



Major changes to Electoral Act

Following a request by the Chief Electoral Officer, Cabinet approved the drafting of a new Electoral Act to replace the *Electoral Act 1985*, with a particular view to—

- utilising contemporary legislative drafting;
- the adoption of modern electoral practice; and
- removing detailed procedures and forms, to be approved or prescribed as appropriate.

Discussion papers were issued in December of 1999 and 2000 requesting comment on a range of proposals to be incorporated into the new Act.

The *Electoral Bill 2004* has been considered by a Parliamentary working group consisting of the Hon. Allison Ritchie MLC, the Hon. Paul Harris MLC, Mr Nick McKim MHA and Mr Will Hodgman MHA. The working group has given general support to the Bill while suggesting a small number of amendments which have been incorporated.

This Bill preserves the fundamental principles in Tasmania's unique electoral systems but seeks to present those principles in a clear, precise and accessible way.

The Bill establishes a new Tasmanian Electoral Commission with wider powers to appoint returning officers and polling places, and to approve a range of forms and procedures. This will allow electoral practice to incorporate the use of appropriate modern technology.

This paper outlines the major changes, both of an administrative and policy nature, which would be implemented by this Bill.

Part 1 - Preliminary

This part contains the definitions for the purposes of the Act.

In particular "approved" in this Bill means approved by the Commission.

Part 2 - Administration

The Bill establishes a three person Tasmanian Electoral Commission, comprising the chairperson, Electoral Commissioner and one other member, and sets out the functions and powers of the Commission.

All members are appointed by the Governor following consultation by the Minister with the Parliamentary leader of each party represented in the Assembly and the President of the Council. Appointment is for a period not exceeding 7 years.

A person is not eligible for appointment if the person is or has been in the past 5 years a member of a House of Parliament of the Commonwealth or a State or Territory or a member of a registered party.

A member may be removed from office by the Governor on addresses from both Houses of Parliament. A member may also be suspended by the Governor for various reasons, but is to be restored to office unless each House passes an address requesting his or her removal within 30 sitting days of the laying before each House of a statement of the grounds of the suspension.

Further conditions relating to the membership and meetings of the Commission are also contained in Schedules 1 and 2.

The Electoral Commissioner is the chief executive officer of the Commission.

The Commission is to report to Parliament annually.

The Bill also provides that Returning Officers are to be appointed by the Commission rather than the Minister, as is the current situation.

Part 3 - Enrolment

The Bill removes the complex enrolment requirements and procedures from the Tasmanian Electoral Act and simply provides that persons entitled to be enrolled to vote in Federal elections are entitled to be enrolled for State elections.

A Joint Roll Arrangement with the Commonwealth has been in place for approximately 80 years, with nearly complementary enrolment qualifications and procedures for Commonwealth and House of Assembly electors. The single joint enrolment card was extended to include Legislative Council and Local Government electors in the early 90's.

It is expected that this arrangement will continue as the Bill further provides that the Commission may approve forms and procedures for the enrolment of persons on the State roll and that these may be joint State/Commonwealth forms and procedures.

There is scope, however, for the provision for separate state entitlement, forms or procedures if required at any stage in the future.

Currently, the Tasmanian *Constitution Act 1934* has a requirement that to enrol in Tasmania a person must have lived in Tasmania for six months continuously at any one time. There is no similar requirement in any other state or the Commonwealth. This difference creates confusion for electors and operational difficulties. New Tasmanians are enrolled initially as 'Commonwealth only' electors and then, after the 6 month period, are requested to lodge a further enrolment form for state enrolment

A consequential amendment to the *Constitution Act 1934* (ss 28 & 29) will be included to delete this 6 months requirement.

The effect of these provisions will be that all Tasmanian electors will have single card enrolment for federal, state and local government elections.

Sale and Inspection of the roll

The sale of the Tasmanian electoral roll is also banned under the Bill. This is in line with recent moves in the Commonwealth and other states. Modern technology now allows easy conversion of our printed rolls to electronic form and consequent commercial use for which it was not intended. This will now be prevented.

However, the Bill will allow the Tasmanian Electoral Commission to provide for public inspection of printed or electronic versions of the electoral roll and provision for the public to check their individual enrolment details on the internet.

Part 4 - Registration of political parties

The basic requirements for party registration have been retained but detailed provisions have been clarified and the role of the Commission introduced.

Under the present Act, any objection to the registration of a party, including a challenge by the Chief Electoral Officer, is to be referred directly to the Supreme Court.

Under the new provisions, the Commission will have responsibility for accepting or rejecting an application to register a party, having considered whether the application complies with the Act and any objections to the registration. Subsequent appeals would be still be made to the Supreme Court.

The mechanisms for adding, deleting or changing members have been clarified as the current Act provides only for the substitution of a registered member.

Currently the declarations by at least 100 party members required to accompany the application for registration need only contain a statement that the person is a member of the party. To ensure that these members are fully

aware of what they are signing they will also be required to state that they support the application for registration.

