

**LOCAL GOVERNMENT (ELECTIONS) AMENDMENT ACT
1987 No. 23**

NEW SOUTH WALES



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LOCAL GOVERNMENT (ELECTIONS) AMENDMENT ACT 1987
No. 23

NEW SOUTH WALES



Act No. 23, 1987

An Act to amend the Local Government Act 1919 with respect to the conduct of elections and polls; to amend the Justices Act 1902 in relation to certain penalty notices; and for other purposes. [Assented to 1 May 1987]

Local Government (Elections) Amendment 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Local Government (Elections) Amendment Act 1987".

Commencement

2. (1) Sections 1, 2 and 5 shall commence on the date of assent to this Act.

(2) Schedule 6 (1), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (1) to the Local Government (Miscellaneous Provisions) Amendment Act 1985 commences.

(3) Schedule 6 (2), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (3) to the Local Government (General Revision) Amendment Act 1986 commences.

(4) Schedule 6 (3), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (4) to the Local Government (General Revision) Amendment Act 1986 commences.

(5) Schedule 6 (4), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (28) to the Local Government (General Revision) Amendment Act 1986 commences.

(6) Schedule 6 (5), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (30) to the Local Government (General Revision) Amendment Act 1986 commences.

(7) Schedule 6 (6), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (31) to the Local Government (General Revision) Amendment Act 1986 commences.

(8) Except as provided by subsections (1)–(7), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Local Government Act 1919 is referred to in this Act as the Principal Act.

Local Government (Elections) Amendment 1987

Amendment of Act No. 41, 1919

4. The Principal Act is amended in the manner set forth in Schedules 1-6.

Provisions relating to certain elections and extraordinary vacancies

5. (1) If a fresh election of councillors for Warringah Shire Council is held in 1987 but before 26 September 1987—

- (a) the provisions of the Principal Act do not operate to require the holding of an election of the councillors on 26 September 1987; and
- (b) subject to sections 35, 86 and 219 of the Principal Act, a councillor elected at the fresh election holds office until the ordinary election of councillors in 1991.

(2) If a vacancy in the office of mayor or president of an area to which section 25A of the Principal Act applies occurred on or after 1 January 1987 and before 27 March 1987, the Principal Act has effect as if the vacancy had occurred during the last 6 months of the term of office of the council for the area.

(3) If a council has so resolved (whether or not under the authority of the Principal Act) an election shall not be held under section 38 (4) of the Principal Act to fill an extraordinary vacancy in the office of an alderman or councillor that occurred on or after 1 January 1987 and before 27 March 1987.

Transitional provisions

6. Schedule 7 has effect.

Amendment of Act No. 27, 1902

7. The Justices Act 1902 is amended by omitting from the matter relating to the Local Government Act 1919 in paragraph (a) of the definition of "penalty notice" in section 100i (1) the matter "270s (1)" and by inserting instead the matter "74C or 270s (1)".

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT

Section 4 (**Definitions**)—

(1) Definition of “Electoral Commissioner”—

After the definition of “Elector”, insert:

“Electoral Commissioner” means the person for the time being holding or acting in the office of Electoral Commissioner under the Parliamentary Electorates and Elections Act 1912.

(2) Definition of “Returning officer”—

Omit the definition, insert instead:

“Returning officer” means—

- (a) in relation to an election or poll conducted by the Electoral Commissioner—the returning officer appointed by the Electoral Commissioner under section 70 (1B); or
- (b) in relation to any other election or poll—the clerk or other person appointed to conduct the election or poll.

(3) Definition of “Roll of electors”—

After the definition of “Roll”, insert:

“Roll of electors” means the roll of electors prepared under Division 4 of Part V.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

(1) Section 25A (**Election of mayor or president by electors**)—

(a) Section 25A (4) (a)—

Omit “during the last six months”, insert instead “on or after 1 January last preceding the end”.

Local Government (Elections) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

(b) Section 25A (6)—

After “council” where secondly occurring, insert “shall notify the Electoral Commissioner that such a poll is required and the Electoral Commissioner”.

(c) Section 25A (6) (c)—

Omit “more than 6 months before”, insert instead “before 1 January last preceding”.

(d) Section 25A (6) (d)—

Omit “6 months or less before”, insert instead “on or after 1 January last preceding”.

(e) Section 25A (6) (d)—

Omit “it does not do so”, insert instead “this is not done”.

(2) Section 30 (**Qualification for office**)—

Section 30 (2) (a)—

After “elector”, insert “, otherwise than by losing the requisite qualification under section 51 while holding the civic office”.

(3) Section 35 (**Extraordinary vacancy**)—

Section 35 (e)—

Omit “four”, insert instead “3”.

(4) Section 37 (**Attendance at meetings of council—default**)—

Section 37 (5)—

After section 37 (4), insert:

(5) In this section—

“year”, in relation to meetings of a council, means a year ending on an anniversary of the date on which the council took office.

Local Government (Elections) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

(5) Section 38 (**Election on appointed days**)—

Section 38 (4)—

Omit “within the last six months”, insert instead “on or after 1 January last preceding the end”.

(6) Section 39 (**Appointed day for election of aldermen or councillors**)—

Section 39 (1) (d)—

After “officer”, insert “with the approval of the Electoral Commissioner”.

(7) Section 41 (**Validation of elections**)—

Section 41 (1) (c)—

Omit “Minister”, insert instead “Electoral Commissioner in the case of an election that he or she conducts or, in any other case, by the returning officer”.

(8) Section 42 (**Lapsed or void elections**)—

Section 42 (1)—

Omit “or to be”, insert instead “and the returning officer is not”.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT

(1) Section 50 (**Qualification of elector**)—

Section 50 (1)—

Omit “shall be entitled to have his name placed on the list referred to in Division 4”, insert instead “is entitled to be enrolled under this Part as an elector”.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) Section 51 (Meaning of “requisite qualification”)—

Section 51 (3)—

Omit the subsection.

(3) Section 52 (Qualification of an owner)—

(a) Section 52 (a), (b)—

Omit the paragraphs, insert instead:

(a) the person is not a corporation, is a joint or several owner of ratable land and is nominated in writing as an elector by the only other owner of the land or by a majority of all the owners of the land;

(b) the person is not a corporation, is not nominated under paragraph (a) and is nominated in writing as an elector by a body corporate which is the owner, or trustees who are the owners, of ratable land;

(b) Section 52 (c), (d)—

Omit “he” wherever occurring, insert instead “the person”.

(c) Section 52 (2)—

At the end of section 52, insert:

(2) Joint or several owners may not, under subsection (1) (a), and a body corporate or trustees may not, under subsection (1) (b)—

(a) nominate more than one person for the same ward or riding; or

(b) nominate a person for more than one ward or riding of the same area.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(4) Section 54 (**Qualification of a resident**)—

Section 54 (2)—

Omit the subsection, insert instead:

(2) In subsection (1), “relevant date” means—

- (a) for the purpose of determining whether the name of a person may be included in the residential roll kept under Division 4—the date on which the claim for enrolment is made; or
- (b) for the purpose of determining whether a person is entitled to vote at an election—the closing date for the election referred to in Division 4.

(5) Section 55 (**Disqualification of electors and of voters**)—

Section 55 (1)—

Omit “to have his name placed on the list referred to in Division 4.”.

(6) Section 56 (**Qualification to vote**)—

(a) Section 56 (1) (a)—

Omit “his”, insert instead “the person’s”.

(b) Section 56 (1) (a), (b), (4)—

Omit “he” wherever occurring, insert instead “the person”.

(c) Section 56 (1)—

Omit “Provided that a married woman who is enrolled under her name prior to marriage may vote under that name pending correction of the rolls.”.

(d) Section 56 (1A)—

After section 56 (1), insert:

(1A) If the name under which a person is enrolled is changed on marriage, the person may, pending correction of the roll, vote under the enrolled name.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 56 (4)—

After “qualification” wherever occurring, insert “under section 51 (1) (a)”.

(f) Section 56 (4)—

Omit “an election held within twelve months after so ceasing”, insert instead “the election for which the person was enrolled and any subsequent election held before the enrolment ceases to have effect”.

(7) Section 56A (**Omission from electoral roll**)—

(a) Section 56A (2)—

Omit “person”, insert instead “resident”.

(b) Section 56A (4) (b)—

At the end of the paragraph, insert “and”.

(c) Section 56A (4) (c)—

Omit “and” where lastly occurring.

(d) Section 56A (4) (d)—

Omit the paragraph.

(e) Section 56A (5), (6)—

Omit the subsections, insert instead:

(5) The returning officer shall examine the declaration of the voter without opening the envelope or allowing any other person to do so and shall make such inquiries into the matters specified in the declaration as the returning officer considers to be necessary.

(6) The returning officer, after examining a declaration, shall—

- (a) if of the opinion that the person who made the declaration was entitled to vote—accept the ballot-paper for further scrutiny; or

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(b) if not of that opinion—reject the ballot-paper without opening the envelope.

(8) Section 57 (**Undivided area treated as a single ward or riding**)—

Omit “the keeping and maintaining of the list referred to in Division 4 and of”.

(9) Part V, Division 4—

Omit the Division, insert instead:

DIVISION 4—*Rolls of electors***Interpretation**

63A. (1) In this Division—

“closing date”, in relation to an election or poll, means the date prescribed for the closing of the residential roll for the election or poll;

“election” means—

- (a) the first election for an area after its constitution;
- (b) an ordinary election;
- (c) an extraordinary election; or
- (d) an election ordered under section 86 or authorised under section 219;

“non-residential roll” means the roll prepared by the clerk under section 65A of persons qualified under section 51 (1) (a) to be electors;

“residential roll” means the roll kept by the Electoral Commissioner under section 65 of persons qualified under section 51 (1) (b) to be electors;

“roll of electors” means the residential roll and the non-residential roll.

(2) Where this Act imposes on a council a duty to take a poll, this Division applies in relation to the poll in the same way as it applies in relation to an election.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Roll of electors**

64. (1) Except where subsection (3) applies, the roll of electors shall be compiled in accordance with this Division for each election and shall be printed in the prescribed form.

(2) The roll of electors shall be prepared separately for each ward or riding or, in the case of the roll required for an extraordinary election, only for the ward or riding in which the election is to be held.

(3) If—

(a) an extraordinary election is to be held not later than 6 months after the last preceding election; or

(b) a poll is to be taken,

the residential roll of electors used for the last preceding election may again be used for the forthcoming election or poll.

(4) Subsection (3) does not apply to an extraordinary election or a poll if the Electoral Commissioner so decides in relation to the election or poll.

Residential roll

65. (1) The Electoral Commissioner shall keep a roll of persons who, in the opinion of the Electoral Commissioner, have the requisite qualifications to be included in the residential roll as electors.

(2) The Electoral Commissioner shall not alter the residential roll between the closing date for an election or poll and the end of the polling day.

(3) So that the roll used for elections for the Legislative Assembly may also be used under this Act, section 21B of the Parliamentary Electorates and Elections Act 1912 applies in relation to the residential roll in the same way as it applies in relation to electoral rolls for elections for the Legislative Assembly.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(4) Any person may, at any reasonable time during office hours, inspect the latest copy of the residential roll at the office of the Electoral Commissioner or at any other place determined by the Electoral Commissioner.

(5) A person may lodge with the Electoral Commissioner—

- (a) a claim for the inclusion of his or her name in the residential roll or for the amendment of any particulars entered in the roll against the name;
- (b) an objection to the inclusion in the residential roll of his or her name or the name of another person; or
- (c) an objection to the inclusion in the residential roll of specified particulars entered against his or her name or the name of another person.

