

Local Government Amendment (Elections) Bill 2008

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 ***Principal Act***) in connection with:

- the conduct of local government elections, and
- the alteration of ward boundaries, and
- applications for the reduction of councillor numbers, and
- the role of councils during election periods, and
- associated matters.

Amendments include the following:

- (a) to make it clear that an alteration of the number of a council's wards does not require approval at a constitutional referendum of electors,
- (b) to allow councils, for a limited period, to apply to reduce the number of councillors without having to conduct a constitutional referendum of electors,
- (c) to provide that the optional preferential voting system applies to elections where only one position is to be filled, and that the proportional voting system applies for elections where 2 or more positions are to be filled,
- (d) to provide expressly for the use of mobile pre-polling booths in accordance with the regulations,
- (e) to express electoral functions as being exercisable by the Electoral Commission rather than the Electoral Commissioner,
- (f) to transfer certain electoral functions from returning officers to the Electoral Commission,
- (g) to permit the Electoral Commission to appoint a returning officer for more than one local government area,
- (h) to provide for the appointment by the Electoral Commission of polling place managers and election assistants as well as returning officers (who are collectively referred to as election officials),
- (i) to make it clear that the Electoral Commission can authorise the sub-delegation of functions delegated to election officials,
- (j) to provide that information on candidates' information sheets must be available (rather than displayed) at polling places and must be published on the websites of the Electoral Commission and the council,
- (k) to vary the 3-week period (or 14-day period in the case of a first election) during which mayors are to be elected by councillors following an ordinary or first election, so that it commences from the date of declaration of the poll,
- (l) to clarify the procedures that are to be followed if a nominated candidate dies,
- (m) to amend a council's charter to state that the council is to exercise its functions responsibly, including during election periods for ordinary elections and to observe caretaker government conventions,

(n) to provide that a person is validly nominated for election to civic office if the person is enrolled when the roll of electors closes,

(o) to confirm that the Director-General or other officer of the Department of Local Government may be appointed as an administrator of a council.

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.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] amends section 8 to include in a council's charter an obligation to exercise its functions responsibly, including during election periods for ordinary elections and in particular to observe caretaker government conventions consistently with relevant guidelines. Section 8 (2) provides that a council must pursue its charter but nothing in the charter or section 8 gives rise to, or can be taken into account in, any civil cause of action.

Schedule 1 [2] and [3] amend section 210 to make it clear that an alteration of the number of a council's wards is an alteration of ward boundaries that does not require approval at a constitutional referendum of electors. The procedure set out in section 210A has to be complied with before a council can alter its ward boundaries. That procedure involves consultation with the Electoral Commission and the Australian Statistician, the public exhibition of a ward boundary plan, and the consideration by the council of submissions made in response to the ward boundary plan.

Schedule 1 [4], [15], [27] and [28] amend various provisions to replace references to the Electoral Commissioner with references to the Electoral Commission.

Schedule 1 [23] makes a consequential amendment to section 296 (7). New provisions also refer to the Electoral Commission. The Electoral Commission is a corporation constituted under section 21A of the *Parliamentary Electorates and Elections Act 1912*, which provides that the functions of the Electoral Commission are exercisable by the Electoral Commissioner. The term **Electoral Commission** is defined in the Dictionary in the Principal Act (see Schedule 1 [47] below).

Schedule 1 [5] amends section 224A to permit a council to apply to the Minister to reduce the number of councillors, but such an application may be made only within a period, which must end on or before 30 June 2008, determined by the Minister by order published in the Gazette.

Schedule 1 [6] omits section 224A (9), which currently provides that an application cannot be made if it would result in the number of councillors for each ward being fewer than 3, on the basis that the voting system for an election for 2 councillors will now be proportional instead of optional preferential (see Schedule 1 [9] below).

Schedule 1 [7] inserts a note at the end of section 224A, drawing attention to provisions of the Principal Act that require the same number of councillors to be elected for each ward.

Schedule 1 [8] amends section 256 to confirm that the same person is eligible (and is taken always to have been eligible) to be appointed and hold office as an administrator of a council and the Director-General or other officer of the Department of Local Government.

