

TASMANIA

ELECTORAL AMENDMENT BILL 2009

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ELECTORAL AMENDMENT BILL 2009

*(Brought in by the Minister for Justice, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

An Act to amend the *Electoral Act 2004*

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 *Electoral Amendment Act 2009*.

2. Commencement

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

3. Principal Act

In this Act, the *Electoral Act 2004** is referred to as the Principal Act.

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4. Section 32 amended (Enrolment)

Section 32 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) Notwithstanding that an arrangement has been made under section 35, subsection (4) and section 33 apply to a person who is entitled to be –
 - (a) enrolled under section 31(2), but is not entitled to be enrolled on the Commonwealth roll because he or she is a prisoner; and
 - (b) enrolled under section 31(1), but is not enrolled on the Commonwealth roll because of the operation of section 102(4) of the Commonwealth Act.

5. Section 70 amended (Polling day)

Section 70(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “14” and substituting “15”;
- (b) by omitting from paragraph (c) “14” and substituting “15”.

6. Section 75 amended (Persons who may be nominated and elected)

Section 75 of the Principal Act is amended as follows:

- (a) by omitting “is”;
- (b) by omitting paragraphs (a) and (b) and substituting the following paragraphs:
 - (a) is qualified under the *Constitution Act 1934* to be elected; and
 - (b) is not ineligible under section 76; and
 - (c) has attained the age of 18 years.

7. Section 78 substituted

Section 78 of the Principal Act is repealed and the following section is substituted:

78. Declaration by candidate

The declaration referred to in section 77(2)(e), (3)(f), (4)(e) or (5)(f) is to be in an approved form and is to contain a statement to the effect that the person making the declaration –

- (a) is qualified under section 14 of the *Constitution Act 1934*; and

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- (b) is not incapable of being elected as a Member under section 32 or 33 of the *Constitution Act 1934*.

8. Section 115 amended (Entitlement to vote – absent from division)

Section 115(1) of the Principal Act is amended by inserting “or mobile polling place” after “place”.

9. Section 130 amended (Postal voting procedure)

Section 130 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) The Commission may approve any procedures that are reasonable and appropriate to assist an elector, who is unable to vote without assistance, to vote under subsection (1).

10. Section 153 amended (Notice of failure to vote)

Section 153 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “of failure to vote” after “notice”;
- (b) by omitting from subsection (2)(d) “have the matter dealt with by a court” and

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substituting “be issued with an infringement notice under section 157A”;

- (c) by inserting in subsection (2)(d)(ii) “notice of failure to vote” after “Commissioner the”.

11. Section 154 amended (Second notice – no response)

Section 154 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “of failure to vote” after “second notice”;
- (b) by omitting from subsection (2)(c) “institute proceedings for an offence under section 181” and substituting “issue an infringement notice under section 157A”.

12. Section 156 amended (Determination notice – reason not accepted)

Section 156(2)(c) of the Principal Act is amended as follows:

- (a) by omitting “have the matter dealt with by a court” and substituting “be issued with an infringement notice under section 157A”;
- (b) by inserting “notice of failure to vote” after “Commissioner the”.

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13. Section 157 substituted

Section 157 of the Principal Act is repealed and the following sections are substituted:

157. Option to pay penalty

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 181 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 157A is not to be issued against the elector in respect of the failure.

157A. Infringement notice

- (1) If an elector has been sent a second notice of failure to vote in accordance with section 154 or a determination notice in accordance with section 156 and –
 - (a) the elector has failed to respond to the notice by the date specified in the notice; and

- (b) the Commissioner is of the opinion that, as a result of the elector failing to respond to the notice by the date specified in the notice, the elector has committed an offence under section 181 –

the Commissioner may issue an infringement notice to the elector.

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

- (a) a statement that the elector has failed to respond to a second notice sent in accordance with section 154; or

- (b) a statement that the elector has failed to respond to a determination notice sent in accordance with section 156.

- (3) A notice of failure to vote issued under section 153, a second notice of failure to vote issued under section 154 or a determination notice issued under section 156 is not an infringement notice for the purposes of the *Monetary Penalties Enforcement Act 2005*.

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157B. Penalty in respect of infringement notice

For the purposes of an infringement notice issued under section 157A, the penalty is 0.4 penalty units.

14. Section 187 amended (Electoral bribery)

Section 187 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1) does not apply to any property or benefit if the value of that property or benefit does not exceed one fee unit.

15. Section 188 amended (Electoral treating)

Section 188 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) Subsection (1) does not apply to –

- (a) food, drink or entertainment if the value of the food, drink or entertainment does not exceed one fee unit; and
- (b) a gift, donation or prize if the value of the gift,

donation or prize does not
exceed one fee unit.

- (b) by inserting in subsection (5) “for the person charged” after “defence”;
- (c) by omitting from subsection (5) “to the club, association or body for similar purposes” and substituting “by that person to the specific club, association or body”.

16. Section 191 substituted

Section 191 of the Principal Act is repealed and the following section is substituted:

191. Campaign material to be authorised

- (1) Subject to sections 192, 193 and 194, a person must not, between the issue of the writ for an election and the close of poll at that election –
 - (a) print, publish, keep on display or distribute, or permit or authorise another person to print, publish, keep on display or distribute, any printed electoral matter without the name and address of the responsible person being printed, in legible characters, at the end of the electoral matter; or
 - (b) publish, or permit or authorise another person to publish, any

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electoral matter on the internet without the name and address of the responsible person appearing at the end of the electoral matter.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) Printed electoral matter is published or kept on display by a person if the publication or display is published or kept on display with that person's consent.

17. Section 195 amended (Advertisements and advertorials)

Section 195 of the Principal Act is amended by inserting “, between the issue of the writ for an election and the close of poll at that election,” after “must”.

18. Schedule 3 amended (Printing and collation of ballot papers)

Schedule 3 to the Principal Act is amended by inserting after clause 1 the following clause:

1A. Printing and collation of batches of ballot papers

- (1) Ballot papers are to be printed in batches with the ballot papers within each batch

having the same order of candidate names.

- (2) There are to be two sets of batches.
- (3) The first set of batches is to be printed in accordance with the provisions of clauses 2, 3, 4 and 5.
- (4) The second set of batches is to be printed so that –
 - (a) there is a batch corresponding to each batch in the first set of batches; and
 - (b) the corresponding batch in the second set of batches has the name of the same candidate in the first position, but the order of the names below that first name is reversed; and

For example, if the order of names on a batch in the first set of batches is ABCDE, the order of names on the corresponding batch in the second set of batches is AEDCB.

- (c) the number of ballot papers in each batch in the second set of batches is, as far as practicable, to be equal to the number of ballot papers in each batch in the first set of batches.

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- (5) All ballot papers are to be collated in accordance with clause 6 and issued in accordance with clause 7.

19. Application of amendments effected by Act

None of the amendments effected by this Act applies to an election in respect of which a writ, for the holding of the election, has been issued before the commencement of this Act.