



New South Wales

Local Government Amendment (Elections) Act 2012 No 21

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New South Wales

Local Government Amendment (Elections) Act 2012 No 21

Act No 21, 2012

An Act to amend the *Local Government Act 1993* to make further provision with respect to local government elections for civic office; and for other purposes.
[Assented to 11 April 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Elections) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Local Government Act 1993 No 30

- [1] **Section 269 Who is a “resident” for the purposes of this Part?**
Omit “on the relevant date” from section 269 (1) (a).
- [2] **Section 269 (2)**
Omit the subsection.
- [3] **Section 290 When is an election of a mayor by the councillors to be held?**
Insert at the end of the section:
(3) For the purposes of this section, an election of councillors does not conclude until the declaration of election of all the councillors of the council concerned.
- [4] **Section 298 Residential roll**
Omit section 298 (3).
- [5] **Section 301 Roll of electors**
Omit “and confirmed under section 298” from section 301 (1).
Insert instead “by the Electoral Commissioner under section 298”.
- [6] **Section 301 (2)**
Omit the subsection. Insert instead:
(2) For each election, an authorised copy of the roll of electors is to be compiled in accordance with this Division.
- [7] **Section 301 (3)**
Insert “the authorised copy of” before “the roll” wherever occurring.
- [8] **Section 301 (4)**
Insert after section 301 (3):
(4) An *authorised copy of the roll* referred to in subsections (2) and (3) is a printed or electronic copy of the roll of the electors for the area or ward concerned as at the closing date for the election.

[9] Section 303 Making of claims for inclusion in the roll

Omit “the roll of electors is” from section 303 (5).

Insert instead “the non-residential roll and the roll of occupiers and ratepaying lessees are”.

[10] Section 305

Omit the section. Insert instead:

305 Provisional voting

The regulations may prescribe circumstances in which a person is to be permitted to vote at an election under this Act where:

- (a) the person is not enrolled for the area or ward concerned, but claims to be entitled to be enrolled on the residential roll for that area, or
- (b) the person claims that the person’s name has been omitted from the roll for the area (for any reason), but claims he or she is entitled to vote at an election, or
- (c) there is other uncertainty as to a person’s entitlement to vote at an election (for example, the person claims the person’s name has been incorrectly marked off a roll at an election).

[11] Section 313

Omit the section. Insert instead:

313 Check on double-voting and failure to vote

- (1) After the close of the poll at a contested election, the copies of the roll of electors used at the election are to be checked by the Electoral Commissioner in accordance with this section to determine:
 - (a) which electors’ names (if any) have been marked more than once, and
 - (b) which electors (if any) appear to have failed to vote.
- (2) In the case of an election administered by a general manager, the general manager must (within the period specified by the Electoral Commissioner) forward the copies of the roll of electors used at that election to the Electoral Commissioner for checking.
- (3) The Electoral Commissioner is, for each contested election, to prepare a list of the names of the persons on the residential roll who, although entitled to vote at the election, appear to have

failed to vote and do not appear to have a sufficient reason for the failure.

[12] Section 316 Position on ballot-paper

Omit “determined by a ballot conducted as prescribed by the regulations”.

Insert instead “determined by a method of random selection (including by electronic means) in accordance with the regulations”.

[13] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

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[14] Dictionary

Omit the definition of *closing date*. Insert instead:

closing date, in relation to an election or poll, means the date prescribed by the regulations for the closing of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees for the election or poll.

[15] Dictionary

Omit the definition of *marked roll*.

Schedule 2 Amendment of Local Government (General) Regulation 2005

[1] Clause 275 Definitions

Omit “or *roll closing date*” from the definition of *closing date* in clause 275 (1).

[2] Clause 275 (1)

Insert in alphabetical order:

authorised copy of a roll, in relation to an election, means an authorised copy of a roll referred to in section 301 (4) of the Act.

driver licence means a driver licence issued under the *Road Transport (Driver Licensing) Act 1998*.

Photo Card means a New South Wales Photo Card issued by Roads and Maritime Services under the *Photo Card Act 2005*.

provisional vote means a vote under Subdivision 1A of Division 7.

[3] Clause 275 (1)

Omit the definitions of *section 305 vote* and *tendered vote*.

[4] Clauses 277A (2), 280 (3) and (5) and 315 (3), paragraph (a) of the definition of “regulated period” in clause 356A (1) and clause 4 (a1) of Schedule 10

Omit “roll closing date” wherever occurring. Insert instead “closing date”.

[5] Clause 289 Nomination proposals

Insert “(at the closing date for the election)” after “enrolled” in clause 289 (1) (a).

[6] Clause 302

Omit the clause. Insert instead:

302 Order of ungrouped candidates and groups on ballot-papers

If after noon on the nomination day there are two or more candidates, not included in a group, for the election or two or more groups of candidates for the election, the returning officer must immediately determine the order of those candidates’ names or those groups’ names on the ballot-papers by:

- (a) a ballot in accordance with clause 303 or 304 (as appropriate), or

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- (b) another method of random selection (including by electronic means) approved by the relevant election manager.

