

CLAUSE NOTES

Electoral Amendment Bill

Clause 1 Short title

This clause provides that, once passed, the Bill will be cited as the *Electoral Amendment Act 2019*.

Clause 2 Commencement

This clause provides for the amendments to commence on a day or days to be proclaimed.

Clause 3 Principal Act

This clause provides that the Principal Act to which the amendments apply is the *Electoral Act 2004* (the Act).

Clause 4 Section 25A inserted

This clause adds a new provision in Part 2 Division 3 of the Act – section 25A.

The proposed new section 25A allows a returning officer to delegate his or her functions or powers, specified in Division 11 or 12 of Part 5 or set out in procedures approved by the Commission under Division 10 of Part 5 of the Act, to an election official. The delegation is to be made in writing.

Under section 24 of the Act, the Tasmanian Electoral Commission is to appoint a returning officer for each division, with the returning officer responsible for conducting every election in the division for which he or she is appointed.

Under Part 5 Divisions 11 and 12, returning officers have a number of administrative functions in relation to the preliminary scrutiny and counting of votes, including:

- Admitting a declaration vote envelope for further scrutiny and keeping a record of whether each declaration vote envelope is admitted to further scrutiny or not;
- Counting of declaration and postal declaration votes;
- Rechecking and finalisation of all first preference vote counts;

- Distributing of further preference votes;
- Recounting of votes prior to the declaration of the poll;
- Declaring the poll by publicly declaring the name of each candidate elected, endorsing on the writ for the election the name of each candidate elected and forwarding the writ to the Commissioner;
- Forwarding results and election materials to the Commission.

Division 10 of Part 5 allows the Commission to approve procedures in relation to voting in remote areas or outside of Tasmania.

Clause 5 Section 70 amended (Polling day)

This clause amends section 70(1) of the Act to extend the minimum time between nomination day and polling day for House of Assembly elections and Legislative Council by-elections from 15 days to 22 days.

Under the Act, the writ for an election must specify a day on or before which nominations are to be made (nomination day). Nomination day is to be a day which is not less than seven days, nor more than 21 days, after the date on which the writ for the election was issued or such later date as the Governor may fix by proclamation.

Under section 70(1), polling day is to be a day not less than 15 days, nor more than 30 days, after nomination day. This applies to elections in the House of Assembly and by-elections in the Legislative Council. Periodic elections in the Legislative Council are scheduled under the *Constitution Act 1934* to be on the first Saturday in May each year or such other day in May appointed by proclamation by the Governor.

The proposed amendment extends the minimum time between nomination day and polling day from 15 days to 22 days. This will provide a greater period of time for postal vote information to be mailed out to electors and will provide a longer period for other early voting and pre-polling administrative tasks to be conducted.

Clause 6 Section 77 amended (How and when nomination takes place)

This clause amends various paragraphs in section 77 by substituting references to facsimile with “an approved electronic means”. This is a modernisation reflecting current and emerging methods of transferring documents and information. The proposed amendment will allow for nomination forms to be lodged by electronic means. It is envisaged that this will allow for the lodgement of forms by email. However, the

proposed amendment provides flexibility to extend to other means of electronic communication or transfer of documents in the future.

Clause 7 Section 126 amended (Application for postal vote)

This clause amends section 126(1) by omitting paragraph (g) and substituting a new paragraph.

Section 126 sets out the requirements for a postal vote application. Under section 126(1)(g), the application must be lodged with a returning officer or a person approved for the purpose:

- If the postal vote is to be sent within Australia, by 6pm on the second day before polling day; or
- If the postal vote is to be sent outside Australia, by 6pm on the fourth day before polling day.

The current timeframes are extremely tight, particularly given recent changes in postal delivery times. If an application is lodged on the second day before polling day (that is, the final Thursday), it is extremely unlikely that a postal vote will be delivered to an elector outside of Hobart before polling day – even if the priority mail delivery service is used.

To make allowances for longer postal delivery times, the proposed amendment moves the deadline for receipt of all postal vote applications forward to 4pm on the eighth day before polling day regardless of whether the postal vote is to be delivered within or outside of Australia. Under this clause, all postal vote applications will be required to be lodged by 4pm on the eighth day before polling day, that is, the Friday a week before polling day.

Clause 8 Section 127 amended (General postal voters)

This clause amends section 127(3) to allow postal vote information to be made available at the office of the Tasmanian Electoral Commission.

Section 127 provides for the issuing of postal votes to electors registered under the *Commonwealth Electoral Act 1918* (Cth) as general postal voters. Electors registered as general postal voters automatically receive ballot papers in the mail after an election has been announced. An elector can be registered as a general postal voter for various specified reasons including if he or she is unable to travel to a polling place due to illness or infirmity or is registered as an overseas elector.