Currently, 3 registered members may apply for the change of a party name. The Bill will require such an application to be signed by the registered officer together with 3 members and must include a statement that the change has been approved by the executive of the party.

Part 5 - Conduct of elections

The Bill combines House of Assembly and Legislative Council procedures into the same sections or divisions while preserving the necessary differences, thereby avoiding duplication and allowing easier reference.

Clearer reference has been made to Assembly by-elections which, although rare events, may be required.

Division 2 – Nominations for election

Nominations by individuals

All candidates are currently required to be nominated by at least 2 nominators. To avoid frivolous nominations without being too onerous on candidates, the Bill provides that individual candidates will require at least 10 nominators who are electors entitled to vote at the election to which the nomination relates.

Nominations by registered parties and groups

The complex and confusing requirement for nominating party candidates, requiring the completion of 4 separate forms, has been replaced with a simple system that allows the registered officer, with the written consent of each candidate, to nominate the party candidates for each division. This is considered sufficient, as a registered party must have at least 100 registered members.

The current Act allows 2 or more people to register to appear as an un-named group on House of Assembly ballot papers.

The recent proliferation of parties in other parts of Australia has given rise to concerns that our almost complete lack of restriction on forming an unnamed group and being entitled to a column, could lead to the ballot paper becoming unwieldy and confusing for voters. It could also be argued that political parties have to go through a more rigorous registration process for the sole purpose of having a separate column on the ballot paper—albeit with the party name as a heading.

Accordingly, the Bill requires non-party groups on House of Assembly ballot papers to be supported by 100 electors on a new group nomination form.

Party names may appear on Legislative Council ballot papers

Following a recommendation of the Parliamentary Working Group on the *Electoral Bill 2004*, provision has been made to allow the name of a registered party to appear on a Legislative Council ballot paper together with the name of a candidate endorsed by that party.

Nomination deposit

The current nomination deposit of \$200 was set in 1985. This has been increased to \$400 in line with inflation. By comparison, the House of Representatives nomination deposit is currently \$350.

Death of a candidate

The new Act clarifies the provisions relating to the death of a candidate. There is a new provision whereby if a candidate dies before the close of nominations, then nominations are to be extended for a 24 hours period to allow further nominations to be lodged.

Division 3 – Arrangements for polling

Appointment of polling places

The Commission will appoint polling places instead of the Governor as currently provided. In addition, the Commission will be able to approve ordinary, pre-poll or mobile polling places outside the division for which the election is being held.

Division 7 – Voting at ordinary, pre-poll and mobile polling places

Assistance to electors

The ability for officials to assist an elector who cannot vote without assistance is very restricted in the current Act. This Bill allows the Commission to approve reasonable and appropriate procedures and provides that any scrutineers present are to be advised of the procedure to be used. This could for example include provision for an elector to vote in his or her car as recently introduced by the Commonwealth.

Pre-poll and mobile voting

Currently to be entitled to vote at a pre-poll or mobile polling place, an elector must fit within a particular category, such as illness or distance from a polling place. However, there are other genuine situations where electors who cannot vote on polling day have either been denied a vote or chose to complete a false declaration in order to vote. To overcome this, the Bill requires a single written declaration by an elector that he or she expects to be unable to vote at a polling place on polling day.

In addition, a declaration envelope will not be required. Electors' names will be marked off a certified list of voters and their ballot papers deposited directly into a ballot box.

Division 9 – Postal voting

As for pre-poll and mobile voting, the Bill only requires a declaration by an elector that he or she expects to be unable to vote at a polling place on polling day

The Bill sets out the basic requirements and provides that postal vote applications and postal vote declaration envelopes are to be approved. The Commission is also to approve procedures for the conduct of the preliminary scrutiny and counting of postal vote declaration envelopes.

The new Act removes the requirement for a witness on a postal vote application and postal vote declaration envelope. The current process requires the matching of the signature on the declaration envelope with the signature on the application to validate a postal vote. This assumes that the application was valid in itself as there is no current requirement to check the signature on an application.

The requirement for a witness on postal voting at local government elections was removed in 1996 with no adverse criticism. It can be difficult to obtain a signature of an authorised witness when overseas and when a witness is not a Tasmanian elector, the TEO may not be able to verify their identity.

To provide safeguards, signatures on postal vote declarations may now be checked against elector enrolment cards. These checks could be sample, targeted or 100% checks depending on the circumstances.

The Bill provides for a register of general postal voters, as in most Australian jurisdictions. Such voters will be sent a postal vote automatically without having to fill in an application at every election. The Commission may approve necessary arrangements to use the lists of general postal voters registered for Commonwealth elections.

Division 11 provides that the closing time for receipt of postal votes is to be 10am (rather than midnight) on the 10th day after polling day (a Tuesday). This will save almost a full day in the election timetable without disadvantaging postal voters, as mail is normally delivered by 10am.