(6) The Electoral Commissioner shall, within the prescribed time after the lodging of a claim or objection, decide whether it should be allowed or disallowed and shall—

- (a) subject to subsection (2), make such entries in, or alterations to, the residential roll as give effect to the decision; and
- (b) serve notice of the decision by post on—
 - (i) the claimant or objector; and
 - (ii) in the case of an objection—any other person to whom the objection relates.

(7) A person dissatisfied with the decision of the Electoral Commissioner on a claim or objection may, in the prescribed manner, appeal against the decision to the Local Court nearest the office of the council.

(8) Subject to subsection (2), the Electoral Commissioner shall make such entries in, or alterations to, the residential roll as give effect to the decision on an appeal.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Non-residential roll**

65A. (1) The clerk shall, not later than the closing date for an election or poll to be conducted by the Electoral Commissioner, prepare the non-residential roll for the election or poll.

(2) Section 65 (except section 65 (1) and (3)) applies in relation to the clerk and the non-residential roll in the same way as it applies in relation to the Electoral Commissioner and the residential roll.

(3) The non-residential roll for an election or poll is the roll confirmed by the Electoral Commissioner after being prepared under this section and certified by the clerk to be, in his or her opinion, a roll of the persons who, on the closing date, claim to be, and are, qualified for inclusion in the non-residential roll as electors.

(4) The non-residential roll for an election or poll ceases to have effect 3 months after the election or poll.

Enrolment of person qualified in more than one ward or riding

66. (1) A person may not be enrolled more than once in respect of the same ward or riding.

(2) A person who has the requisite qualification in more than one ward or riding of an area may be enrolled only in respect of one of them, being—

(a) if the person has the requisite qualification as a resident in a ward or riding—that ward or riding; or

(b) in any other case—

(i) the ward or riding specified in a notice in writing given by the person to the clerk within the prescribed time; or

(ii) in the absence of such a notice—the ward or riding chosen by the clerk.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(10) Section 70 (Elections—how conducted, etc.)—

(a) Section 70 (1)—

Omit “Elections”, insert instead “Except as otherwise provided by this section, elections”.

(b) Section 70 (1A)—(1C)—

After section 70 (1), insert:

(1A) The Electoral Commissioner shall conduct—

- (a) elections referred to in Division 4 and sections 530C (7) and 549; and
- (b) polls required to be taken under sections 25A (6) and 81A, and under Part XXVII.

(1B) The Electoral Commissioner shall appoint a returning officer for each area for the purpose of conducting, in the area and under the direction of the Electoral Commissioner, the elections and polls referred to in subsection (1A) and, in conducting them, the returning officer is entitled to access to the records of the council of the area.

(1C) The Electoral Commissioner shall—

- (a) appoint the polling places;
- (b) determine the fees payable to returning officers and other electoral officers; and
- (c) determine any matter not provided for by this Act or an ordinance,

for the purposes of an election or poll referred to in subsection (1A).

(c) Section 70 (2)—

After “incurred by”, insert “the Electoral Commissioner or”.

(d) Section 70 (2), (3)—

After “election” wherever occurring, insert “or poll”.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 70 (3)—

Omit “A”, insert instead “The Electoral Commissioner or a”.

(11) Section 70A—

After section 70, insert:

Delegation by Electoral Commissioner

70A. (1) The Electoral Commissioner may delegate to any person any of the functions of the Electoral Commissioner under this Act, other than this power of delegation.

(2) A delegation under this section—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Electoral Commissioner.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Electoral Commissioner.

(5) A delegation under this section does not prevent the exercise of a function by the Electoral Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(7) In this section—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(12) Section 73 (**Contested election of aldermen or councillors**)—

(a) Section 73 (3A), (3AA)—

Omit “Subject to any proclamation under subsection (3C) issued on or after the date of assent to the Local Government (Elections) Amendment Act, 1976,” wherever occurring.

(b) Section 73 (3A)—

Omit “the system” where firstly occurring, insert instead “The system”.

(c) Section 73 (3A), (3AA)—

Omit “on or after that date” wherever occurring.

(d) Section 73 (3AA)—

Omit “at an”, insert instead “At an”.

(e) Section 73 (3B), (3C)—

Omit the subsections.

(f) Section 73 (5)—

After “shall”, insert “, on the declaration of the result of the election, deliver them to the custody of the council which shall”.

(13) Section 74B (**Returning officer to mark residential roll**)—

(a) Section 74B (a)—

Omit “each”, insert instead “the residential”.

(b) Section 74B (a)—

Omit “prepared under this Act”.

(c) Section 74B (a)—

Omit “persons enrolled”, insert instead “residents”.

(d) Section 74B (a)—

After “74A”, insert “and who appear not to have had sufficient reason for the failure”.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 74B (2)—

At the end of section 74B, insert:

(2) Upon certifying the marked roll, the returning officer shall cause it to be delivered without delay to the council.

(14) Sections 74C–74G—

Omit the sections, insert instead:

Penalty notice to be issued for failure to vote

74C. (1) If a resident is indicated on a marked roll as not having sufficient reason for failing to vote at an election when required by section 74A to do so, the clerk shall, within 3 months after the close of the poll, serve a penalty notice on the resident personally or by post at the address of the resident last known to the clerk.

(2) A penalty notice is a notice in the prescribed form to the effect that, if the resident does not desire to have the failure to vote dealt with by a court, he or she may, within the prescribed time—

- (a) give the council a sufficient reason for the failure; or
- (b) pay to the council a penalty of \$25.

(3) A resident served with a penalty notice may decline to be dealt with under this section and shall be presumed to have done so if, within the prescribed time for a response to the notice, the resident, or a person on behalf of the resident, does not—

- (a) give the council a reason for the failure to vote; or
- (b) pay to the council the penalty specified in the notice.

(4) If, in response to a penalty notice and within the time prescribed for the response—

- (a) the council is given a sufficient reason for the failure to vote; or

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) the penalty specified in the notice is paid to the council, proceedings against any person for the failure to vote are prohibited.

(5) If, in response to a penalty notice, the council is given a reason for the failure to vote but the reason is not a sufficient reason, the clerk shall include a statement to that effect in any courtesy letter served under section 100J of the Justices Act 1902.

(6) For the purposes of this section, it is a sufficient reason for the failure of a resident to vote at an election if the council is satisfied that he or she—

- (a) is dead;
- (b) was absent from the area on polling-day;
- (c) was ineligible to vote at the election;
- (d) had an honest belief that abstention from voting was part of his or her religious duty; or
- (e) was unable for any other reason acceptable to the council to vote at the election,

or had voted in the election under an enrolment on a roll other than the marked roll indicating the failure to vote.

(7) In this section, a reference to the prescribed time for a response to a penalty notice is a reference to—

- (a) the time for response specified in the notice; or
- (b) if the clerk extends that time (whether before or after its expiration)—the extended time.

Notation on marked roll of response to penalty notice

74D. The clerk shall note on the marked roll in relation to each resident on whom a penalty notice is served—

- (a) whether or not there has been a response to the notice; and
- (b) if there has been a response—whether or not a sufficient reason has been given or the penalty paid.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

Evidence in marked roll

74E. (1) A notation on the marked roll to the effect—

- (a) that a resident was served with a penalty notice—is evidence of service of the notice;
- (b) that there was no response to a penalty notice served on a resident—is evidence that there was no such response within the prescribed time under section 74C; or
- (c) that a reason for a resident's failure to vote was given in response to a penalty notice but was insufficient—is evidence that the reason given was not a sufficient reason under section 74C.

(2) Subsection (1) applies in relation to a copy of, or an extract from, the marked roll certified by the clerk to be such a copy or extract in the same way as it applies in relation to the marked roll.

Offences relating to failure to vote

74F. (1) A resident who fails to record his or her vote at an election when required by section 74A to do so is guilty of an offence and liable to a penalty not exceeding \$50.

(2) A person (whether or not a resident) who, in response to a penalty notice, gives a false reason for the failure of a resident to vote is guilty of an offence and liable to a penalty not exceeding \$50.

(15) Section 81A—

Omit the section, insert instead:

Polls relating to libraries

81A. (1) If a council—

- (a) resolves that a poll be taken on one or more of the questions referred to in subsection (2); or

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

- (b) receives a petition by not less than one-fifth of the electors for the area for the taking of a poll on one or more of those questions,

the council shall notify the Electoral Commissioner accordingly, specifying the question or questions to which the resolution or petition relates.

- (2) The questions referred to in this subsection are:
- (a) whether the council should provide, control and manage libraries, library services or information services;
 - (b) whether the council should adopt the Library Act 1939;
 - (c) whether the council should revoke its adoption of the Library Act 1939;
 - (d) if the council adopts the Library Act 1939—whether a special rate should be made and levied to provide, control and manage libraries, library services and information services.

(3) Within a reasonable time after receiving a notification under subsection (1), the Electoral Commissioner shall take a poll in the area on the question or questions specified in the notification.

(16) Section 82 (**Compulsory polls**)—

Omit “Where the council is required by this Act to take a poll of electors”, insert instead “Where this Act requires the taking of a poll of electors”.

(17) Section 82A (**Compulsory voting at certain polls**)—

- (a) Section 82A (1)—

Omit “, 73 (3B)”.

- (b) Section 82A (1)—

Omit “section 544”, insert instead “Part XXVII”.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

- (c) Section 82A (2)—
Omit “74G”, insert instead “74F”.
 - (d) Section 82A (2)—
Omit “under this Act and so apply as if a reference to section 74A were a reference to this section”.
 - (18) Section 83 (**Ordinances**)—
 - (a) Section 83 (c)—
Omit the paragraph.
 - (b) Section 83 (k)—
Before “clerk”, insert “Electoral Commissioner or the”.
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SCHEDULE 4

(Sec. 4)

AMENDMENT TO PART VI OF THE PRINCIPAL ACT

Section 86 (**Removal of council**)—

Omit “, order the compilation of fresh lists and rolls of electors, and”, insert instead “and order”.

SCHEDULE 5

(Sec. 4)

AMENDMENT TO PART XXIV_A OF THE PRINCIPAL ACT

Section 530c (**Local districts**)—

Section 530c (7)—

Omit the subsection, insert instead:

Local Government (Elections) Amendment 1987

SCHEDULE 5—*continued*

AMENDMENT TO PART XXIV^A OF THE PRINCIPAL ACT—
continued

(7) Within a reasonable time determined by the Electoral Commissioner after being notified by the council of the establishment of a local district—

(a) the Electoral Commissioner and the clerk shall compile for the local district a roll of electors within the meaning of Division 4 of Part V; and

(b) the Electoral Commissioner shall conduct an election to determine the elected members of the district committee,

as if the local district were a ward or riding and the elected members of the district committee were being elected as members of a council at an extraordinary election.

SCHEDULE 6

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 71 (**Nominations**) (as amended by Act No. 209, 1985)—

Section 71 (4)—

Omit “council”, insert instead “returning officer”.

(2) Section 73 (**Contested elections of aldermen or councillors**) (as amended by Act No. 159, 1986)—

Section 73 (4) (f)—

After “other square”, insert “or squares”.

(3) Section 83 (**Ordinances**) (as amended by Act No. 159, 1986)—

Section 83 (e)—

Omit “or lists of electors”.