Under section 127(3), the names and addresses of electors issued with a postal vote as general postal voters are to be made available for public inspection at the office of the returning officer.

The proposed amendment changes this requirement so that the details are to be made available at the office of the Tasmanian Electoral Commission rather than the office of the returning officer. This is for practical and administrative purposes as returning officers are situated in short-term premises which are vacated shortly after the election.

This clause also omits subsection (4) and replaces it with a new subsection to reflect the change made to subsection (3).

Clause 9 Section 129 amended (Issue of replacement postal votes)

This clause amends section 129(1) to include a timeframe for applying for replacement postal vote material.

Section 129(1) of the Act provides that an election official is to issue replacement postal vote material to a person who was issued with postal vote material if satisfied that the person has not received or has spoiled the postal vote material. There is currently no timeframe or deadline for applying for replacement postal vote material.

The proposed new amendment inserts a deadline consistent with the new timeframe to be applied to postal vote applications under section 126. Under the proposed amendment, section 129(1) will require a request for replacement postal vote material to be made to the Commission before 4pm on the eighth day before polling day.

Clause 10 Section 130 amended (Postal voting procedure)

This clause amends section 130(1)(d)(ii) in relation to the return of a postal vote ballot paper to provide that a postal vote must be returned by posting it to the returning officer before the close of poll. This will make section 130(1)(d)(ii) consistent with section 130(1)(d)(i).

Clause 11 Section 153 amended (Notice of failure to vote)

This clause, along with clause 12, makes amendments in relation to the provisions for failure to vote to take account of potential delays in postal delivery times.

Division 14 of Part 5 of the Act sets out a process to be followed by the Commissioner where an elector appears to have failed to vote in an election. Under section 153, the Commissioner is to send by post a notice of failure to vote as soon as practicable after an election. The elector may then, on or before the return date, pay a penalty, or provide the Commissioner with particulars in writing of where and when he or she voted, or of any valid and sufficient reason for the failure to vote.

The proposed amendment to section 153(2) clarifies that a response to a notice of failure to vote can be returned by post. This is important in

relation to the proposed changes to section 154 (refer to clause note for clause 12 below).

Clause 12 Section 154 amended (Second notice – no response)

This clause amends section 154 of the Act in relation to the time allowed for a response to a notice of failure to vote.

Section 154 of the Act provides that if a response to a notice of failure to vote referred to in section 153 is not received by the return date, the Commissioner is to, as soon as practicable, send a second notice of failure to vote to an elector.

The proposed amendment adds a specific timeframe in relation to responses returned by post to make allowances for delays and crossovers in postal deliveries. In the case of a response posted prior to the return date, there is a leeway of 14 days for the response to be received prior to the Commissioner sending the next notice.

Clause 13 Section 198 amended (Campaigning on polling day)

This clause amends section 198 by amending subsection (1) to incorporate in that subsection what was previously in paragraph (a), and by omitting paragraphs (a) and (b) of section 198(1).

Section 198(1)(b) prohibits a person from publishing or causing to be published in a newspaper an advertisement for or on behalf of, or relating in any way to, a candidate or party or a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.

The proposed amendment removes these restrictions on newspaper advertising, reporting and commentary on polling day.

Clause 14 Section 228 amended (How and when to nominate to contest recount)

This clause makes two amendments to section 228(2)(d) of the Act. Section 228 sets out the process to nominate to contest a recount.

The first proposed amendment updates section 228(2)(d) to provide for a nomination to be sent by an approved electronic means rather than by facsimile. This is consistent with the amendments to section 77 proposed by clause 6 (see clause note for clause 6 above).

The second proposed amendment is to extend the timeframe for the return of nomination forms from 10 days to 14 days after the day on which the notice of the vacancy was published. As with other proposed amendments, this will make allowances for longer postal delivery times.

Clause 15 Schedule 2 amended (Meetings of Commission)

This clause inserts new subclauses into clause 6 of Schedule 2 to allow out of session resolutions of the Tasmanian Electoral Commission to be distributed and passed by electronic means.

The proposed new subclause (4) allows the Tasmanian Electoral Commission to determine an electronic method by which a proposed resolution may be distributed to and passed by members and a means (which may also be electronic) of keeping a record of the passing of such a resolution.

The proposed new subclause (5) allows a proposed resolution to be distributed to members in accordance with the electronic method determined under the new subclause (4). It also deems a resolution to have been passed on the day by which all members have, in accordance with the electronic method, passed the resolution. The Tasmanian Electoral Commission will be required to keep a record of the distribution of the resolution and whether it was passed and to provide a copy of that record to each member.

Clause 16 Repeal of Act

This is a standard provision to provide for the automatic repeal of the Amendment Act (the Bill) after the amendments have been incorporated into the Principal Act.