

Agreement in Principle

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [10.05 a.m.]: I move:

That this bill be now agreed to in principle.

Many people in New South Wales who are blind or vision impaired currently do not have the opportunity to cast a secret vote at a State election. They have no choice but to enlist the help of another person to fill out their ballot paper and place it in the ballot box. By amending the Parliamentary Electorates and Elections Act, this bill will allow these vision-impaired electors to vote in secret, using a computer or telephone at a private location such as their home. As a result, these voters will gain new levels of independence and empowerment as participants in our democratic processes.

This new technology-assisted voting system for New South Wales is called iVote. iVote is an Australian first. The Government is pioneering the use of new communications technology to make elections more democratic and accessible. This bill provides for the iVote system to be in place for the State general election in March next year. iVote will not only assist vision-impaired electors; others may use iVote next year, and that includes electors with other disabilities or who live in remote parts of the State. Once the performance of iVote has been reviewed after the 2011 election, there is the possibility it will be made available to even more electors, including those who are interstate or overseas and unable to easily attend a polling place.

The introduction of the iVote system under this bill follows an investigation into the feasibility of technology-assisted voting by the Electoral Commissioner, recommended in the report on the 2007 State general election by the Joint Standing Committee on Electoral Matters. The Electoral Commissioner's iVote report was tabled in Parliament in September this year. In preparing the iVote report, the Electoral Commissioner canvassed organisations representing people who are vision-impaired or have other disabilities. The Electoral Commissioner's investigation initially had concentrated on using personal computers connected to the internet for iVoting. An important message from the blind and vision-impaired community is that members strongly prefer a telephone-based system to register their secret ballot. This led to a broadening of the design of the iVote system during the feasibility study.

However, the iVote report also found that the online voting option is preferred by a majority of electors with other disabilities or who are geographically isolated. As a consequence, the Electoral Commissioner recommends that both online and telephone voting be supported in the iVote system for the 2011 State general election. In the iVote report, the Electoral Commissioner estimated that if iVoting were adopted for the coming election, around 10,000 electors would vote using the system. Of these 10,000 people, approximately 70 per cent would be vision-impaired electors and 25 per cent would be expected to be people with other disabilities. Approximately 5 per cent would be able-bodied people living in remote parts of New South Wales. To ensure that the iVote system could cope with this level of demand, the Electoral Commissioner recommends that the design capacity of the iVote system for the 2011 election would be for 15,000 electors.

The Government has carefully considered the findings of the iVote report. We are pleased to support its recommendations, and have allocated resources to implement technology-assisted voting by telephone and internet for the coming election. As well as providing for the establishment of iVoting at New South Wales elections, the bill will make a number of amendments to clarify certain administrative processes under the Act that have been requested by the Electoral Commissioner. The bill will also amend the Government Information (Public Access) Act to protect sensitive information kept for administration of elections, including software programs and codes for the iVote system. Each of the elements of the bill is addressed in a separate schedule, beginning with technology assisted voting at schedule 1. Schedule 1 of the bill will add a new division to the Act that provides for technology assisted voting, which will be known to electors as iVoting. The Electoral Commissioner is granted powers to approve procedures to enable eligible electors to use the iVote system.

The Electoral Commissioner may determine an eligible elector from a number of categories of voters. The first category is a person whose vision impairment, physical incapacity or low level of literacy prevents them from otherwise voting without assistance. The next category is a person with a disability within the meaning of the Anti-Discrimination Act 1977 and who, because of the disability, has difficulty voting at a polling place or is unable to vote without assistance. Voters eligible under this category may include people with disabilities concerning physical control or fine motor skills, sensory impairment such as deafness or inability to speak, and intellectual or social skills impairment that may make it difficult to interact with polling place staff.

The third category is a person who lives in a remote location in New South Wales and has greater difficulty in attending a polling booth. To qualify for consideration as an eligible elector, the elector's residence must be 20 kilometres or more from a polling place. This category has been included to provide a benefit to voters in rural and remote locations. However, it will also provide a valuable insight into how well iVoting works in the wider community, which will provide useful information when consideration is given to expanding its availability in the future.

It is important to note that an elector from any of the categories I have just outlined will not have an automatic right to use iVoting. The Electoral Commissioner must approve each class of eligible electors from amongst the categories. Furthermore, a class of electors from any of the categories may be excluded from technology assisted voting by regulation. This is to provide the flexibility to ensure that access to the iVote system is provided in a way that is equitable and efficient. In anticipation of a wider rollout of iVoting, a fourth category of eligible electors has been included in the bill, that is, voters who are interstate or overseas at the time of an election. However, it is appropriate that the implementation of the iVote system is staged, and this provision for electors outside the State will not commence until March 2012 and the category will require a regulation to become operative.

A report by the Electoral Commissioner after the 2011 election into the performance of the iVote system will inform any future decision on iVoting for people outside New South Wales. This report is required under the provisions of the bill. Technology assisted voting requires the operation of a complex information technology platform by, or on behalf of, the Electoral Commission as part of the crucial function of conducting elections for the New South Wales Parliament. Accordingly, the Electoral Commissioner requires a degree of flexibility in determining and approving procedures for iVoting. However, constitutional integrity of the electoral system requires that any such flexibility is limited by reference in the bill to principles of accuracy, accountability and transparency.

