



New South Wales

# Local Government Legislation Amendment (Elections) Bill 1998

## Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Local Government Act 1993* to make a number of miscellaneous changes relating to all council elections, including:
    - (i) to clarify obligations of councils to notify the Electoral Commissioner of changes in ward boundaries,
    - (ii) to authorise the Electoral Commissioner instead of the returning officer to fix the date for holding a by-election,
    - (iii) to make it clear that a candidate for civic office must be qualified to hold that office in order to be nominated for election (in addition to being enrolled as an elector for the area concerned),
    - (iv) to provide for candidate information sheets rather than candidate resumes in order to expand the matters that may be included in them,
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- (v) to allow group voting tickets at all council elections and not just at elections for council areas not divided into wards,
  - (vi) to alter the procedure for recording a failure to vote,
  - (vii) to require groups to make declarations of electoral contributions and expenditure,
  - (viii) to extend the period for lodging declarations of electoral contributions and expenditure from 3 months to 4 months after an election,
- (b) to amend the *City of Sydney Act 1988* to make a number of miscellaneous changes relating to elections for the City of Sydney, including:
- (i) to provide for the updating of the roll of non-residential electors for the purposes of each election, and to provide that those electors are not to be enrolled unless they duly apply for enrolment for the purposes of each such election,
  - (ii) to require non-residential electors who are ratepaying lessees in the City to be residents of New South Wales (as is the case for non-resident electors who are occupiers of land in the City),
  - (iii) to ensure that non-residential electors (or, in the case of corporations, their nominees) are qualified as electors for the State Parliament or the Commonwealth Parliament, including voting age qualification,
  - (iv) to treat partnerships in the same way as corporations with respect to qualification for enrolment as non-residential electors, namely, to require them to nominate a single elector instead of each partner being qualified to vote.

## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *City of Sydney Act 1988* set out in Schedule 2.

### **Schedule 1 Amendment of Local Government Act 1993**

**Schedule 1** contains the changes to the *Local Government Act 1993* mentioned above relating to all council elections.

**Schedule 1 [1]–[3]** clarify the obligations of councils to notify the Electoral Commissioner of changes in ward boundaries. The amendments make it clear that the changes are determined by councils and do not require the approval of the Electoral Commissioner.

**Schedule 1 [4]** authorises the Electoral Commissioner instead of the returning officer to fix the date for holding a council by-election.

**Schedule 1 [5]** makes it clear that a candidate for civic office must be qualified to hold that office in order to be nominated for election (in addition to being enrolled as an elector for the area concerned). Sections 274 and 275 of the *Local Government Act 1993* set out the qualifications for holding civic office.

**Schedule 1 [6]–[8]** provide for candidate information sheets in council elections rather than candidate resumes in order to expand the matters that may be included in them (for example, the inclusion of statements of future policies of the candidate).

**Schedule 1 [9]** allows group voting tickets at all council elections and not just at elections for council areas not divided into wards.

**Schedule 1 [10]–[16]** alter the procedure for recording a failure to vote and the action taken to deal with that failure. The amendments replace a procedure based on the making of notations on the electoral rolls used at an election with the procedure applicable in Commonwealth elections of the preparation of a separate list of non-voters. The amendments also update a superseded reference to courtesy letters under the *Justices Act 1902*.

**Schedule 1 [17]–[20]** require groups at council elections to make declarations of electoral contributions and expenditure and extend the period for lodging declarations of electoral contributions and expenditure from 3 months to 4 months after a council election.

**Schedule 1 [21] and [22]** make amendments of a savings or transitional nature.

### **Schedule 2 Amendment of City of Sydney Act 1988**

**Schedule 2** contains the changes to the *City of Sydney Act 1988* mentioned above relating to elections for the City of Sydney.

**Schedule 2 [1], [5], [8]–[13]** provide for the updating of the roll of non-residential electors for the purposes of each election for the City of Sydney, and provide that those electors are not to be enrolled unless they

duly apply for enrolment for the purposes of each such election. The amendments apply the procedure applying in the last general council election whereby the general manager of the council is required to send, before the election, a claim for enrolment to each person on the list of non-residential electors.

