

Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009

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 Parliamentary Electorates and Elections Act 1912 (**the Principal Act**) so as:

- (a) to provide for a form of automatic enrolment of electors on the rolls for State parliamentary and local government elections, and
- (b) to allow persons eligible to enrol in an electoral district (**a district**) to enrol and cast a provisional vote in an election for that district on polling day, provided the person can produce a driver licence or a New South Wales Photo Card issued by the Roads and Traffic Authority, and
- (c) to centralise the processing of postal vote applications and allow such applications to be made on-line, and
- (d) to provide that pre-poll voting places may be operated outside the State (for example, in interstate capital cities and overseas), and
- (e) to make miscellaneous amendments to improve the conduct of State parliamentary elections under the Principal 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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Parliamentary Electorates and Elections Act 1912 No 41 relating to automatic enrolment

Schedule 1 makes amendments to various provisions of the Principal Act:

- (a) to enable the Electoral Commissioner to undertake automatic enrolment of electors in certain circumstances, and
- (b) to allow persons eligible to enrol in a district to enrol and cast a provisional vote in an election for that district on polling day, provided the person can produce a driver licence or a New South Wales Photo Card.

Specifically, **Schedule 1 [5] and [6]** omit Part 3 (Qualification of electors) from the Principal Act and insert instead proposed Part 3B (Entitlement to enrol and vote) (containing proposed sections 22–25) into the Principal Act. The proposed new Part substantially re-enacts the provisions of the omitted Part.

Proposed section 22 makes it clear that, in general, a person is entitled to be enrolled for a district if:

- (a) the person:
 - (i) has attained 18 years of age, and
 - (ii) is an Australian citizen, and
- (b) the person lives at an address in that district and the person has lived at that address for at least one month before the enrolment.

The proposed section also provides that persons who are entitled to be enrolled on the Commonwealth roll (for example, Australians living outside Australia, itinerant electors, certain British subjects enrolled before 1984 etc) are also entitled to be enrolled for a district.

Proposed section 23 provides, subject to the other provisions of the Principal Act, that an elector who is enrolled for a district is entitled to vote at any election for the Legislative Assembly for the district. (Section 22 of the *Constitution Act 1902* provides that persons entitled to vote at a general election of Members of the Legislative Assembly, and only those persons, are entitled to vote at a periodic

election for the Legislative Council.)

Proposed section 24 contains restrictions on entitlement to vote corresponding to the provisions of current section 20 (3)–(7) of the Principal Act.

Proposed section 25 is the transferred and renumbered section 21 of the Principal Act (Disqualifications from voting).

Schedule 1 [6] and [7] omit Part 3B (Arrangement with the Commonwealth as to rolls) and Part 4 (Officers and enrolment) from the Principal Act and insert proposed Part 4 (Enrolment and rolls), containing proposed sections 26–52).

The new provisions make it clear that the Electoral Commissioner is to keep and maintain a roll for each district. The current practice of a joint Commonwealth-State roll for each joint subdivision being kept by subdivision registrars will no longer be continued.

Proposed Part 4 substantially re-enacts the provisions of current Part 4.

The major change in the new Part are the provisions that allow the automatic enrolment of persons in certain circumstances (contained in proposed section 29).

Under the proposed section, if the Electoral Commissioner, at any time, believes that a person who is not enrolled is entitled to be enrolled for a district, the Electoral Commissioner may enrol the person. However, the Electoral Commissioner must not do so unless the person concerned is first contacted in writing (including by email, SMS text message or other electronic means) and given a period of time (being not less than 7 days) to contact the Electoral Commissioner and inform him or her that the belief is incorrect and the reasons why that is so. Similar provisions provide for the transfer of enrolment and removal from the roll.

The proposed section makes it clear that the Electoral Commissioner may form a belief by:

- (a) consulting electoral enrolment details on any roll kept by the Australian Electoral Commission, and
- (b) consulting and using information collected under proposed Division 6 of the Part (for example, by the Roads and Traffic Authority and the Registry of Births, Deaths & Marriages).

Proposed Divisions 1, 2, 3, 4 and 5 of the proposed Part in other respects substantially mirror current Divisions 3, 4, 5, 6 and 3A of Part 4 of the Principal Act. However, proposed section 27 (that contains the compulsory obligation to enrol currently in section 34 of the Principal Act) increases the maximum penalty for a failure to enroll from 0.5 penalty unit (currently \$55) to 1 penalty unit (currently \$110). (See below for the corresponding amendment of Schedule 19 to the Principal Act.)

