector's electoral district. This amendment complements other amendments which allow absentee voters to cast an ordinary vote at a polling booth that the ECQ has advertised for that purpose. The clause also provides that an elector must make a declaration vote if for any reason the elector cannot make an ordinary vote at a polling booth on polling day. This provides a safeguard to ensure that in the event that electronic roll mark-off is unavailable or, if the elector's entitlement to vote cannot be determined, the elector is able to cast their vote using a declaration envelope.

Consistent with the amendment to section 21 (which has the effect of not precluding persons serving a sentence of less than three years from voting), the clause also provides that persons who are detained in custody on polling day (whether on remand or imprisoned) and who are eligible to vote must make a declaration vote. This amendment enables prisoners who are entitled to vote to do so using postal ballots.

These amendments are consistent with the amendments to section 115 of the Electoral Act.

Clause 91 Amendment of s 27 (Ways in which an elector may make a declaration vote)

Clause 91 amends section 27 to remove separate references to ECQ offices which will be declared as pre-poll voting offices or polling booths at the discretion of the ECQ. Such offices may be located in the State, interstate or overseas. The clause also amends section 27(1)(d) which is consequential to the insertion of the new section 34B relating to spoilt ballot papers. This amendment is consistent with the amendments to section 116 of the Electoral Act.

Clause 92 Amendment of s 28 (Making a declaration vote at a polling booth)

Clause 92 amends section 28 so that a request for a declaration vote must be complied with unless the elector is enrolled for an electoral district for which an ordinary vote may be made at the polling booth. This amendment complements other amendments which allow absentee voters to cast ordinary votes at certain polling booths, and is consistent with the amendments to section 117 of the Electoral Act.

Clause 93 Omission of s 29 (Making a declaration vote at a commission office)

Clause 93 omits section 29. ECQ offices will be declared as pre-poll voting offices if appropriate. The ECQ will no longer be required to provide declaration voting services at all of its offices and will instead control which offices to make available for such services. This amendment is consistent with the omission of section 118 from the Electoral Act.

Clause 94 Amendment of s 30 (Making a declaration vote using posted referendum papers)

Clause 94 amends the deadline by which applications for postal votes must be made. Requests must be received by the ECQ or the returning officer not later than 7pm on the day that is 12 days before polling day for a ballot paper or declaration envelope to be posted, delivered or sent. This day will normally fall on the second Monday before polling day, allowing the ECQ 10 business days to send the postal ballot papers to the elector.

An elector may make a request by calling the ECQ directly, or by completing the approved form (for example, by submitting the form electronically on the ECQ's website). An elector may ask another person to give their completed written request form to the ECQ on their behalf. Someone else cannot call the ECQ to make the request on behalf of the elector.

If an elector makes a request after the deadline, the ECQ must notify the elector as such (for example, by text or email). The ECQ or the returning officer must post, deliver or send the ballot paper or declaration envelope as soon as practicable after receiving the request.

These amendments are consistent with the amendments to section 119 of the Electoral Act.

Clause 95 Amendment of s 31 (Electoral visitor voting)

Clause 95 amends section 31 to clarify how an elector may make a request to vote as an electoral visitor voter. An elector must make the request in writing in the approved form (for example, by submitting the form electronically on the ECQ's website). The completed form may be given to the ECQ or returning officer directly or the elector may ask someone else to give it on their behalf. Unlike postal voting, an elector cannot call the ECQ to request to be an electoral visitor voter over the phone. This amendment is consistent with amendments to section 120 of the Electoral Act.

Clause 96 Insertion of new pt 4, div 3, sdiv 4

Clause 96 inserts sections 34A and 34B in new part 4, division 3 and subdivision 4.

New section 34A allows an issuing officer, in certain circumstances, to give an elector another ballot paper where they provide their spoilt ballot paper to the issuing officer. New section 34B allows postal voters to request a replacement postal ballot paper if they do not receive their ballot paper or if they receive it but it is damaged. The elector must make additional declarations on the declaration envelope that the ballot paper was lost or damaged. These amendments correspond with the insertion of sections 123A and 123B into the Electoral Act.

Clause 97 Amendment of s 36 (Preliminary processing of declaration envelopes and ballot papers)

Clause 97 amends section 36 to clarify that the examination of declaration envelopes can occur before or after polling day (but not on polling day). This corresponds with the amendments to section 125 of the Electoral Act.

Clause 98 Amendment of s 37 (Preliminary and official counting of votes)

Clause 98 amends section 37 to provide that votes must be counted in accordance with the ECQ's procedures for counting absentee votes made under section 41A. This corresponds with the amendments to section 126 of the Electoral Act.

Clause 99 Replacement of s 38 (Preliminary counting of ordinary votes)

Clause 99 replaces section 38 to allow for any absentee votes that have been cast as ordinary votes at a polling booth, together with any postal votes that have been preliminarily processed under section 36 to be counted in the preliminary count. The section also ensures that the staff must follow the procedures approved under new section 130A in order to ensure that the secrecy of the vote is maintained.

This corresponds with the amendments to section 127 of the Electoral Act.

Clause 100 Amendment of s 39 (Official counting of votes)

Clause 100 amends section 39 as a result of the amendments to section 38 which result in different parcels being made for each electoral district.

This corresponds with the amendments to section 128 of the Electoral Act.

