

TASMANIA

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2013

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**LOCAL GOVERNMENT AMENDMENT
(ELECTIONS) BILL 2013**

*(Brought in by the Minister for Local Government, the
Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Local Government Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Local Government Amendment (Elections) Act 2013*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Local Government Act 1993** is referred to as the Principal Act.

*No. 95 of 1993

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4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *Standards Panel* the following definition:

Tasmanian Electoral Commission means the Tasmanian Electoral Commission established by section 6 of the *Electoral Act 2004*;

5. Section 44 amended (Term of office)

Section 44(1) of the Principal Act is amended by omitting “2 years” and substituting “4 years”.

6. Section 46 amended (Term of office of councillors)

Section 46 of the Principal Act is amended by omitting subsections (2), (2A) and (2B).

7. Section 46A substituted

Section 46A of the Principal Act is repealed and the following section is substituted:

46A. Term of office relating to elections in 2011

The term of office of a councillor elected in the election held in October 2011 in respect of a municipal area is the period concluding on the day on which the certificate of election is issued in respect of the ordinary election due to be held in

October 2013 in respect of the municipal area.

8. Section 254 amended (Entitlement to vote)

Section 254 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) A person is entitled to vote in an election in a municipal area on behalf of a corporate body if a nomination of the person to vote in an election in the municipal area on behalf of the corporate body has effect under section 255.

9. Section 257 substituted

Section 257 of the Principal Act is repealed and the following section is substituted:

257. Electoral enrolment form

- (1) A person who is entitled under section 254(2) to vote in an election in a municipal area may lodge with the general manager an electoral enrolment form in respect of the municipal area.
- (2) An electoral enrolment form lodged under subsection (1) is to be in an approved form.

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10. Part 15, Division 2A inserted

After section 262 of the Principal Act, the following Division is inserted in Part 15:

Division 2A – Compulsory voting

262A. Voting compulsory in certain cases

- (1) A person who is entitled to vote in a municipal area by virtue of section 254(1) must vote in an election in the municipal area.
- (2) A person who is entitled to vote in a municipal area by virtue of section 254(2) or (2A) and who is enrolled on the roll kept under section 258(1) in respect of the municipal area must vote in an election in the municipal area.

262B. Offence of failing to vote where voting compulsory

- (1) An elector who must, in accordance with section 262A, vote in an election in a municipal area must not, without a valid and sufficient reason, fail to vote in the election.

Penalty: 1 penalty unit.

- (2) Without limiting subsection (1), for the purposes of this Act it is a valid and

sufficient reason for failing to vote in an election if the elector –

- (a) was incapable of voting at the election; or
 - (b) was ineligible to vote at the election; or
 - (c) believes it to be part of his or her religious duty to abstain from voting.
- (3) Proceedings for an offence under subsection (1) may be instituted only by the Tasmanian Electoral Commission or the Director of Public Prosecutions.

262C. Notice of failure to vote

- (1) After each election in a municipal area, the Electoral Commissioner is to prepare a list of names and addresses of electors who must, in accordance with section 262A, vote in the election and who have failed to vote in the election.
- (2) Subject to subsection (5), as soon as practicable after an election, the Electoral Commissioner is to send, by post, a notice of failure to vote to each elector whose name appears on a list prepared under subsection (1).
- (3) The notice under subsection (2) is to be in an approved form, specify the date by

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which the notice is to be returned to the Electoral Commissioner (*the return date*) and include a statement to the effect that –

- (a) the elector appears be a person who must vote in an election in the municipal area and has failed to vote in that election; and
- (b) it is an offence for an elector to fail, without a valid and sufficient reason, to vote at an election in a municipal area in which he or she must, in accordance with section 262A, vote; and
- (c) if the elector believes he or she voted in the election he or she may, on or before the return date, provide the Electoral Commissioner with particulars in writing as to why the elector believes he or she voted in the election; and
- (d) if the elector failed to vote in the election and does not wish to be issued with an infringement notice under section 262H, the elector may, on or before the return date –
 - (i) provide the Electoral Commissioner with particulars in writing as to

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any reason why the
elector failed to vote in
the election; or

(ii) pay the Electoral
Commissioner the notice
of failure to vote penalty
in accordance with
section 262G.

- (4) The return date is to be a date not less than 21 days after the notice referred to in subsection (2) is sent.
- (5) If the Electoral Commissioner is satisfied that an elector whose name appears on a list prepared under subsection (1) has a valid and sufficient reason for failing to vote in the election, the Electoral Commissioner is to take no further action under this Division in relation to the failure to vote.

262D. Second notice – no response

- (1) If an elector to whom a notice under section 262C(2) in respect of an election is sent does not, by the return date specified in the notice in accordance with section 262C(3) –
- (a) provide the Electoral
Commissioner with particulars in
writing as to why the elector
believes he or she voted in the
election; or

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- (b) take an action referred to in section 262C(3)(d)(i) or (ii) –

the Electoral Commissioner is, as soon as practicable, to send, by post, a second notice of failure to vote to the elector.

