



New South Wales

Parliamentary Electorates and Elections Further Amendment Act 2010 No 126

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Parliamentary Electorates and Elections Further Amendment Act 2010 No 126

Act No 126, 2010

An Act to amend the *Parliamentary Electorates and Elections Act 1912* to make provision for technology assisted voting for persons with impaired vision or with certain other disabilities and for persons unable to vote by reason of location, to make further provision regarding the conduct of elections; and for other purposes.
[Assented to 7 December 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Electorates and Elections Further Amendment Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Parliamentary Electorates and Elections Act 1912 No 41 relating to technology assisted voting

Part 5, Division 12A

Insert after Division 12 of Part 5:

Division 12A Technology assisted voting

120AA Definitions

In this Division:

approved procedures means the procedures approved under section 120AC.

eligible elector—see section 120AB.

technology assisted voting means a method of voting where an eligible elector votes by means of a networked electronic device, such as by a telephone or by a computer linked to the internet.

120AB Meaning of “eligible elector”

- (1) For the purposes of this Division, an *eligible elector* means an elector who meets any of the following eligibility requirements for technology assisted voting (and any additional requirements imposed on those eligibility requirements under subsection (2)):
 - (a) the elector’s vision is so impaired, or the elector is otherwise so physically incapacitated or so illiterate, that he or she is unable to vote without assistance,
 - (b) the elector has a disability (within the meaning of the *Anti-Discrimination Act 1977*) and because of that disability he or she has difficulty voting at a polling place or is unable to vote without assistance,
 - (c) the elector’s real place of living is not within 20 kilometres, by the nearest practicable route, of a polling place,
 - (d) the elector will not throughout the hours of polling on polling day be within New South Wales.
- (2) The Electoral Commissioner may, by order published on the NSW legislation website, impose additional requirements on any of the eligibility requirements for technology assisted voting.
- (3) The regulations can limit the classes of electors who may be eligible for technology assisted voting.

120AC Electoral Commissioner to approve procedures for technology assisted voting

- (1) The Electoral Commissioner may approve procedures to facilitate voting by eligible electors at an election by means of technology assisted voting.
- (2) The approved procedures must provide:
 - (a) for an eligible elector to register before voting by means of technology assisted voting, and
 - (b) for the making of a record of each eligible elector who has voted by means of technology assisted voting, and
 - (c) for the authentication of the eligible elector's vote, and
 - (d) for the secrecy of the eligible elector's vote, and
 - (e) that any vote cast in accordance with the approved procedures be securely transmitted to the Electoral Commissioner and securely stored by the Electoral Commissioner until printed, and
 - (f) for the production of a printed ballot paper at the close of the poll, for the purposes of the scrutiny, for each vote transmitted to the Electoral Commissioner showing the vote cast by the eligible elector, and
 - (g) for the bundling of those ballot papers according to the electoral district of the eligible elector (separating Assembly and Council ballot papers into different bundles), the sealing of the bundled ballot papers in packages and the distribution of:
 - (i) the sealed packages of Assembly ballot papers to the relevant returning officers for each of those districts, and
 - (ii) the sealed packages of Council ballot papers to the Electoral Commissioner.
- (3) A printed ballot paper produced in accordance with the approved procedures does not need to be in or to the effect of the form prescribed in Schedule 4 or 4A (as the case requires), or be of the same size or format as the ballot papers printed in accordance with section 83 or 83B, so long as the vote cast by the eligible elector can be accurately determined.
- (4) The Electoral Commissioner may approve procedures under this section only if the Electoral Commissioner is satisfied that a class of electors, who in other circumstances would be unable to vote or would have difficulty voting, would benefit from the approval of the procedures.

- (5) The only limit on the power of the Electoral Commissioner to approve procedures under this section is that the pre-condition for approval set out in subsection (4) is met.
- (6) The approval of procedures under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal except on the grounds that the approval exceeds the jurisdictional limit specified by subsection (5) for the approval of such procedures.

