

Electoral and Other Legislation Amendment Regulation (No. 2) 2020

Explanatory notes for SL 2020 No. 215

Made under the

Electoral Act 1992

Referendums Act 1997

State Penalties Enforcement Act 1999

General Outline

Short Title

Electoral and Other Legislation Amendment Regulation (No. 2) 2020

Authorising law

Sections 392 and section 392Y of the *Electoral Act 1992*

Section 100 of the *Referendums Act 1997*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (Amendment Act) was enacted on 30 June 2020. The Amendment Act inserted new part 12B into the *Electoral Act 1992* (Electoral Act) to provide flexibility, if required, to facilitate the holding of the 2020 State general election (2020 election) in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

Section 392Y of the Electoral Act, as inserted by the Amendment Act, provides that a regulation may make provision about a matter to facilitate the holding of the 2020 election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

The *Electoral and Other Legislation Amendment Regulation (No. 2) 2020* (Amendment Regulation) provides, pursuant to section 392Y of the Electoral Act, for new part 6A (2020 general election) of the *Electoral Regulation 2013* (Electoral Regulation) (part 6A).

Part 6A provides that the Electoral Commission of Queensland (ECQ) must, as soon as practicable after the issue of the writ for the 2020 election, post, deliver or otherwise send a ballot paper and declaration envelope to an elector registered as a general postal voter under section 184A(2)(b), (c) or (ca) of the *Commonwealth Electoral Act 1918* (Cwlth) (Commonwealth Act). The Amendment Regulation further clarifies that an elector

registered as a general postal voter under these provisions of the Commonwealth Act may vote using another procedure for voting under the Electoral Act.

Under part 6A, Queensland electors who are general postal voters under the Commonwealth Act, due to being hospitalized or being unable to travel from their homes to a polling place due to serious illness or infirmity or because they are caring for someone who is seriously ill or infirm, will automatically have their ballot papers posted to them. This measure will assist this class of vulnerable electors to vote in a way that does not require their attendance at a polling booth, thereby minimising their risk of exposure to COVID-19.

The Attorney-General and Minister for Justice is satisfied, as required by section 392Z(3), that the insertion of part 6A is necessary to facilitate the holding of the 2020 election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. The amendment inserting part 6A is declared to be a regulation under part 12B of the Electoral Act, as required by section 392Z(5) of the Electoral Act.

The Amendment Act creates new offences which will apply during the 2020 election if the ECQ, or a returning officer or member of the electoral commissioner's staff, deems it necessary to issue directions about the distribution or display of how-to-vote cards and other election material or the presence and movement of persons at relevant places to help minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* to prescribe the contravention of these directions as penalty infringement notice offences.

The Electoral Act and the *Referendums Act 1997* require certain procedures made by the ECQ to be given effect by approval by regulation and the procedures to be tabled in the Legislative Assembly. The Amendment Regulation will replace current sections of the Electoral Regulation and the *Referendums Regulation 2016* (Referendums Regulation) which approve procedures for electronically assisted voting for State elections, counting of absentee votes for State elections and referendums and the electronic lodgement of returns. These amendments are required to allow for the correction of an oversight in relation to the tabling of the procedures, as previously approved, and to approve updated procedures. The Amendment Regulation will also omit section 3 of the Referendums Regulation, which approved electronically assisted voting procedures for referendums as those procedures are no longer current.

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 relating to the 2020 election will facilitate the holding of the election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

The Amendment Regulation will also facilitate approval of procedures of the ECQ to reflect current systems and practices.

Any costs to the ECQ in implementing the Amendment Regulation will be met from the ECQ's existing budget.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The ECQ requested the amendments in part 6A, has been consulted during the preparation of the Amendment Regulation and has raised no issues with the Amendment Regulation.

Approval was given for the amendments relating to the 2020 election to not be subject to regulatory impact analysis. The Queensland Productivity Commission has not been consulted on the remaining amendments because they are excluded from regulatory impact analysis under the *Queensland Government Guide to Better Regulation* as regulatory proposals of a machinery nature.