



ELECTORAL AMENDMENT (No. 2)

No. 78 of 1979

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AN ACT to amend the Electoral Act 1907 for the purpose of making further provision with respect to the election of persons to be Members of Parliament and for related purposes.

[Royal Assent 11 December 1979]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Electoral Amendment Act* Short title. (No. 2) 1979.

Principal Act. **2**—In this Act, the *Electoral Act* 1907* is referred to as the Principal Act.

Amendment of section 52 of Principal Act (When Assembly dissolved, new writs to be issued within 10 days). **3**—Section 52 of the Principal Act is amended by omitting subsection (2).

Repeal of section 180 of Principal Act. **4**—Section 180 of the Principal Act is repealed.

Insertion in Principal Act of new Part XVA. **5**—After section 181 of the Principal Act, the following Part is inserted:—

PART XVA—DECISIONS OF THE COURT

Interpretation: Part XVA.

181A—For the purposes of this Part—

- (a) a reference to the Court is a reference to the Supreme Court or, as the case may be, a judge of that Court;
- (b) a reference to a decision of the Court is a reference to a finding of the Court, a declaration of the Court, or an order of the Court, as the case may be;
- (c) a reference to an election declared to be void includes a reference to an election declared to be absolutely void.

Effect of decisions of the Court.

181B—(1) Subject to subsection (2), where with respect to a petition relating to the validity of an election or return of a candidate as a Member of the Council or the Assembly, the Court declares—

- (a) to be not elected any candidate who was returned as elected; or
- (b) to be duly elected any candidate who was not returned as elected,

the person so returned shall cease to be a Member of the Council or Assembly or, as the case may be, the candidate declared to be so elected shall be entitled to take his seat as such a Member.

(2) Subsection (1) does not apply to a petition that involves the determination of a question relating to the disqualification of the candidate returned as a Member of either

* 7 Edw. VII No. 6. For this Act, as amended to 1959, see Reprint of Statutes (1826-1959), Vol. 2, p. 279. Subsequently amended by No. 41 of 1961, No. 15 of 1963, No. 55 of 1965, No. 65 of 1967, No. 69 of 1968, No. 26 of 1971, Nos. 19 and 75 of 1973, No. 66 of 1974, No. 112 of 1976, and No. 39 of 1979.

House or the conduct of a candidate so returned, or of a person acting on behalf of such a candidate, at or in connection with an election.

(3) Where under this Act the Court declares an election of a Member or Members of either House to be void, the following provisions apply:—

(a) if the election of one Member only in a division is declared void, an election shall be held in accordance with section 181c to fill the vacancy caused by the election being declared void;

(b) if the election of more than one Member in a division is declared void, the seats of all other Members elected for that division shall, by virtue of this paragraph, become vacant, and an election shall be held in accordance with section 181c to fill all the seats for that division.

(4) Where under this Act the Court declares that—

(a) any Member of the Council or Assembly is not disqualified from, or incapable of, sitting or voting as a Member of the Council or, as the case may be, the Assembly; or

(b) the seat of a Member of either House is not vacant, that Member may continue to sit and vote as a Member of the relevant House.

(5) Where under this Act the Court declares that a Member of the Council or the Assembly is disqualified from, or incapable of, sitting or voting as a Member of the Council or, as the case may be, the Assembly, he shall cease to be a Member of the relevant House and his seat shall be filled as provided in Part XIA.

(6) Subject to section 181c (6), where under this Act the Court declares the seat of a Member of either House to be vacant, the vacancy shall be filled as provided in Part XIA.

181c—(1) Where the Court makes a decision referred to in section 181B (3), the Registrar of the Supreme Court shall, not later than 3 days after the decision of the Court is made, notify the Governor and the Chief Electoral Officer of that decision.

Consequences
of certain
decisions of
the Court.

(2) Subject to subsection (3), the Governor shall, within 10 days after receiving notification of the Court's decision in accordance with subsection (1), issue a writ directed to the

returning officer of the division concerned for the election of a Member or Members for that division, as the case may be.

(3) Where decisions relating to two or more petitions heard together in respect of the elections or returns of candidates for the same division are given on different days, the period of 10 days referred to in subsection (2) does not begin until the day on which the last of those decisions is notified to the Governor.

(4) A Member of either House whose election is declared void under this Act is not disqualified from being a candidate for election as a Member of either House at the next following election held in respect of the division for which he was a Member.

(5) Subsection (4) does not apply to a person who—

(a) is convicted of bribery or undue influence, or of attempted bribery or undue influence, at an election; or

(b) is found by the Supreme Court (on a disputed return) to have committed or attempted to commit bribery or undue influence when a candidate,

under section 182.

(6) Part XIA does not apply where under this Act the election of a Member of either House is declared void and this subsection has effect notwithstanding that the seat of a Member of either House is also declared to be vacant.

Insertion of
new section
186.

6—After section 185 of the Principal Act, the following section is inserted:—

Petitions to
be heard
together.

186—All petitions under section 143 or under Part XV in respect of elections or returns of candidates for the same division or in respect of the seat of a Member of either House for the same division shall be heard together.

Transitional
provision.

7—Part XVA of the Principal Act does not apply to the hearing of any proceedings under the Principal Act begun before the commencement of this Act or to any decision in respect of such hearing but that Part does apply in respect of the giving of effect to that decision.

Expiry of
amendments to
Principal Act.

8—The amendments to the Principal Act effected by sections 4 and 5 shall continue in force until 31st December 1980 and after that date the Principal Act shall have effect as if those sections had never been enacted.