

State Penalties Enforcement (Electoral) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 96

Made under the

State Penalties Enforcement Act 1999

General Outline

Short Title

State Penalties Enforcement (Electoral) Amendment Regulation 2021

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* amended the *Electoral Act 1992* (Electoral Act) to facilitate the holding of a state by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

Part 12C of the Electoral Act applies to by-elections for which the writ is issued on or before the COVID-19 legislation expiry day. The COVID-19 legislation expiry day is currently defined in section 4A of the *COVID-19 Emergency Response Act 2020* as the earlier of 30 September 2021, or another day prescribed by regulation.

The *State Penalties Enforcement (Electoral) Amendment Regulation 2021* (Amendment Regulation) amends the *State Penalties Enforcement Regulation 2014* to prescribe the following offences, contained in part 12C, as penalty infringement notice (PIN) offences:

- contravening a direction by the Electoral Commission of Queensland (ECQ) about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth (section 392ZL(4) of the Electoral Act) – maximum penalty: 10 penalty units and PIN amount: one penalty unit;
- contravening a direction by the ECQ about the number of scrutineers each candidate may have at a polling booth or other place where a scrutineer is entitled to be present, or prohibiting a candidate or scrutineer from being present at a polling booth or other place they would otherwise be entitled to be present (section 392ZM(4) of the Electoral Act) - maximum penalty: 20 penalty units and PIN amount: two penalty units; and

- contravening a direction by a returning officer or member of the electoral commissioner's staff in charge of a polling booth about the movement of candidates or scrutineers at the polling booth or other place where they may be present (section 392ZN(4) of the Electoral Act) - maximum penalty: 20 penalty units and PIN amount: two penalty units.

Achievement of policy objectives

The policy objective is achieved by the making of the Amendment Regulation.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments will assist with facilitating the holding of a state by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. Any costs to the ECQ in implementing the Amendment Regulation will be met from the ECQ's existing budget.

Consistency with fundamental legislative principles

Whether legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LSA) includes whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

The Amendment Regulation prescribes offences for contravening a direction given by the ECQ, a returning officer or member of the ECQ's staff in charge of a polling booth, without reasonable excuse, as PIN offences. The PIN amounts prescribed for these offences are 1 and 2 penalty units and are commensurate with the PIN amounts prescribed for similar offences in the Electoral Act.

Consultation

The ECQ has been consulted about the making of the Amendment Regulation and has raised no concerns.

The Office of Productivity and Red Tape Reduction has advised the proposal does not require regulatory impact analysis on the basis that it is unlikely to result in significant adverse impacts.