

The Constitution Act Amendment (Electoral Reform) Bill

No.

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LEGISLATIVE COUNCIL

Read 1 12 November 1987

(Brought from the Legislative Assembly)

A BILL

for

An Act to amend *The Constitution Act Amendment Act 1958* to provide for the appointment of an independent Electoral Commissioner, to regulate electoral material, to consequentially amend certain other Acts and for other purposes.

The Constitution Act Amendment (Electoral Reform) Act 1987

The Parliament of Victoria enacts as follows:

Purpose of Act.

1. The purpose of this Act is—

- 5 (a) to provide for the appointment of an independent Electoral Commissioner; and
- 10 (b) to prohibit the distribution of unapproved how-to-vote cards and of other printed electoral material outside polling places on polling day and to provide for the reservation by a registered political party of the initials for that party for its how-to-vote cards; and
- (c) to change the name of the Electoral Commission to the Electoral Boundaries Commission.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act.

Principal Act
Act No. 6224
Reprinted to No.
10146.
Subsequently
amended by Nos.
10244, 16/1986,
59/1986 and
110/1986.

3. In this Act *The Constitution Act Amendment Act 1958* is called the Principal Act.

Independence of Electoral Commissioner.

4. (1) In the *Public Service Act 1974* Schedule Three A is amended as follows: 5

- (a) In the Column headed “*Administrative Unit*” insert “State Electoral Office”;
- (b) In the Column headed “*Office*” insert “Electoral Commissioner”. 10

(2) For section 144 of the Principal Act substitute:

Electoral Commissioner.

“144. (1) The Governor in Council may appoint an officer to be called the Electoral Commissioner.

(2) The Electoral Commissioner holds office for the period not exceeding 10 years specified in the instrument of appointment and may be re-appointed. 15

(3) The office of the Electoral Commissioner becomes vacant—

- (a) upon acceptance by the Governor in Council of the Electoral Commissioner’s resignation in writing; or 20
- (b) upon the Electoral Commissioner becoming a bankrupt; or
- (c) upon the Electoral Commissioner nominating for election for a House of Parliament of Victoria or of the Commonwealth or of any other State or Territory; or
- (d) upon the Governor in Council determining that the Electoral Commissioner is physically or mentally incapable of carrying out the duties of office; or 25
- (e) upon the passing of a resolution by both Houses of Parliament requesting the Electoral Commissioner’s removal from office; or 30
- (f) upon the Electoral Commissioner being convicted of an indictable offence or being sentenced to imprisonment for any offence.”

Deputy Electoral Commissioner.

“144A. (1) The Governor in Council may appoint an officer to be called the Deputy Electoral Commissioner.

5 (2) The Deputy Electoral Commissioner holds office for the period not exceeding 10 years specified in the instrument of appointment and may be re-appointed.

(3) The office of the Deputy Electoral Commissioner becomes vacant—

- 10 (a) upon acceptance by the Governor in Council of the Deputy Electoral Commissioner's resignation in writing; or
- (b) upon the Deputy Electoral Commissioner becoming a bankrupt; or
- 15 (c) upon the Deputy Electoral Commissioner nominating for election for a House of Parliament of Victoria or of the Commonwealth or of any other State or Territory; or
- (d) upon the Governor in Council determining that the Deputy Electoral Commissioner is physically or mentally incapable of carrying out the duties of office; or
- 20 (e) upon the passing of a resolution by both Houses of Parliament requesting the Deputy Electoral Commissioner's removal from office; or
- (f) upon the Deputy Electoral Commissioner being convicted of an indictable offence or being sentenced to imprisonment for any offence.

25 (4) Nothing in the *Public Service Act* 1974 applies to or in relation to the office of the Deputy Electoral Commissioner or to any person holding that office.

30 (5) The Governor in Council may by Order in Council fix the terms and conditions of employment which are applicable to the Deputy Electoral Commissioner.”

Suspension from office.

35 “144B. (1) The Governor in Council may suspend the Electoral Commissioner or the Deputy Electoral Commissioner from office on the ground of neglect of duty or of misconduct or of any other ground which in the opinion of the Governor in Council makes the Electoral Commissioner or the Deputy Electoral Commissioner unfit for office.