Proposed Division 6 of the Part (containing proposed sections 46–48) contains provisions to enable the Electoral Commissioner to collect information for the purposes of automatic enrolment (and generally for the preparation, maintenance and revision of rolls).

Proposed section 46 allows the collection of information. Proposed section 47 imposes an obligation on certain persons and bodies to provide information to the Electoral Commissioner on request. Proposed section 48 provides for the non-disclosure and privacy of such information kept by the Electoral Commissioner.

Proposed Division 7 of the Part substantially mirrors current Division 8 of Part 4 of the Principal Act and also a modified version of current section 21B (Arrangement with Commonwealth as to rolls) of the Principal Act. The provision (proposed section 49) will enable continued co-operation between the NSW Electoral Commission and the Australian Electoral Commission by providing for State-Commonwealth arrangements for a joint enrolment process or for the exchange of information necessary for the preparation, maintenance and revision of rolls or for both.

Schedule 1 [14] makes a substantial amendment to current section 106 of the Principal Act to enable persons eligible to enrol in a district to enrol and cast a provisional vote in an election for that district on election day, provided the person can produce a driver licence or a New South Wales Photo Card.

Specifically, proposed section 106 (2A) provides that an unenrolled person who has never been enrolled and wishes to enrol, or whose name has been removed from the roll and wishes to re-enrol, is to be permitted to vote at a polling place at an election if:

- (a) the person completes a claim for enrolment form, produces a driver licence or a Photo Card issued by the Roads and Traffic Authority and makes a declaration in the form approved by the Electoral Commissioner, and
- (b) an election official is satisfied that the claim for enrolment form has been properly completed and the driver licence or Photo Card provided shows that the person's residence is the same as the place named in the claim for enrolment form as the person's residence.

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

Proposed section 106 (2B) provides for a similar provisional voting process for transfer of enrolment.

Proposed section 106 (1) and (2) preserve the current right of persons who claim not to have voted where their names have been marked off the roll as having voted, and persons whose names have been omitted from the roll, to provisionally vote. Such persons will continue to be able to cast a provisional vote on making a declaration in the form approved by the Electoral Commissioner. Proposed section 106 (2) (a) will require a person voting under proposed section 106 (2) to complete a claim for enrolment form and produces a driver licence or a Photo Card if the person has one on them.

Proposed section 106 (2C) provides for a similar provisional voting process for a person who is enrolled for a district, but whose name does not appear on the authorised copy of the roll at the polling place concerned. A person could be enrolled, but not on the authorised copy of a roll at a polling place, if the person enrolled after the issue of the writ for the election.

Schedule 1 [18] and [19] provide for a similar form of provisional absent voting (see proposed sections 115A and 117A).

Schedule 1 [27] omits Schedule 19 (Procedure in relation to enforcement of provisions of section 34) to the Principal Act and re-enacts it (as Schedule 19 (Enforcement of compulsory obligation to enrol)) to take account of the amendments referred to above and to update the language used in the Schedule. The proposed new Schedule increases the maximum penalty notice amount for a failure to enrol from 0.1 penalty unit (currently \$11) to \$55.

Schedule 1 [1]–[4], [8]–[13], [15]–[17] and [20]–[26] make other consequential amendments.

Schedule 2 Amendment of Parliamentary Electorates and Elections Act 1912 No 41 relating to postal voting

Schedule 2 makes amendments to the Principal Act:

- (a) to provide that postal vote applications are to be processed solely by the Electoral Commissioner (not by the district returning officers) (**Schedule 2 [4], [7], [16], [20] and [26]**), and
- (b) to allow postal vote applications to be made on-line (including by removing the requirement that such applications must be signed and witnessed—it is noted that postal voting certificates are still required to be signed and witnessed) (**Schedule 2 [5], [8], [23] and [24]**), and
- (c) to enable a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*) to apply for a postal vote (**Schedule 2 [3]**), and (d) to enable a person who believes that attending a polling place on polling day will place the personal safety of the person or of members of the person’s family at risk to apply for a postal vote (**Schedule 2 [3]**), and
- (e) to allow persons in declared institutions to apply for postal votes (or to be general postal voters) if otherwise qualified (**Schedule 2 [6] and [9]**), and
- (f) to replace the concept of a Register of General Postal Voters with the concept of persons who are general postal voters for the purpose of the Principal Act (that is to remove the requirement that the Electoral Commissioner keep a “register”) (**Schedule 2 [1], [13]–[15] and [22]**), and
- (g) to enable a person to apply to be a general postal voter if the person is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*) (**Schedule 2 [12]**), and
- (h) to replace the requirement that returning officers must make all postal vote applications available for public inspection with a requirement that the Electoral Commissioner keep secure all postal vote applications for a specified period (see also proposed section 138 regarding access to electoral information) (**Schedule 2 [18]**), and
- (i) to enable ballot papers sent to postal voters to be initialled by hand or by electronic or mechanical means (**Schedule 2 [19]**), and
- (j) to remove certain obsolete or redundant provisions (**Schedule 2 [21]**), and (k) to make consequential amendments (**Schedule 2 [2], [10], [11], [17] and [25]**).