[7] Clause 303 Ballot for determining the order of ungrouped candidates on ballot-papers

Omit “A ballot referred to in clause 302 (a)” from clause 303 (1).

Insert instead “A ballot to determine the order in which ungrouped candidates’ names are to appear on the ballot-papers, as referred to in clause 302,”.

[8] Clause 304 Ballot for determining the order of groups of candidates on ballot-papers

Omit “A ballot referred to in clause 302 (b)” from clause 304 (1).

Insert instead “A ballot to determine the order in which the names of groups of candidates are to appear on the ballot-papers, as referred to in clause 302,”.

[9] Clause 305 Form of ballot-papers

Omit “302 (a)” from clause 305 (3). Insert instead “302”.

[10] Clause 305 (4) (b) and (d)

Omit “304 (1) (b)” and “304 (1) (a)”, respectively. Insert instead “302”.

[11] Part 11, Division 7, Subdivision 1A

Insert after clause 320:

Subdivision 1A Provisional voting

320A Person already marked off roll

- (1) An elector, at a polling place in an area at any election, who is recorded (on the authorised copy of the roll used at the polling place) as having received a ballot-paper, but who claims not to have received a ballot-paper, is to be permitted to vote at the election.
- (2) The elector is to be permitted to vote if the elector:
 - (a) answers the questions set out in clause 339 (4) in the manner specified in clause 339 (5), and
 - (b) makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

320B Person omitted from roll

A person, at a polling place in an area at any election:

- (a) who was enrolled for the area, and
 - (b) whose name was omitted from the roll of electors for the area (for any reason), and
 - (c) who claims to be entitled to vote at the election,
- is to be permitted to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

320C Person enrolling for first time, re-enrolling or transferring enrolment

- (1) A person, at a polling place in an area at any election, who is not enrolled for the area (whether the person is enrolled for another area or is not enrolled for any area), but who claims to be entitled to enrol on the residential roll for the area, is to be permitted to vote at the election.
- (2) The person must:
 - (a) complete a claim for enrolment in the form approved by the Electoral Commissioner and submit it to an election official at the polling place, and
 - (b) provide to that election official as proof of identity a driver licence or a Photo Card, and
 - (c) make a declaration in the form approved by the Electoral Commissioner before that election official.
- (3) The person is to be permitted to vote at the election if the election official is satisfied that:
 - (a) the claim for enrolment has been properly completed, and
 - (b) the person is who the person claims to be, and
 - (c) the proof of identity provided shows that the person's residence is the same as the place specified in the claim for enrolment as the person's residence.

Note. If a person cannot produce a driver licence or a Photo Card, the person will not be permitted to vote under this clause.

320D Person enrolled after closing date

A person, at a polling place in an area at any election, who is enrolled for the area, but whose name does not appear on the authorised copy of the roll at the polling place, is to be permitted

to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official.

Note. The Electoral Commissioner may enrol a person at any time, including after the authorised copy of the roll for an election has been printed.

320E Procedure for provisional voting

- (1) A declaration required to be made under this Subdivision:
 - (a) is to be written or printed on an envelope, and
 - (b) may include a claim for enrolment or transfer of enrolment.
- (2) A person voting under this Subdivision, after making the required declaration and receiving a ballot-paper, is to mark the ballot-paper and fold it to conceal the vote marked on it and return it folded to the polling place manager.
- (3) The polling place manager on receiving the ballot-paper must, in the presence of the person and of any scrutineers present, and without unfolding the ballot-paper, enclose it in the envelope, seal the envelope and put it in the ballot-box.
- (4) The polling place managers are each to make a list of provisional votes. Each polling place manager is to note on the list:
 - (a) the giving of a ballot-paper at the polling place where the polling place manager is in charge to an elector who has made a declaration under this Subdivision, and
 - (b) the number of such votes delivered or sent to the returning officer from that polling place (or, if the polling place manager is the returning officer, retained by him or her).

[12] Clause 339 Questions put to elector

Omit “section 305 of the Act” from clause 339 (7) (b).

Insert instead “Subdivision 1A of Division 7”.

[13] Clause 340 Voting by elector with confidential address

Omit “section 305 votes” from clause 340 (5).

Insert instead “provisional votes”.

[14] Clauses 343 and 344

Omit the clauses.

[15] Clause 348 Initial scrutiny of ballot-papers and counting of votes

Omit “, section 305 votes and tendered votes” from clause 348 (1) (d).

Insert instead “and provisional votes”.

[16] Clause 349 Sending ballot-papers to returning officer

Omit “, the envelopes containing section 305 votes and the envelopes containing tendered votes” from clause 349 (1) (b) (i).

Insert instead “and the envelopes containing provisional votes”.

[17] Clause 349 (1) (b) (v)

Omit “section 305 votes and the list of tendered votes”.

Insert instead “provisional votes”.