120AD Independent auditing of technology assisted voting

- (1) The Electoral Commissioner is to engage an independent person (the *independent auditor*) to conduct audits of the information technology used under the approved procedures.
- (2) Audits under this section are to be conducted and the results of those audits are to be provided to the Electoral Commissioner:
 - (a) at least 7 days before voting commences in each Assembly general election at which technology assisted voting is to be available, and
 - (b) within 60 days after the return of the writs for each Assembly general election at which technology assisted voting was available.
- (3) Without limiting the content of the audit, the independent auditor is to determine whether test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test ballot papers produced under those procedures.
- (4) The independent auditor may make recommendations to the Electoral Commissioner to reduce or eliminate any risks that could affect the security, accuracy or secrecy of voting in accordance with the approved procedures.

120AE Scrutineers

A candidate may appoint a scrutineer to observe:

- (a) any production of the printed ballot papers and bundling and sealing of those ballot papers in accordance with the approved procedures, and
- (b) any other element of the technology assisted voting process that is approved by the Electoral Commissioner for the purposes of this section.

120AF Technology assisted votes to be counted with postal votes

Any vote cast by an eligible elector and transmitted to the Electoral Commissioner in accordance with the approved procedures is to be counted with the postal votes for that election.

120AG Secrecy relating to technology assisted voting

- (1) Any person who becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted is not to disclose that information to any other person except in accordance with the approved procedures.

Maximum penalty: 5 penalty units, or imprisonment for a term not exceeding 6 months, or both.

- (2) A person must not disclose to any other person any source code or other computer software that relates to technology assisted voting under the approved procedures, except in accordance with the approved procedures or in accordance with any arrangement entered into by the person with the Electoral Commissioner.

Maximum penalty: 5 penalty units, or imprisonment for a term not exceeding 6 months, or both.

120AH False and misleading statements

A person who makes any statement (whether orally, in writing or by means of electronic communication) that the person knows to be false or misleading in a material particular for the purposes of or in connection with either of the following is guilty of an offence:

- (a) making an application for registration for technology assisted voting,
(b) casting a vote by means of technology assisted voting.

Maximum penalty: 100 penalty units, or imprisonment for a term not exceeding 2 years, or both.

120AI Protection of computer hardware and software

A person must not, without reasonable excuse, destroy or interfere with any computer program, data file or electronic device used, or intended to be used, by the Electoral Commissioner for or in connection with technology assisted voting.

Maximum penalty: 100 penalty units, or imprisonment for a term not exceeding 3 years, or both.

120AJ Approvals to be published on the internet

An approval by the Electoral Commissioner for the purposes of this Division must be:

- (a) in writing, and
- (b) published on the Commission's internet website.

120AK Regulations relating to technology assisted voting

- (1) The regulations may make provision for or with respect to voting by eligible electors by means of technology assisted voting.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
 - (a) the technology assisted voting method or methods that may be authorised under approved procedures,
 - (b) the period during which voting by eligible electors using technology assisted voting is permitted (including a period before polling day),
 - (c) the appointment by the Electoral Commissioner of officers to facilitate voting by means of technology assisted voting,
 - (d) the independent auditing of the secrecy and authenticity of voting by means of technology assisted voting at any election.
- (3) The regulations may provide that technology assisted voting is not to be used at a specified election.
- (4) For the avoidance of doubt, neither this section nor any regulations made under this section prevent approved procedures dealing with matters referred to in this section.
- (5) However, if a provision of a regulation made under this section is inconsistent with an approved procedure, the provision of the regulation prevails to the extent of the inconsistency.

120AL Electoral Commissioner may determine that technology assisted voting is not to be used

- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.
- (2) A determination under this section must be in writing and published on the Commission's internet website.