Clause 101 Insertion of new s 41A

Clause 101 inserts new section 41A which requires the ECQ to make procedures about how absentee votes at a referendum are to be counted. Absentee votes are votes cast by electors at a polling booth that is located outside of the elector's electoral district. The procedures must provide for a number of specific issues, including ensuring votes are counted at polling places in a way that does not compromise the secrecy of voting.

This corresponds with the insertion of section 130A into the Electoral Act.

Clause 102 Amendment of s 46 (Storage of ballot papers and declaration envelopes)

Clause 102 amends section 46 to change the period for which formal and informal ballot papers for the referendum, certified copies of electoral rolls and declaration envelopes must be kept following the polling day for the referendum. The minimum time period that these records must be kept is for one year after the polling day after the referendum, or longer if the material related to an application to dispute a referendum or appeal or it is being used for authorised analysis or research. This corresponds with the amendments to section 136 of the Electoral Act.

Clause 103 Amendment of s 72 (Author of referendum matter must be named)

Clause 103 amends section 72 to include a maximum penalty for a corporation of 85 penalty units and indicate that publishing on the internet is covered by the provision. The clause also omits the defined term “referendum matter” which has been moved to the dictionary.

Clause 104 Amendment of s 73 (Headline to general referendum matter advertisements)

Clause 104 amends section 73 to increase the maximum penalty for an individual to 10 penalty units and include a maximum penalty for a corporation of 40 penalty units.

Clause 105 Amendment of s 76 (Leave to vote)

Clause 105 amends section 76 to increase the penalty for an individual to 10 penalty units and include a maximum penalty for a corporation of 40 penalty units.

Clause 106 Amendment of s 77 (Canvassing etc. in or near polling places)

Clause 106 amends section 77 to increase the maximum penalty to 10 penalty units. The clause also makes a consequential amendment arising from the omission of section 29.

Clause 107 Amendment of s 78 (Interrupting voting etc)

Clause 107 amends section 78 to increase the maximum penalty to 10 penalty units.

Clause 108 Amendment of s 82 (Offences relating to ballot papers)

Clause 108 makes a consequential amendment to section 82 arising from amendments to section 30.

Clause 109 Amendment of s 83 (Failure to give, post or send documents for someone else)

Clause 109 makes a consequential amendment to section 83 arising from amendments to section 30.

Clause 110 Amendment of s 85 (Breaking seals on parcels)

Clause 110 makes a consequential amendment to section 85 arising from amendments to section 38.

Clause 111 Amendment of s 86 (Duty of witness to signing of declaration voting papers)

Clause 111 makes a consequential amendment to section 86 arising from amendments to section 30.

Clause 112 Amendment of s 88 (Extension of time)

Clause 112 amends section 88 as a result of changes made by the *Constitution (Fixed Term Parliament) Act 2015* to reflect the fact that both the Electoral Act and the Constitution can extend polling day in different situations.

Clause 113 Amendment of s 89 (Cut-off day for electoral rolls for an election and a referendum)

Clause 113 amends section 89 to accommodate changes to the cut-off day for the electoral rolls for an election that may occur after the issue of the writ pursuant to the Electoral Act. If the cut-off day is amended for the election, it will be extended to that amended day for the referendum.

Clause 114 Omission of s 90 (Pre-poll voting – making a declaration vote at a commission office)

Clause 114 omits section 90 as a result of the omission of section 29.

Clause 115 Amendment of s 94 (Applications, declarations, ballot papers and references)

Clause 115 makes consequential amendments to section 94 arising from amendments to section 119 of the Electoral Act, and sections 29 and 30 of the Referendums Act.

Clause 116 Insertion of new s 95A

Clause 116 inserts new section 95A (Suspension of poll at both referendum and election) which clarifies that if an election is held jointly with a referendum and the election is suspended under new section 99B of the Electoral Act, then the poll for the referendum is also suspended for the same period.

Clause 117 Amendment of s 96 (Adjournment at both referendum and election)

Clause 117 makes a consequential amendment resulting from the insertion of section 99B of the Electoral Act.

Clause 118 Amendment of s 96AC (Application of division 1)

Clause 118 makes a consequential amendment to section 96AC resulting from the insertion of section 99B of the Electoral Act.

Clause 119 Amendment of s 96AE (Applications, declarations, ballot papers and references)

Clause 119 makes a consequential amendment to section 96AE(a) arising from amendments to section 30.

Clause 120 Omission of s 96AH (Ballot papers)

Clause 120 omits section 96AH which is no longer required as a result of amendments to section 18 which will require all ballot papers to state the name of the electoral district.

Clause 121 Amendment of sch 3 (Dictionary)

Clause 121 amends the Dictionary in Schedule 3 to omit, insert and amend definitions to assist with the interpretation of other provisions.

Part 4 Amendment of other Acts

Division 1 Amendment of Acts Interpretation Act 1954

Clause 122 Act amended

Clause 122 provides that Part 4, Division 1 amends the *Act Interpretation Act 1954*.

Clause 123 Amendment of sch 1 (Meaning of commonly used words and expressions)

Clause 123 removes references to the repealed *Constitution Act Amendment Act 1890* from the meaning of “*Constitution of Queensland*”.

Division 2 Amendment of Parliament of Queensland Act 2001

Clause 124 Act amended

Clause 124 provides that Part 4, Division 2 amends the *Parliament of Queensland Act 2001*.

Clause 125 Amendment of s 5 (Relationship between this Act and some other Acts about Parliament)

Clause 125 amends section 5(2) to indicate that the Constitution contains basic statements about the Legislative Assembly and provides for the duration of the Legislative Assembly.