



New South Wales

Electoral Legislation Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Electoral Act 2017* (the *Electoral Act*) and the *Electoral Funding Act 2018* (the *Funding 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.

Schedule 1 Amendment of Electoral Act 2017 No 66— miscellaneous

Schedule 1[1] reduces the maximum period of early voting to 7 days preceding the election day.

Schedule 1[2] allows preliminary scrutiny of postal voting envelopes to begin 14 days before election day, instead of 5 days before election day.

Schedule 1[3] allows postal voting envelopes to be accepted in the scrutiny if received by the Electoral Commissioner before the expiry of the period prescribed by the regulations following the close of voting, being a period not exceeding 13 days, rather than the current 4 day period.

Schedule 1[4] makes it clear that the postal voting procedure must take place before the close of voting.

Schedule 1[5] inserts a provision to provide that, where the Electoral Commissioner has delivered or posted 2 envelopes to electors, ballot papers are not to be rejected for further scrutiny merely because the ballot papers were not inside the envelope on which the postal vote certificate is printed.

Schedule 1[6] makes a law revision correction to a provision about applications for the registration of electoral matter to remove the redundant reference to an official agent.

The Electoral Act, section 186(1) provides that a person must not, during the regulated period, print, publish, distribute or publicly display electoral material without legibly showing on the material the name and address of an individual on whose instructions the material was printed, published or distributed. **Schedule 1[7]** provides that, for electoral material that is a social media post, the name and address of the individual on whose instructions the material was published or distributed must be published or distributed in a way, if any, prescribed by the regulations under the Act. **Schedule 1[8]** makes a consequential amendment.

Schedule 1[9] makes a law revision correction to replace “councillor” with “member”.

Schedule 1[10] inserts a new provision to provide that a voting centre manager or an election official must not exercise certain functions in relation to contravention of specified offences within 6 metres of an early voting centre or a voting centre, such as giving directions or removing or confiscating posters and electoral material, unless the manager or official has considered the guidelines, if any, issued by the Electoral Commissioner.

Schedule 1[11] inserts further exceptions to the general obligation not to disclose information obtained in connection with the administration or execution of the Electoral Act or any other Act conferring or imposing functions on the Electoral Commission or Electoral Commissioner.

The Electoral Commission or the Electoral Commissioner may disclose information if—

- (a) the information is disclosed to a person who has given information to the Electoral Commission or Electoral Commissioner about a possible contravention of the Electoral Act or the Funding Act or a regulation under 1 of the Acts, and
- (b) the disclosure is reasonably necessary for the purpose of—
 - (i) reporting the progress of an investigation into the possible contravention, or
 - (ii) providing the person who gave the information with advice as to the outcome of the investigation or any action taken as a result of the investigation, and
- (c) the Electoral Commission or the Electoral Commissioner, as the case requires, is satisfied the disclosure is in the public interest.

Also, the Electoral Commission or the Electoral Commissioner may disclose information if—

- (a) the information concerns a possible contravention of the Electoral Act or the Funding Act or a regulation under 1 of the Acts, and
- (b) the disclosure is for the purpose of reporting to the public about the progress or outcome of an investigation into the possible contravention, and
- (c) the Electoral Commission or the Electoral Commissioner, as the case requires, is satisfied the disclosure is in the public interest.

The amendment also provides that the Electoral Commission and the Electoral Commissioner have qualified privilege in proceedings for defamation arising out of a permitted disclosure made under the Electoral Act, section 268.

Schedule 1[12] makes a law revision amendment to correct a cross-reference.

Schedule 1[13] provides that technology assisted voting, other than telephone voting for vision impaired or blind electors, is not to be used at—

- (a) the 2023 general election, or
- (b) a by-election held during the period after 30 June 2022 and before the 2023 general election.

Schedule 2 Amendment of Electoral Act 2017 No 66— regarding party logos on ballot papers

Schedule 2 makes a number of amendments to provide for the inclusion of registered party logos on ballot papers in elections.

The amendments do not apply in relation to a local government election until a date prescribed by the regulations.

Clause 2(a) of this Bill provides that these amendments do not commence until 1 October 2024.