**120AM Review of technology assisted voting at elections and
investigation of its extension to other electors**

- (1) The Electoral Commissioner is to conduct:
 - (a) a review of the performance of technology assisted voting at the 2011 Assembly general election and periodic Council election, and
 - (b) an investigation into extending technology assisted voting to all electors outside the State and other electors for subsequent elections under this Act.
- (2) The review and investigation are to be undertaken as soon as possible after the return of writs for the 2011 Assembly general election.
- (3) A report on the review and investigation is to be given to the Minister not later than 26 September 2011.
- (4) The Minister is, as soon as practicable, to table, or cause to be tabled, a copy of the report in each House of Parliament.

Schedule 2 Miscellaneous amendments to Parliamentary Electorates and Elections Act 1912 No 41

[1] Section 3 Definitions

Insert “, any approved form” after “any electoral claim” in the definition of *Electoral paper* in section 3 (1).

[2] Section 21ACA

Insert after section 21AC:

21ACA Electoral Commissioner not required to vote at Assembly and Council elections

The Electoral Commissioner is not required to vote at any election of a member of the Assembly or any periodic Council election.

[3] Section 21AH

Omit the section. Insert instead:

21AH Returning officer not eligible to vote at Assembly election

A returning officer for a district is ineligible to vote at any election of a member of the Assembly for that district.

[4] Sections 21AR, 84 (2), 98 (3), 114P (6) and 114ZN (2)

Omit “in the Gazette” wherever occurring.

Insert instead “on the Commission’s internet website”.

[5] Section 22 Who is entitled to be enrolled?

Omit “age 17” from section 22 (2) (f). Insert instead “age 16”.

[6] Section 22 (3)

Omit “17 years”. Insert instead “16 years”.

[7] Section 24 Restrictions on entitlement to vote

Omit section 24 (4)–(6).

[8] Section 28 Means of enrolment

Insert at the end of section 28 (b):

, or

- (c) in response to a change to any roll kept under the Commonwealth Act under section 30A.

[9] Section 30A

Insert after section 30:

30A Enrolment by Electoral Commissioner in response to change to Commonwealth electoral roll

- (1) If, because of a change to any roll kept under the Commonwealth Act, the Electoral Commissioner forms the opinion that:
- (a) a person who is not enrolled for any district is entitled to be enrolled for a district, the Electoral Commissioner may enrol the person for the district, or
 - (b) a person is incorrectly enrolled for a district (the *first district*), but that the person is entitled to be enrolled for another district (the *second district*), the Electoral Commissioner may:
 - (i) remove the person's name from the roll for the first district, and
 - (ii) enrol the person for the second district, or
 - (c) a person who is enrolled for a district is not entitled to be enrolled for that district, the Electoral Commissioner may remove the person's name from the roll for the district.
- (2) Nothing in this section prevents the Electoral Commissioner enrolling a person for a district during the period of any election, including after the issue of the writ for the election.

[10] Section 47 Persons who are to provide information

Omit "17 years" from section 47 (3) (b) (iii). Insert instead "16 years".

[11] Section 67A Application of Part

Omit "Divisions 2, 3, 6B, 7, 8, 9, 10, 11A, 12, 13, 15, 16 and 17".

Insert instead "Divisions 2, 5A, 6B, 7, 8, 9, 10, 11A, 12, 12A, 13, 15, 16, 17 and 18".

[12] Section 83 Printing of ballot papers

Omit “in which those names were drawn by a ballot held pursuant to” from section 83 (a).

Insert instead “determined under”.

[13] Section 83B Printing of ballot papers

Omit “hold a ballot to” wherever occurring in section 83B (1) (a) and (b).

[14] Section 83B (2)

Omit the subsection. Insert instead:

- (2) The Electoral Commissioner may use any method of random selection as seems appropriate to the Electoral Commissioner (including by electronic means) to determine the order in which names of groups and candidates are to be entered on ballot papers.

[15] Section 83B (6)

Omit “ballots of the kind referred to in subsection (1) to be held”.

Insert instead “determinations of the kind referred to in subsections (1) and (2)”.

