

TASMANIA

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2022

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LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2022

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
31 May 2022

*(Brought in by the Minister for Local Government, the
Honourable Nicholas Adam Street)*

A BILL FOR

An Act to amend the *Local Government Act 1993*

Be it enacted by Her 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 2022*.

2. Commencement

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

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3. Principal Act

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

4. 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 for certain persons entitled to vote

A person who is entitled to vote in an electoral area by virtue of section 254(1) must vote in an election in the electoral 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 an electoral area must not, without a valid and sufficient reason, fail to vote in the election.

Penalty: Fine not exceeding one penalty unit.

- (2) Without limiting the generality of subsection (1), an elector has a valid and

*No. 95 of 1993

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

- (a) was incapable of voting in the election; or
 - (b) was not entitled to vote in the election; or
 - (c) believes it is part of the elector's religious duty to abstain from voting in an election.
- (3) Proceedings for an offence against 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 an electoral area, the Electoral Commissioner is to prepare a list of names and addresses of electors –
- (a) who must, in accordance with section 262A, vote in the election; and
 - (b) who have failed to vote in the election.
- (2) As soon as practicable after an election, the Electoral Commissioner is to send, by post, a notice to each elector whose name appears on a list prepared under subsection (1).

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- (3) Despite subsection (2), if the Electoral Commissioner is satisfied that an elector, whose name appears on a list prepared under subsection (1) in relation to an election, had a valid and sufficient reason for failing to vote at the election, the Electoral Commissioner is not to send a notice under that subsection to the elector.
- (4) A notice under subsection (2) in relation to an elector –
 - (a) is to be in an approved form; and
 - (b) is to specify a date (the *response date*) that is not less than 21 days after the notice is sent to the elector; and
 - (c) is to include a statement about compulsory voting.
- (5) A statement about compulsory voting included in a notice under subsection (2) sent to an elector is a statement to the effect that –
 - (a) the elector appears to be a person who must vote in an election in an electoral area and who 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 in an election in an electoral area in which the

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elector must, under section 262A, vote; and

- (c) if the elector believes that the elector voted in the election, the elector may, on or before the response date, provide the Electoral Commissioner with particulars in writing as to why the elector believes that the elector voted in the election; and
- (d) if the elector failed to vote in the election, the elector may, on or before the response date –
 - (i) provide the Electoral Commissioner with particulars in writing as to any reason why the elector failed to vote in the election; or
 - (ii) pay to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G.

262D. Second notice if no response from elector

- (1) If an elector who has been sent a notice under section 262C(2) in relation to an election does not, by the response date specified in the notice –

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(a) provide the Electoral Commissioner with particulars in writing as to why the elector believes that the elector voted in the election; or

(b) take an action referred to in section 262C(5)(d) –

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

(2) A second notice in relation to an elector is to –

(a) be in an approved form; and

(b) specify a date (the *second response date*) that is not less than 14 days after the notice is sent to the elector; and

(c) include the statement about compulsory voting referred to in section 262C(5); and

(d) include a relevant statement.

(3) A relevant statement in a second notice in relation to an elector is –

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

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- (i) provided the Electoral Commissioner with particulars in writing as to why the elector believes that the elector voted in the election; or
 - (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; and
- (b) a statement to the effect that, if the elector does not, by the second response date –
- (i) provide the Electoral Commissioner with particulars in writing as to why the elector believes that the elector voted in the election; or
 - (ii) provide the Electoral Commissioner with particulars in writing as to any reason why the

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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 to the elector an infringement notice under section 262H.

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

- (1) If the Electoral Commissioner receives –
 - (a) before the response date specified in a notice sent to an elector under section 262C(2); or
 - (b) before the second response date specified in a notice sent to an elector under section 262D(1) –

particulars in writing as to any reason why the elector failed to vote in the election, the Electoral Commissioner is to determine whether, in the Electoral Commissioner’s opinion, the elector has a valid and sufficient reason for having failed to vote in the election.

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

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

- (1) If –
- (a) an elector has been sent a notice under section 262C(2) or section 262D(1); and
 - (b) the Electoral Commissioner receives –
 - (i) before the response date specified in the notice under section 262C(2); or
 - (ii) before the second response date specified in the notice under section 262D(1) –

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

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that the reason is not a valid and sufficient reason for having failed to vote in the election –

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

- (2) A determination notice in relation to an elector is to –
- (a) be in an approved form; and
 - (b) specify a date (the *determination response date*) that is not less than 14 days after the notice is sent to the elector; and
 - (c) include a relevant statement.
- (3) A relevant statement in a determination notice in relation to an elector is a statement to the effect that –
- (a) the Electoral Commissioner has determined that the reason 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 an elector to fail, without a valid and sufficient reason, to vote in an election in an electoral area in which the elector must, under section 262A, vote; and

- (c) if the elector does not wish to be issued with an infringement notice under section 262H, the elector may, on or before the determination response date, pay to the Electoral Commissioner the notice of failure to vote penalty in accordance with section 262G.