Local Government (Elections) Amendment 1987

SCHEDULE 6—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Section 542 (**Petitions**) (as amended by Act No. 159, 1986)—

(a) Section 542 (1)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

(b) Section 542 (2)—

Omit the subsection, insert instead:

(2) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether a part of the shire should be declared to be an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

(5) Section 548 (**Power to establish**) (as amended by Act No. 159, 1986)—

(a) Section 548 (1A)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

(b) Section 548 (1B)—

Omit the subsection, insert instead:

(1B) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether an urban committee should be established in respect of an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

Local Government (Elections) Amendment 1987

SCHEDULE 6—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (6) Section 549 (**Election of urban committee**) (as amended by Act No. 159, 1986)—

Section 549 (2)—

Omit the subsection, insert instead:

- (2) Within a reasonable time after a resolution under subsection (1)—

(a) the Electoral Commissioner and the clerk shall compile for the urban area a roll of electors within the meaning of Division 4 of Part V; and

(b) the Electoral Commissioner shall conduct an election to determine the members of the urban committee,

as if the urban area were a riding and the members of the urban committee were being elected as members of a council at an extraordinary election.

SCHEDULE 7

(Sec. 6)

TRANSITIONAL PROVISIONS

Interpretation

1. Words and expressions used in this Schedule have the same meaning as they have in the Principal Act and—

“applicable area” means an area the subject of a declaration in force under clause 2;

“appointed day” means the day appointed and notified under section 2 (8).

Applicable areas

2. (1) The Electoral Commissioner may, by notice in writing served on the council for an area, declare that clause 3 applies in the area for the purposes of—

- (a) the ordinary election to be held on 26 September 1987; and

Local Government (Elections) Amendment 1987

SCHEDULE 7—*continued*

TRANSITIONAL PROVISIONS—*continued*

- (b) an election or poll that is to be held before the ordinary election in 1991 and is specified in the notice.
- (2) The Electoral Commissioner may, by notice in writing served on the council for an applicable area, revoke the notice served on the council under subclause (1).

Transitional roll

3. (1) Notwithstanding anything in the Principal Act, as amended by this Act, the residential roll for an applicable area shall be a transitional roll confirmed by the Electoral Commissioner after being prepared and certified by the clerk in accordance with sections 65 and 65A (1)–(5) of the Principal Act as in force immediately before the appointed day.

(2) The transitional roll shall be prepared as if—

- (a) the Principal Act had been amended by omitting section 51 (1) (a); and
- (b) the reference in section 65A of the Principal Act to the prescribed day were a reference to the closing date under the Principal Act, as amended by this Act.

(3) In preparing the transitional roll, the clerk shall comply with any directions given by the Electoral Commissioner in relation to matters not otherwise dealt with by this clause.

(4) This clause does not affect the operation of section 65A of the Principal Act, as amended by this Act.

Absence from ordinary meetings of council

4. If, immediately before the appointed day, leave of absence granted for the purposes of section 35 (e) or 37 of the Principal Act had not expired, the leave of absence continues on and after that day, as leave of absence for the purposes of section 35 (e) or 37 of the Principal Act, as amended by this Act, until its expiration.

LOCAL GOVERNMENT (ELECTIONS) AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
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6. Transitional provisions
7. Amendment of Act No. 27, 1902

SCHEDULE 1—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

SCHEDULE 2—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

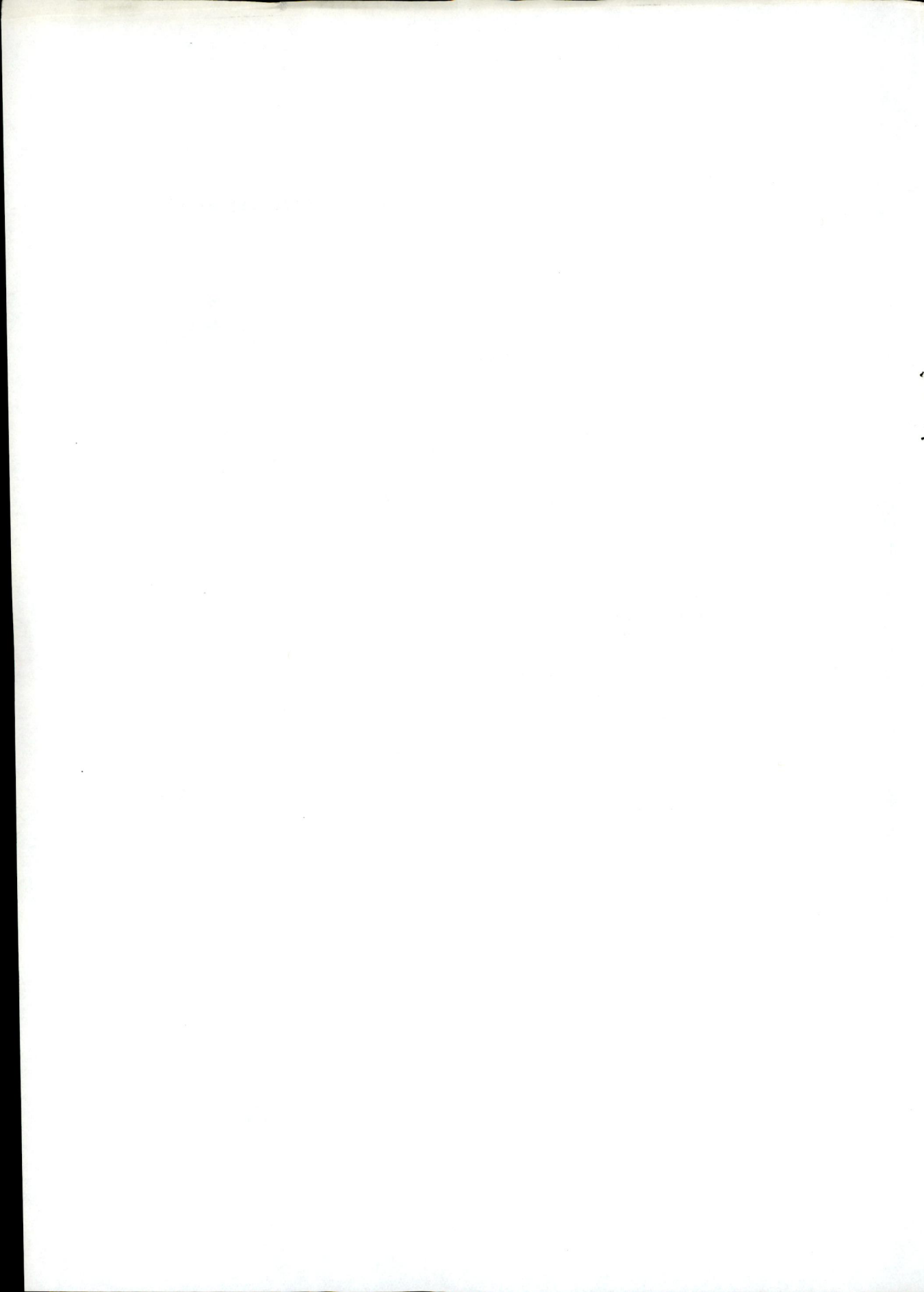
SCHEDULE 3—AMENDMENTS TO PART V OF THE PRINCIPAL ACT

SCHEDULE 4—AMENDMENT TO PART VI OF THE PRINCIPAL ACT

SCHEDULE 5—AMENDMENT TO PART XXIV^A OF THE PRINCIPAL ACT

SCHEDULE 6—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 7—TRANSITIONAL PROVISIONS

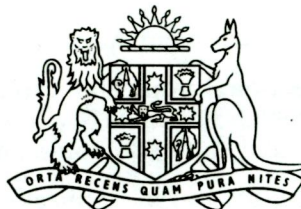


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1987*

NEW SOUTH WALES



Act No. , 1987

An Act to amend the Local Government Act 1919 with respect to the conduct of elections and polls; to amend the Justices Act 1902 in relation to certain penalty notices; and for other purposes.

Local Government (Elections) Amendment 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Local Government (Elections) Amendment Act 1987".

Commencement

2. (1) Sections 1, 2 and 5 shall commence on the date of assent to this Act.

(2) Schedule 6 (1), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (1) to the Local Government (Miscellaneous Provisions) Amendment Act 1985 commences.

15 (3) Schedule 6 (2), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (3) to the Local Government (General Revision) Amendment Act 1986 commences.

(4) Schedule 6 (3), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (4) to the Local Government (General Revision) Amendment Act 1986 commences.

20 (5) Schedule 6 (4), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (28) to the Local Government (General Revision) Amendment Act 1986 commences.

25 (6) Schedule 6 (5), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (30) to the Local Government (General Revision) Amendment Act 1986 commences.

(7) Schedule 6 (6), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (31) to the Local Government (General Revision) Amendment Act 1986 commences.

30 (8) Except as provided by subsections (1)–(7), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Local Government Act 1919 is referred to in this Act as the Principal Act.

Local Government (Elections) Amendment 1987

Amendment of Act No. 41, 1919

4. The Principal Act is amended in the manner set forth in Schedules 1-6.

Provisions relating to certain elections and extraordinary vacancies

5. (1) If a fresh election of councillors for Warringah Shire Council is held in 1987 but before 26 September 1987—

- (a) the provisions of the Principal Act do not operate to require the holding of an election of the councillors on 26 September 1987; and
- (b) subject to sections 35, 86 and 219 of the Principal Act, a councillor elected at the fresh election holds office until the ordinary election of councillors in 1991.

(2) If a vacancy in the office of mayor or president of an area to which section 25A of the Principal Act applies occurred on or after 1 January 1987 and before 27 March 1987, the Principal Act has effect as if the vacancy had occurred during the last 6 months of the term of office of the council for the area.

(3) If a council has so resolved (whether or not under the authority of the Principal Act) an election shall not be held under section 38 (4) of the Principal Act to fill an extraordinary vacancy in the office of an alderman or councillor that occurred on or after 1 January 1987 and before 27 March 1987.

Transitional provisions

6. Schedule 7 has effect.

Amendment of Act No. 27, 1902

7. The Justices Act 1902 is amended by omitting from the matter relating to the Local Government Act 1919 in paragraph (a) of the definition of "penalty notice" in section 100i (1) the matter "270s (1)" and by inserting instead the matter "74C or 270s (1)".

Local Government (Elections) Amendment 1987

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT

Section 4 (**Definitions**)—

5 (1) Definition of “Electoral Commissioner”—

After the definition of “Elector”, insert:

“Electoral Commissioner” means the person for the time being holding or acting in the office of Electoral Commissioner under the Parliamentary Electorates and Elections Act 1912.

10 (2) Definition of “Returning officer”—

Omit the definition, insert instead:

“Returning officer” means—

15 (a) in relation to an election or poll conducted by the Electoral Commissioner—the returning officer appointed by the Electoral Commissioner under section 70 (1B); or

(b) in relation to any other election or poll—the clerk or other person appointed to conduct the election or poll.

(3) Definition of “Roll of electors”—

20 After the definition of “Roll”, insert:

“Roll of electors” means the roll of electors prepared under Division 4 of Part V.

SCHEDULE 2

(Sec. 4)

25 AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

(1) Section 25A (**Election of mayor or president by electors**)—

(a) Section 25A (4) (a)—

Omit “during the last six months”, insert instead “on or after 1 January last preceding the end”.

Local Government (Elections) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

(b) Section 25A (6)—

After “council” where secondly occurring, insert “shall notify the Electoral Commissioner that such a poll is required and the Electoral Commissioner”.

5 (c) Section 25A (6) (c)—

Omit “more than 6 months before”, insert instead “before 1 January last preceding”.

(d) Section 25A (6) (d)—

10 Omit “6 months or less before”, insert instead “on or after 1 January last preceding”.

(e) Section 25A (6) (d)—

Omit “it does not do so”, insert instead “this is not done”.

(2) Section 30 (**Qualification for office**)—

Section 30 (2) (a)—

15 After “elector”, insert “, otherwise than by losing the requisite qualification under section 51 while holding the civic office”.

(3) Section 35 (**Extraordinary vacancy**)—

Section 35 (e)—

Omit “four”, insert instead “3”.

