

# CLAUSE NOTES

## Local Government Amendment (Elections) Bill 2013

### **Clause 1: Short Title**

Clause 1 is a formal provision specifying the title of the proposed Act.

### **Clause 2: Commencement**

Clause 2 is a formal provision specifying that the Bill will commence on the day it receives Royal Assent.

### **Clause 3: Principal Act**

Clause 3 identifies that the amendments contained in the Bill relate to the *Local Government Act 1993* (the Act).

### **Clause 4: Section 3 amended (Interpretation)**

Clause 4 inserts a definition of "Tasmanian Electoral Commission".

### **Clause 5: Section 44 amended (Term of office)**

Clause 5 changes the terms of office of Mayors and Deputy Mayors from two years to four years.

### **Clause 6: Section 46 amended (Term of office of councillors)**

Clause 6 removes provisions that will no longer be relevant when all councillors face election at the same time.

### **Clause 7: Section 46A substituted**

Clause 7 removes provisions that are no longer relevant and clarifies that the term of office of a councillor elected in October 2011 will end at the next ordinary election.

The clause uses the phrase "the ordinary election due to be held in October 2013". It is intended to postpone this election by one

year by Governor's Order, so the terms affected by this provision will end in October 2014.

**Clause 8: Section 254 amended (Entitlement to vote)**

Clause 8 clarifies that a person who is nominated by a corporate body is entitled to vote as long as that nomination has effect under section 255.

**Clause 9: Section 257 substituted**

Clause 9 inserts a new section 257.

The new section 257(1) clarifies that a person who is entitled to vote by virtue of s254(2) may choose to enrol to vote. This applies to those who are entitled to vote due to being an owner or occupier of land in a municipal area.

Section 257(2) clarifies that if a person chooses to enrol he or she is to do so using the approved form.

**Clause 10: Part 15, Division 2A inserted**

Clause 10 inserts a new Division into the Act.

Division 2A makes voting compulsory in elections held under the Act and sets out an enforcement regime.

**Section 262A** makes voting in local government elections compulsory.

Subsection 262A(1) makes voting in local government elections compulsory for all people who are on the electoral roll for the House of Assembly in respect of the relevant municipal area.

Subsection 262A(2) makes voting in local government elections compulsory for all owners and occupiers of land that have chosen to enrol, and for all corporate nominees whose nominations are in effect.

**Section 262B** creates an offence for failure to vote in a local government election, sets a maximum penalty for that offence, allows for failure to vote in certain circumstances, and provides for proceedings to be instituted in relation to an offence.

Subsection 262B(1) creates an offence for failing to vote in a local government election without a valid and sufficient reason and sets a maximum penalty of 1 penalty unit (currently \$130) for that offence.

Subsection 262B(2) sets out a number of valid and sufficient reasons for failing to vote.

Subsection 262B(3) limits the ability to institute proceedings to the Tasmanian Electoral Commission and the Director of Public Prosecutions.

**Section 262C** provides for the issue of a notice of failure to vote to electors who failed to vote in an election.

Subsection 262C(1) requires the Electoral Commissioner to prepare a list of electors who failed to vote.

Subsection 262C(2) states that a notice of failure to vote is to be sent to those electors.

Subsection 262C(3) sets out certain requirements in relation to the notice of failure to vote.

Subsection 262C(4) allows for at least 21 days for an elector to respond to a notice of failure to vote.

Subsection 262C(5) provides that no further action is to be taken if an elector has a valid and sufficient reason for failing to vote.

**Section 262D** provides for the issue of a second notice of failure to vote to electors who failed to vote in an election.

Subsection 262D(1) states that a second notice of failure to vote is to be sent to an elector who fails to respond accordingly to a notice of failure to vote sent under section 262C.

Subsection 262D(2) sets out certain requirements in relation to the second notice of failure to vote.

Subsection 262D(3) allows for at least 14 days for an elector to respond to a second notice of failure to vote.

**Section 262E** requires the Electoral Commissioner to determine whether a reason given by an elector for a failure to vote is a valid and sufficient reason for failing to vote.

Subsection 262E(1) states that if an elector provides particulars in writing, the Electoral Commissioner is to determine whether the elector had a valid and sufficient reason for failing to vote.

Subsection 262E(2) provides that no further action is to be taken if an elector has a valid and sufficient reason for failing to vote.

**Section 262F** provides for the issue of a determination notice if a reason for failure to vote is not accepted.

Subsection 262F(1) states that the Electoral Commissioner may send a determination notice to an elector who has provided reasons for failing to vote that are not considered to be valid and sufficient.

Subsection 262F(2) sets out requirements for a determination notice.

Subsection 262F(3) allows for at least 14 days for an elector to respond to a determination notice.

**Section 262G** provides the option to pay a penalty.

Subsection 262G(1) provides for a notice of failure to vote penalty of 0.2 penalty units (currently \$26).

Subsection 262G(2) specifies that if an elector fails to vote and pays the notice of failure to vote penalty, no further action is to be taken against that elector.

**Section 262H** provides for the issue of an infringement notice in relation to a failure to vote.

Subsection 262H(1) provides that the Electoral Commissioner may issue an infringement notice if a person has not responded as required to a second notice of failure to vote.

Subsection 262H(2) provides that the Electoral Commissioner may issue an infringement notice if an elector has not responded as required to a determination notice.

Subsection 262H(3) requires an infringement notice to comply with the *Monetary Penalties Enforcement Act 2005* and sets out certain requirements.

Subsection 262H(4) clarifies that certain other notices sent under this Division are not infringement notices for the purposes of the *Monetary Penalties Enforcement Act 2005*.

Subsection 262H(5) sets the penalty payable for an infringement notice at 0.4 penalty units (currently \$52).

#### **Clause 11:Section 268A amended (Closing day and polling period)**

Clause 11 amends section 268A(1) of the Act to clarify that an election closes on the last Tuesday in October of any year in which an election is held.

#### **Clause 12:Schedule 5 amended (Office of Councillors)**

Clause 12 amends Schedule 5 to ban dual representation.

Subclause (ea) means that if a person who is a Member of Parliament is elected to a council office and does not resign from Parliament within 30 days, the council office will be automatically vacated.

Subclause (eb) means that if a person who holds a council office is elected to Parliament, the council office will be automatically vacated 12 months after the person was elected to Parliament.

#### **Clause 13:Repeal of Act**

Clause 13 is a formal provision that is included in all Amendment Bills.