

PARLIAMENT OF QUEENSLAND (CHANGE OF POLITICAL STATUS) BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The object of this Bill is to ensure that where a member of the Assembly, having been elected as a representative of a party or as an independent member, changes his or her political status (i.e., membership of a party or status as an independent), the voters in the member's electorate have an opportunity to express their approval or disapproval of the member's change of status by re-electing or not re-electing the member.

Reasons for the objectives and how they will be achieved

It is acknowledged that many voters vote for a particular political candidate not only on the basis of the candidate's personal qualities but also on the basis of the candidate's announced policies and political status. When a candidate changes political status without resigning and seeking re-election, there may be two effects:

1. In more extreme cases, a party or coalition that did not previously command the support of a majority of members of the Assembly may now have such support. The apparent will of the people, expressed by voting, as to who should be able to form a government, is flouted in such cases.

2. If the party balance in the assembly is not affected, it may remain unclear whether those who voted for the member would approve the change of status. The member may, or may not, continue to represent the will of the majority of voters in the electorate.

This Bill seeks to avoid either of the above effects by providing that where a member changes status the member's seat will be automatically vacated. This Bill does not introduce any new disqualifications that would affect the member's right to stand again for election. Unless disqualification provisions already in the principal Act apply, the member would be entitled to be a candidate in the ensuing by-election.

Administrative cost to government of implementation

This Bill may require the Electoral Commission of Queensland to conduct more frequent by-elections. The number will depend on how many members change their party or independent status in the course of one Parliament.

Consistency with fundamental legislative principles

This Bill is designed to enhance the institution of Parliament (see *Legislative Standards Act 1992*, s 4(4)) by ensuring that the composition of the Assembly remains representative of the will of the electors.

CONSULTATION

This Bill is introduced by a private member. Consultation has been with numerous members of the community.

NOTES ON PROVISIONS

Clause 1 provides for the short title of the proposed Act.

Clause 2 provides that the Act will amend the *Parliament of Queensland Act 2001*.

There is no commencement clause. The Act will therefore commence on the date of assent – *Acts Interpretation Act 1954*, s 15A.

Clause 3 inserts a new paragraph into existing s 72 and renumbers another. As paragraph (n) currently refers to vacation of seats under “another law”, it would be anomalous not to refer to the proposed s 72A. Therefore new paragraph (n) refers to the new section, and existing paragraph (n) is re-lettered (o).

Clause 4 inserts a new section 72A.

The section provides a new ground of automatic vacation of a member’s seat. Unlike most of the grounds in existing s 72, the new grounds listed in s 72A do not disqualify the member from immediately standing as a candidate for re-election to the seat. The purpose, as noted above, is to ensure that a by-election will ensue, at which (unless disqualified on other grounds) the member will have an opportunity to regain the seat.

Sub-section (1) spells out the circumstances in which a change of status leads to vacation of the seat. Paragraph (a) applies where a member who was elected as the candidate of a party resigns from the party or joins another party. “Or” is intended to be inclusive – usually a member will both resign from the first party and join a second one, but the paragraph is intended to apply also where a party member voluntarily becomes an independent, or where the member joins a rival party without bothering with the formality of resigning from the first one. The paragraph does not apply where a member is expelled from a party.

Paragraph (b) applies where an independent member becomes a member of a party. It is intended to apply whether the member joins an existing party or participates in the formation of a new one.

Sub-sections (2)-(4) explain the meaning of some of the terms used in sub-section (1). As to sub-section (2), a member is taken to have been elected as the candidate of a party if either or both of two conditions in paragraph (a) are met. In the usual case (sub-paragraph (i)) the party name or abbreviation will have been adjacent to the member's name on the ballot paper, under *Electoral Act 1992* s 97(2)(g). The "or" between the paragraphs is intended to be inclusive – sub-paragraph (ii) will generally have been satisfied if sub-paragraph (i) is satisfied but if a candidate did not have the party name on the ballot paper a party candidate can still be recognised by the criteria in sub-paragraph (ii). (Sub-paragraph (ii) is based on the drafting of the second paragraph of Commonwealth Constitution s 15, and is intended to be interpreted in the same way.) Paragraph (b) makes clear that a change in name of a party is not intended to result in a wholesale vacation of seats. Sub-section (3) explains the term "independent member" and sub-section (4) cross-refers to the *Electoral Act 1992* for the terms "member" of a political party and "political party".

Interaction with s 73: No amendment is proposed which would prevent s 73 (Assembly may disregard disqualifying events), on its face, from applying to the situation where a seat becomes vacant under s 72A. However, the Assembly may only make a declaration under s 73 where, in its opinion, the disqualifying ground has stopped having effect and was trivial. It is not anticipated that this will apply to cases where a member has changed status as referred to in the new section 72A.