**Schedule 2 [2]** requires non-residential electors who are ratepaying lessees in the City to be residents of New South Wales (as is the case for non-resident electors who are occupiers of land in the City).

**Schedule 2 [3]** makes a consequential amendment to ensure that the provisions of the Act will continue to apply if the City of Sydney were divided into wards.

**Schedule 2 [4] and [7]** ensure that non-residential electors (or, in the case of corporations, their nominees) are qualified as electors for the State Parliament or the Commonwealth Parliament, including voting age qualification.

**Schedule 2 [6]** provides that partnerships are to be treated in the same way as corporations with respect to qualification for enrolment as non-residential electors, namely, to require them to nominate a single elector instead of each partner being qualified to vote.

**Schedule 2 [14] and [15]** make consequential amendments to the provisions relating to compulsory voting. It preserves the requirement for compulsory voting of residential electors and of persons who have been enrolled as non-residential electors.

**Schedule 2 [16]** ensures that the relevant provisions applying to elections in the City of Sydney apply to council polls and constitutional referendums in the City.

**Schedule 2 [17] and [18]** make amendments of a savings or transitional nature.

First print



New South Wales

# Local Government Legislation Amendment (Elections) Bill 1998

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New South Wales

## Local Government Legislation Amendment (Elections) Bill 1998

No. , 1998

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### **A Bill for**

An Act to amend the *Local Government Act 1993* and the *City of Sydney Act 1988* in relation to local government elections, and in other respects.

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

**1 Name of Act**

This Act is the *Local Government Legislation Amendment (Elections) Act 1998*.

**2 Commencement**

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

**3 Amendment of Local Government Act 1993 No 30**

The *Local Government Act 1993* is amended as set out in Schedule 1.

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**4 Amendment of City of Sydney Act 1988 No 48**

The *City of Sydney Act 1988* is amended as set out in Schedule 2.

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**Schedule 1 Amendment of Local Government Act 1993**

(Section 3)

**[1] Section 211 Ward boundaries**

Omit section 211 (2) (b). Insert instead:

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- (b) any changes to the boundaries of its existing wards which it proposes to make,

**[2] Section 211 (2)**

Omit "for consideration". Insert instead "for their information".

**[3] Section 211 (3)**

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Insert ", and to ensure that the proposed boundaries comply with subsection (4)" after "census districts".

**[4] Section 292 When is a by-election to be held?**

Omit "the returning officer with the approval of".

**[5] Section 306 Nominations**

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Insert ", and must be qualified to hold that civic office," after "a person must be enrolled as an elector for the area" in section 306 (2).

**[6] Section 308 Candidate information sheets**

Omit "candidate resume" from section 308 (1).  
Insert instead "candidate information sheet".

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**[7] Section 308 (2)**

Omit the subsection. Insert instead:

- (2) The regulations may make provision for the matters that are to be included in, or that may or may not be included in, a candidate information sheet.

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- [8] Section 308 (3) and (4)**  
Omit "resume" wherever occurring.  
Insert instead "candidate information sheet".
- [9] Section 308A Grouping of candidates and group voting tickets**  
Omit "At an election for an area that is not divided into wards, the" 5  
from section 308A (3).  
Insert instead "The".
- [10] Section 313**  
Omit the section. Insert instead:
- 313 List of residents failing to vote** 10  
After the close of the poll at a contested election, the  
Electoral Commissioner is to prepare a list of the names  
of the persons on the residential roll for the election who,  
although entitled to vote at the election, appear to have  
failed to vote and do not appear to have a sufficient 15  
reason for the failure.
- [11] Section 314 Penalty notice to be issued for failure to vote**  
Omit "each resident who is indicated on a marked roll delivered to  
the Electoral Commissioner" from section 314 (1).  
Insert instead "each resident who is indicated on the list prepared 20  
under section 313".
- [12] Section 314 (5)**  
Omit "courtesy letter served under section 100J of the *Justices Act*  
*1902*".  
Insert instead "penalty reminder notice served under the *Fines Act* 25  
*1996*".
- [13] Section 314 (6) (e)**  
Omit the paragraph.