20 (4) Section 37 (**Attendance at meetings of council—default**)—

Section 37 (5)—

After section 37 (4), insert:

(5) In this section—

25 “year”, in relation to meetings of a council, means a year ending on an anniversary of the date on which the council took office.

Local Government (Elections) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

(5) Section 38 (**Election on appointed days**)—

Section 38 (4)—

Omit “within the last six months”, insert instead “on or after 1 January last preceding the end”.

5 (6) Section 39 (**Appointed day for election of aldermen or councillors**)—

Section 39 (1) (d)—

After “officer”, insert “with the approval of the Electoral Commissioner”.

(7) Section 41 (**Validation of elections**)—

10 Section 41 (1) (c)—

Omit “Minister”, insert instead “Electoral Commissioner in the case of an election that he or she conducts or, in any other case, by the returning officer”.

(8) Section 42 (**Lapsed or void elections**)—

15 Section 42 (1)—

Omit “or to be”, insert instead “and the returning officer is not”.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT

20 (1) Section 50 (**Qualification of elector**)—

Section 50 (1)—

Omit “shall be entitled to have his name placed on the list referred to in Division 4”, insert instead “is entitled to be enrolled under this Part as an elector”.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) Section 51 (**Meaning of “requisite qualification”**)—

Section 51 (3)—

Omit the subsection.

(3) Section 52 (**Qualification of an owner**)—

5 (a) Section 52 (a), (b)—

Omit the paragraphs, insert instead:

10 (a) the person is not a corporation, is a joint or several owner of ratable land and is nominated in writing as an elector by the only other owner of the land or by a majority of all the owners of the land;

(b) the person is not a corporation, is not nominated under paragraph (a) and is nominated in writing as an elector by a body corporate which is the owner, or trustees who are the owners, of ratable land;

15 (b) Section 52 (c), (d)—

Omit “he” wherever occurring, insert instead “the person”.

(c) Section 52 (2)—

At the end of section 52, insert:

20 (2) Joint or several owners may not, under subsection (1) (a), and a body corporate or trustees may not, under subsection (1) (b)—

(a) nominate more than one person for the same ward or riding; or

25 (b) nominate a person for more than one ward or riding of the same area.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*(4) Section 54 (**Qualification of a resident**)—

Section 54 (2)—

Omit the subsection, insert instead:

(2) In subsection (1), “relevant date” means—

- 5 (a) for the purpose of determining whether the name of a person may be included in the residential roll kept under Division 4—the date on which the claim for enrolment is made; or
- 10 (b) for the purpose of determining whether a person is entitled to vote at an election—the closing date for the election referred to in Division 4.

(5) Section 55 (**Disqualification of electors and of voters**)—

Section 55 (1)—

15 Omit “to have his name placed on the list referred to in Division 4.”.

(6) Section 56 (**Qualification to vote**)—

(a) Section 56 (1) (a)—

Omit “his”, insert instead “the person’s”.

(b) Section 56 (1) (a), (b), (4)—

20 Omit “he” wherever occurring, insert instead “the person”.

(c) Section 56 (1)—

Omit “Provided that a married woman who is enrolled under her name prior to marriage may vote under that name pending correction of the rolls.”.

25 (d) Section 56 (1A)—

After section 56 (1), insert:

(1A) If the name under which a person is enrolled is changed on marriage, the person may, pending correction of the roll, vote under the enrolled name.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

- (e) Section 56 (4)—
 After “qualification” wherever occurring, insert “under section 51 (1) (a)”.
- (f) Section 56 (4)—
 5 Omit “an election held within twelve months after so ceasing”, insert instead “the election for which the person was enrolled and any subsequent election held before the enrolment ceases to have effect”.
- (7) Section 56A (**Omission from electoral roll**)—
- 10 (a) Section 56A (2)—
 Omit “person”, insert instead “resident”.
- (b) Section 56A (4) (b)—
 At the end of the paragraph, insert “and”.
- (c) Section 56A (4) (c)—
 15 Omit “and” where lastly occurring.
- (d) Section 56A (4) (d)—
 Omit the paragraph.
- (e) Section 56A (5), (6)—
 Omit the subsections, insert instead:
- 20 (5) The returning officer shall examine the declaration of the voter without opening the envelope or allowing any other person to do so and shall make such inquiries into the matters specified in the declaration as the returning officer considers to be necessary.
- 25 (6) The returning officer, after examining a declaration, shall—
 (a) if of the opinion that the person who made the declaration was entitled to vote—accept the ballot-paper for further scrutiny; or

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) if not of that opinion—reject the ballot-paper without opening the envelope.

(8) Section 57 (**Undivided area treated as a single ward or riding**)—

Omit “the keeping and maintaining of the list referred to in Division 4 and of”.

(9) Part V, Division 4—

Omit the Division, insert instead:

DIVISION 4—*Rolls of electors*

Interpretation

63A. (1) In this Division—

“closing date”, in relation to an election or poll, means the date prescribed for the closing of the residential roll for the election or poll;

“election” means—

- (a) the first election for an area after its constitution;
- (b) an ordinary election;
- (c) an extraordinary election; or
- (d) an election ordered under section 86 or authorised under section 219;

“non-residential roll” means the roll prepared by the clerk under section 65A of persons qualified under section 51 (1) (a) to be electors;

“residential roll” means the roll kept by the Electoral Commissioner under section 65 of persons qualified under section 51 (1) (b) to be electors;

“roll of electors” means the residential roll and the non-residential roll.

(2) Where this Act imposes on a council a duty to take a poll, this Division applies in relation to the poll in the same way as it applies in relation to an election.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Roll of electors**

64. (1) Except where subsection (3) applies, the roll of electors shall be compiled in accordance with this Division for each election and shall be printed in the prescribed form.

5 (2) The roll of electors shall be prepared separately for each ward or riding or, in the case of the roll required for an extraordinary election, only for the ward or riding in which the election is to be held.

(3) If—

10 (a) an extraordinary election is to be held not later than 6 months after the last preceding election; or

(b) a poll is to be taken,

the residential roll of electors used for the last preceding election may again be used for the forthcoming election or poll.

15 (4) Subsection (3) does not apply to an extraordinary election or a poll if the Electoral Commissioner so decides in relation to the election or poll.

Residential roll

20 65. (1) The Electoral Commissioner shall keep a roll of persons who, in the opinion of the Electoral Commissioner, have the requisite qualifications to be included in the residential roll as electors.

25 (2) The Electoral Commissioner shall not alter the residential roll between the closing date for an election or poll and the end of the polling day.

30 (3) So that the roll used for elections for the Legislative Assembly may also be used under this Act, section 21B of the Parliamentary Electorates and Elections Act 1912 applies in relation to the residential roll in the same way as it applies in relation to electoral rolls for elections for the Legislative Assembly.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(4) Any person may, at any reasonable time during office hours, inspect the latest copy of the residential roll at the office of the Electoral Commissioner or at any other place determined by the Electoral Commissioner.

5 (5) A person may lodge with the Electoral Commissioner—

(a) a claim for the inclusion of his or her name in the residential roll or for the amendment of any particulars entered in the roll against the name;

10 (b) an objection to the inclusion in the residential roll of his or her name or the name of another person; or

(c) an objection to the inclusion in the residential roll of specified particulars entered against his or her name or the name of another person.

15 (6) The Electoral Commissioner shall, within the prescribed time after the lodging of a claim or objection, decide whether it should be allowed or disallowed and shall—

(a) subject to subsection (2), make such entries in, or alterations to, the residential roll as give effect to the decision; and

20 (b) serve notice of the decision by post on—

(i) the claimant or objector; and

(ii) in the case of an objection—any other person to whom the objection relates.

25 (7) A person dissatisfied with the decision of the Electoral Commissioner on a claim or objection may, in the prescribed manner, appeal against the decision to the Local Court nearest the office of the council.

30 (8) Subject to subsection (2), the Electoral Commissioner shall make such entries in, or alterations to, the residential roll as give effect to the decision on an appeal.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Non-residential roll**

65A. (1) The clerk shall, not later than the closing date for an election or poll to be conducted by the Electoral Commissioner, prepare the non-residential roll for the election or poll.

5 (2) Section 65 (except section 65 (1) and (3)) applies in relation to the clerk and the non-residential roll in the same way as it applies in relation to the Electoral Commissioner and the residential roll.

10 (3) The non-residential roll for an election or poll is the roll confirmed by the Electoral Commissioner after being prepared under this section and certified by the clerk to be, in his or her opinion, a roll of the persons who, on the closing date, claim to be, and are, qualified for inclusion in the non-residential roll as electors.

15 (4) The non-residential roll for an election or poll ceases to have effect 3 months after the election or poll.

Enrolment of person qualified in more than one ward or riding

66. (1) A person may not be enrolled more than once in respect of the same ward or riding.

20 (2) A person who has the requisite qualification in more than one ward or riding of an area may be enrolled only in respect of one of them, being—

(a) if the person has the requisite qualification as a resident in a ward or riding—that ward or riding; or

25 (b) in any other case—

(i) the ward or riding specified in a notice in writing given by the person to the clerk within the prescribed time; or

30 (ii) in the absence of such a notice—the ward or riding chosen by the clerk.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*(10) Section 70 (**Elections—how conducted, etc.**)—

(a) Section 70 (1)—

Omit “Elections”, insert instead “Except as otherwise provided by this section, elections”.

5 (b) Section 70 (1A)—(1C)—

After section 70 (1), insert:

(1A) The Electoral Commissioner shall conduct—

(a) elections referred to in Division 4 and sections 530C (7) and 549; and

10 (b) polls required to be taken under sections 25A (6) and 81A, and under Part XXVII.

(1B) The Electoral Commissioner shall appoint a returning officer for each area for the purpose of conducting, in the area and under the direction of the Electoral Commissioner, the elections and polls referred to in subsection (1A) and, in conducting them, the returning officer is entitled to access to the records of the council of the area.

15

(1C) The Electoral Commissioner shall—

(a) appoint the polling places;

20 (b) determine the fees payable to returning officers and other electoral officers; and

(c) determine any matter not provided for by this Act or an ordinance,

25

for the purposes of an election or poll referred to in subsection (1A).

(c) Section 70 (2)—

After “incurred by”, insert “the Electoral Commissioner or”.

(d) Section 70 (2), (3)—

After “election” wherever occurring, insert “or poll”.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 70 (3)—

Omit “A”, insert instead “The Electoral Commissioner or a”.

(11) Section 70A—

After section 70, insert:

5 **Delegation by Electoral Commissioner**

70A. (1) The Electoral Commissioner may delegate to any person any of the functions of the Electoral Commissioner under this Act, other than this power of delegation.

(2) A delegation under this section—

- 10 (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Electoral Commissioner.

15 (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Electoral Commissioner.

20 (5) A delegation under this section does not prevent the exercise of a function by the Electoral Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

25 (7) In this section—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- 30

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*(12) Section 73 (**Contested election of aldermen or councillors**)—

(a) Section 73 (3A), (3AA)—

Omit “Subject to any proclamation under subsection (3C) issued on or after the date of assent to the Local Government (Elections) Amendment Act, 1976,” wherever occurring.

(b) Section 73 (3A)—

Omit “the system” where firstly occurring, insert instead “The system”.

(c) Section 73 (3A), (3AA)—

Omit “on or after that date” wherever occurring.

(d) Section 73 (3AA)—

Omit “at an”, insert instead “At an”.

(e) Section 73 (3B), (3C)—

Omit the subsections.

(f) Section 73 (5)—

After “shall”, insert “, on the declaration of the result of the election, deliver them to the custody of the council which shall”.

(13) Section 74B (**Returning officer to mark residential roll**)—

(a) Section 74B (a)—

Omit “each”, insert instead “the residential”.

