

# Electoral Amendment Bill 2016

## Explanatory Memorandum

### GENERAL INFORMATION

This Bill will amend the *Electoral Act 1907* (the Act). It contains provisions that will improve and modernise electoral administration processes for electors, electors with disabilities, political parties and candidates.

### CLAUSE 1 – SHORT TITLE

The short title of this amendment is the *Electoral Amendment Bill 2016*.

### CLAUSE 2 – COMMENCEMENT

Part 1 comes into operation on the day this Bill receives Royal Assent. All other amendments take effect on a day fixed by proclamation. This provides the Electoral Commission with time to put in place the administrative arrangements needed to effect these amendments.

### CLAUSE 3 – ACT AMENDMENT

This Bill amends the Act.

### CLAUSE 4 – DEFINITION OF TERMS

Section 4 is amended to insert new definitions for “Commission website”, “official agent” and “vote record”.

### CLAUSE 5 – OFFICIAL AGENTS

A new section 4AA is inserted into the Act. Currently, only candidates can appoint scrutineers. This new section provides options for official agents to appoint scrutineers. Official agents can be party secretaries or authorised persons appointed by groups or candidates. Allowing official agents to appoint scrutineers will ease the administrative burden on candidates and facilitate more streamlined services at count centres.

### CLAUSES 6, 7, 8 AND 9 – DIRECT ENROLMENT

These amendments will ensure that when electors are directly enrolled by the Commonwealth they are also directly enrolled by the State. Currently, to be on the State electoral roll, the elector is required to fill out an enrolment form.

Since 2012, the Australian Electoral Commission (AEC), has been directly enrolling electors or updating electors’ details on the electoral roll once it receives information from other government agencies, such as the ATO or Centrelink. Once the AEC receive this information from government agencies they communicate with the elector, informing them that they either have been added to the electoral roll or their enrolment details have been updated. The elector does not need to reply to this communication if the details are correct. If the details are incorrect the elector has 28 days to respond to the AEC.

The current difference in enrolment requirements between the Commonwealth and Western Australia mean there are 170,000 electors in Western Australia who have been directly enrolled by the AEC for Federal elections but are not enrolled for State purposes. This gap is expected to rise to over 220,000 electors by the State election.

This situation where electors are directly enrolled by the AEC, but are required to submit a paper-based form for State enrolment frustrates and confuses electors. Unless the Act is amended thousands of electors will be turned away at polling booths at the State election because their latest details are not on the State roll. Therefore, the Act will be amended so that when an elector is directly enrolled by the AEC they will also be directly enrolled by the State. Retrospective provisions will ensure that those 170,000 electors who currently are not on the State roll will automatically have their details updated on the State roll once this legislation is passed by the Parliament.

### **CLAUSES 10 AND 11 – EARLY VOTING**

Clause 10 amends section 90 of the Act so that electors no longer have to provide a reason for voting early. Clause 11 inserts a new section 91.

At recent elections across Australia there have been significant increases in the levels of early voting. For example, at the last State election over 150,000 electors voted early. This was an increase of over 37% since the 2008 State election. Further, at the Vasse by-election, early voting trebled compared to the 2013 State election.

Currently, the Act requires that electors must provide reasons for voting early and meet one of a number of eligibility criteria. Early voting declarations may be made orally or in writing. The operational reality is that polling officials cannot test the veracity of such declarations. Further, the increase in early voting reflects the reality of modern lifestyles and work patterns. Therefore, the Act will be amended so electors no longer have to provide a reason to cast an early vote.

For clarity the new section 91, ensures that within 7 days of the election, polling officials can still visit electors who are seriously ill or are approaching maternity.

### **CLAUSE 12 – TECHNOLOGY ASSISTED VOTING**

Clause 12 inserts a new Subdivision 2 into Part IV Division 3 (new sections 99C-99O). These new sections will authorise voting with the use of technology for electors with a disability. For the next State election the Electoral Commission will provide internet voting for such electors.