Schedule 1 [9] amends the introduction to Chapter 10 consequentially on the substitution of section 285 (see Schedule 1 [11] below).

Schedule 1 [10], [22], [38] and [40] amend various sections to transfer electoral responsibilities from returning officers to the Electoral Commission.

Schedule 1 [11] substitutes section 285, so that the voting system in contested elections is to be:

- optional preferential, if only 1 councillor is to be elected (instead of 1 or 2 councillors), or
- proportional, if the number of councillors to be elected is 2 or more (instead of 3 or more councillors).

Schedule 1 [12]–[14] amend section 290 to alter the period in which the election of a mayor by the councillors is to be held. At present, the election of a mayor is to be held within a period of 3 weeks after an ordinary election of councillors (or a period of 14 days after a first election). Under the amended section, that period will start from the date of the declaration of the poll for the election of councillors.

Schedule 1 [16]–[18], [20], [21] and [25] amend section 296 to provide for the appointment by the Electoral Commission of returning officers, polling place managers and election assistants (collectively called “election officials” instead of “electoral officials”). The terminology is consistent with that used in the *Parliamentary Electorates and Elections Act 1912*. A person may be appointed as returning officer for one or more areas. The position of substitute returning officer is abolished. The functions of election officials are as specified by the Principal Act, the regulations and the Electoral Commission.

Schedule 1 [19] amends section 296 (5) to provide that the Electoral Commission as well as the returning officer is entitled to have access to relevant council papers.

Schedule 1 [24] inserts proposed section 296 (7A) to make explicit provision for regulations to permit the use of mobile polling booths and mobile polling teams before polling day.

Schedule 1 [26] amends section 297 to ensure that election officials who are delegates of the Electoral Commission can be authorised to sub-delegate functions to other election officials.

Schedule 1 [29], [37] and [39] amend sections 303, 314 and 317 to substitute the term “election day” for the term “polling day” in order to achieve consistency with proposed amendments to the regulation under the Principal Act.

Schedule 1 [30] and [32] amend sections 305 and 308 to substitute the term “election official” for “electoral official”, consistently with the terminology used in the *Parliamentary Electorates and Elections Act 1912*.

Schedule 1 [31] amends section 306 to provide that the validity of the nomination for election to civic office of a person who is enrolled at the date prescribed for the closing of the roll of elections is not affected merely because the person ceases or has ceased to be a resident, owner, occupier or ratepaying lessee entitling the person to enrolment.

Schedule 1 [33] and [34] amend section 308 so that candidate information sheets are to be available for inspection (rather than displayed) at polling places, and information in candidate information sheets must be published on the websites of the Electoral Commission and the council. The council need only provide a link to the Electoral Commission’s website.

Schedule 1 [35] and [36] amend section 309 to deal with the consequences of the death of a nominated candidate at a contested election. If the candidate dies before 6pm on election day, the election fails in respect of the ward or area concerned. If the candidate dies after 6pm on election day, counting is to proceed as if the candidate had not died and, if that candidate is declared elected, a casual vacancy is taken to occur.

Schedule 1 [41] and [42] amend section 368 in relation to the quorum for council meetings. The quorum consists of the majority of the total number of councillors. The amendments make it clear that, in determining the total number of councillors, any casual vacancies in councillor positions and any suspended councillors are not to be counted. The amendments will, in particular, be relevant where a casual vacancy is not to be filled because of a reduction of councillor numbers under amended section 224A (see Schedule 1 [5] above).

Schedules 1 [43] and [44] amend sections 744 and 745 to ensure that delegates of the Minister and Director-General can be authorised to sub-delegate delegated functions. This complements the amendment to section 297 (see Schedule 1 [26] above).

Schedule 1 [45] amends Schedule 8 to authorise the making of regulations of a savings, transitional or other nature consequent on the enactment of the proposed Act.

Schedule 1 [46] and [47] amend the Dictionary to insert definitions of terms used in the amended Principal Act.