(2) An Electoral Commissioner or a Deputy Electoral Commissioner who is suspended must be restored to office unless—

- 40 (a) a statement setting out the grounds of suspension is placed before each House of Parliament during the first 7 sitting days of that House following the suspension; and
- (b) each House of Parliament within 20 days of the statement being placed before it passes a resolution requesting the

Electoral Commissioner's or the Deputy Electoral Commissioner's removal from office."

Other terms and conditions.

"144C. (1) If the Electoral Commissioner or the Deputy Electoral Commissioner is at the time of his or her appointment an officer of the public service the Electoral Commissioner or the Deputy Electoral Commissioner is entitled upon ceasing to be the Electoral Commissioner or the Deputy Electoral Commissioner to be re-appointed by the Public Service Board to some office in the public service with a classification and emoluments corresponding with or higher than those that he or she enjoyed in the office in the public service which he or she last held as if the service as Electoral Commissioner or Deputy Electoral Commissioner had been service in the public service. 5 10

(2) If the Electoral Commissioner or the Deputy Electoral Commissioner is at the time of his or her appointment an officer within the meaning of the *Superannuation Act* 1958 he or she continues subject to that Act to be an officer within the meaning of that Act. 15

(3) The Electoral Commissioner or the Deputy Electoral Commissioner must not without the consent of the Governor in Council directly or indirectly engage in any paid employment outside of his or her office. 20

(4) The person who immediately before the commencement of section 4 of *The Constitution Act Amendment (Electoral Reform) Act* 1987—

- (a) holds the office of Chief Electoral Officer is to be appointed as the Electoral Commissioner; and 25
- (b) holds the office of Deputy Chief Electoral Officer is to be appointed as the Deputy Electoral Commissioner."

Functions, powers and duties.

"144D. (1) The Electoral Commissioner has the following functions, powers and duties: 30

- (a) The functions, powers and duties conferred on the Electoral Commissioner under this or any other Act;
- (b) With the permission of the Minister, power to carry out any other statutory or non-statutory function on the terms and conditions approved by the Minister; 35
- (c) The power to appoint returning officers and polling places;
- (d) The duty to report to each House of Parliament within 12 months of the conduct of every election (including any by-election) on the administration of that election; 40
- (e) The power to delegate by instrument to the Deputy Electoral Commissioner or to any officer or class of officers in the public service any function, power or duty conferred on the

Electoral Commissioner under this or any other Act other than this power of delegation.

(2) The Deputy Electoral Commissioner has the following functions, powers and duties:

- 5 (a) The functions, powers and duties conferred on the Deputy Electoral Commissioner under this or any other Act;
- (b) The functions, powers and duties delegated to him or her by the Electoral Commissioner;
- 10 (c) If the Electoral Commissioner is absent or unavailable to discharge the duties of his or her office or the office of Electoral Commissioner is temporarily vacant, to act in the office of Electoral Commissioner in which case the Deputy Electoral Commissioner has all the functions, powers and duties specified in sub-section (1).

15 (3) The Electoral Commissioner and the Deputy Electoral Commissioner must before commencing the duties of office take an oath or make an affirmation that he or she will faithfully and impartially perform the duties of office.

20 (4) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.”.

(3) The Acts specified in Part A of the Schedule are amended as specified in Part A of the Schedule.

25 (4) Any reference in any Act or subordinate instrument within the meaning of the *Interpretation of Legislation Act* 1984 to the Chief Electoral Officer is to be construed as a reference to the Electoral Commissioner.

Registration of initials by registered political parties.

5. The Principal Act is amended as follows:

- 30 (a) In section 148D (2) for paragraph (b) substitute—
“(b) if the party wishes to be able to use for the purposes of this Act an abbreviation of its name or the initials for its name—set out that abbreviation or the initials or both;”;
- 35 (b) In section 148G—
(i) for “148G. The” substitute “148G. (1) The”;
- (ii) after “abbreviation of” insert “or the initials for”;
- (iii) in paragraph (c) after “acronym of” insert “or are the initials for”;
- 40 (iv) in paragraph (d) after “acronym of” insert “or the initials for”;
- (v) in paragraph (d) for “that abbreviation or” substitute “that abbreviation, those initials or that”;