(b) Section 74B (a)—

Omit “prepared under this Act”.

(c) Section 74B (a)—

Omit “persons enrolled”, insert instead “residents”.

(d) Section 74B (a)—

After “74A”, insert “and who appear not to have had sufficient reason for the failure”.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 74B (2)—

At the end of section 74B, insert:

(2) Upon certifying the marked roll, the returning officer shall cause it to be delivered without delay to the council.

5 (14) Sections 74C–74G—

Omit the sections, insert instead:

Penalty notice to be issued for failure to vote

10 74C. (1) If a resident is indicated on a marked roll as not having sufficient reason for failing to vote at an election when required by section 74A to do so, the clerk shall, within 3 months after the close of the poll, serve a penalty notice on the resident personally or by post at the address of the resident last known to the clerk.

15 (2) A penalty notice is a notice in the prescribed form to the effect that, if the resident does not desire to have the failure to vote dealt with by a court, he or she may, within the prescribed time—

(a) give the council a sufficient reason for the failure; or

(b) pay to the council a penalty of \$25.

20 (3) A resident served with a penalty notice may decline to be dealt with under this section and shall be presumed to have done so if, within the prescribed time for a response to the notice, the resident, or a person on behalf of the resident, does not—

(a) give the council a reason for the failure to vote; or

25 (b) pay to the council the penalty specified in the notice.

(4) If, in response to a penalty notice and within the time prescribed for the response—

(a) the council is given a sufficient reason for the failure to vote; or

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) the penalty specified in the notice is paid to the council, proceedings against any person for the failure to vote are prohibited.

5 (5) If, in response to a penalty notice, the council is given a reason for the failure to vote but the reason is not a sufficient reason, the clerk shall include a statement to that effect in any courtesy letter served under section 100j of the Justices Act 1902.

10 (6) For the purposes of this section, it is a sufficient reason for the failure of a resident to vote at an election if the council is satisfied that he or she—

(a) is dead;

(b) was absent from the area on polling-day;

(c) was ineligible to vote at the election;

15 (d) had an honest belief that abstention from voting was part of his or her religious duty; or

(e) was unable for any other reason acceptable to the council to vote at the election,

or had voted in the election under an enrolment on a roll other than the marked roll indicating the failure to vote.

20 (7) In this section, a reference to the prescribed time for a response to a penalty notice is a reference to—

(a) the time for response specified in the notice; or

(b) if the clerk extends that time (whether before or after its expiration)—the extended time.

25 **Notation on marked roll of response to penalty notice**

74D. The clerk shall note on the marked roll in relation to each resident on whom a penalty notice is served—

(a) whether or not there has been a response to the notice; and

30 (b) if there has been a response—whether or not a sufficient reason has been given or the penalty paid.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Evidence in marked roll**

74E. (1) A notation on the marked roll to the effect—

- (a) that a resident was served with a penalty notice—is evidence of service of the notice;
- 5 (b) that there was no response to a penalty notice served on a resident—is evidence that there was no such response within the prescribed time under section 74C; or
- 10 (c) that a reason for a resident's failure to vote was given in response to a penalty notice but was insufficient—is evidence that the reason given was not a sufficient reason under section 74C.

(2) Subsection (1) applies in relation to a copy of, or an extract from, the marked roll certified by the clerk to be such a copy or extract in the same way as it applies in relation to the marked roll.

15 **Offences relating to failure to vote**

74F. (1) A resident who fails to record his or her vote at an election when required by section 74A to do so is guilty of an offence and liable to a penalty not exceeding \$50.

- 20 (2) A person (whether or not a resident) who, in response to a penalty notice, gives a false reason for the failure of a resident to vote is guilty of an offence and liable to a penalty not exceeding \$50.

(15) Section 81A—

Omit the section, insert instead:

25 **Polls relating to libraries**

81A. (1) If a council—

- (a) resolves that a poll be taken on one or more of the questions referred to in subsection (2); or

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

- (b) receives a petition by not less than one-fifth of the electors for the area for the taking of a poll on one or more of those questions,

5 the council shall notify the Electoral Commissioner accordingly, specifying the question or questions to which the resolution or petition relates.

(2) The questions referred to in this subsection are:

- (a) whether the council should provide, control and manage libraries, library services or information services;
- 10 (b) whether the council should adopt the Library Act 1939;
- (c) whether the council should revoke its adoption of the Library Act 1939;
- 15 (d) if the council adopts the Library Act 1939—whether a special rate should be made and levied to provide, control and manage libraries, library services and information services.

20 (3) Within a reasonable time after receiving a notification under subsection (1), the Electoral Commissioner shall take a poll in the area on the question or questions specified in the notification.

(16) Section 82 (**Compulsory polls**)—

Omit “Where the council is required by this Act to take a poll of electors”, insert instead “Where this Act requires the taking of a poll of electors”.

25 (17) Section 82A (**Compulsory voting at certain polls**)—

(a) Section 82A (1)—

Omit “, 73 (3B)”.

(b) Section 82A (1)—

Omit “section 544”, insert instead “Part XXVII”.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

- (c) Section 82A (2)—
Omit “74G”, insert instead “74F”.
- (d) Section 82A (2)—
5 Omit “under this Act and so apply as if a reference to section 74A were a reference to this section”.
- (18) Section 83 (**Ordinances**)—
- (a) Section 83 (c)—
Omit the paragraph.
- (b) Section 83 (k)—
10 Before “clerk”, insert “Electoral Commissioner or the”.
-

SCHEDULE 4

(Sec. 4)

AMENDMENT TO PART VI OF THE PRINCIPAL ACT

- Section 86 (**Removal of council**)—
- 15 Omit “, order the compilation of fresh lists and rolls of electors, and”, insert instead “and order”.
-

SCHEDULE 5

(Sec. 4)

AMENDMENT TO PART XXIV_A OF THE PRINCIPAL ACT

- 20 Section 530C (**Local districts**)—
Section 530C (7)—
Omit the subsection, insert instead:

Local Government (Elections) Amendment 1987

SCHEDULE 5—*continued*

AMENDMENT TO PART XXIV^A OF THE PRINCIPAL ACT—
continued

(7) Within a reasonable time determined by the Electoral Commissioner after being notified by the council of the establishment of a local district—

- 5 (a) the Electoral Commissioner and the clerk shall compile for the local district a roll of electors within the meaning of Division 4 of Part V; and
- (b) the Electoral Commissioner shall conduct an election to determine the elected members of the district committee,
- 10 as if the local district were a ward or riding and the elected members of the district committee were being elected as members of a council at an extraordinary election.
-

SCHEDULE 6

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- 15 (1) Section 71 (**Nominations**) (as amended by Act No. 209, 1985)—
Section 71 (4)—
Omit “council”, insert instead “returning officer”.
- (2) Section 73 (**Contested elections of aldermen or councillors**) (as amended by Act No. 159, 1986)—
20 Section 73 (4) (f)—
After “other square”, insert “or squares”.
- (3) Section 83 (**Ordinances**) (as amended by Act No. 159, 1986)—
Section 83 (e)—
Omit “or lists of electors”.

SCHEDULE 6—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Section 542 (**Petitions**) (as amended by Act No. 159, 1986)—

(a) Section 542 (1)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

(b) Section 542 (2)—

5 Omit the subsection, insert instead:

10 (2) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether a part of the shire should be declared to be an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

(5) Section 548 (**Power to establish**) (as amended by Act No. 159, 1986)—

(a) Section 548 (1A)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

15 (b) Section 548 (1B)—

Omit the subsection, insert instead:

20 (1B) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether an urban committee should be established in respect of an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

Local Government (Elections) Amendment 1987

SCHEDULE 6—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (6) Section 549 (**Election of urban committee**) (as amended by Act No. 159, 1986)—

Section 549 (2)—

Omit the subsection, insert instead:

- 5 (2) Within a reasonable time after a resolution under subsection
(1)—
- (a) the Electoral Commissioner and the clerk shall compile for
the urban area a roll of electors within the meaning of
Division 4 of Part V; and
- 10 (b) the Electoral Commissioner shall conduct an election to
determine the members of the urban committee,
- as if the urban area were a riding and the members of the urban
committee were being elected as members of a council at an
extraordinary election.

15

SCHEDULE 7

(Sec. 6)

TRANSITIONAL PROVISIONS

Interpretation

1. Words and expressions used in this Schedule have the same meaning as they have
20 in the Principal Act and—

“applicable area” means an area the subject of a declaration in force under clause 2;

“appointed day” means the day appointed and notified under section 2 (8).

Applicable areas

2. (1) The Electoral Commissioner may, by notice in writing served on the council
25 for an area, declare that clause 3 applies in the area for the purposes of—

(a) the ordinary election to be held on 26 September 1987; and

Local Government (Elections) Amendment 1987

SCHEDULE 7—*continued*

TRANSITIONAL PROVISIONS—*continued*

(b) an election or poll that is to be held before the ordinary election in 1991 and is specified in the notice.

(2) The Electoral Commissioner may, by notice in writing served on the council for an applicable area, revoke the notice served on the council under subclause (1).

5 Transitional roll

3. (1) Notwithstanding anything in the Principal Act, as amended by this Act, the residential roll for an applicable area shall be a transitional roll confirmed by the Electoral Commissioner after being prepared and certified by the clerk in accordance with sections 65 and 65A (1)–(5) of the Principal Act as in force immediately before the appointed day.

(2) The transitional roll shall be prepared as if—

(a) the Principal Act had been amended by omitting section 51 (1) (a); and

(b) the reference in section 65A of the Principal Act to the prescribed day were a reference to the closing date under the Principal Act, as amended by this Act.

15 (3) In preparing the transitional roll, the clerk shall comply with any directions given by the Electoral Commissioner in relation to matters not otherwise dealt with by this clause.

(4) This clause does not affect the operation of section 65A of the Principal Act, as amended by this Act.

20 Absence from ordinary meetings of council

4. If, immediately before the appointed day, leave of absence granted for the purposes of section 35 (e) or 37 of the Principal Act had not expired, the leave of absence continues on and after that day, as leave of absence for the purposes of section 35 (e) or 37 of the Principal Act, as amended by this Act, until its expiration.

FIRST PRINT

**LOCAL GOVERNMENT (ELECTIONS) AMENDMENT
BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Local Government Act 1919 to make provision for—

- (a) the conduct by the Electoral Commissioner holding office under the Parliamentary Electorates and Elections Act 1912 of elections and polls under the Local Government Act 1919 at which voting is compulsory for resident electors;
- (b) the maintenance by the Electoral Commissioner of a roll of resident electors eligible to vote at such an election or poll;
- (c) the preparation by the town or shire clerk, as the need arises, of a roll of non-residential electors eligible to vote at such an election or poll;
- (d) the issue by the town or shire clerk of a penalty notice where a resident has failed to vote at such an election; and
- (e) other miscellaneous matters.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 provides that the Local Government Act 1919 is referred to in the proposed Act as the Principal Act.

Local Government (Elections) Amendment 1987

Clause 4 is a formal provision that gives effect to the Schedules of amendments.

Clause 5 dispenses with the necessity for an election of the Warringah Shire Council on the statutory date for council elections (26 September 1987) if a fresh election for the council is held in 1987 before that date.

Clause 6 gives effect to the transitional provisions in Schedule 7.

Clause 7 amends the Justices Act 1902 in a manner that applies the follow up and enforcement provisions of that Act to penalty notices served on persons who fail to vote at an election or poll under the Principal Act at which voting is compulsory.

SCHEDULE 1—AMENDMENTS TO PART I OF THE PRINCIPAL ACT

Schedule 1 inserts in the Principal Act certain definitions required for the purposes of the amendments to be effected by the proposed Act.