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**[14] Section 314 (7)**

Omit "on the marked roll".

Insert instead "on the list prepared under section 313, or on a separate list of the residents on whom penalty notices have been served,".

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**[15] Section 315 Evidence in list of non-voters**

Omit "on a marked roll". Insert instead "on a certified list".

**[16] Section 315**

Insert at the end of the section:

- (2) For the purposes of this section, a certified list is a list that is certified by the Electoral Commissioner as (or as a copy of or extract from) the list prepared under section 313 or the separate list prepared under section 314 (7).

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**[17] Section 328 Obligation to disclose donations and expenditure**

Omit "and Parts 5" from section 328 (1).

Insert instead "and (4) (c) and Parts 5, 6A".

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**[18] Section 328 (3)**

Omit "Parts 5 and 7 and the matter relating to groups".

Insert instead "Parts 5, 6A and 7".

**[19] Section 328 (3) (d), (f) and (f1)**

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Omit section 328 (3) (d) and (f). Insert instead:

- (d) references to the day for the return of the writs in an election were references to the close of polling in the election, and

- (f) references to the day of nomination were references to the nomination day prescribed by the regulations under this Act, except as provided by paragraph (f1), and

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(f1) references to the day of nomination in provisions relating to the registration of groups or disclosures by groups were references to the third day after the nomination day prescribed by the regulations under this Act, and 5

**[20] Section 328 (3) (i1)**

Insert after section 328 (3) (i):

(i1) references to a group of candidates in relation to a periodic Council election were references to a group of candidates in relation to an election under this Act, and 10

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

Insert at the end of clause 1 (1):

*Local Government Legislation Amendment (Elections) Act 1998* 15

**[22] Schedule 8**

Insert in the Schedule (with appropriate Part and clause numbers):

**Part Provisions consequent on the enactment of the Local Government Legislation Amendment (Elections) Act 1998** 20

**Application of amendments**

An amendment to this Act made by the *Local Government Legislation Amendment (Elections) Act 1998* does not apply to or in respect of an election which has a closing date before the commencement of the amendment. 25

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## Schedule 2 Amendment of City of Sydney Act 1988

(Section 4)

### [1] Section 14 Definitions

Omit section 14 (1) (f) (i). Insert instead: 5

- (i) whether a person is entitled to have the person's name included in a list under section 18 or a roll of electors—the date on which the claim for enrolment is made, or

### [2] Section 14 (4)

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Insert "a ratepaying lessee or" before "an occupier".

### [3] Section 14 (5)

Insert after section 14 (4):

- (5) If the City of Sydney is divided into wards, this Division applies to each ward in the same way as it applies to the area of the City of Sydney. 15

### [4] Section 15 Right to be enrolled as an elector

Omit section 15 (1A) and (2). Insert instead:

- (2) A person is not entitled to be enrolled as an elector under subsection (1) unless the person (or, in the case of a corporation, the person nominated as the elector by the corporation) is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives. 20
- (3) Sections 266 and 269–272 of the Principal Act do not apply to the City of Sydney. 25

### [5] Section 16 Provisions relating to right to be enrolled as an elector

Omit section 16 (2).

**[6] Section 16A**

Insert after section 16:

**16A Partnerships**

- (1) This section applies for the purposes of this Division and sections 267 and 268 of the Principal Act. 5
- (2) If a person is an owner, ratepaying lessee or occupier of rateable land in the person's capacity as a partner of a firm:
  - (a) the person is taken not to be an owner, ratepaying lessee or occupier of that rateable land, and 10
  - (b) the firm is taken to be a corporation that is the owner, ratepaying lessee or occupier of that rateable land.

**[7] Section 17 Roll of electors**

Omit "and (1A)" wherever occurring. 15

**[8] Section 17A Non-residential roll for use in September 1995 ordinary election**

Omit the section.

**[9] Section 18 List of electors for enrolment on non-residential roll**

Omit section 18 (1) and (2). Insert instead: 20

- (1) The general manager of the City of Sydney must keep a list of persons:
  - (a) who, in the opinion of the general manager, are entitled under section 15 (1) (a) to be enrolled as electors for the City of Sydney, and 25
  - (b) who have duly lodged a claim under this section to have their names included in the list.

