

## **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 ***Elections Act***) as follows:

- (a) to enable persons with impaired vision or with certain other disabilities and persons who may have difficulty voting by reason of location to vote by telephone or by means of a computer linked to the internet,
- (b) to make other miscellaneous amendments relating to the conduct of State Parliamentary elections.

The Bill also makes two amendments to the *Government Information (Public Access) Act 2009* relating to elections and election funding.

### 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.

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

**Schedule 1** inserts proposed Division 12A (proposed sections 120AA–120AM) into Part 5 (Conduct of elections) of the Elections Act.

The proposed Division provides that the Electoral Commissioner will be able to approve procedures (***the approved procedures***) to enable eligible electors to vote at a State Parliamentary election by means of technology assisted voting, being a method of voting where the eligible elector votes by means of a networked electronic device, such as by using a computer linked to the internet or by using a telephone.

The ***eligible electors*** able to use this method are defined to be those electors who meet any of the following eligibility requirements:

- (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. (However, technology assisted voting will not be available for this class of electors until at least one year after the 2011 State Parliamentary elections.)

The Electoral Commissioner will also be able, by order published on the NSW legislation website, to set additional requirements for electors or any class of electors to be eligible for technology assisted voting. The regulations under the Elections Act will be able to exclude classes of electors from designation by the Electoral Commissioner.

The procedures approved by the Electoral Commissioner for technology assisted voting 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

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(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 and sealing of those ballot papers in packages and the distribution of those sealed packages to the relevant returning officers.

The proposed Division also provides for the following:

(a) the independent auditing, before and after each Assembly general election, of the information technology used under the approved procedures,

(b) that scrutineers appointed by candidates may observe the production of the printed ballot papers and bundling and sealing of those ballot papers in accordance with the approved procedures and any other element of the technology assisted voting process that is approved by the Electoral Commissioner for scrutiny,

(c) that votes cast by eligible electors and transmitted to the Electoral Commissioner in accordance with the approved procedures are to be counted with the postal votes for that election,

(d) that it is an offence for any person who becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted to disclose that information to any other person except in accordance with the approved procedures,

(e) that it is an offence for a person to make 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 making an application for registration for technology assisted voting or casting a vote by means of technology assisted voting,

(f) that it is an offence for a person, without reasonable excuse, to 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,

(g) that approvals by the Electoral Commissioner for the purposes of the proposed Division must be in writing and published on the Commission's internet website,

(h) that regulations may be made under the Elections Act that make provision for or with respect to enabling eligible electors to vote in elections by means of technology assisted voting,

(i) that the Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election,

(j) the review of the performance of technology assisted voting at the 2011 State Parliamentary election and the investigation by the Electoral Commissioner of the extension of technology assisted voting to all electors outside the State and other electors for subsequent State Parliamentary elections.

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

**Schedule 2 [1]** provides that “approved forms” are electoral papers for the purposes of the Elections Act. As a consequence the following sections of the Elections Act will apply to approved forms:

- (a) section 176C (Signature to electoral paper),
- (b) section 176D (Untrue statements in forms),
- (c) section 176E (Witnessing electoral papers),
- (d) section 176F (Forging or uttering electoral papers).

See also the related amendment in **Schedule 2 [18]**.

**Schedule 2 [2]** provides that the Electoral Commissioner is not required to vote at any election of a member of the Legislative Assembly or any periodic Legislative Council election.

**Schedule 2 [3]** provides that a returning officer for an electoral district is ineligible to vote at any election of a member of the Legislative Assembly for that district.

**Schedule 2 [4]** amends various provisions of the Elections Act to provide that certain decisions are to be made public on the Electoral Commission’s internet website rather than in the Gazette. Those decisions are as follows:

- (a) section 21AR—notice of any appointment or termination of an appointment of a returning officer,
- (b) section 84 (2)—the appointment or abolition of a polling place,
- (c) section 98 (3)—the appointment or abolition of a polling place outside the electoral district,
- (d) section 114P (6)—the appointment of places (within or outside the State) and the hours for pre-poll voting,
- (e) section 114ZN (2)—the declaration of institutions (such as convalescent homes, hospitals or similar institutions) for the purposes of declared institution pre-poll voting.

