



New South Wales

# Electoral Legislation Amendment Act (No 2) 2022 No 58

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New South Wales

# **Electoral Legislation Amendment Act (No 2) 2022 No 58**

Act No 58, 2022

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An Act to amend electoral legislation to make further provision about postal voting and telephone voting; and for other purposes. [Assented to 26 October 2022]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Electoral Legislation Amendment Act (No 2) 2022*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## **Schedule 1 Amendment of Electoral Act 2017 No 66**

**[1] Section 144 Issue of ballot papers to registered early voters**

Omit “within 1 business day”. Insert instead “as soon as possible”.

**[2] Section 187A**

Insert after section 187—

**187A Authorisation of automated telephone calls**

A person must not, during the regulated period, cause, permit or authorise an automated telephone call containing electoral matter to be made to another person, unless the call contains, in a clear voice, spoken in English, the name and address of an individual on whose instructions the call was made.

Maximum penalty—

- (a) for an individual—20 penalty units or imprisonment for 6 months, or both, or
- (b) otherwise—100 penalty units.

**[3] Schedule 2 Provisions relating to Electoral Commissioner**

Omit clause 5(3). Insert instead—

**(3) Appointment by Electoral Commissioner—vacancy, illness or absence**

The Electoral Commissioner may appoint a member of staff of the Electoral Commission to act as Electoral Commissioner—

- (a) while the office of Electoral Commissioner is vacant during an election period, or
- (b) at any time while the Electoral Commissioner is ill or absent.

**(3A) A person appointed under subclause (3)(a) may, while the office of Electoral Commissioner is vacant during an election period, act as Electoral Commissioner until a person is appointed by the Governor—**

- (a) under section 11 as Electoral Commissioner, or
- (b) under subclause (1) to act as Electoral Commissioner.

**(3B) A person appointed under subclause (3)(b) may, during an illness or absence of the Electoral Commissioner, act as Electoral Commissioner until a person is appointed by the Minister to act as Electoral Commissioner under subclause (2).**

**(3C) Maximum period of acting outside election period**

Despite subclause (3B), a person appointed under subclause (3)(b) may, outside an election period, act as Electoral Commissioner for a period of not more than 30 days.

**(3D) Termination of appointment**

To avoid doubt, a person authorised under this clause to appoint a person to act as Electoral Commissioner may terminate the appointment.

**[4] Schedule 7 Savings, transitional and other provisions**

Omit Part 4. Insert instead—

## Part 4 Special provision for 2023 general election and certain by-elections

### 14 Technology assisted voting other than telephone voting not to be used

- (1) Technology assisted voting under the Act, Part 7, Division 11, other than telephone voting permitted under this clause, must not be used at—
  - (a) the 2023 general election, or
  - (b) a by-election held during the period after the commencement of this clause and before the 2023 general election.
- (2) Telephone voting by electors who are blind or have low vision is permitted.
- (3) The regulations may authorise the Electoral Commissioner to determine that telephone voting by COVID-19 affected electors is permitted.
- (4) Despite subclauses (1)–(3), the Electoral Commissioner may, at any time, determine that telephone voting is not permitted at a specified election, or during a specified period during an election, by either or both of the following—
  - (a) electors who are blind or have low vision,
  - (b) COVID-19 affected electors.
- (5) A determination under subclause (3) or (4) must be in writing and published on the Electoral Commission’s website.
- (6) An election is taken not to have failed, and the results of an election are not invalid, merely because telephone voting permitted by this clause was not available during a period when telephone voting was permitted under this clause.
- (7) In this clause—

**COVID-19 affected elector** means an elector who is self-isolating in accordance with—

  - (a) a public health order under the *Public Health Act 2010* for COVID-19 related reasons, or
  - (b) a current guidance document, relating to self-isolation for COVID-19 related reasons, issued by the Chief Health Officer and published on the website of the Ministry of Health.

### 15 Alternate method of postal voting

- (1) The Electoral Commissioner may determine that postal voting at one or more of the following elections must be conducted under the Act, Part 7, Division 10 as modified by Schedule 8—
  - (a) the 2023 general election,
  - (b) a by-election held after March 2023 and before the 2027 general election.
- (2) A determination under subclause (1) must be—
  - (a) made—
    - (i) for the 2023 general election—at least 60 days before the general election, or
    - (ii) for a by-election—within 1 business day of the nomination day for the by-election, and
  - (b) in writing, and

- (c) published on the Electoral Commission's website.
- (3) If a determination has been made under this clause, postal voting at the election concerned must be conducted under the Act, Part 7, Division 10 as modified by Schedule 8.

## **16 Voting overseas**

- (1) This clause applies to the 2023 general election.
- (2) Despite section 108, the Electoral Commissioner may, if the Electoral Commissioner is satisfied it would enhance the convenience of a large number of electors—
  - (a) appoint a place outside Australia as a voting centre for all electoral districts, and
  - (b) designate the voting centre as an early voting centre, and
  - (c) determine the days and hours of operation of the early voting centre, including whether voting will occur at the early voting centre on election day.
- (3) The Electoral Commissioner may abolish a voting centre appointed under this clause.
- (4) The Electoral Commissioner must publish notice of the following on the Electoral Commission's website at a time determined by the Electoral Commissioner—
  - (a) an appointment, designation or determination under subclause (2),
  - (b) an abolition of a voting centre under subclause (3).
- (5) Despite Part 7, only voting under sections 135 and 136 is permitted to take place at a voting centre appointed under this clause.
- (6) For this clause—
  - (a) despite section 81(1) and (2), the Electoral Commissioner may appoint a person, who the Electoral Commissioner considers has the appropriate skills and experience, as an election official for a voting centre appointed under this clause, and
  - (b) a reference in section 135 or 136 to an elector at a voting centre that is not designated for the electoral district for which the elector claims to be enrolled is taken to be a reference to an elector at a voting centre appointed under this clause.

