New South Wales

Local Government Amendment (Elections) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* (the **LG Act**) and the *Local Government (General) Regulation 2005* (the **LG Regulation**) so as:

(a) to provide that the system of continuous automatic enrolment of electors on the rolls for State parliamentary elections extends to enable persons to be enrolled on the roll of residential electors for a local government election during the period leading up to the polling day for the election, and

(b) to allow persons eligible to enrol as residential electors for local government elections to enrol and cast a provisional vote at an election on polling day, provided the person can produce a New South Wales driver licence or Photo Card, and

(c) to make other miscellaneous amendments to improve the conduct of local government elections under the LG Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1   Amendment of Local Government Act 1993 No 30

Amendments relating to automatic enrolment

Schedule 1 [1], [2], [4], [5] and **[9]** make amendments to give effect to the objective set out in paragraph (a) of the Overview. The result of the amendments is that the Electoral Commissioner will be required to continuously keep a roll for each local government area of persons who are, in the opinion of the Electoral Commissioner, entitled to be enrolled as electors because they are residents of the area. The Electoral Commissioner may use the roll used for elections of the Legislative Assembly (that is, the automatically updated roll for State elections under the *Parliamentary Electorates and Elections Act 1912*) or the roll used for Commonwealth elections as a basis for the local government residential roll (see section 298 of the LG Act).

Schedule 1 [6]–[8] and **[14]** make consequential amendments to provide for printed and electronic authorised copies of the roll of electors for use at local government elections. (See also proposed provisional voting provisions that will allow certain residents who are not on the authorised copy of the roll to cast a provisional vote at an election).

Amendments relating to provisional voting

Schedule 1 [10] and **Schedule 2 [11]** make amendments to give effect to the objective set out in paragraph (b) of the Overview. Substituted section 305 allows regulations to be made to enable provisional votes to be cast in certain circumstances in local government elections under the LG Act.

Proposed Subdivision 1A of Division 7 of Part 11 of the LG Regulation (proposed clauses 320A–320E) will enable an elector to cast a provisional vote in a local council election in a similar manner as a provisional vote is cast in a State election under section 106 of the *Parliamentary Electorates and Elections Act 1912*. The proposed Subdivision provides for 4 types of provisional vote. Provisional voting is currently allowed:

(a)   where a person is already marked off an authorised roll but the person claims not to have voted (clause 344 of the LG Regulation), and

(b)   where a person's name has been incorrectly omitted from a roll (section 305 of the LG Act and clause 343 of the LG Regulation).

Under the new provisions, provisional voting will also be permitted:

(a)   where a resident of the local government area is enrolling for the first time, re-enrolling or transferring enrolment (provided the resident can produce a New South Wales driver licence or Photo Card), and

(b)   where a person has enrolled for the election before polling day but after authorised copies of the rolls have been finalised.

The proposed Subdivision and related provisions also deal with the procedure for provisional voting and the scrutiny and counting of provisional votes.

Schedule 2 [2], [3], [12]–[19] and **[28]–[31]** make consequential changes to the LG Regulation.

Miscellaneous amendments

Schedule 1 [3] amends section 290 of the LG Act to make it clear that, in determining when an election of a mayor by the councillors must be held after an election of councillors, time begins to count after the declaration of election of all the councillors of the council concerned.

Schedule 1 [11] and **[15]** and **Schedule 2 [27]** make amendments to the LG Act and LG Regulation to streamline the process, after an election, for checking the rolls of electors for double-voting and failure to vote. All the rolls used in a local government election (whether the election is administered by the Electoral Commissioner or by the general manager of a council) are to be checked by the Electoral Commissioner.

Schedule 1 [12] and **Schedule 2 [6]–[10]** make amendments to the LG Act and LG Regulation to enable the relevant election manager to approve methods of random selection (for example, by electronic means) to determine the order that candidates' names and groups' names appear on ballot-papers rather than being limited to the method of balloting of names currently set out in the LG Regulation.

Schedule 1 [13] enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 2   Amendment of Local Government (General) Regulation 2005

Schedule 2 [1] and **[4]** make amendments to make certain terminology used in the LG Regulation consistent.

Schedule 2 [5] makes it clear that a candidate for nomination at an election must be proposed by persons who are enrolled in respect of the same ward or area as at the prescribed closing date for the election.

Schedule 2 [20]–[26] make amendments to provide that, in relation to elections administered by the general manager of a council, the returning officer is to be responsible for the registration of electoral material under Subdivision 6 of Division 9A of Part 11 of the LG Regulation (rather than the general manager).

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No   , 2012

A Bill for

An Act to amend the *Local Government Act 1993* to make further provision with respect to local government elections for civic office; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Elections) Act 2012*.

2 Commencement

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

Schedule 1   Amendment of Local Government Act 1993 No 30

[1]   Section 269 Who is a "resident" for the purposes of this Part?

