



New South Wales

Electoral Amendment (COVID-19) Act 2021 No 42

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Electoral Amendment (COVID-19) Act 2021 No 42

Act No 42, 2021

An Act to amend the *Electoral Act 2017* to provide for by-elections held during the COVID-19 pandemic. [Assented to 29 November 2021]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Electoral Amendment (COVID-19) Act 2021*.

2 Commencement

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

Schedule 1 Amendment of Electoral Act 2017 No 66

Part 10, Division 3

Insert after clause 271—

Division 3 By-elections during COVID-19 pandemic

272 Definition

In this Division—

prescribed period means the period—

- (a) starting at the beginning of the day on which this Division commences, and
- (b) ending at the end of 30 June 2022.

273 Early voting and postal voting

- (1) If a by-election is held during the prescribed period, an elector may apply under section 113 to vote before election day, whether or not the elector is unable to attend at a voting centre on election day, as referred to in section 6.
- (2) If a by-election is held during the prescribed period, an elector may apply under section 143 to vote by post if the elector—
 - (a) is self-isolating because of COVID-19 related reasons, or
 - (b) reasonably believes that attending a voting centre on election day will pose a risk to the health or safety of the person, or of another person, because of the COVID-19 pandemic, or
 - (c) is a permanent or temporary resident in a hospital, nursing home, retirement village or similar facility.

274 Regulation-making power

- (1) The regulations may modify the application of this Act for a by-election held during the prescribed period, for the purposes of responding to the public health emergency caused by the COVID-19 pandemic.
- (2) The Minister may recommend to the Governor that regulations be made under this section only if the proposed regulations are—
 - (a) in accordance with advice issued by the Electoral Commissioner, and
 - (b) reasonable to protect the health, safety and welfare of persons from risk of harm caused by the COVID-19 pandemic.
- (3) A copy of the following must be tabled in each House of Parliament before a regulation is made under this section—
 - (a) advice issued by the Electoral Commissioner referred to in subsection (2)(a),
 - (b) any advice obtained by the Minister from the Chief Health Officer in relation to the making of the regulation.
- (4) Regulations made under this section—
 - (a) are not limited by the regulation-making power in this Act, and
 - (b) may override the provisions of this Act.
- (5) A regulation made under this section must not enable a by-election to be conducted exclusively by—

- (a) postal voting, or
 - (b) postal voting and technology assisted voting, within the meaning of Part 7, Division 11.
- (6) A regulation must not be made under this section in relation to a by-election held during the prescribed period that—
- (a) restricts or prevents a person from displaying a poster or handing out tangible electoral material in accordance with this Act, or
 - (b) enables the Electoral Commissioner or an election official to give a direction to a person restricting or preventing the person from displaying a poster or handing out tangible electoral material in accordance with this Act, or
 - (c) restricts or otherwise modifies provisions of this Act relating to the following—
 - (i) the number of scrutineers that may be appointed by a candidate or registered party,
 - (ii) the entitlement of a scrutineer to be present in a voting centre or ballot counting place,
 - (iii) the functions of a scrutineer, or
 - (d) enables the Electoral Commissioner or an election official to give a direction to a person that restricts or otherwise modifies the matters specified in paragraph (c).
- (7) A regulation made under this section is repealed at the end of the day on which this Division is repealed.

275 Repeal of Division

This Division is repealed at the end of 30 June 2022.

[Second reading speech made in—

Legislative Council on 16 November 2021

Legislative Assembly on 24 November 2021]