- (vi) in paragraph (e) (i) for “abbreviation or” substitute “abbreviation or the initials for or an”;
- (vii) in paragraph (e) (ii) after “acronym of” insert “or the initials for”; and
- (viii) in paragraph (e) (ii) for “that abbreviation or” substitute “that abbreviation, those initials or that”; 5
- (c) In section 148L (1) (a)—
 - (i) omit “and” (where occurring after sub-paragraph (ii)); and
 - (ii) after sub-paragraph (ii) insert— 10
 - “(iia) if the initials for the name of the party were set out in the application—those initials; and”;
- (d) In section 148M—
 - (i) after sub-section (1) (e) insert—
 - “(ea) if initials for the name of the party are entered 15
 - in the Register—changing those initials to the initials specified in the application;
 - (eb) if initials for the name of the party are not entered in the Register—entering in the Register initials for the name of the party, 20
 - being the initials specified in the application;”;
 - (ii) in sub-sections (4) and (6) for “or (e)” (wherever occurring) substitute “,(e), (ea) or (eb) “; 25
- (e) In section 290A— 25
 - (i) in paragraph (a) after “abbreviation of” insert “or the initials for”; and
 - (ii) in paragraph (b) after “abbreviation of” (where secondly occurring) insert “or initials for”; and
 - (iii) in paragraph (b) for “was otherwise” substitute “was or 30
 - were otherwise”; and
 - (iv) in paragraph (c) after “abbreviation of” insert “or the initials for”.

New Division 20A—How-to-vote Cards inserted into Part V.

- 6. After Division 20 of Part V. of the Principal Act insert— 35
 - “Division 20A—How-to-vote Cards”

Definitions.

- ‘267G. In this Division—
 - “**Election**” means an election for the Council or the Assembly and includes a simultaneous election. 40
 - “**Elector**” means any person whose name appears on an electoral roll as an elector for the Council or for the Assembly.

“How-to-vote card” means any card, handbill, pamphlet or notice—

(a) which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot-paper for use in an election; or

(b) which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates.

“Printed electoral material” means an advertisement, handbill, pamphlet or notice that is intended or calculated to affect the result of an election, and includes a how-to-vote card.’.

Approval of how-to-vote cards.

“276H. (1) A person who—

(a) is a candidate for an election; or

(b) is—

(i) the registered officer of a registered political party which has endorsed the candidate referred to in paragraph (a); or

(ii) a person nominated by such a registered officer to be a deputy of the registered officer for the purposes of this sub-section—

on behalf of the candidate; or

(c) is not a person referred to in paragraph (a) or (b), on his or her own behalf or on behalf of any organization or group (not being a registered political party)—

may make application in the prescribed form to the Electoral Commissioner within 3 working days of the close of nominations for that election, for the approval of a form or sample of a how-to-vote card proposed to be handed out, distributed or otherwise made available to persons on polling day.

(2) Where the Electoral Commissioner has received an application for approval of a form or sample of a how-to-vote card under sub-section (1), the Electoral Commissioner must, within seven days after the day of nomination for the election—

(a) approve; or

(b) provisionally approve; or

(c) refuse to approve—

the form or sample.

(3) In determining whether to approve, provisionally approve or refuse to approve a form or sample of a how-to-vote card, the Electoral Commissioner must have regard to the prescribed matters.

(4) The Electoral Commissioner if satisfied that a form or sample of a how-to-vote card is likely to mislead or deceive an elector in relation to the casting of the vote of the elector or contains offensive or obscene material, must refuse to approve the form or sample.

(5) If the form or sample of a how-to-vote card does not contain an indication of the order of voting preference for all the candidates listed on it or a statement that a figure must be placed against the name of each such candidate, the Electoral Commissioner must not approve the form or sample but may provisionally approve it.

(6) If the applicant for approval of a form or sample of a how-to-vote card that has been provisionally approved submits to the Electoral Commissioner, not later than 7 days before the polling day, a sample of the card completed with particulars of an order of voting preference for all candidates listed on it or a statement that a figure must be placed against the name of each candidate listed on the form or sample, the Electoral Commissioner must approve or refuse to approve the card.

(7) If a form or sample of a how-to-vote card is approved under this section, the applicant for the approval must—

- (a) ensure that any how-to-vote card to which the approval relates is endosed in the prescribed manner; and
- (b) before polling day, give to the Electoral Commissioner and to the returning officer for the election at least two samples of the card as proposed to be handed out, distributed or made available.”.