Omit "on the relevant date" from section 269 (1) (a).

[2]   Section 269 (2)

Omit the subsection.

[3]   Section 290 When is an election of a mayor by the councillors to be held?

Insert at the end of the section:

(3)   For the purposes of this section, an election of councillors does not conclude until the declaration of election of all the councillors of the council concerned.

[4]   Section 298 Residential roll

Omit section 298 (3).

[5]   Section 301 Roll of electors

Omit "and confirmed under section 298" from section 301 (1).

Insert instead "by the Electoral Commissioner under section 298".

[6]   Section 301 (2)

Omit the subsection. Insert instead:

(2)   For each election, an authorised copy of the roll of electors is to be compiled in accordance with this Division.

[7]   Section 301 (3)

Insert "the authorised copy of" before "the roll" wherever occurring.

[8]   Section 301 (4)

Insert after section 301 (3):

(4)   An *authorised copy of the roll* referred to in subsections (2) and (3) is a printed or electronic copy of the roll of the electors for the area or ward concerned as at the closing date for the election.

[9]   Section 303 Making of claims for inclusion in the roll

Omit "the roll of electors is" from section 303 (5).

Insert instead "the non-residential roll and the roll of occupiers and ratepaying lessees are".

[10]   Section 305

Omit the section. Insert instead:

305   Provisional voting

The regulations may prescribe circumstances in which a person is to be permitted to vote at an election under this Act where:

(a)   the person is not enrolled for the area or ward concerned, but claims to be entitled to be enrolled on the residential roll for that area, or

(b)   the person claims that the person's name has been omitted from the roll for the area (for any reason), but claims he or she is entitled to vote at an election, or

(c)   there is other uncertainty as to a person's entitlement to vote at an election (for example, the person claims the person's name has been incorrectly marked off a roll at an election).

[11]   Section 313

Omit the section. Insert instead:

313   Check on double-voting and failure to vote

(1)   After the close of the poll at a contested election, the copies of the roll of electors used at the election are to be checked by the Electoral Commissioner in accordance with this section to determine:

(a)   which electors' names (if any) have been marked more than once, and

(b)   which electors (if any) appear to have failed to vote.

(2)   In the case of an election administered by a general manager, the general manager must (within the period specified by the Electoral Commissioner) forward the copies of the roll of electors used at that election to the Electoral Commissioner for checking.

(3)   The Electoral Commissioner is, for each contested election, to prepare a list of the names of the persons on the residential roll who, although entitled to vote at the election, appear to have

failed to vote and do not appear to have a sufficient reason for the failure.

[12] Section 316 Position on ballot-paper

Omit "determined by a ballot conducted as prescribed by the regulations".

Insert instead "determined by a method of random selection (including by electronic means) in accordance with the regulations".

[13] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

Local Government Amendment (Elections) Act 2012

[14] Dictionary

Omit the definition of *closing date*. Insert instead:

closing date, in relation to an election or poll, means the date prescribed by the regulations for the closing of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees for the election or poll.

[15] Dictionary

Omit the definition of *marked roll*.

Schedule 2   Amendment of Local Government (General) Regulation 2005

[1]   Clause 275 Definitions

Omit "or *roll closing date*" from the definition of *closing date* in clause 275 (1).

[2]   Clause 275 (1)

Insert in alphabetical order:

> *authorised copy of a roll*, in relation to an election, means an authorised copy of a roll referred to in section 301 (4) of the Act.
>
> *driver licence* means a driver licence issued under the *Road Transport (Driver Licensing) Act 1998*.
>
> *Photo Card* means a New South Wales Photo Card issued by Roads and Maritime Services under the *Photo Card Act 2005*.
>
> *provisional vote* means a vote under Subdivision 1A of Division 7.

[3]   Clause 275 (1)

Omit the definitions of *section 305 vote* and *tendered vote*.

[4]   Clauses 277A (2), 280 (3) and (5) and 315 (3), paragraph (a) of the definition of "regulated period" in clause 356A (1) and clause 4 (a1) of Schedule 10

Omit "roll closing date" wherever occurring. Insert instead "closing date".

[5]   Clause 289 Nomination proposals

Insert "(at the closing date for the election)" after "enrolled" in clause 289 (1) (a).

[6]   Clause 302

Omit the clause. Insert instead:

302   Order of ungrouped candidates and groups on ballot-papers

If after noon on the nomination day there are two or more candidates, not included in a group, for the election or two or more groups of candidates for the election, the returning officer must immediately determine the order of those candidates' names or those groups' names on the ballot-papers by:

(a)   a ballot in accordance with clause 303 or 304 (as appropriate), or

(b)   another method of random selection (including by electronic means) approved by the relevant election manager.