SCHEDULE 2—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

Schedule 2 (1) enables the Electoral Commissioner to conduct any poll required to be held for the purpose of determining whether a mayor or shire president should be elected by the electors at a general election.

Schedule 2 (2) provides that the holder of a civic office does not incur disqualification from office because of a loss, while holding the office, of qualification as an elector.

Schedule 2 (3) provides for vacation of office by an alderman or councillor after failing to attend 3 consecutive ordinary meetings of the council without the leave of the council.

Schedule 2 (4) clarifies the meaning of "year" in relation to the number of meetings of a council during a year.

Schedule 2 (5) enables the Minister, on the application of a council, to dispense with an election to fill an extraordinary vacancy on the council if the vacancy occurs after 1 January in the year of an ordinary election.

Schedule 2 (6) requires the returning officer to obtain the approval of the Electoral Commissioner before fixing and advertising the date for an extraordinary election.

Schedule 2 (7) makes consequential amendments.

Schedule 2 (8) makes a consequential amendment.

SCHEDULE 3—AMENDMENTS TO PART V OF THE PRINCIPAL ACT

Schedule 3 (1) makes a consequential amendment.

Schedule 3 (2) makes a consequential amendment.

Schedule 3 (3) has the effect of preventing more than one non-resident vote in relation to land in a ward or riding if the land is owned jointly or severally, or by a corporation, or by trustees.

Schedule 3 (4) provides for determination of the date at which a person is eligible to be enrolled, or to vote, as a resident.

Schedule 3 (5) makes a consequential amendment.

Schedule 3 (6) makes gender neutralising and consequential amendments.

Local Government (Elections) Amendment 1987

Schedule 3 (7) makes consequential amendments.

Schedule 3 (8) makes a consequential amendment.

Schedule 3 (9) repeals Division 4 of Part V of the Principal Act and substitutes a new Division 4 in which—

- (a) proposed section 63A provides for the interpretation of the new Division;
- (b) proposed section 64 makes general provision with respect to the roll of electors consisting of the residential roll and the non-residential roll;
- (c) proposed section 65 provides for the keeping by the Electoral Commissioner of the residential roll;
- (d) proposed section 65A provides for the preparation by the town or shire clerk of a non-residential roll for each election or poll to be conducted by the Electoral Commissioner and for its ceasing to have effect 3 months after the election or poll; and
- (e) proposed section 66 provides that a person qualified for enrolment in more than one ward or riding in a council area may be enrolled only in respect of one of them.

Schedule 3 (10) provides for—

- (a) the conduct of specified elections and polls (being those at which voting by resident electors is compulsory) by the Electoral Commissioner;
- (b) the appointment by the Electoral Commissioner of a returning officer (who will usually be the town or shire clerk) for each council area; and
- (c) enables the Electoral Commissioner to make such other arrangements as are necessary for the conduct of an election or poll.

Schedule 3 (11) enables the Electoral Commissioner to delegate functions under the Principal Act.

Schedule 3 (12) makes consequential amendments.

Schedule 3 (13) makes consequential amendments.

Schedule 3 (14) substitutes sections 74C–74F which provide for the service of a penalty notice by the town or shire clerk on a resident who fails to vote at an election or poll at which voting is compulsory. The penalty notice would enable the resident to avoid further proceedings (fine \$50) by giving a sufficient reason for the failure to vote or by paying to the council a penalty of \$25.

Schedule 3 (15)–(18) makes consequential amendments.

SCHEDULE 4—AMENDMENT TO PART VI OF THE PRINCIPAL ACT

Schedule 4 makes a consequential amendment.

SCHEDULE 5—AMENDMENT TO PART XXIV_A OF THE PRINCIPAL ACT

Schedule 5 provides for the compilation of rolls of electors following establishment of a local district and for the conduct by the Electoral Commissioner of an election to determine the elected members of the district committee.

Local Government (Elections) Amendment 1987

SCHEDULE 6—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

Schedule 6 makes miscellaneous consequential amendments to uncommenced provisions of 2 other Acts amending the Principal Act.

SCHEDULE 7—TRANSITIONAL PROVISIONS

Clause 1 provides for the interpretation of the Schedule.

Clauses 2 and 3 provide for a transitional arrangement under which the residential roll will be prepared by the town or shire clerk under the existing provisions of the Principal Act. The arrangement will apply only in respect of certain areas pending finalisation by the Electoral Commissioner of arrangements for taking over preparation of the rolls for those areas.

Clause 4 continues in force any leave of absence from ordinary meetings of a council if it was effective immediately before the commencement of the proposed Act.

LOCAL GOVERNMENT (ELECTIONS) AMENDMENT BILL 1987

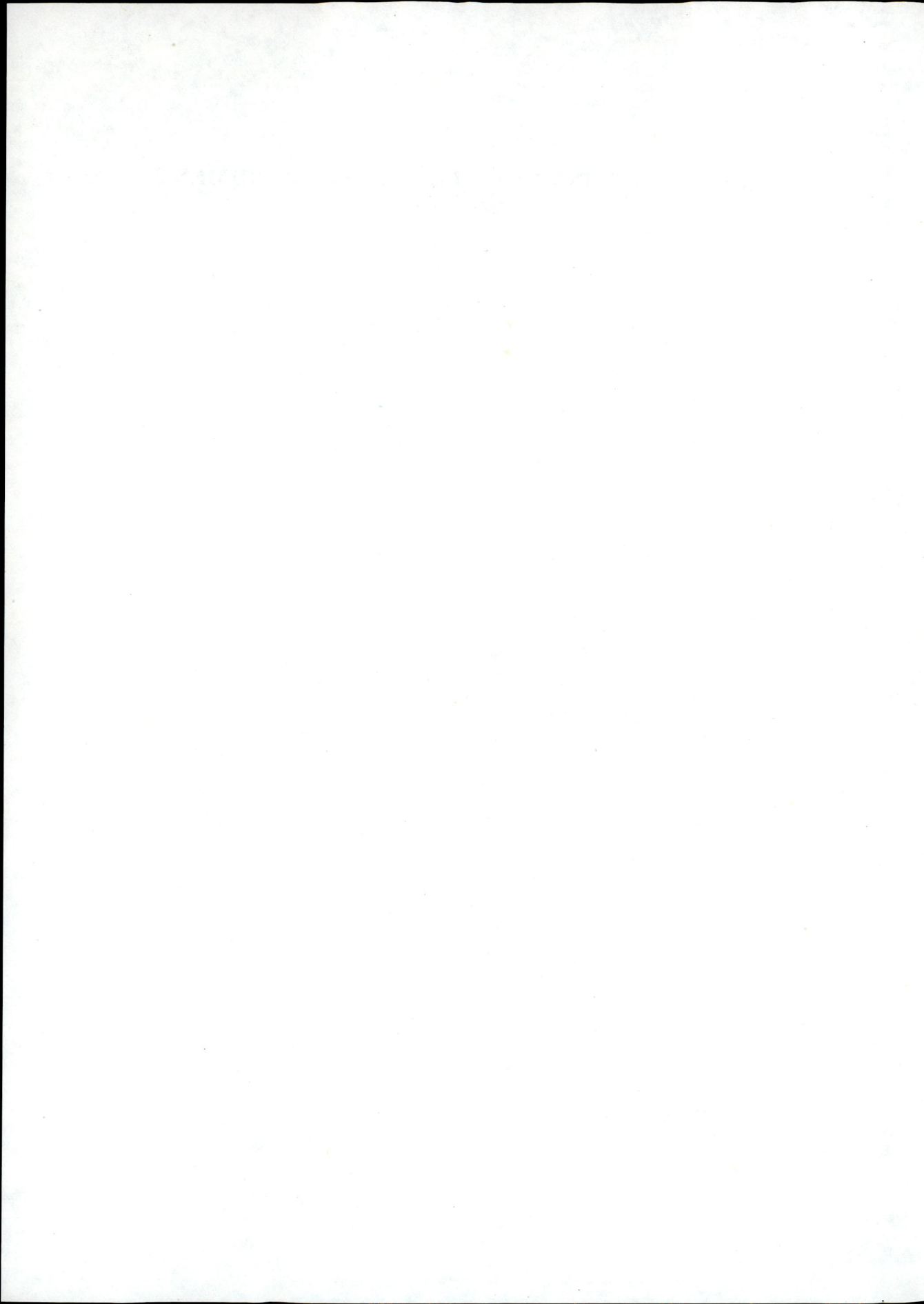
NEW SOUTH WALES



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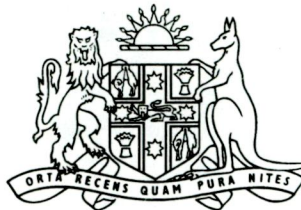
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SCHEDULE 1—AMENDMENTS TO PART I OF THE PRINCIPAL ACT
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**LOCAL GOVERNMENT (ELECTIONS) AMENDMENT
BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Local Government Act 1919 with respect to the conduct of elections and polls; to amend the Justices Act 1902 in relation to certain penalty notices; and for other purposes.

Local Government (Elections) Amendment 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Local Government (Elections) Amendment Act 1987".

Commencement

2. (1) Sections 1, 2 and 5 shall commence on the date of assent to this
10 Act.

(2) Schedule 6 (1), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (1) to the Local Government (Miscellaneous Provisions) Amendment Act 1985 commences.

(3) Schedule 6 (2), and section 4 in its application to that provision, shall
15 commence on the day on which Schedule 2 (3) to the Local Government (General Revision) Amendment Act 1986 commences.

(4) Schedule 6 (3), and section 4 in its application to that provision, shall commence on the day on which Schedule 2 (4) to the Local Government (General Revision) Amendment Act 1986 commences.

20 (5) Schedule 6 (4), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (28) to the Local Government (General Revision) Amendment Act 1986 commences.

(6) Schedule 6 (5), and section 4 in its application to that provision, shall
25 commence on the day on which Schedule 3 (30) to the Local Government (General Revision) Amendment Act 1986 commences.

(7) Schedule 6 (6), and section 4 in its application to that provision, shall commence on the day on which Schedule 3 (31) to the Local Government (General Revision) Amendment Act 1986 commences.

(8) Except as provided by subsections (1)–(7), this Act shall commence
30 on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Local Government Act 1919 is referred to in this Act as the Principal Act.

Local Government (Elections) Amendment 1987

Amendment of Act No. 41, 1919

4. The Principal Act is amended in the manner set forth in Schedules 1-6.

Election of Warringah Shire Council

5 5. If a fresh election of councillors for Warringah Shire Council is held in 1987 but before 26 September 1987—

- (a) the provisions of the Principal Act do not operate to require the holding of an election of the councillors on 26 September 1987; and
- 10 (b) subject to sections 35, 86 and 219 of the Principal Act, a councillor elected at the fresh election holds office until the ordinary election of councillors in 1991.

Transitional provisions

6. Schedule 7 has effect.

Amendment of Act No. 27, 1902

15 7. The Justices Act 1902 is amended by omitting from the matter relating to the Local Government Act 1919 in paragraph (a) of the definition of "penalty notice" in section 100i (1) the matter "270s (1)" and by inserting instead the matter "74c or 270s (1)".

SCHEDULE 1

20 (Sec. 4)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT

Section 4 (**Definitions**)—

(1) Definition of "Electoral Commissioner"—

After the definition of "Elector", insert:

25 "Electoral Commissioner" means the person for the time being holding or acting in the office of Electoral Commissioner under the Parliamentary Electorates and Elections Act 1912.

Local Government (Elections) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued*

(2) Definition of “Returning officer”—

Omit the definition, insert instead:

“Returning officer” means—

5 (a) in relation to an election or poll conducted by the Electoral Commissioner—the returning officer appointed by the Electoral Commissioner under section 70 (1B); or

(b) in relation to any other election or poll—the clerk or other person appointed to conduct the election or poll.