Variation of application.

“267i. (1) If, after initial consideration of an application for the approval of a form or sample of a how-to-vote card, the Electoral Commissioner is of the opinion that approval of the form or sample must be refused but that the applicant might be prepared to vary the application in such a way that the Electoral Commissioner would not refuse to approve the form or sample, the Electoral Commissioner must give the applicant notice of the changes necessary to obtain the approval of the Electoral Commissioner.

(2) If notice is given under sub-section (1) in relation to an application, the Electoral Commissioner is not required to give further consideration to the application unless and until a request is lodged with the Electoral Commissioner under sub-section (3).

(3) If notice is given under sub-section (1) in relation to an application, the applicant may within 48 hours after the receipt of the notice lodge with the Electoral Commissioner a written request, signed by the applicant, to—

- (a) vary the application in the manner specified in the notice; or

(b) proceed with the application in the form in which it was lodged—
and the Electoral Commissioner must comply with the request.”.

Cards to be available for inspection.

- 5 “267J. (1) As soon as practicable after approving a form or sample of a how-to-vote card, the Electoral Commissioner must—
- (a) give or send by post a copy of the approved form or sample to the returning officer for the election; and
- 10 (b) cause a copy of the form or sample to be made available for inspection at such places as are prescribed.
- (2) On receipt of copies of a how-to-vote card as proposed to be handed out, distributed or otherwise made available the Electoral Commissioner must—
- 15 (a) give or send by post a copy to the returning officer for the election; and
- (b) make a copy available for inspection at the State Electoral Office and cause a copy to be made available for inspection at such other places as are prescribed.
- 20 (3) A returning officer must, on receipt from the Electoral Commissioner of a copy of the approved form or sample of a how-to-vote card make available a copy of the approved form or sample, or, if a copy of the card as proposed to be handed out, distributed or otherwise made available has been received by the returning officer, make
- 25 available a copy of that card, for inspection at that returning officer’s office.”

Appeals.

- 30 “267K. An application may be made within 10 days after the day of nomination for the election to the Administrative Appeals Tribunal for the review of a decision of the Electoral Commissioner approving, provisionally approving or refusing to approve a form or sample of a how-to-vote card under this Division.”.

Distribution of printed electoral material.

- 35 “267L. (1) A person must not on polling day, within 400 metres of the entrance of or within the building used as a polling place hand out, distribute or otherwise make available to any person or authorise the handing out, distribution or otherwise making available to any person of any printed electoral material other than a how-to-vote card which or a form or sample of which has been approved by the Electoral Commissioner in accordance with this Division and that is endorsed
- 40 in the prescribed manner.

Penalty: \$1000 or imprisonment for a period not exceeding 6 months, or both.

(2) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed a how-to-vote card which has not been approved by the Electoral Commissioner in accordance with this Division and which contains a representation or purported representation of an endorsement in the prescribed manner. 5

Penalty: \$1000 or imprisonment for a period not exceeding 6 months, or both.

(3) In a prosecution of any person for handing out a how-to-vote card under sub-section (1) or (2), it is a defence if the person proves that that person did not know, and could not reasonably be expected to have known, that the card was not a how-to-vote card a form or sample of which was approved by the Electoral Commissioner in accordance with this Division. 10

(4) Sub-section (1) does not apply to—

- (a) the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business; or

15
20
- (b) the handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates or by the political party which has endorsed that candidate in that election; or

25
- (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure.”

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Power to request handing over of how-to-vote cards. 30

“267M. (1) The person in charge of a polling place or a person authorised by the person in charge to act on that person's behalf under this section may on polling day request a person reasonably suspected by the first-mentioned person of contravening section 267L (1) or 267L (2)— 35

- (a) to produce for inspection to that first-mentioned person any how-to-vote cards in the possession of that other person; and

40
- (b) to hand over to the first-mentioned person all such cards other than how-to-vote cards endorsed in the prescribed manner.

40

(2) A person must comply with a request under sub-section (1).

Penalty: \$1000.”

Power to make regulations.