[7]   Clause 303 Ballot for determining the order of ungrouped candidates on ballot-papers

Omit "A ballot referred to in clause 302 (a)" from clause 303 (1).

Insert instead "A ballot to determine the order in which ungrouped candidates' names are to appear on the ballot-papers, as referred to in clause 302,".

[8]   Clause 304 Ballot for determining the order of groups of candidates on ballot-papers

Omit "A ballot referred to in clause 302 (b)" from clause 304 (1).

Insert instead "A ballot to determine the order in which the names of groups of candidates are to appear on the ballot-papers, as referred to in clause 302,".

[9]   Clause 305 Form of ballot-papers

Omit "302 (a)" from clause 305 (3). Insert instead "302".

[10]   Clause 305 (4) (b) and (d)

Omit "304 (1) (b)" and "304 (1) (a)", respectively. Insert instead "302".

[11]   Part 11, Division 7, Subdivision 1A

Insert after clause 320:

Subdivision 1A   Provisional voting

320A   Person already marked off roll

(1)   An elector, at a polling place in an area at any election, who is recorded (on the authorised copy of the roll used at the polling place) as having received a ballot-paper, but who claims not to have received a ballot-paper, is to be permitted to vote at the election.

(2)   The elector is to be permitted to vote if the elector:

(a)   answers the questions set out in clause 339 (4) in the manner specified in clause 339 (5), and

(b)   makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

320B   Person omitted from roll

A person, at a polling place in an area at any election:

(a)   who was enrolled for the area, and

(b)   whose name was omitted from the roll of electors for the area (for any reason), and

(c)   who claims to be entitled to vote at the election,

is to be permitted to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

320C   Person enrolling for first time, re-enrolling or transferring enrolment

(1)   A person, at a polling place in an area at any election, who is not enrolled for the area (whether the person is enrolled for another area or is not enrolled for any area), but who claims to be entitled to enrol on the residential roll for the area, is to be permitted to vote at the election.

(2)   The person must:

(a)   complete a claim for enrolment in the form approved by the Electoral Commissioner and submit it to an election official at the polling place, and

(b)   provide to that election official as proof of identity a driver licence or a Photo Card, and

(c)   make a declaration in the form approved by the Electoral Commissioner before that election official.

(3)   The person is to be permitted to vote at the election if the election official is satisfied that:

(a)   the claim for enrolment has been properly completed, and

(b)   the person is who the person claims to be, and

(c)   the proof of identity provided shows that the person's residence is the same as the place specified in the claim for enrolment as the person's residence.

Note. If a person cannot produce a driver licence or a Photo Card, the person will not be permitted to vote under this clause.

320D   Person enrolled after closing date

A person, at a polling place in an area at any election, who is enrolled for the area, but whose name does not appear on the authorised copy of the roll at the polling place, is to be permitted

to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official.

Note. The Electoral Commissioner may enrol a person at any time, including after the authorised copy of the roll for an election has been printed.

320E Procedure for provisional voting

(1) A declaration required to be made under this Subdivision:

(a) is to be written or printed on an envelope, and

(b) may include a claim for enrolment or transfer of enrolment.

(2) A person voting under this Subdivision, after making the required declaration and receiving a ballot-paper, is to mark the ballot-paper and fold it to conceal the vote marked on it and return it folded to the polling place manager.

(3) The polling place manager on receiving the ballot-paper must, in the presence of the person and of any scrutineers present, and without unfolding the ballot-paper, enclose it in the envelope, seal the envelope and put it in the ballot-box.

(4) The polling place managers are each to make a list of provisional votes. Each polling place manager is to note on the list:

(a) the giving of a ballot-paper at the polling place where the polling place manager is in charge to an elector who has made a declaration under this Subdivision, and

(b) the number of such votes delivered or sent to the returning officer from that polling place (or, if the polling place manager is the returning officer, retained by him or her).

[12] Clause 339 Questions put to elector

Omit "section 305 of the Act" from clause 339 (7) (b).

Insert instead "Subdivision 1A of Division 7".

[13] Clause 340 Voting by elector with confidential address

Omit "section 305 votes" from clause 340 (5).

Insert instead "provisional votes".

[14] Clauses 343 and 344

Omit the clauses.

[15]   Clause 348 Initial scrutiny of ballot-papers and counting of votes

Omit ", section 305 votes and tendered votes" from clause 348 (1) (d).

Insert instead "and provisional votes".

[16]   Clause 349 Sending ballot-papers to returning officer

Omit ", the envelopes containing section 305 votes and the envelopes containing tendered votes" from clause 349 (1) (b) (i).

Insert instead "and the envelopes containing provisional votes".

[17]   Clause 349 (1) (b) (v)

Omit "section 305 votes and the list of tendered votes".

Insert instead "provisional votes".