Schedule 3 Amendment of Electoral Funding Act 2018 No 20

Schedule 3[1], [14] and [17] enable disclosures and claims under the Funding Act to be audited by persons the Electoral Commission is satisfied has sufficient skills and experience, rather than only registered company auditors.

Schedule 3[2] removes expenditure incurred in auditing campaign accounts from the meaning of *electoral expenditure* for the purposes of the Funding Act. **Schedule 3[10]** makes a consequential amendment.

Schedule 3[3] removes expenditure incurred on travel and travel accommodation for candidates and staff engaged in electoral campaigning from the meaning of *electoral expenditure* for the purposes of the Funding Act, Part 3, Division 4 (Caps on electoral expenditure for election campaigns).

Schedule 3[4] insert a provision to deal with the making of disclosures where a candidate in a State election has been dis-endorsed. A party agent of the registered party may notify the Electoral Commission that the party has dis-endorsed a candidate. On and from the receipt of the notice by the Electoral Commission, the person responsible for making a disclosure required under the Funding Act, Part 3 for the candidate is the candidate and not the party agent of the registered party.

Schedule 3[5] and [6] increase certain periods within which disclosures of political donations must be made from 4 weeks to 6 weeks after the half-year or disclosure period concerned.

Schedule 3[7] removes a redundant provision. The Funding Act, section 14(1)(f)–(h) already deal with disclosures for groups of candidates.

Schedule 3[8] makes an amendment regarding the information about the date of a donation to be disclosed in a disclosure. **Schedule 3[9]** makes a consequential amendment.

Schedule 3[11] replaces the amounts of the applicable cap for a State election campaign for a third-party campaigner. The new amounts are—

- (a) \$1,288,500—if the third-party campaigner was registered before the commencement of the capped State expenditure period for the election, or
- (b) \$644,300—in other cases.

Schedule 3[12] corrects a typographical error.

Schedule 3[13] provides that small donations of \$100 or less, rather than \$50 or less, do not have to be aggregated with other donations for disclosure purposes if made by a person at a fundraising venture or function.

Schedule 3[15] allows a person to make a request to the Electoral Commission for an extension on the due date of a declaration of disclosures, in addition to before the due date.

Schedule 3[16] corrects a reference to a defined term.

Schedule 3[18] corrects an internal cross-reference.

Schedule 3[19] makes an amendment to deal with the calculation of quarterly payments from the Administration Fund. For that purpose, the number of endorsed elected members of a party in relation to any quarterly payment for a quarter during which a dissolution or expiry of the Legislative Assembly occurs is to be determined as at the date that is immediately before the date of the dissolution or expiry.

Schedule 3[20] and [29] make law revision amendments as independent elected members no longer have agents.

Schedule 3[21] allows a party or elected member to carry over, to the next quarter in the same calendar year, unspent eligible amounts of administrative funding payments.

Schedule 3[22] allows a party or elected member eligible for a quarterly advance payment from the Administration Fund in respect of a quarter of 100% (rather 50%) of the total amount to which the party or elected member would be entitled to for the quarter.

Schedule 3[23] corrects cross-reference errors.

Schedule 3[25] and [28] change the funding year for policy development funding for parties not entitled to administrative funding from calendar year to financial year. **Schedule 3[26] and [27]** reset amounts for the new funding years. **Schedule 3[24] and [31]–[33]** make consequential amendments relating to the indexation of those amounts.

Schedule 3[30] inserts a provision to enable the registered officer of a party under the Electoral Act or the *Local Government Act 1993*, if the party agent for a party is absent or otherwise unavailable, to lodge the following on behalf of the party agent—

- (a) a declaration under the Funding Act, Part 3, Division 2,
- (b) a claim for a payment under the Funding Act, Part 4 or Part 5.

A registered officer may lodge a declaration or claim or both on behalf of a party agent only if—

- (a) the registered officer has completed the training prescribed by the regulations for appointment as a party agent, unless the person is of a class of persons recognised by the regulations as a person eligible for appointment as a party agent without further training, and
- (b) the party agent or the registered officer has given the Electoral Commission written notice of the party agent's absence or unavailability and the registered officer's intention to lodge declarations or claims or both during the absence or unavailability.

Schedule 3[34] inserts savings and transitional provisions.