[18] Clause 350 Checking of ballot-papers in sealed envelopes

Omit clause 350 (4)–(6). Insert instead:

(4) Provisional votes

The returning officer must:

- (a) on election day (at any time after 8 am) produce all the sealed envelopes containing provisional votes cast before election day, and
- (b) on the close of poll produce all the sealed envelopes containing provisional votes cast on election day, and deal with them in accordance with subclause (5).

(5) The returning officer is to do the following or have the following done in relation to the envelopes referred to in subclause (4):

- (a) count the sealed ballot-paper envelopes unopened and record the count,
- (b) examine the declaration on each envelope before it is opened and, if necessary, make inquiries to determine whether the person who signed the declaration was on the day of polling:
 - (i) in relation to a declaration made under clause 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or
 - (ii) in any other case—entitled to vote,

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- (c) if the declaration is in order and the returning officer is satisfied that the voter was, on the day of polling:
 - (i) in relation to a declaration made under clause 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or
 - (ii) in any other case—entitled to vote,
the returning officer is to open the envelope containing the ballot-paper, extract the ballot-paper and, without damaging the writing on the envelope, place the ballot-paper still folded in a securely fastened ballot-box for further scrutiny,
 - (d) if the declaration is not in order, or it appears to the returning officer that the elector is not entitled to vote or was, on the day of polling, not entitled to be enrolled on the residential roll for the area or ward concerned, the returning officer is to leave the envelope containing the ballot-paper unopened,
 - (e) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (c) and (d), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

[19] Clause 351 Finalising the count

Omit “tendered votes and section 305 votes” from clause 351 (1) (a).

Insert instead “provisional votes”.

[20] Clause 356OA

Insert before clause 356P:

356OA Definition

In this Subdivision, *electoral material registrar* means:

- (a) in relation to an election administered by a general manager of a council—the relevant returning officer, or
- (b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

[21] Clause 356P Application for registration of electoral material

Omit “the election manager (in a form approved by the election manager)” wherever occurring in clause 356P (1) and (7).

Insert instead “the electoral material registrar”.

- [22] Clauses 356P (6) and (8), 356Q (1)–(3) and (5), 356R (7) (b) and 356S (1)**
Omit “election manager” wherever occurring.
Insert instead “electoral material registrar”.
- [23] Clause 356P (9)**
Omit the subclause. Insert instead:
- (9) Manner and form of application**
An application under this clause:
- (a) is to be in the form approved by:
 - (i) in relation to an election administered by a general manager of a council—the Director-General, or
 - (ii) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner, and
 - (b) is to be signed by the applicant, and
 - (c) may be delivered or sent (by post or otherwise) or may be transmitted by facsimile or email.
- [24] Clause 356R Registration of electoral material**
Omit “(in a form approved by the election manager)” from clause 356R (1).
- [25] Clause 356R (2A)**
Insert after clause 356R (2):
- (2A) Form of certificate**
A certificate of registration issued under this clause is to be in the form approved by:
- (a) in relation to an election administered by a general manager of a council—the Director-General, or
 - (b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.
- [26] Clause 356R (4)**
Omit “the Electoral Commissioner or by a person authorised by the election manager”.
Insert instead “the electoral material registrar”.
- [27] Clause 390 Check on double-voting and failure to vote**
Omit the clause.

[28] Clause 391 Security of election materials

Insert “(other than any provisional vote envelopes required to be sent to the Electoral Commissioner under clause 391A)” after “other papers” in clause 391 (1) (c).

[29] Clause 391A

Insert after clause 391:

391A Provisional voting envelopes

- (1) This clause applies to any envelope used for a provisional vote at an election administered by a general manager of a council.
- (2) The returning officer, after the election has been declared, is to:
 - (a) make a copy of the declarations on the envelopes (whether by photographing, photocopying or scanning the declaration), and
 - (b) send the original envelopes to the Electoral Commissioner.
- (3) The Electoral Commissioner may use the information contained in any envelope sent to the Electoral Commissioner under this clause, and any envelope in the possession of a returning officer for an election administered by the Electoral Commissioner, for the purposes of updating and maintaining electoral rolls (whether under the Act or any other law).
- (4) The Electoral Commissioner must ensure that any envelopes sent to the Electoral Commissioner under this clause are kept securely until the latest of the following:
 - (a) the period of 6 months after the relevant day of polling has expired,
 - (b) if proceedings in a court or tribunal relating to the election concerned have been commenced within that period—the proceedings have been finally determined.
- (5) On the expiry of the Electoral Commissioner’s obligation under subclause (4), the Electoral Commissioner may cause the envelopes to be destroyed.

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Schedule 2 Amendment of Local Government (General) Regulation 2005

[30] Clause 392A Section 305 votes—prescribed form of declaration

Omit the clause.

[31] Schedule 11 Forms

Omit Form 11.

[Agreement in principle speech made in Legislative Assembly on 2 April 2012
Second reading speech made in Legislative Council on 3 April 2012]

BY AUTHORITY