Division 10 – Polling in Antarctica, remote areas and outside Tasmania

Voting in Antarctica and remote areas

The complex and old-fashioned provisions relating to polling in Antarctica have been replaced by provision for the Commission to approve procedures and this facility has also been extended to other remote areas.

Voting while outside Tasmania

The current procedures for overseas and interstate voting are very limited and require formal application in writing, the posting of a ballot paper from the returning officer to the elector and the elector returning that ballot paper by post. With modern technology it is possible for a postal vote to be requested by electronic means and a ballot paper delivered to the elector electronically. This legislation will allow the Commission to approve procedures which as far as practicable retain secrecy and security, but can take advantage of technology.

In addition, the new provision under Division 7 to appoint polling places outside the electoral division will allow the creation of pre-poll facilities in electoral offices in other states. This would be at minimal cost as we generally have reciprocal arrangements.

These provisions will assist in addressing a criticism that it is difficult, and in some cases impossible, to vote from outside Tasmania.

Division 14 – Compulsory voting

See also Division 3 of Part 7 (Offences).

The current sections relating to enforcement of compulsory voting are unduly complex and time-consuming, requiring at least two notices for simple offences. In some cases it is impossible to prosecute within the time limit imposed by the Justices Act 1959.

The Bill adopts a process similar to that in the *Commonwealth Electoral Act 1918*. This is along the lines of an on-the-spot traffic infringement system. Apparent offenders will receive a single penalty notice allowing either an immediate fine payment or the provision of a reason for not voting. If the reason is not acceptable a further penalty notice will be issued. Telephone payment of fines by credit card will be accepted.

The current penalties are out of date. The initial penalty for failure to vote, if accepted by the elector, will be increased from \$5 to \$20. The penalty if the case goes to court will be increased from \$50 to \$100.

Part 6 - Electoral expenditure in respect of Council elections

There have been no significant changes to this part.

Part 7 - Offences

To facilitate compliance with the Act and easy reference, all offences have been incorporated into one part in the Bill. The offences are clearly separated into appropriate divisions.

Authorisation of printed & broadcast electoral matter

Currently the Act requires the name and residential address of the person who instructed the printing and the name and address of the printer to appear on all printed, published and distributed electoral matter.

Under the new Act, only the name and address of the responsible person will need to appear on electoral matter. Details of the publisher and printer will no longer be required.

The requirement for a residential address makes it difficult for some people to authorise material, as, for genuine privacy reasons, they do not wish to advertise their home address.

Accordingly, the new Act allows non-residential addresses to be used—provided the address enables them to be readily located.

It is made clear that authorisation is not required on specific items such as T-Shirts, buttons pens or balloons, and also business cards.

Currently it is an offence for a person to use a candidate's name in advertising without that candidate's consent. The new Act will extend this prohibition to the use of a photograph or a likeness of a candidate.

Requirements for radio and television advertising have been removed as these are covered by the Commonwealth *Broadcasting Services Act 1992*.

Part 8 - Disputed elections, eligibility and vacancies

While there have been no substantial changes to the provisions relating to disputed elections, eligibility and vacancies, they have been modernised.

Part 9 - Casual vacancies in Assembly

While there have been no substantial changes to the provisions relating to casual vacancies, they have been clarified, particularly in relation to the possible need for a by-election and the procedures to be followed in this unusual event.

Schedule 4 – Method of counting votes at Assembly election

The only modification to the scrutiny process has been to incorporate the amalgamation of transfer values.

Currently the Act provides that when a candidate is excluded all the ballot papers received by that candidate are distributed to other candidates as separate parcels in the order and at the transfer value each parcel was

received. This is a lengthy and time-consuming process with around 100 counts often required to exclude the last candidate.

This modification to the scrutiny process only applies when distributing the votes of excluded candidates. It involves the amalgamation of parcels of votes having the same transfer value into single parcels prior to distribution. These larger parcels are then distributed in order of decreasing size of the transfer value (starting from 1) rather than at present in the order each parcel was received by the candidate being excluded.

Amalgamation of transfer values will significantly reduce the number of counts required. In 2002 the 5 House of Assembly divisions required between 250 and 750 counts depending on the number of candidates. With amalgamation, only 40 to 80 counts would have been needed. This would have provided a result about a day earlier on the longer scrutinies and delivered some small cost savings.

It will have only minor effect on the results of an election and is arguably no less fair than the existing system. In fact by reducing the number of counts, the number of votes lost by fraction will be reduced allowing more votes to remain in the count. The order of election of candidates in 2002 would not have changed.

While some ballot papers will be handled in a different order and hence result in some differences in the flow of preferences it is argued that the larger amalgamated parcels being distributed will provide a more representative flow of preferences and be less 'quirky' in their effect.

The Australian Capital Territory incorporated this modification with the support of all parties and the Proportional Representation Society of Australia when, after considerable public debate, it adopted the Hare-Clark system for their Legislative Assembly.

It has also been used for local government elections in Tasmania since 1999.