[16] Section 99 Questions to be put to voter

Omit section 99 (3).

[17] Section 99 (5) (b)

Omit “and the question specified in subsection (3)”.

[18] Sections 99A, 114A (2) (a), 114Q (1), 114ZR (3) and 115 (1) (c)

Omit “prescribed form” wherever occurring.

Insert instead “approved form”.

[19] Section 114R Provisional pre-poll voting

Insert “106 (1), (2), (2C), (3) (a)–(d) and (5),” after “sections” in section 114R (5).

[20] Section 114R (5A)

Insert after section 114R (5):

(5A) Electoral Commissioner may determine that enrolment voting provisions do not apply at pre-poll voting places outside New South Wales

The Electoral Commissioner may determine that sections 115A and 117A–119 do not extend to the casting of votes at one or more specified pre-poll voting places (being pre-poll voting places located outside New South Wales). Such a determination must be:

- (a) in writing, and
- (b) published on the Commission’s internet website.

[21] Section 114ZQB Procedure for voting at declared institutions—voting in elector’s district

Omit “(2),” from section 114ZQB (2).

[22] Section 114ZR Procedure for voting at declared institutions—voting other than in elector’s district

Omit “in the form prescribed” from section 114ZR (5).

Insert instead “in the approved form”.

[23] Section 114ZR (11) and (12)

Insert after section 114ZR (10):

(11) Provisional pre-poll voting at declared institutions outside district

Section 106 (1), (2), (2C), (3) (a)–(d) and (5) extend to the casting of a vote of a person at a declared institution that is not in the district for which the person claims to be entitled to be enrolled, subject to the following modifications:

- (a) references to polling places are taken to be references to declared institutions,
- (b) references to polling place managers and election officials are taken to be references to pre-poll voting officers at the declared institutions.

(12) **Application of absent voting scrutiny provisions**

Sections 117–120 extend to the scrutiny of a vote of a person at a declared institution that is not in the district for which the person claims to be entitled to be enrolled, subject to the following modifications:

- (a) references to absent voters ballot papers are taken to be references to the ballot papers of persons voting under this section (other than subsection (11)),
- (b) references to voting under section 115A are taken to be references to voting under section 106 (1), (2) and (2C) as extended by subsection (11).

[24] Section 138 Election information

Omit “electoral information” and “Electoral information” wherever occurring in section 138 (2), (3) and (4).

Insert instead “election information” and “Election information”, respectively.

[25] Schedule 4 Ballot paper

Omit:

Place the number “1” in the square opposite the name of the candidate for whom you desire to give your first preference vote.
*You may, if you wish, vote for additional candidates by placing consecutive numbers beginning with the number “2” in the squares opposite the names of those additional candidates in the order of your preferences for them.

Fold the ballot paper so that the vote cannot be seen, and put it in the ballot box or in the envelope provided as appropriate.

Insert instead:

Write the number **1** in the square next to the candidate of your choice.

*You can show more choices, if you want to, by writing numbers in the other squares, starting with the number **2**.

Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).

[26] Schedule 4A

Omit the Schedule. Insert instead:

Schedule 4A Ballot paper

NEW SOUTH WALES Election of 21 Members of Legislative Council

<p>You may vote either ABOVE or BELOW the line:</p> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <p><i>If you vote ABOVE the line:</i></p> </div> <p>Write the number 1 in the square for the group of your choice. You can show more choices, if you want to, by writing numbers in the other squares, starting with the number 2. Do not write any numbers below the line. Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).</p>	<p style="text-align: center;">GROUP A *</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p style="text-align: center;">GROUP C *</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p style="text-align: center;">GROUP Q *</p> <p style="text-align: center;"><input type="checkbox"/></p>	
OR	<p style="text-align: center;">GROUP A *</p> <p><input type="checkbox"/> PARKER Allan **</p> <p><input type="checkbox"/> MILLER John **</p> <p>.....</p> <p><input type="checkbox"/> MORGAN Albert **</p> <p><input type="checkbox"/> LUMSDAINE Elaine **</p> <p><input type="checkbox"/> POULOS Nicholas **</p>	<p style="text-align: center;">GROUP B *</p> <p><input type="checkbox"/> WILLIAMS Gregory **</p> <p><input type="checkbox"/> ROGERS Ralph **</p> <p><input type="checkbox"/> PERCIVAL Eleanor **</p>	<p style="text-align: center;">GROUP C *</p> <p><input type="checkbox"/> LEVY Mark **</p> <p><input type="checkbox"/> WOOD Henry **</p> <p>.....</p> <p><input type="checkbox"/> FONG Phillip **</p> <p><input type="checkbox"/> ILIC Petar **</p> <p><input type="checkbox"/> HAYES Graham **</p>	<p style="text-align: center;">GROUP Q *</p> <p><input type="checkbox"/> BOOKMAN John **</p> <p><input type="checkbox"/> CRANE June **</p> <p>.....</p> <p><input type="checkbox"/> KING Henry **</p> <p><input type="checkbox"/> WILSON Mary **</p> <p><input type="checkbox"/> FRENCH Charles **</p>
<p style="text-align: center;">GROUP A *</p> <p><input type="checkbox"/> PARKER Allan **</p> <p><input type="checkbox"/> MILLER John **</p> <p>.....</p> <p><input type="checkbox"/> MORGAN Albert **</p> <p><input type="checkbox"/> LUMSDAINE Elaine **</p> <p><input type="checkbox"/> POULOS Nicholas **</p>	<p style="text-align: center;">GROUP B *</p> <p><input type="checkbox"/> WILLIAMS Gregory **</p> <p><input type="checkbox"/> ROGERS Ralph **</p> <p><input type="checkbox"/> PERCIVAL Eleanor **</p>	<p style="text-align: center;">GROUP C *</p> <p><input type="checkbox"/> LEVY Mark **</p> <p><input type="checkbox"/> WOOD Henry **</p> <p>.....</p> <p><input type="checkbox"/> FONG Phillip **</p> <p><input type="checkbox"/> ILIC Petar **</p> <p><input type="checkbox"/> HAYES Graham **</p>	<p style="text-align: center;">GROUP Q *</p> <p><input type="checkbox"/> BOOKMAN John **</p> <p><input type="checkbox"/> CRANE June **</p> <p>.....</p> <p><input type="checkbox"/> KING Henry **</p> <p><input type="checkbox"/> WILSON Mary **</p> <p><input type="checkbox"/> FRENCH Charles **</p>	

* Here insert name of registered party or composite name if to be printed ** Here insert name of registered party if to be printed *** Here insert name of registered party or word "independent" if to be printed

Parliamentary Electorates and Elections Further Amendment Act 2010
No 126

Miscellaneous amendments to Parliamentary Electorates and Elections Act Schedule 2
1912 No 41

[27] Schedule 22 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Parliamentary Electorates and Elections Further Amendment
Act 2010*

Schedule 3 Amendment of Government Information (Public Access) Act 2009 No 52

**[1] Schedule 1 Information for which there is conclusive presumption of
overriding public interest against disclosure**

Omit “section 48 (Privacy—non-disclosure of information)” from the matter relating to the *Parliamentary Electorates and Elections Act 1912* in clause 1 of the Schedule.

Insert instead “sections 48 (Privacy—non-disclosure of information), 120AG (Secrecy relating to technology assisted voting), 135 (Violation of secrecy by officers) and 154AE (Votes from Antarctica not to be disclosed)”.

[2] Schedule 2 Excluded information of particular agencies

Insert at the end of clause 4 of the Schedule:

Election Funding Authority—investigative and prosecuting functions.

[Agreement in principle speech made in Legislative Assembly on 24 November 2010
Second reading speech made in Legislative Council on 25 November 2010]

BY AUTHORITY