10 (3) Definition of “Roll of electors”—

After the definition of “Roll”, insert:

“Roll of electors” means the roll of electors prepared under Division 4 of Part V.

SCHEDULE 2

15

(Sec. 4)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT

(1) Section 25A (**Election of mayor or president by electors**)—

(a) Section 25A (6)—

20

After “council” where secondly occurring, insert “shall notify the Electoral Commissioner that such a poll is required and the Electoral Commissioner”.

(b) Section 25A (6) (d)—

Omit “it does not do so”, insert instead “this is not done”.

Local Government (Elections) Amendment 1987

SCHEDULE 2—*continued*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*

- (2) Section 30 (**Qualification for office**)—
 Section 30 (2) (a)—
 After “elector”, insert “, otherwise than by losing the requisite qualification under section 51 while holding the civic office”.
- 5 (3) Section 35 (**Extraordinary vacancy**)—
 Section 35 (e)—
 Omit “four”, insert instead “3”.
- (4) Section 37 (**Attendance at meetings of council—default**)—
 Section 37 (5)—
 10 After section 37 (4), insert:
 (5) In this section—
 “year”, in relation to meetings of a council, means a year ending on an anniversary of the date on which the council took office.
- 15 (5) Section 38 (**Election on appointed days**)—
 Section 38 (4)—
 Omit “within the last six months”, insert instead “on or after 1 January last preceding the end”.
- (6) Section 39 (**Appointed day for election of aldermen or councillors**)—
 20 Section 39 (1) (d)—
 After “officer”, insert “with the approval of the Electoral Commissioner”.
- (7) Section 41 (**Validation of elections**)—
 Section 41 (1) (c)—
 25 Omit “Minister”, insert instead “Electoral Commissioner in the case of an election that he or she conducts or, in any other case, by the returning officer”.

*Local Government (Elections) Amendment 1987*SCHEDULE 2—*continued*AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued*(8) Section 42 (**Lapsed or void elections**)—

Section 42 (1)—

Omit “or to be”, insert instead “and the returning officer is not”.

SCHEDULE 3

5

(Sec. 4)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT

(1) Section 50 (**Qualification of elector**)—

Section 50 (1)—

10

Omit “shall be entitled to have his name placed on the list referred to in Division 4”, insert instead “is entitled to be enrolled under this Part as an elector”.

(2) Section 51 (**Meaning of “requisite qualification”**)—

Section 51 (3)—

Omit the subsection.

15

(3) Section 52 (**Qualification of an owner**)—

(a) Section 52 (a), (b)—

Omit the paragraphs, insert instead:

20

(a) the person is not a corporation, is a joint or several owner of ratable land and is nominated in writing as an elector by the only other owner of the land or by a majority of all the owners of the land;

25

(b) the person is not a corporation, is not nominated under paragraph (a) and is nominated in writing as an elector by a body corporate which is the owner, or trustees who are the owners, of ratable land;

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) Section 52 (c), (d)—

Omit “he” wherever occurring, insert instead “the person”.

(c) Section 52 (2)—

At the end of section 52, insert:

5 (2) Joint or several owners may not, under subsection (1) (a), and a body corporate or trustees may not, under subsection (1) (b)—

(a) nominate more than one person for the same ward or riding; or

10 (b) nominate a person for more than one ward or riding of the same area.

(4) Section 54 (**Qualification of a resident**)—

Section 54 (2)—

Omit the subsection, insert instead:

15 (2) In subsection (1), “relevant date” means—

(a) for the purpose of determining whether the name of a person may be included in the residential roll kept under Division 4—the date on which the claim for enrolment is made; or

20 (b) for the purpose of determining whether a person is entitled to vote at an election—the closing date for the election referred to in Division 4.

(5) Section 55 (**Disqualification of electors and of voters**)—

Section 55 (1)—

25 Omit “to have his name placed on the list referred to in Division 4.”.

(6) Section 56 (**Qualification to vote**)—

(a) Section 56 (1) (a)—

Omit “his”, insert instead “the person’s”.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) Section 56 (1) (a), (b), (4)—

Omit “he” wherever occurring, insert instead “the person”.

(c) Section 56 (1)—

5 Omit “Provided that a married woman who is enrolled under her name prior to marriage may vote under that name pending correction of the rolls.”.

(d) Section 56 (1A)—

After section 56 (1), insert:

10 (1A) If the name under which a person is enrolled is changed on marriage, the person may, pending correction of the roll, vote under the enrolled name.

(e) Section 56 (4)—

After “qualification” wherever occurring, insert “under section 51 (1) (a)”.

15 (f) Section 56 (4)—

Omit “an election held within twelve months after so ceasing”, insert instead “the election for which the person was enrolled and any subsequent election held before the enrolment ceases to have effect”.

20 (7) Section 56A (**Omission from electoral roll**)—

(a) Section 56A (2)—

Omit “person”, insert instead “resident”.

(b) Section 56A (4) (b)—

At the end of the paragraph, insert “and”.

25 (c) Section 56A (4) (c)—

Omit “and” where lastly occurring.

(d) Section 56A (4) (d)—

Omit the paragraph.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(e) Section 56A (5), (6)—

Omit the subsections, insert instead:

5 (5) The returning officer shall examine the declaration of the voter without opening the envelope or allowing any other person to do so and shall make such inquiries into the matters specified in the declaration as the returning officer considers to be necessary.

(6) The returning officer, after examining a declaration, shall—

10 (a) if of the opinion that the person who made the declaration was entitled to vote—accept the ballot-paper for further scrutiny; or

(b) if not of that opinion—reject the ballot-paper without opening the envelope.

(8) Section 57 (**Undivided area treated as a single ward or riding**)—

15 Omit “the keeping and maintaining of the list referred to in Division 4 and of”.

(9) Part V, Division 4—

Omit the Division, insert instead:

DIVISION 4—*Rolls of electors*20 **Interpretation**

63A. (1) In this Division—

“closing date”, in relation to an election or poll, means the date prescribed for the closing of the residential roll for the election or poll;

25 “election” means—

(a) the first election for an area after its constitution;

(b) an ordinary election;

(c) an extraordinary election; or

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(d) an election ordered under section 86 or authorised under section 219;

“non-residential roll” means the roll prepared by the clerk under section 65A of persons qualified under section 51 (1) (a) to be electors;

“residential roll” means the roll kept by the Electoral Commissioner under section 65 of persons qualified under section 51 (1) (b) to be electors;

“roll of electors” means the residential roll and the non-residential roll.

(2) Where this Act imposes on a council a duty to take a poll, this Division applies in relation to the poll in the same way as it applies in relation to an election.

Roll of electors

64. (1) Except where subsection (3) applies, the roll of electors shall be compiled in accordance with this Division for each election and shall be printed in the prescribed form.

(2) The roll of electors shall be prepared separately for each ward or riding or, in the case of the roll required for an extraordinary election, only for the ward or riding in which the election is to be held.

(3) If—

(a) an extraordinary election is to be held not later than 6 months after the last preceding election; or

(b) a poll is to be taken,

the residential roll of electors used for the last preceding election may again be used for the forthcoming election or poll.

(4) Subsection (3) does not apply to an extraordinary election or a poll if the Electoral Commissioner so decides in relation to the election or poll.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued***Residential roll**

- 5 65. (1) The Electoral Commissioner shall keep a roll of persons who, in the opinion of the Electoral Commissioner, have the requisite qualifications to be included in the residential roll as electors.
- (2) The Electoral Commissioner shall not alter the residential roll between the closing date for an election or poll and the end of the polling day.
- 10 (3) So that the roll used for elections for the Legislative Assembly may also be used under this Act, section 21B of the Parliamentary Electorates and Elections Act 1912 applies in relation to the residential roll in the same way as it applies in relation to electoral rolls for elections for the Legislative Assembly.
- 15 (4) Any person may, at any reasonable time during office hours, inspect the latest copy of the residential roll at the office of the Electoral Commissioner or at any other place determined by the Electoral Commissioner.
- (5) A person may lodge with the Electoral Commissioner—
- 20 (a) a claim for the inclusion of his or her name in the residential roll or for the amendment of any particulars entered in the roll against the name;
- (b) an objection to the inclusion in the residential roll of his or her name or the name of another person; or
- 25 (c) an objection to the inclusion in the residential roll of specified particulars entered against his or her name or the name of another person.
- (6) The Electoral Commissioner shall, within the prescribed time after the lodging of a claim or objection, decide whether it should be allowed or disallowed and shall—
- 30 (a) subject to subsection (2), make such entries in, or alterations to, the residential roll as give effect to the decision; and

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) serve notice of the decision by post on—

(i) the claimant or objector; and

(ii) in the case of an objection—any other person to whom the objection relates.

5 (7) A person dissatisfied with the decision of the Electoral Commissioner on a claim or objection may, in the prescribed manner, appeal against the decision to the Local Court nearest the office of the council.

10 (8) Subject to subsection (2), the Electoral Commissioner shall make such entries in, or alterations to, the residential roll as give effect to the decision on an appeal.

Non-residential roll

15 65A. (1) The clerk shall, not later than the closing date for an election or poll to be conducted by the Electoral Commissioner, prepare the non-residential roll for the election or poll.

(2) Section 65 (except section 65 (1) and (3)) applies in relation to the clerk and the non-residential roll in the same way as it applies in relation to the Electoral Commissioner and the residential roll.

20 (3) The non-residential roll for an election or poll is the roll confirmed by the Electoral Commissioner after being prepared under this section and certified by the clerk to be, in his or her opinion, a roll of the persons who, on the closing date, claim to be, and are, qualified for inclusion in the non-residential roll as electors.

25

(4) The non-residential roll for an election or poll ceases to have effect 3 months after the election or poll.

Enrolment of person qualified in more than one ward or riding

30 66. (1) A person may not be enrolled more than once in respect of the same ward or riding.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) A person who has the requisite qualification in more than one ward or riding of an area may be enrolled only in respect of one of them, being—

- 5 (a) if the person has the requisite qualification as a resident in a ward or riding—that ward or riding; or
- (b) in any other case—
- (i) the ward or riding specified in a notice in writing given by the person to the clerk within the prescribed time; or
- 10 (ii) in the absence of such a notice—the ward or riding chosen by the clerk.

(10) Section 70 (**Elections—how conducted, etc.**)—

(a) Section 70 (1)—

15 Omit “Elections”, insert instead “Except as otherwise provided by this section, elections”.

(b) Section 70 (1A)—(1C)—

After section 70 (1), insert:

(1A) The Electoral Commissioner shall conduct—

- 20 (a) elections referred to in Division 4 and sections 530C (7) and 549; and
- (b) polls required to be taken under sections 25A (6) and 81A, and under Part XXVII.

25 (1B) The Electoral Commissioner shall appoint a returning officer for each area for the purpose of conducting, in the area and under the direction of the Electoral Commissioner, the elections and polls referred to in subsection (1A) and, in conducting them, the returning officer is entitled to access to the records of the council of the area.

(1C) The Electoral Commissioner shall—

- 30 (a) appoint the polling places;

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(b) determine the fees payable to returning officers and other electoral officers; and

(c) determine any matter not provided for by this Act or an ordinance,

5 for the purposes of an election or poll referred to in subsection (1A).

(c) Section 70 (2)—

After “incurred by”, insert “the Electoral Commissioner or”.

(d) Section 70 (2), (3)—

10 After “election” wherever occurring, insert “or poll”.

(e) Section 70 (3)—

Omit “A”, insert instead “The Electoral Commissioner or a”.