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**[10] Section 18 (7)**

Omit the subsection. Insert instead:

- (7) Section 303 (3) and (4) of the Principal Act applies in respect of claims and objections with respect to the list in the same way as it applies to claims and objections with respect to a roll of electors. 5

**[11] Section 18A**

Insert after section 18:

**18A Updating for each election of list of electors for enrolment on non-residential roll** 10

- (1) The general manager of the City of Sydney must, at least one month before the closing date for each election, send to each person whose name is included in the list kept under section 18 (1) a form that enables the person to make a claim under section 18 (4) for the inclusion of the person's name in the list or for the amendment of any particulars entered in the list against the person's name. 15

- (2) If the form is not returned to the general manager on or before the closing date for the election concerned, the general manager must remove the person's name from the list. However, this section does not prevent a person making a claim under section 18 (4) after the person's name is so removed from the list. 20

- (3) In this section:  
*closing date* for an election has the same meaning as it has for an election under the Principal Act. 25

**[12] Section 19 Non-residential roll**

Omit section 19 (1). Insert instead:

- (1) After the closing date for an election, the general manager of the City of Sydney must certify the list under section 18 of the persons whose names are included in the list on that date. 30

- (1A) Before certifying the list under subsection (1), the general manager must:
- (a) deal, in accordance with section 18 (5) and (6) (b), with any claim or objection received in the office of the City Council on or before the closing date, and 5
  - (b) remove from the list the names required to be removed, in accordance with section 18A, in relation to the election.
- [13] Section 21 Voting where secretary of corporation enrolled as elector** 10
- Omit the section.
- [14] Section 22 Compulsory voting**
- Omit section 22 (1). Insert instead:
- (1) Electors whose names are on the residential roll or on the non-residential roll must vote at a contested election for the City of Sydney, unless exempt from voting under the Principal Act or this Act. Section 286 of the Principal Act does not apply to a contested election for the City of Sydney. 15  
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- [15] Section 22 (2)**
- Omit “(except section 312)”.
- [16] Part 3, Division 4**
- Insert after Division 3 of Part 3:
- Division 4 Council poll or constitutional referendum** 25
- 24 Applicable provisions of Principal Act and this Part**
- (1) The provisions of this Part apply (and the provisions of sections 266, 269-272, 299 and 300 of the Principal Act do not apply) to a council poll or constitutional referendum in the City of Sydney. 30

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- (2) However, section 22 (1) applies to a constitutional referendum but not a council poll in the City of Sydney.

**[17] Schedule 3 Savings, transitional and other provisions**

Insert "or *Local Government Legislation Amendment (Elections) Act 1998*" after "1997" in clause 29 (1).

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**[18] Schedule 3**

Insert at the end of the Schedule:

**Part 9 Provisions consequent on enactment of  
Local Government Legislation Amendment  
(Elections) Act 1998**

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**31 Saving of list for non-residential roll**

- (1) The list kept by the general manager of the City of Sydney, immediately before the commencement of the amendment made to section 18 (1) by the *Local Government Legislation Amendment (Elections) Act 1998* is, on that commencement, taken to be the list kept by the general manager under section 18 (1), as amended by that Act. The provisions of this Act, as amended by that Act, apply to that list accordingly.
- (2) The obligation of the general manager of the City of Sydney to send out claim forms under section 18A in connection with the first election after the commencement of that section extends to any person whose name is on the list but who ceases to be entitled to be on the list because of the amendments made by the *Local Government Legislation Amendment (Elections) Act 1998*.

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**32 Amendment to be made by Administrative Decisions  
Legislation Amendment Act 1997 that is no longer  
necessary**

Schedule 5.6 of the *Administrative Decisions Legislation  
Amendment Act 1997* (which substitutes section 18 (7) of  
this Act) does not have any effect if section 18 (7) of this  
Act is substituted beforehand by the *Local Government  
Legislation Amendment (Elections) Act 1998*.

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