**Schedule 2 [5], [6] and [10]** make amendments, consistent with the *Commonwealth Electoral Act 1918* of the Commonwealth, to provide that 16 year olds may enrol under the Elections Act. Such persons may not vote until they attain 18 years of age.

**Schedule 2 [7]** repeals certain provisions of the Elections Act that provide that an elector is not entitled to vote at an election for a district unless the real place of living of the elector was, at some time within 3 months immediately preceding polling day for that election, within that district. It is noted that section 22 of the Elections Act provides that a person is not entitled to be enrolled for a district unless the person lives at an address in that district and the person has lived at that address for at least  
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one month before the enrolment. **Schedule 2 [16] and [17]** make consequential amendments.

**Schedule 2 [8] and [9]** make amendments to enable the Electoral Commissioner to make changes to electoral rolls kept under the Elections Act as a consequence of any change to any roll kept by the Australian Electoral Commission under the *Commonwealth Electoral Act 1918* of the Commonwealth.

**Schedule 2 [11]** makes an amendment consequent on the enactment of proposed Division 12A (see Schedule 1). The amendment also makes law revisions to include references to Divisions 5A and 18 and remove a reference to repealed Division 3.

**Schedule 2 [12]** makes a law revision amendment.

**Schedule 2 [13] and [14]** make amendments to provide that the Electoral Commissioner may specify the manner in which the random order of names on ballot papers for Legislative Council elections is to be determined. The provisions currently assume a physical ballot with procedures to be prescribed by the regulations under the Elections Act. The methods that may be specified in the future may include determination by electronic means. **Schedule 2 [15]** makes a consequential

amendment.

**Schedule 2 [18]** amends various provisions of the Elections Act to enable the Electoral Commissioner to approve forms for the purposes of that Act rather than requiring those forms be prescribed by the regulations under that Act.

**Schedule 2 [22]** makes a consequential amendment.

**Schedule 2 [19]** makes an amendment to enable an elector to cast certain provisional pre-poll votes when voting at a pre-poll voting place outside the elector's district.

**Schedule 2 [20]** enables the Electoral Commissioner to determine that various provisions of the Elections Act that enable a person to simultaneously enrol and vote do not apply at specified pre-poll voting places outside New South Wales.

**Schedule 2 [21]** makes an amendment to enable an elector, when voting at a declared institution within the elector's district, to cast a provisional vote on the ground that the elector claims that the elector's name was wrongly omitted from the roll.

**Schedule 2 [23]** makes an amendment to enable an elector to cast certain provisional votes (not being provisional votes that enable a person to simultaneously enrol for the first time and vote or transfer enrolment and vote) when voting at a declared institution outside the elector's district. The amendment also inserts a provision to make it clear that the votes of persons voting at declared institutions outside the electors' districts are to be treated as absent votes for the purposes of the scrutiny.

**Schedule 2 [24]** renames "electoral information" in section 138 of the Elections Act as "election information" to prevent confusion with the term used in section 46 of that Act.

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**Schedule 2 [25] and [26]** make amendments to Schedules 4 and 4A to the Elections Act to change the words of instructions contained in the sample ballot papers set out in those Schedules.

**Schedule 2 [27]** enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

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

**Schedule 3 [1]** amends Schedule 1 to the *Government Information (Public Access) Act 2009* to provide that it is to be conclusively presumed for the purposes of that Act that there is an overriding public interest against disclosure of information the disclosure of which is prohibited by any of the following sections of the Elections Act:

(a) 120AG (Secrecy relating to technology assisted voting)—that prohibits the disclosure of information of how electors voted using technology assisted voting and prohibits the disclosure of the source code and other software that relates to such voting,

(b) 135 (Violation of secrecy by officers)—that prohibits the disclosure by election officials and scrutineers of information of how electors voted,

(c) 154AE (Votes from Antarctica not to be disclosed)—that prohibits the disclosure of information of how an elector voted under the special provisions relating to Antarctic voters.

**Schedule 3 [2]** amends Schedule 2 to the *Government Information (Public Access) Act 2009* to provide that information relating to the investigative or prosecuting functions of the Election Funding Authority is "excluded information" for the purpose of that Act. Section 43 of that Act prevents an access application from being made to an agency for excluded information of the agency. Also, Schedule 1 to that Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of excluded information.