- (2) The second notice is to be in an approved form, specify the date by which the notice is to be returned to the Electoral Commissioner (*the second return date*) and include –

- (a) the statement required under section 262C(3); and

- (b) a statement to the effect that a notice was sent by post to the elector under section 262C(2) and that the elector has not –

- (i) provided the Electoral Commissioner with particulars in writing as to why the elector believes he or she voted in the election to which the notice relates; or

- (ii) taken an action referred to in section 262C(3)(d)(i) or (ii); and

- (c) a statement to the effect that, if the elector does not, by the second return date –

- (i) provide the Electoral Commissioner with particulars in writing as to why the elector believes he or she voted in the election to which the notice relates; or
- (ii) provide the Electoral Commissioner with particulars in writing as to any reason why the elector failed to vote in the election; or
- (iii) pay to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G –

the Electoral Commissioner may issue an infringement notice under section 262H to the elector.

- (3) The second return date is to be a date not less than 14 days after the second notice is sent.

262E. Determination of valid and sufficient reason for failure to vote

- (1) If the Electoral Commissioner receives –

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- (a) before the return date specified in a notice in accordance with section 262C sent to an elector; or
- (b) before the second return date specified in a notice, if any, under section 262D sent to the elector –

particulars in writing as to any reason why the elector failed to vote in the election, the Electoral Commissioner is to determine whether, in his or her opinion, the elector has a valid and sufficient reason for failing to vote in the election.

- (2) If the Electoral Commissioner determines under subsection (1) that an elector has a valid and sufficient reason for failing to vote in the election, the Electoral Commissioner is to take no further action under this Division in relation to the failure to vote.

262F. Determination notice – reason for failure to vote not accepted

- (1) If –
 - (a) an elector has been sent a notice in accordance with section 262C or 262D in relation to an election; and

(b) the Electoral Commissioner receives –

(i) before the return date specified in the notice in accordance with section 262C in respect of an elector; or

(ii) before the second return date specified in a notice, if any, under section 262D sent to the elector –

particulars in writing from the elector as to any reason why the elector failed to vote in the election; and

(c) the Electoral Commissioner determines under section 262E that the reason is not a valid and sufficient reason for failing to vote in the election –

the Electoral Commissioner is to, as soon as practicable, send, by post, a determination notice to the elector.

(2) The determination notice is to be in an approved form, specify a date (*the return date*) and include a statement to the effect that –

(a) the Electoral Commissioner has determined that the reason

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provided by the elector is not a valid and sufficient reason for failing to vote in the election to which the notice relates; and

- (b) it is an offence for a person who must, in accordance with section 262A, vote in an election in a municipal area to fail, without a valid and sufficient reason, to vote at an election in the municipal area; and
 - (c) if the elector does not wish to be issued with an infringement notice under section 262H, he or she may, on or before the return date, pay the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G.
- (3) The return date is to be a date not less than 14 days after the determination notice is sent.

262G. Option to pay penalty

- (1) An elector may pay to the Electoral Commissioner a notice of failure to vote penalty of 0.2 penalty units.
- (2) If an elector fails to vote at an election and pays a notice of failure to vote penalty of 0.2 penalty units –

- (a) any liability of the elector under section 262B(1) in respect of the failure to vote is discharged; and
- (b) proceedings for an offence against that section are not to be instituted against the elector in respect of the failure; and
- (c) an infringement notice in accordance with section 262H is not to be issued against the elector in respect of the failure.

262H. Infringement notice

(1) If –

- (a) an elector has been sent a second notice of failure to vote in accordance with section 262D; and
- (b) the elector has not, by the second return date, within the meaning of that section, specified in the notice –
 - (i) provided the Electoral Commissioner with particulars in writing as to why the elector believes he or she voted in the election to which the notice relates; or

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(ii) provided the Electoral Commissioner with particulars in writing as to any reason why the elector failed to vote in the election; or

(iii) paid to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G –

the Electoral Commissioner may issue an infringement notice to the elector.

(2) If –

(a) an elector has been sent a determination notice under section 262F in respect of an election; and

(b) the elector has not, by the return date specified in the notice, paid to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G –

the Electoral Commissioner may issue an infringement notice to the elector.

(3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005* and include either –

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- (a) a statement that the elector has failed to respond to a second notice sent in accordance with section 262D; or
 - (b) a statement that the elector has failed to pay to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G on or before the return date specified in the determination notice sent to the elector under section 262F.
- (4) A notice of failure to vote sent under section 262C, a second notice of failure to vote sent under section 262D, or a determination notice sent under section 262F, is not an infringement notice for the purposes of the *Monetary Penalties Enforcement Act 2005*.
- (5) For the purposes of an infringement notice, the penalty is 0.4 penalty units.

11. Section 268A amended (Closing day and polling period)

Section 268A(1) of the Principal Act is amended as follows:

- (a) by inserting “in any year” after “for an election”;
- (b) by omitting “any uneven year” and substituting “the year”.

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12. Schedule 5 amended (Office of Councillors)

Clause 3(1) of Schedule 5 to the Principal Act is amended by inserting after paragraph (e) the following paragraphs:

- (ea) is, on the day on which he or she begins to hold that office, a member of the Legislative Council, or the House of Assembly, and is such a member for 30 days continuously during that term of office of the councillor; or
- (eb) becomes, after the day on which he or she begins to hold that office, a member of the Legislative Council, or the House of Assembly, and is such a member for 12 months continuously during that term of office as a councillor; or

13. Repeal of Act

This Act is repealed on the three hundredth and sixty fifth day from the day on which it commences.