Schedule 3 Amendment of Parliamentary Electorates and Elections Act 1912 No 41 relating to pre-poll voting at electoral offices and other appointed places

Schedule 3 makes amendments to the Principal Act:

- (a) to enable interstate and overseas places to be appointed as pre-poll voting places (**Schedule 3 [4] and [11]**), and
- (b) to enable a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*) to make a pre-poll vote (**Schedule 3 [10]**), and
- (c) to enable a person who believes that attending a polling place on polling day will place the personal safety of the person or of members of the person’s family at risk to make a pre-poll vote (**Schedule 3 [10]**), and
- (d) to enable an elector voting at a pre-poll voting place (such as an electoral office and other appointed place) within the State that is within the elector’s district to cast an ordinary vote into a ballot box rather than make a declaration style vote and place it in an envelope (**Schedule 3 [12]**), and
- (e) to enable provisional voting (similar to provisional voting under proposed sections 106 and 115A—see Schedule 1 [14] and [18]) to occur at pre-poll voting places (**Schedule 3 [15]**), and

- (f) to remove an obsolete provision (**Schedule 3 [16]**), and
- (g) to enable the periodic Council ballot paper of a person who voted in the incorrect district to be counted in certain circumstances (**Schedule 3 [19]**), and
- (h) to omit the now redundant Division 11 (Voting by post (interstate and overseas)) of Part 5 of the Principal Act (being the Division that enabled persons to apply in person for postal votes at certain appointed interstate and overseas places, eg certain Australian embassies and high commissions overseas) (**Schedule 3 [20]**), and
- (i) to make consequential amendments (**Schedule 3 [1]–[3], [5]–[9], [13], [14], [17], [18] and [21]–[25]**).

Persons outside the State will still be able to apply for postal votes in the ordinary way.

Schedule 4 Amendment of Parliamentary Electorates and Elections Act 1912 No 41 relating to pre-poll voting at declared institutions

Schedule 4 makes amendments to the Principal Act:

- (a) to enable voting at declared institutions to be undertaken on any day during the 7 days preceding polling day, rather than only on the fifth, fourth and third days preceding polling day (**Schedule 4 [1]**), and
- (b) to update the language referring to persons who are in declared institutions (**Schedule 4 [2]**), and
- (c) to enable an elector voting at a declared institution that is within the elector's district to cast an ordinary vote into a ballot box rather than make a declaration style vote and place it in an envelope (**Schedule 4 [3]**), and
- (d) to remove certain obsolete or redundant provisions (**Schedule 4 [6]**), and
- (e) to enable the periodic Council ballot paper of a person who voted at a declared institution for the incorrect district to be counted in certain circumstances (**Schedule 4 [10]**), and
- (f) to make consequential amendments (**Schedule 4 [4], [5] and [7]–[9]**).

Schedule 5 Miscellaneous amendments to Parliamentary Electorates and Elections Act 1912 No 41

Schedule 5 makes miscellaneous amendments to the Principal Act as follows:

- (a) to provide for a simplified procedure for voting for electors who are in the Australian Antarctic Territory or on ships to or from that Territory during an election (**Schedule 5 [1], [71] and [72]**),
- (b) to make law revision amendments following on from the abolition of group voting tickets (**Schedule 5 [2], [68] and [69]**),
- (c) to provide that residents of other States and Territories may be appointed as election officials but only if they are enrolled in another State or Territory as an elector for the House of Representatives (**Schedule 5 [3]**),
- (d) to provide that the Electoral Commission and the Electoral Commissioner may delegate functions to officers or members of staff of electoral commissions or electoral offices of the Commonwealth or of a State or Territory (**Schedule 5 [4] and [5]**),
- (e) to provide that the Electoral Commissioner is not required to make registered party information sheets available in public libraries or other places determined by the Electoral Commissioner (it is noted that such sheets are now published on the Internet) (**Schedule 5 [6]**),