[18]   Clause 350 Checking of ballot-papers in sealed envelopes

Omit clause 350 (4)–(6). Insert instead:

> (4)   **Provisional votes**
>
> The returning officer must:
>
> > (a)   on election day (at any time after 8 am) produce all the sealed envelopes containing provisional votes cast before election day, and
> >
> > (b)   on the close of poll produce all the sealed envelopes containing provisional votes cast on election day,
>
> and deal with them in accordance with subclause (5).
>
> (5)   The returning officer is to do the following or have the following done in relation to the envelopes referred to in subclause (4):
>
> > (a)   count the sealed ballot-paper envelopes unopened and record the count,
> >
> > (b)   examine the declaration on each envelope before it is opened and, if necessary, make inquiries to determine whether the person who signed the declaration was on the day of polling:
> >
> > > (i)   in relation to a declaration made under clause 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or
> > >
> > > (ii)   in any other case—entitled to vote,

(c) if the declaration is in order and the returning officer is satisfied that the voter was, on the day of polling:

 (i) in relation to a declaration made under clause 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or

 (ii) in any other case—entitled to vote,

the returning officer is to open the envelope containing the ballot-paper, extract the ballot-paper and, without damaging the writing on the envelope, place the ballot-paper still folded in a securely fastened ballot-box for further scrutiny,

(d) if the declaration is not in order, or it appears to the returning officer that the elector is not entitled to vote or was, on the day of polling, not entitled to be enrolled on the residential roll for the area or ward concerned, the returning officer is to leave the envelope containing the ballot-paper unopened,

(e) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (c) and (d), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

[19] Clause 351 Finalising the count

Omit "tendered votes and section 305 votes" from clause 351 (1) (a).

Insert instead "provisional votes".

[20] Clause 356OA

Insert before clause 356P:

356OA Definition

In this Subdivision, *electoral material registrar* means:

(a) in relation to an election administered by a general manager of a council—the relevant returning officer, or

(b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

[21] Clause 356P Application for registration of electoral material

Omit "the election manager (in a form approved by the election manager)" wherever occurring in clause 356P (1) and (7).

Insert instead "the electoral material registrar".

[22]   Clauses 356P (6) and (8), 356Q (1)–(3) and (5), 356R (7) (b) and 356S (1)

Omit "election manager" wherever occurring.

Insert instead "electoral material registrar".

[23]   Clause 356P (9)

Omit the subclause. Insert instead:

    (9)   **Manner and form of application**

        An application under this clause:

        (a)   is to be in the form approved by:

            (i)   in relation to an election administered by a general manager of a council—the Director-General, or

            (ii)   in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner, and

        (b)   is to be signed by the applicant, and

        (c)   may be delivered or sent (by post or otherwise) or may be transmitted by facsimile or email.

[24]   Clause 356R Registration of electoral material

Omit "(in a form approved by the election manager)" from clause 356R (1).

[25]   Clause 356R (2A)

Insert after clause 356R (2):

    (2A)   **Form of certificate**

        A certificate of registration issued under this clause is to be in the form approved by:

        (a)   in relation to an election administered by a general manager of a council—the Director-General, or

        (b)   in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

[26]   Clause 356R (4)

Omit "the Electoral Commissioner or by a person authorised by the election manager".

Insert instead "the electoral material registrar".

[27]   Clause 390 Check on double-voting and failure to vote

Omit the clause.

[28]   Clause 391 Security of election materials

Insert "(other than any provisional vote envelopes required to be sent to the Electoral Commissioner under clause 391A)" after "other papers" in clause 391 (1) (c).

[29]   Clause 391A

Insert after clause 391:

391A   Provisional voting envelopes

(1)   This clause applies to any envelope used for a provisional vote at an election administered by a general manager of a council.

(2)   The returning officer, after the election has been declared, is to:

(a)   make a copy of the declarations on the envelopes (whether by photographing, photocopying or scanning the declaration), and

(b)   send the original envelopes to the Electoral Commissioner.

(3)   The Electoral Commissioner may use the information contained in any envelope sent to the Electoral Commissioner under this clause, and any envelope in the possession of a returning officer for an election administered by the Electoral Commissioner, for the purposes of updating and maintaining electoral rolls (whether under the Act or any other law).

(4)   The Electoral Commissioner must ensure that any envelopes sent to the Electoral Commissioner under this clause are kept securely until the latest of the following:

(a)   the period of 6 months after the relevant day of polling has expired,

(b)   if proceedings in a court or tribunal relating to the election concerned have been commenced within that period—the proceedings have been finally determined.

(5)   On the expiry of the Electoral Commissioner's obligation under subclause (4), the Electoral Commissioner may cause the envelopes to be destroyed.

[30]   Clause 392A Section 305 votes—prescribed form of declaration

Omit the clause.

[31]   Schedule 11 Forms

Omit Form 11.