“267N. The Governor in Council may make regulations for or with respect to—

- 5 (a) prescribing forms for use under this Division; and
- (b) prescribing an endorsement of the approval of a form or sample of a how-to-vote card to be shown on the card; and
- (c) prescribing places for the purposes of sections 267J (1) (b) and 267J (2) (b); and
- 10 (d) the matters to be taken into account by the Electoral Commissioner in determining whether to approve, provisionally approve or refuse to approve a form or sample of a how-to-vote card under this Division, including—
 - (i) the colour of the paper or other material for the card; and
 - 15 (ii) the colour for the print on the card; and
 - (iii) its content or overall appearance; and
 - (iv) anything written or drawn or otherwise appearing on the form or sample; and
 - (v) whether the card contains offensive or obscene material; and
 - 20 (vi) whether the card sufficiently identifies the political party, person, organization or group on behalf of which or whom it is to be distributed.”.

Change of name of Electoral Commission.

- 25 7. (1) In section 1 of the *Electoral Commission Act* 1982 for “*Electoral Commission*” substitute “*Electoral Boundaries Commission*”.
- (2) Any reference in any Act or subordinate instrument within the meaning of the *Interpretation of Legislation Act* 1984 to—
 - 30 (a) the *Electoral Commission Act* 1982 is to be construed as a reference to the *Electoral Boundaries Commission Act* 1982; and
 - (b) the Electoral Commission is to be construed as a reference to the Electoral Boundaries Commission.
- 35 (3) The Electoral Boundaries Commission is the same body as the Electoral Commission and no act, matter or thing is in any way abated or affected by reason of the change of name.
- (4) The *Electoral Provinces and Districts Act* 1974 is repealed.
- (5) The Acts specified in Part B of the Schedule are amended as specified in Part B of the Schedule.

SCHEDULE

PART A

1. In the following provisions of *The Constitution Act Amendment Act 1958*, for “chief electoral officer” or “Chief Electoral Officer” (wherever occurring) substitute “Electoral Commissioner”:

Heading of Division I of Part V, 109, 112 (1), 114, 114A, 115, 121A, 122, 124, 124A, 147A, 148, 148C, 148D, 148E, 148G, 148H, 148J, 148K, 148L, 148M, 148N, 148P, 148Q, 148R, 148S, 148T, 148U, 148W, 148X, 148Y, 148Z, 148ZA, 148ZB, 148ZC, 149, 155A, 156, 157A, 157B, 162, 164, 199, 201C, 209A, 210, 211, 212, 218D, 218E, 218N, 218P, 218Q, 221, 222, 223, 229, 235, 239, 259, 261, 264, 270, 271, 271A, 272, 273, 274, 281, 284, 286, 306A, 311, 311A, 311B, Fifth Schedule, Sixth Schedule and Eighteenth Schedule.

2. In the following provisions of the following Acts, for “chief electoral officer” or “Chief Electoral Officer” (wherever occurring) substitute “Electoral Commissioner”:

Barley Marketing Act 1958—section 22

Electoral Commission Act 1982—sections 3, 4, 12, 14, 15 and 17

Essential Services Act 1958—sections 11 and 12

Industrial Relations Act 1979—sections 99 and 102

Juries Act 1967—sections 8 and 9 and Schedule 3

Local Government Act 1958—sections 82, 84 and 92

Vital State Projects Act 1976—sections 9 and 12

3. Section 3 (1) of *The Constitution Act Amendment Act 1958* is amended as follows:

(a) The definition of “Chief Electoral Officer” is repealed;

(b) After the definition of “Elector” insert—

“Electoral Commissioner” means the Electoral Commissioner appointed under section 144.’

4. In section 74 (1) of the *Local Government Act 1958* the definition of “Chief Electoral Officer” is repealed.

5. At the end of section 23D (24) of the *Public Service Act 1974* insert “or sections 144 and 144A of *The Constitution Act Amendment Act 1958*”.

PART B

6. In sections 2 and 3 of the *Electoral Commission Act 1982*, for “Electoral Commission” (wherever occurring) substitute “Electoral Boundaries Commission”.

7. The following amendments are made to the following sections of *The Constitution Act Amendment Act 1958*:

112 (1) For “*Electoral Commission*” substitute “*Electoral Boundaries Commission*”

114A (1) (b) For “*Electoral Commission*” substitute “*Electoral Boundaries Commission*”

8. In section 23D (24) of the *Public Service Act 1974*, for “*Electoral Commission*” substitute “Electoral Boundaries Commission”.