- (f) to provide in numerous provisions that the Electoral Commissioner may publicly advertise notices and information in a manner chosen by the Electoral Commissioner and remove (in most places) the current requirement that notice must always be in a newspaper (**Schedule 5 [7], [10], [11], [13], [21], [22], [28], [31], [32], [53] and [60]**),
- (g) to provide that the place that nomination papers for the Legislative Assembly may be received for an election need not be in the district concerned (**Schedule 5 [8]**),
- (h) to provide that nomination papers for Legislative Assembly and Legislative Council elections may be received, and nominations may be withdrawn, by facsimile and email (**Schedule 5 [9], [12], [16], [20], [25] and [30]**),
- (i) to make it clear that candidates, and their nominators, for Legislative Assembly and Legislative Council elections must be enrolled as at 6 pm on the date of issue of the writ for the election concerned (**Schedule 5 [14], [15], [23] and [24]**),
- (j) to provide that a candidate, in his or her nomination papers, may specify a short or alternative form of his or her given name that can be printed on the ballot papers for the election (**Schedule 5 [17], [18], [26], [27], [34] and [35]**),
- (k) to provide that candidates' deposit must be lodged by 12 noon on the day of nomination (rather than at the time nomination papers are lodged) (**Schedule 5 [19] and [29]**),
- (l) to provide that the returning officer is to determine the order in which the candidates' names appear on the ballot papers by randomly selecting the names of candidates in a manner specified by the Electoral Commissioner (including by electronic means), rather than the regulations prescribing a form of ballot (**Schedule 5 [33]**),
- (m) to provide that the Electoral Commissioner may arrange for mobile polling booths to visit remote districts for pre-poll voting (**Schedule 5 [36]**),
- (n) to provide that the authorised copies of the roll used in elections may be in printed or electronic form and are to be prepared to contain the names of electors as at the date of the issue of the writ for the election (**Schedule 5 [2], [37], [38], [40], [48], [50], [52], [57] and [58]**),
- (o) to provide that if a polling place does not have or runs out of ballot papers, the returning officer, polling place manager or other election official in charge at the time may have the ballot paper reproduced (including by photocopying or by copies being obtained by use of facsimile or email) (**Schedule 5 [39] and [42]**),
- (p) to provide in the Principal Act, rather than in the regulations, that immediately on delivering a ballot paper to a voter, an election official must, in a manner specified by the Electoral Commissioner, record that delivery on the printed or electronic authorised copy of the roll (**Schedule 5 [41]**),
- (q) to make it clear that the offence under section 112 of the Principal Act relates to multiple voting and not only to double voting (**Schedule 5 [43]**),
- (r) to provide that the penalty notices for failing to vote need not be sent to the elector's enrolled address, but must be served personally or by post (**Schedule 5 [44] and [45]**),
- (s) to increase the penalty payable under a penalty notice for failing to vote from \$25 to \$55, (**Schedule 5 [46]**),
- (t) to increase the maximum penalty payable on conviction in a court for failing to vote from 0.5 penalty unit, currently \$55, to 1 penalty unit, currently \$110, (**Schedule 5 [47]**),
- (u) to simplify and clarify certain provisions relating to the security of election materials after the declaration of elected candidates (**Schedule 5 [49]–[51], [56], [59] and [61]**),

(v) to provide that, after an election, certain electoral information about the distribution of first preference votes is to be available to the public and certain other information is to be available to each registered political party that so requests and each member of Parliament who is not a member of a registered political party and who makes a request in respect of the member's district (**Schedule 5 [62]**),

(w) to clarify certain overlapping offence provisions that regulate the display of posters at or near polling places—the revised provisions will provide that posters must not be posted in, on the exterior of or within 6 metres (rather than 5 metres) of polling places and also posters larger than 8,000 square centimetres must not be posted within the grounds of, or on the outer wall, fence or boundary of an enclosure in which a building used as a polling place is situated (**Schedule 5 [63]–[66] and [70]**),

(x) to provide that it is an offence (carrying a maximum penalty of 5 penalty units (currently \$550) or imprisonment for six months) to display certain electoral advertisements and notices on an electronic billboard, digital road sign or other similar device, unless the matter contains, in visible, legible characters, the name and address of the person on whose instructions the matter was displayed (**Schedule 5 [67]**),

(y) to omit an archaic provision that enabled the Electoral Commissioner to recommend that where a registrar, or deputy registrar, or other officer, had been guilty of any negligent act of commission or omission, contrary to the provisions of the Principal Act, the Electoral Commissioner could recommend that the person forfeit the whole or any portion of the officer's remuneration for the year (**Schedule 5 [73]**),

(z) to insert provisions of a savings and transitional nature (**Schedule 5 [74] and [75]**).