The bill will provide that procedures approved by the Electoral Commissioner must include provisions for iVoter registration, a record of an iVote having been made, secrecy of the iVote and production of the iVote ballot paper for counting with other votes. Further, the bill will require an independent audit of the technology assisted voting system both before and after each general election to ensure that it properly reflects the votes cast and that it is secure. This will allow tests of the iVote system software to ensure that it is accurate and that the secrecy of votes is protected, with the system resistant to hackers and any other malicious tampering.

As a further measure to guard the integrity of the system, the bill contains an offence provision for any person who destroys or interferes with the technology used by the Electoral Commissioner in connection with technology assisted voting. The maximum penalties for breach are 100 penalty units, three years imprisonment or both. These penalties are equivalent to those under the Act concerning bribery and intimidation. Finally, governments must be prepared for an unforeseen failure of technology and have in place contingency plans. The iVote system is no exception. In the event of an emergency or catastrophic technical failure of the technology assisted voting platform, there are provisions for iVoting to be withdrawn as a form of voting for an election. This may occur either by the making of a regulation or by determination of the Electoral Commissioner.

In addition to establishing iVoting, the bill will also make a number of amendments regarding the conduct of elections under the Act, many of which were requested by the Electoral Commissioner. These are set out in schedule 2 of the bill. The changes predominantly arise as a result of the introduction of the automatic enrolment in New South Wales or are being made for consistency with changes made by the Commonwealth to its procedures. The bill amends the Act to provide that the Electoral Commissioner is not required to vote in New South Wales parliamentary elections. This provision is to enhance the impartiality of the office of the Electoral Commissioner. Currently, the Act makes returning officers ineligible to vote at any Legislative Assembly election. The bill will amend the Act to provide that the returning officer for an electoral district will be ineligible to vote only at a Legislative Assembly election for the district for which they are returning officer.

Certain decisions by the Electoral Commissioner are required to be published in the *Government Gazette*. The bill will amend the Act to require that these decisions will be published on the website of the Electoral Commissioner. These decisions include notice of appointment or termination of a returning officer and the appointment or abolition of a polling place. Young people continue to be under-enrolled and the Commonwealth recently has reduced the provisional enrolment age from 17 years to 16 years to address this. The bill will make the New South Wales provisional enrolment age consistent with Commonwealth arrangements. Despite being provisionally enrolled, a person may not vote at an election until they are 18 years old.

The bill will amend the Act to remove the three-month rule. This rule currently provides for the disqualification of an elector who has not lived within the district where she or he is enrolled at some time during the three months prior to the election. The rule may be applied currently when a voter attends a polling place to vote and is asked about their place of residence by an election official. The test is impractical and no longer justifiable given the recent Smart Roll automatic enrolment amendments that have modernised the enrolment record practices of the Electoral Commission. Similar provisions in Commonwealth and Victorian legislation have been removed.

Commonwealth electoral rolls may be updated by electors online. The bill amends the Act, therefore, to allow for the Electoral Commissioner to enrol a person in New South Wales based on the Commonwealth roll information without first having to notify the person. The bill amends the Act to allow the Electoral Commissioner to conduct an electronic draw as an alternative to the manual process for determining the order of candidates for the Legislative Council ballot. The bill will remove inconsistencies in the Act between processes available for people to vote provisionally inside their home electoral district and for those provisionally voting outside their home electorate. It includes enabling an elector to cast certain provisional votes when voting at a declared institution

outside the elector's district.

The bill will amend the Act to enable the Electoral Commissioner to determine whether provisional enrolment voting will be available at overseas and interstate pre-polling places for an election. Such provisional enrolment voting was provided under the recent Automatic Enrolment Act 2009 amendments to the Act. However, there may be limited demand for provisional enrolment voting overseas. Therefore, the cost of training staff at international missions may not be justified. Accordingly, the amendment will provide the Electoral Commissioner with the discretion to make provisional enrolment voting available at specific places outside New South Wales.

Schedule 2 of the bill provides that directions for ballot papers are simplified. This will enhance the integrity of the election process by minimising the potential for informal voting. The Electoral Commissioner advises that in 2007, the proportion of informal votes for 11 electoral districts was greater than 4 per cent, and that lack of familiarity with English was a factor in the level of informal voting.

As I have mentioned, schedule 3 of this bill will amend the Government Information (Public Access) Act 2009 to protect sensitive information kept for the administration of elections, including software programs and codes for the iVote system. The bill will amend the Government Information (Public Access) Act 2009 to provide for a conclusive presumption of overriding public interest against disclosure in relation to certain provisions in the Act, specifically those concerning secrecy relating to technology-assisted voting, the violation of secrecy by electoral officers and the disclosure of votes from Antarctica.

Finally, there is a miscellaneous amendment to the Government Information (Public Access) Act 2009 to provide that the investigative and prosecuting functions of the Electoral Funding Authority are "excluded information". This is consistent with the exclusions that already apply to other investigative and prosecutorial agencies, including the Director of Public Prosecutions, the Independent Commission Against Corruption, the office of the Auditor-General, the office of the Ombudsman and the office of the Information Commissioner. This bill is an important reform that supports the principle of a secret ballot. Before arriving at this legislation, lots of work was done looking at options to accommodate voters with all kinds of different needs, and consulting with groups representing the stakeholders. This bill is the culmination of that work and provides an important step forward in our democracy. I commend the bill to the House.