262G. Elector may pay failure to vote 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 in 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 –

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- (a) an elector has been sent, in accordance with section 262D(1), a second notice in relation to an election; and
- (b) the elector has not, by the second response date specified in the notice –
 - (i) provided the Electoral Commissioner with particulars in writing as to why the elector believes that the elector voted in the election; or
 - (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 to the elector an infringement notice.

(2) If –

- (a) an elector has been sent, in accordance with section 262F(1),

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a determination notice in relation to an election; and

- (b) the elector has not, by the determination response 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 to the elector an infringement notice.

- (3) An 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 to the elector in accordance with section 262D(1); or

- (b) a statement that the elector has failed to pay to the Electoral Commissioner, in accordance with section 262G, the notice of failure to vote penalty, on or before the determination response date specified in the determination notice sent to the elector under section 262F(1).

- (4) A notice sent under section 262C(2), a second notice sent under section 262D(1), or a determination

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notice sent under section 262F(1), 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.

5. Section 289 substituted

Section 289 of the Principal Act is repealed and the following section is substituted:

289. Instructions on ballot papers

Instructions on the ballot paper in relation to an election –

- (a) are to include a statement to the effect that the elector is to mark the ballot paper by numbering the boxes, from 1 to the same number of boxes as there are candidates, in the order that the elector chooses; and
- (b) are to include –
- (i) if there are fewer than 5 candidates required to be elected – a statement to the effect that the elector’s vote will not count unless the elector numbers at least the same number of boxes as there

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are candidates required to be elected; or

- (ii) if there are 5 or more candidates required to be elected – a statement to the effect that the elector’s vote will not count unless the elector numbers at least 5 boxes.

6. Section 290 amended (Marking of ballot papers)

Section 290 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) In respect of an election –

(a) for more than one councillor but fewer than 5 councillors –

(i) an elector must mark the ballot paper by placing consecutive numbers, in the boxes next to the names of the candidates, in order of preference from number 1 to the number of candidates required to be elected; and

(ii) an elector may place further consecutive numbers, in any or all of the remaining boxes, next

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to the names of the
remaining candidates; or

(b) for 5 or more councillors –

(i) an elector must mark the ballot paper by placing consecutive numbers, in the boxes next to the names of the candidates, in order of preference from number 1 to 5; and

(ii) an elector may place further consecutive numbers, in any or all of the remaining boxes, next to the names of the remaining candidates.

7. Section 300 amended (Informal ballot papers)

Section 300 of the Principal Act is amended as follows:

(a) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:

(c) subject to subsection (3), the vote is recorded on the ballot paper otherwise than in accordance with section 290; or

(b) by inserting the following subsection after subsection (2):

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(3) If –

- (a) an elector has marked on a ballot paper one or more numbers, representing a preference of the elector, that is, or are, higher than the highest number that the elector must, under section 290, mark on the ballot paper; and
- (b) one or more of the numbers, representing a preference of the voter, that is, or are, higher than the highest number that the elector must, under section 290, mark on the ballot paper, is omitted or duplicated on the ballot paper; and
- (c) the ballot paper would otherwise be formal –

the numbers that are omitted or duplicated, and the numbers that are higher than the first such omission or duplication, are to be disregarded and the ballot paper is to be treated as being a formal ballot paper.

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8. Schedule 6 amended (Ballot Papers)

Schedule 6 to the Principal Act is amended by omitting Part 2 and substituting the following Part:

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PART 2 – COUNCILLOR ELECTIONS

Form

BALLOT PAPER

Tasmania

.....
(Name of council)

.....
(Name of electoral district if applicable)

Election ofcouncillors
(Insert number of candidates required to be elected)

Number the boxes from 1 to in order of your choice
(Insert number of candidates)

Number at least.....boxes to make your vote count
(Insert “5”, or, if there are fewer than 5 candidates required
to be elected, insert the number of candidates required to be elected)

.....
(Name of candidate)

.....
(Name of candidate)

.....
(Name of candidate)

.....
(Name of candidate)

.....
(Name of candidate)

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9. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.