

## CLAUSE NOTES

### Local Government Amendment (Elections) Bill 2022

**Clause 1:** This Act may be cited as the *Local Government Amendment (Elections) Amendment Act 2022*.

**Clause 2:** The provisions commence on the day the Act receives royal assent.

**Clause 3:** In this Act, the *Local Government Act 1993* is referred to as the Principal Act.

**Clause 4:** Division 2A is inserted in Part 15 of the Principal Act to give effect to compulsory voting at local government elections.

Section 262A provides that a person who is entitled to vote at a local government election, by virtue of their enrolment on the House of Assembly electoral roll at an address in the electoral area, must vote in an election in the electoral area.

Section 262B provides that it is an offence for a person who must vote in an election to fail to vote in the election without a valid and sufficient reason. A fine of not more than one penalty unit is specified.

A valid and sufficient reason includes, but is not limited to, being incapable of voting at the election, not being entitled to vote at the election, or a belief that it was a part of an elector's religious duty to abstain from voting in an election.

Proceedings for an offence may only be brought by the Tasmanian Electoral Commission or the Director of Public Prosecutions.

Section 262C provides that, after each election, the Electoral Commissioner is to prepare a list of electors, who were required to vote at the election, but who had failed to vote. The Electoral Commissioner is to then send each listed elector a failure to vote notice, by post, as soon as practicable after the election. The notice is to be in a form approved by the Tasmanian Electoral Commission.

However, if satisfied that an elector had a valid and sufficient reason for their failure to vote, the Electoral Commissioner is not to send such a notice or take subsequent action.

The failure to vote notice is to provide a period for response from the elector not less than 21 days from the date the notice is sent. It is to include a statement about compulsory voting of a meaning that:

The elector appears to be a person who was required to vote at the election and who failed to vote at the election.

It is an offence to fail to vote at an election, in an electoral area in which the elector is enrolled on the House of Assembly roll, without a valid and sufficient reason.

If the elector believes he or she voted in the election, the elector may provide the Electoral Commissioner particulars in writing as to that belief.

If the elector failed to vote in the election, the elector may provide the Electoral Commissioner with the particulars in writing as to any reason the elector failed to vote, or may pay the notice of failure to vote penalty.

Section 262D provides that if the elector does not provide particulars in writing, or pay the penalty, by the specified response date, the Electoral Commissioner is to send a second notice by post as soon as practicable.

The second notice is to specify a period for response from the elector not less than 14 days from the date the notice is sent, and to include the statement about compulsory voting, as included in the first notice. It is to be in a form approved by the Tasmanian Electoral Commission. It is further to include a statement of a meaning that:

The elector was sent a notice by post, and the elector has not provided the Electoral Commissioner with particulars in writing as to why the elector believes the elector voted in the election; or provided particulars of any reason the elector failed to vote; or paid the notice of failure to vote penalty.

If the elector does not, by the date specified, provide the Electoral Commissioner with particulars in writing as to why the elector believes the elector voted in the election; or provide particulars of any reason the elector failed to vote; or pay the notice of failure to vote penalty, the Commissioner may issue the elector with an infringement notice.

Section 262E provides that the Electoral Commissioner is to consider particulars in writing received, before the response dates specified in the first or second notices, from an elector as to why that elector failed to vote at the election. The Electoral Commissioner is to determine whether, in his or her opinion, those reasons were valid and sufficient. If satisfied that the elector has a valid and sufficient reason, the Electoral Commissioner is to take no further action.

Section 262F provides that, where the Electoral Commissioner has considered particulars in writing as to why the elector failed to vote at the election, and determined that the reason provided was not a valid and sufficient reason, the Electoral Commissioner is to send a determination notice, as soon as practicable, by post. The notice is to be in a form approved by the Tasmanian Electoral Commission, provide a response date not less than 14 days from the date the notice is sent, and include a statement to the effect that:

The Electoral Commissioner has determined that the reason provided is not a valid and sufficient reason for the elector's failure to vote at the election.

It is an offence to fail to vote at an election, in an electoral area in which the elector is enrolled on the House of Assembly roll, without a valid and sufficient reason.

If the elector does not wish to be issued with an infringement notice, the elector may pay to the Electoral Commissioner the notice of failure to vote penalty on or before the response date.

Section 262G provides that an elector may pay to the Electoral Commissioner a notice of failure to vote penalty of 0.2 penalty units (\$34.60 in 2021-22). If the elector fails to vote in an election, and pays the notice of failure to vote penalty, any liability against the elector for the failure to vote is discharged; no proceedings for an offence are to be instituted; and an infringement notice for the failure to vote is not to be issued.

Section 262H provides that, if an elector has been sent a second failure to vote notice, and has not, by the specified response date, provided the Electoral Commissioner with particulars in writing as to why the elector believes the elector voted in the election; or provided particulars of any reason the elector failed to vote; or paid the notice of failure to vote penalty, the Commissioner may issue an infringement notice.

The section further provides that, if the Electoral Commissioner has issued a determination notice, and the elector has not paid the notice of failure to vote penalty by the specified date, the Electoral Commissioner may issue an infringement notice.

An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*, and is to include either a statement that the elector failed to respond to the second failure to vote notice, or that the elector did not pay the notice of failure to vote penalty before the date specified in the determination notice. Section 14 of the Monetary Penalties Enforcement Act provides for the form of infringement notices, and includes that a person on whom an infringement notice is served must lodge a notice of election in accordance with that Act within 28 days, if they wish for the offence to be heard and determined in court; and that if no notice of election is lodged in that time, and the infringement notice is not withdrawn, the person is taken to be convicted of the offence.

The section provides that a penalty in an infringement notice is 0.4 penalty units (\$69.20 in 2021-22).

**Clause 5:** Section 289 of the Principal Act is repealed and substituted. The provisions provide that a ballot paper for an election of councillors, mayor, or deputy mayor is to include instructions that:

The elector is to mark the ballot paper by numbering the boxes from 1 to the number of candidates in the order the elector chooses.

The elector's vote will not count unless:

*For an election with fewer than 5 candidates required to be elected:* The elector numbers at least the same number of boxes as there are candidates required to be elected.

*For an election with 5 or more candidates required to be elected:* The elector numbers at least 5 boxes.

**Clause 6:** Section 290 of the Principal Act is amended. The provisions provide that:

*For an election with more than one but fewer than five councillors required to be elected:* The elector must mark the ballot paper by numbering consecutively in the order of preference from 1 to the number of councillors required to be elected, and may place further consecutive numbers in the remaining boxes.

*For an election with 5 or more councillors required to be elected:* The elector must mark the ballot paper by numbering consecutively in the order of preference from 1 to 5, and may place further consecutive numbers in the remaining boxes.

**Clause 7:** Section 300 of the Principal Act is amended to provide that, if a ballot paper has preferences above the minimum number of boxes the elector must have numbered, and one

or more of those subsequent numbers is omitted or duplicated, and the ballot paper would otherwise be formal, the numbers including and above the first such number omitted or duplicated are to be disregarded, and the ballot paper treated as a formal ballot paper.

**Clause 8:** Schedule 6, Part 2 of the Principal Act is substituted to provide a new format for ballot papers for the election of more than one councillor.

**Clause 9:** The Local Government Amendment (Elections) Amendment Act is repealed on the anniversary of its commencement.