



ELECTORAL LEGISLATION AMENDMENT BILL (No 2) 2022

Statement of Public Interest

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill amends the *Electoral Act 2017* (**Electoral Act**) and the *Government Sector Finance Act 2018* (**GSF Act**) to make minor amendments to postal, telephone, and overseas voting for the 2023 State general election (the **Election**), and miscellaneous amendments to improve administration of the NSW Electoral Commission (**NSWEC**).

In relation to postal voting, the NSWEC advises that for the 2022 Federal election, a record number of electors in NSW voted by post. The NSWEC anticipates a similarly high number of postal votes for the Election. As recommended by the NSWEC, the Bill amends the Electoral Act to allow the Electoral Commissioner to determine that an alternate method of postal voting can be used at the Election or a by-election held after March 2023 and before the 2027 general election. The alternate postal voting materials consists of:

- a ballot paper
- a separate postal vote certificate
- an envelope for return to the Electoral Commissioner.

The envelope proposed for use by the NSWEC is designed to protect the secrecy of the ballot paper. The envelope is designed with a rear window, protected by a removable flap. When the flap is peeled back, provided the postal vote certificate and the ballot paper have been inserted correctly, the postal vote certificate can be viewed by scrutineers without revealing the ballot paper.

The alternate postal vote pack is consistent with what was used at the 2022 Federal election. The NSWEC has advised that the alternate postal vote pack can be produced at the volumes and within the timeframes required.

From 14 October 2022 it will not be mandatory to self-isolate in NSW if diagnosed with COVID-19. Notwithstanding this, the Bill amends the Electoral Act to provide that a regulation may be made that authorises the Electoral Commissioner to determine that telephone voting can be provided to electors in self-isolation due to COVID-19, should it be required.

For overseas electors, worldwide postal service delays can result in postal votes not being returned in time to be included in the vote count. The Bill introduces provisions that allow the Electoral Commissioner to appoint places overseas as early voting centres that will accept declaration (absent) voting.

The Bill also makes amendments to clarify authorisation requirements for automated telephone calls ('robo-calls') containing electoral matter, harmonise postal voting material dispatch times, allow the Electoral Commissioner to appoint an Acting Electoral Commissioner outside of an election period during an illness or absence, and appoint the Electoral Commissioner as the accountable authority for the NSWEC.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to ensure that:



- administrative arrangements are in place to ensure the Election is valid, voters are not disenfranchised, and the Electoral Commissioner and NSWEC are able to deliver the Election efficiently, including that:
 - provisions are introduced to adopt an alternate postal vote pack to manage anticipated high volumes of postal votes
 - there is the option for a regulation to be made to allow the Electoral Commissioner to determine that telephone voting is permitted for persons in self-isolation due to COVID-19
 - the Electoral Commissioner is permitted to appoint places overseas as early voting centres to accept declaration (absent) voting for overseas electors
 - authorisation requirements for automated telephone calls ('robo-calls') containing electoral matter are appropriately adapted for that medium
- the NSWEC is administered effectively with the Electoral Commissioner having capacity to appoint an Acting Electoral Commissioner in appropriate circumstances and for the Electoral Commissioner to be recognised as the accountable authority of the NSWEC for the purposes of the GSF Act.

Options: What alternative policies and mechanisms were considered in advance of the bill?

In relation to postal voting, the NSWEC considered alternative options including utilising a mix of suppliers to print postal voting materials. This option was not progressed due to supply chain risks and the duplication of the quality control process that would be required. Other forms of postal vote materials were also considered and not progressed, including because of risks associated with voter confusion and supplier constraints.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Bill introduces amendments to ensure the upcoming Election is both valid and efficiently administered. An advantage of introducing the Bill is that it permits the Electoral Commissioner to determine that an alternate postal voting method should be adopted given that high numbers of postal voters are expected for the Election. Additionally, the Bill establishes a two-step process to making telephone voting available to electors required to self-isolate due to COVID-19. That process is first, a regulation amendment, and second, a determination by the Electoral Commissioner under that regulation. Although self-isolation due to COVID-19 will not be required in NSW from 14 October 2022, the Bill provides flexibility to adapt to changing circumstances should the need arise.

An advantage of the Bill is that it improves the administrative efficiency of the NSWEC, for example, by allowing the Electoral Commissioner to appoint an Acting Electoral Commissioner outside an election period during illness or absence, as well as prescribing the Electoral Commissioner as the accountable authority for the NSWEC under the GSF Act.

Another advantage of the Bill is that it enables the Electoral Commissioner to appoint places overseas as early voting centres where NSW electors can cast a declaration (absent) vote.

Conversely, if the Bill is not passed, the Electoral Commissioner has advised that there is a real risk of postal voter disenfranchisement at the Election, with a consequential risk to the



validity of the Election results. Due to the prescriptive nature of the postal vote provisions, there is a risk that, without the proposed amendments, the Electoral Commission will not be able to produce and dispatch the anticipated high volumes of postal voting materials within the prescribed timeframes.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill commences on a date to be appointed by proclamation.

The Electoral Legislation Amendment Bill 2022 would introduce a new Part 4 of Schedule 7 to the Electoral Act. The Bill now amends that new Part 4. Commencing the proposed amendments by proclamation will ensure they commence after the relevant provisions in the Electoral Legislation Amendment Bill 2022 have commenced.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Bill addresses recommendations by the Electoral Commissioner and takes into account the views of the NSW Electoral Commission, which was closely consulted on the Bill.