(11) Section 70A—

After section 70, insert:

15 **Delegation by Electoral Commissioner**

70A. (1) The Electoral Commissioner may delegate to any person any of the functions of the Electoral Commissioner under this Act, other than this power of delegation.

(2) A delegation under this section—

20 (a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Electoral Commissioner.

25 (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Electoral Commissioner.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(5) A delegation under this section does not prevent the exercise of a function by the Electoral Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(7) In this section—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(12) Section 73 (**Contested election of aldermen or councillors**)—

(a) Section 73 (3A), (3AA)—

Omit “Subject to any proclamation under subsection (3C) issued on or after the date of assent to the Local Government (Elections) Amendment Act, 1976,” wherever occurring.

(b) Section 73 (3A)—

Omit “the system” where firstly occurring, insert instead “The system”.

(c) Section 73 (3A), (3AA)—

Omit “on or after that date” wherever occurring.

(d) Section 73 (3AA)—

Omit “at an”, insert instead “At an”.

(e) Section 73 (3B), (3C)—

Omit the subsections.

(f) Section 73 (5)—

After “shall”, insert “, on the declaration of the result of the election, deliver them to the custody of the council which shall”.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*(13) Section 74B (**Returning officer to mark residential roll**)—

(a) Section 74B (a)—

Omit “each”, insert instead “the residential”.

(b) Section 74B (a)—

5 Omit “prepared under this Act”.

(c) Section 74B (a)—

Omit “persons enrolled”, insert instead “residents”.

(d) Section 74B (a)—

10 After “74A”, insert “and who appear not to have had sufficient reason for the failure”.

(e) Section 74B (2)—

At the end of section 74B, insert:

(2) Upon certifying the marked roll, the returning officer shall cause it to be delivered without delay to the council.

15 (14) Sections 74C–74G—

Omit the sections, insert instead:

Penalty notice to be issued for failure to vote

20 74C. (1) If a resident is indicated on a marked roll as not having sufficient reason for failing to vote at an election when required by section 74A to do so, the clerk shall, within 3 months after the close of the poll, serve a penalty notice on the resident personally or by post at the address of the resident last known to the clerk.

25 (2) A penalty notice is a notice in the prescribed form to the effect that, if the resident does not desire to have the failure to vote dealt with by a court, he or she may, within the prescribed time—

(a) give the council a sufficient reason for the failure; or

(b) pay to the council a penalty of \$25.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(3) A resident served with a penalty notice may decline to be dealt with under this section and shall be presumed to have done so if, within the prescribed time for a response to the notice, the resident, or a person on behalf of the resident, does not—

- 5 (a) give the council a reason for the failure to vote; or
 (b) pay to the council the penalty specified in the notice.

(4) If, in response to a penalty notice and within the time prescribed for the response—

- 10 (a) the council is given a sufficient reason for the failure to vote; or
 (b) the penalty specified in the notice is paid to the council,

proceedings against any person for the failure to vote are prohibited.

15 (5) If, in response to a penalty notice, the council is given a reason for the failure to vote but the reason is not a sufficient reason, the clerk shall include a statement to that effect in any courtesy letter served under section 100j of the Justices Act 1902.

20 (6) For the purposes of this section, it is a sufficient reason for the failure of a resident to vote at an election if the council is satisfied that he or she—

- (a) is dead;
 (b) was absent from the area on polling-day;
 (c) was ineligible to vote at the election;
 25 (d) had an honest belief that abstention from voting was part of his or her religious duty; or
 (e) was unable for any other reason acceptable to the council to vote at the election,

or had voted in the election under an enrolment on a roll other than the marked roll indicating the failure to vote.

*Local Government (Elections) Amendment 1987*SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(7) In this section, a reference to the prescribed time for a response to a penalty notice is a reference to—

- (a) the time for response specified in the notice; or
- (b) if the clerk extends that time (whether before or after its expiration)—the extended time.

Notation on marked roll of response to penalty notice

74D. The clerk shall note on the marked roll in relation to each resident on whom a penalty notice is served—

- (a) whether or not there has been a response to the notice; and
- (b) if there has been a response—whether or not a sufficient reason has been given or the penalty paid.

Evidence in marked roll

74E. (1) A notation on the marked roll to the effect—

- (a) that a resident was served with a penalty notice—is evidence of service of the notice;
- (b) that there was no response to a penalty notice served on a resident—is evidence that there was no such response within the prescribed time under section 74C; or
- (c) that a reason for a resident's failure to vote was given in response to a penalty notice but was insufficient—is evidence that the reason given was not a sufficient reason under section 74C.

(2) Subsection (1) applies in relation to a copy of, or an extract from, the marked roll certified by the clerk to be such a copy or extract in the same way as it applies in relation to the marked roll.

Offences relating to failure to vote

74F. (1) A resident who fails to record his or her vote at an election when required by section 74A to do so is guilty of an offence and liable to a penalty not exceeding \$50.

SCHEDULE 3—*continued*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(2) A person (whether or not a resident) who, in response to a penalty notice, gives a false reason for the failure of a resident to vote is guilty of an offence and liable to a penalty not exceeding \$50.

5 (15) Section 81A—

Omit the section, insert instead:

Polls relating to libraries

81A. (1) If a council—

- 10 (a) resolves that a poll be taken on one or more of the questions referred to in subsection (2); or
- (b) receives a petition by not less than one-fifth of the electors for the area for the taking of a poll on one or more of those questions,

15 the council shall notify the Electoral Commissioner accordingly, specifying the question or questions to which the resolution or petition relates.

(2) The questions referred to in this subsection are:

- 20 (a) whether the council should provide, control and manage libraries, library services or information services;
- (b) whether the council should adopt the Library Act 1939;
- (c) whether the council should revoke its adoption of the Library Act 1939;
- 25 (d) if the council adopts the Library Act 1939—whether a special rate should be made and levied to provide, control and manage libraries, library services and information services.

30 (3) Within a reasonable time after receiving a notification under subsection (1), the Electoral Commissioner shall take a poll in the area on the question or questions specified in the notification.

Local Government (Elections) Amendment 1987

SCHEDULE 3—*continued*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—*continued*

(16) Section 82 (**Compulsory polls**)—

Omit “Where the council is required by this Act to take a poll of electors”, insert instead “Where this Act requires the taking of a poll of electors”.

5 (17) Section 82A (**Compulsory voting at certain polls**)—

(a) Section 82A (1)—

Omit “, 73 (3B)”.

(b) Section 82A (1)—

Omit “section 544”, insert instead “Part XXVII”.

10 (c) Section 82A (2)—

Omit “74G”, insert instead “74F”.

(d) Section 82A (2)—

Omit “under this Act and so apply as if a reference to section 74A were a reference to this section”.

15 (18) Section 83 (**Ordinances**)—

(a) Section 83 (c)—

Omit the paragraph.

(b) Section 83 (k)—

Before “clerk”, insert “Electoral Commissioner or the”.

Local Government (Elections) Amendment 1987

SCHEDULE 4

(Sec. 4)

AMENDMENT TO PART VI OF THE PRINCIPAL ACT

Section 86 (**Removal of council**)—

- 5 Omit “, order the compilation of fresh lists and rolls of electors, and”, insert instead “and order”.
-

SCHEDULE 5

(Sec. 4)

AMENDMENT TO PART XXIV_A OF THE PRINCIPAL ACT

10 Section 530C (**Local districts**)—

Section 530C (7)—

Omit the subsection, insert instead:

- 15 (7) Within a reasonable time determined by the Electoral Commissioner after being notified by the council of the establishment of a local district—

- (a) the Electoral Commissioner and the clerk shall compile for the local district a roll of electors within the meaning of Division 4 of Part V; and
- 20 (b) the Electoral Commissioner shall conduct an election to determine the elected members of the district committee,

as if the local district were a ward or riding and the elected members of the district committee were being elected as members of a council at an extraordinary election.

SCHEDULE 6

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 71 (**Nominations**) (as amended by Act No. 209, 1985)—

5 Section 71 (4)—

Omit “council”, insert instead “returning officer”.

(2) Section 73 (**Contested elections of aldermen or councillors**) (as amended by Act No. 159, 1986)—

Section 73 (4) (f)—

10 After “other square”, insert “or squares”.

(3) Section 83 (**Ordinances**) (as amended by Act No. 159, 1986)—

Section 83 (e)—

Omit “or lists of electors”.

(4) Section 542 (**Petitions**) (as amended by Act No. 159, 1986)—

15 (a) Section 542 (1)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

(b) Section 542 (2)—

Omit the subsection, insert instead:

20 (2) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether a part of the shire should be declared to be an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

25 (5) Section 548 (**Power to establish**) (as amended by Act No. 159, 1986)—

(a) Section 548 (1A)—

Omit “to take a poll”, insert instead “for the taking of a poll”.

SCHEDULE 6—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 548 (1B)—

Omit the subsection, insert instead:

5 (1B) If a shire council notifies the Electoral Commissioner that not less than 100 electors have petitioned the council for the taking of a poll on the question of whether an urban committee should be established in respect of an urban area, the Electoral Commissioner shall take such a poll of the electors in that part of the shire as if it were a riding.

10 (6) Section 549 (**Election of urban committee**) (as amended by Act No. 159, 1986)—

Section 549 (2)—

Omit the subsection, insert instead:

- 15 (2) Within a reasonable time after a resolution under subsection (1)—
- (a) the Electoral Commissioner and the clerk shall compile for the urban area a roll of electors within the meaning of Division 4 of Part V; and
- (b) the Electoral Commissioner shall conduct an election to determine the members of the urban committee,
- 20 as if the urban area were a riding and the members of the urban committee were being elected as members of a council at an extraordinary election.
-

Local Government (Elections) Amendment 1987

SCHEDULE 7

(Sec. 6)

TRANSITIONAL PROVISIONS

Interpretation

- 5 1. Words and expressions used in this Schedule have the same meaning as they have in the Principal Act and—

“applicable area” means an area the subject of a declaration in force under clause 2;

“appointed day” means the day appointed and notified under section 2 (8).

Applicable areas

- 10 2. (1) The Electoral Commissioner may, by notice in writing served on the council for an area, declare that clause 3 applies in the area for the purposes of—

(a) the ordinary election to be held on 26 September 1987; and

(b) an election or poll that is to be held before the ordinary election in 1991 and is specified in the notice.

- 15 (2) The Electoral Commissioner may, by notice in writing served on the council for an applicable area, revoke the notice served on the council under subclause (1).

Transitional roll

- 20 3. (1) Notwithstanding anything in the Principal Act, as amended by this Act, the residential roll for an applicable area shall be a transitional roll confirmed by the Electoral Commissioner after being prepared and certified by the clerk in accordance with sections 65 and 65A (1)–(5) of the Principal Act as in force immediately before the appointed day.

(2) The transitional roll shall be prepared as if—

(a) the Principal Act had been amended by omitting section 51 (1) (a); and

- 25 (b) the reference in section 65A of the Principal Act to the prescribed day were a reference to the closing date under the Principal Act, as amended by this Act.

(3) In preparing the transitional roll, the clerk shall comply with any directions given by the Electoral Commissioner in relation to matters not otherwise dealt with by this clause.

- 30 (4) This clause does not affect the operation of section 65A of the Principal Act, as amended by this Act.

Local Government (Elections) Amendment 1987

SCHEDULE 7—*continued*TRANSITIONAL PROVISIONS—*continued***Absence from ordinary meetings of council**

4. If, immediately before the appointed day, leave of absence granted for the purposes of section 35 (e) or 37 of the Principal Act had not expired, the leave of absence continues on and after that day, as leave of absence for the purposes of section 35 (e) or 37 of the
- 5 Principal Act, as amended by this Act, until its expiration.