## **[5] Schedule 8**

Insert after Schedule 7—

## **Schedule 8 Modification of postal voting**

Schedule 7, clause 15

### **[1] Section 144 Issue of ballot papers to registered early voters**

Omit section 144(a)–(b). Insert instead—

- (a) a postal vote certificate in the approved form, and
- (b) a ballot paper for the election, and
- (c) an envelope for the return of the certificate and ballot paper to the Electoral Commissioner.

**[2] Section 145 Issue of ballot papers to postal vote applicants**

Omit section 145(2)(a)–(b). Insert instead—

- (a) a postal vote certificate in the approved form, and
- (b) a ballot paper for the election, and
- (c) an envelope for the return of the certificate and ballot paper to the Electoral Commissioner.

**[3] Section 147A**

Insert after section 147—

**147A Form of certain postal vote certificates and ballot papers**

A postal vote certificate and ballot paper may be printed on the same sheet of paper with a perforation to enable the postal vote certificate and ballot paper to be divided into separate documents.

**[4] Section 148 Directions for postal voting**

Omit section 148(1)(c)(iii). Insert instead—

- (iii) place the ballot paper and the certificate in the envelope provided by the Electoral Commissioner for return to the Electoral Commissioner, and

**[5] Section 149 Preliminary scrutiny of postal ballot papers**

Insert before section 149(1)—

- (1A) The Electoral Commissioner may—
  - (a) without opening it, examine an envelope received by the Electoral Commissioner containing a ballot paper to determine whether the postal vote certificate is visible through a rear window in the envelope, and
  - (b) if the postal vote certificate is not visible through the rear window in the envelope, but the Electoral Commissioner considers it is likely the postal vote certificate is sealed inside the envelope—
    - (i) open the envelope without destroying it, and
    - (ii) withdraw the documents inside the envelope and ascertain whether the postal vote certificate was sealed inside the envelope, and
  - (iii) if the postal vote certificate was sealed inside the envelope with the ballot paper—
    - (A) without further inspecting the documents or allowing another person to inspect the documents, replace the documents in the envelope in a way that enables the postal vote certificate to be visible through the rear window in the envelope, and
    - (B) reseal the envelope, and
  - (iv) if the postal vote certificate was not sealed inside the envelope with the ballot paper—
    - (A) without further inspecting the documents or allowing another person to inspect the documents, replace the documents in the envelope, and
    - (B) reseal the envelope, and

(C) reject the envelope from further scrutiny.

**[6] Section 149(1)(a)**

Omit “such unopened envelopes on which a postal vote certificate is printed containing postal votes as”.

Insert instead “the sealed envelopes containing postal votes that”.

**[7] Section 149(1)(b)**

Omit “unopened all remaining envelopes on which a postal vote certificate is printed”.

Insert instead “all remaining sealed envelopes”.

**[8] Section 149(4)**

Omit “on an envelope containing a ballot paper”.

Insert instead “for a ballot paper”.

**[9] Section 149(4)**

Insert “containing the ballot paper” after “the envelope”.

**[10] Section 149A**

Omit the section. Insert instead—

**149A Saving of certain postal ballot papers**

- (1) A ballot paper is not to be rejected for scrutiny merely because the ballot paper and postal vote certificate were sealed inside an envelope other than the envelope provided by the Electoral Commissioner.
- (2) If the Electoral Commissioner is unable to read the postal vote certificate without opening the envelope because of the reason referred to in subsection (1), the Electoral Commissioner must—
  - (a) open the envelope, and
  - (b) withdraw the postal vote certificate from the envelope, and
  - (c) accept the envelope for scrutiny if satisfied that—
    - (i) the postal vote certificate has been properly signed and witnessed, and
    - (ii) for a postal vote certificate posted to the Electoral Commissioner—the certificate was completed before the close of voting, and
    - (iii) for a postal vote certificate delivered to an election official—the certificate was delivered before the close of voting, and
    - (iv) the elector is enrolled for the district for which the elector claimed to be enrolled, and
  - (d) if not satisfied of one or more of the matters in paragraph (c)—disallow the ballot paper in the envelope.
- (3) If an envelope has been accepted for scrutiny under subsection (2), the Electoral Commissioner must—
  - (a) withdraw the ballot paper from the envelope, and



- (b) without inspecting the ballot paper, or allowing another person to inspect the ballot paper, place the ballot paper in a ballot box for further scrutiny.

## **Schedule 2      Amendment of Government Sector Finance Act 2018 No 55**

### **Section 2.7 Accountable authorities for GSF agencies**

Insert after section 2.7(2)(h)—

- (h1) for the New South Wales Electoral Commission—the Electoral Commissioner, or

[Second reading speech made in—  
Legislative Assembly on 12 October 2022  
Legislative Council on 20 October 2022]