Many people with a disability in Western Australia do not have the opportunity to cast a vote in secret because they need to seek the help of another person to fill out their ballot paper. These amendments will allow electors with a disability to vote in secret and gain new levels of independence and empowerment as participants in the next State election.

Internet voting has now been used successfully in State elections in New South Wales and Victoria. As a result there is an expectation by electors with a disability that this service will be available in Western Australia.

The operation of internet voting requires the operation of complex information technology platforms and accordingly the proposed legislation will provide the Electoral Commissioner with a degree of flexibility in determining approved procedures. The approved procedures must be published on the Commission's website and will provide:

- a definition of an eligible elector. This is an elector who cannot vote without assistance because the elector is illiterate, sight impaired or otherwise incapacitated;
- for an elector with a disability to register to vote via the internet;
- for the making of a record for each elector who has voted via the internet;
- for the secrecy of electors' votes;
- for the authentication of each electors' vote by that elector;
- that any vote cast in accordance with the approved procedures be securely transmitted to the Electoral Commission and securely stored;
- for the scrutiny and counting of votes cast.

The proposed Subdivision also requires:

- independent auditing of internet voting;
- that scrutineers may observe internet voting in accordance with the approved procedures;
- that votes cast by eligible electors are counted as early votes;
- that it is an offence for any person who becomes aware of how an eligible elector votes and discloses that information;
- that it is an offence if a person makes a false or misleading statement in connection with registering or casting an internet vote;
- that it is an offence for a person to destroy or interfere with any computer program, data file or electronic device in connection with internet voting;
- that the Electoral Commissioner can make a determination not to proceed with internet voting.

### **CLAUSE 13 – MOBILE POLLING**

Official agents for candidates will be able to appoint scrutineers for candidates when voting occurs in hospitals and other special institutions.

**CLAUSES 14 – PENS IN POLLING BOOTHS**

Clause 14 allows the Electoral Commission to provide pens as well as pencils in polling booths. In the recent New South Wales State election pens replaced pencils and there have been various reports from Commonwealth parliamentary committees recommending the use of pens. Pens will be the operational norm in polling booths.

**CLAUSE 15 – SCRUTINEERS APPOINTED BY OFFICIAL AGENTS**

Official agents for candidates will be able to appoint scrutineers at polling places.

**CLAUSE 16 – QUESTIONS PUT TO ELECTORS**

Currently, a polling official asks an elector if they have cast an early vote for the election. Sometimes this has created confusion amongst electors about early voting procedures. The change to “Have you already cast a vote for the election?” will reduce this confusion.

**CLAUSE 17 – TECHNOLOGY ASSISTED VOTER DECLARATION**

Currently, an elector who has their name objected to on the electoral roll can still make a provisional vote providing they make a declaration. The approved procedures relating to internet voting will ensure that an elector who falls within that category will be taken to have complied with the declaration provisions in section 122.

**CLAUSES 18 – INTERNET VOTES COUNTED AS EARLY VOTES**

Clause 18 amends section 134 so that internet votes are counted as early votes.

**CLAUSE 19 – OFFICIAL AGENTS SCRUTINEERS AT COUNT CENTRES**

Official agents for candidates will be able to appoint scrutineers at count centres.

**CLAUSE 20 – INTERNET VOTE COUNTING**

Clause 20 amends the Act so that internet vote records are itemised as a form of early voting and included in the count for Legislative Assembly elections.

**CLAUSES 21 AND 22 – TIED VOTES AND RECOUNTS**

The words ballot paper are amended. As internet votes are not traditional ballot papers, this amendment ensures that internet votes are included in tied Legislative Assembly elections. This also ensures that internet votes are included in any Legislative Assembly recount.

**CLAUSE 23 – OFFICIAL AGENTS FOR GROUPS**

Official agents for groups and candidates will be able to appoint scrutineers for Legislative Council elections.

**CLAUSE 24 – DIGITAL AND ELECTRONIC DOCUMENTATION**

A new section 149B is inserted to ensure all digital and electronic forms are returned to the Electoral Commission after the election.

**CLAUSE 25 – CONSENTING CANDIDATE'S OFFICIAL AGENT**

Section 156D is amended so that official agents for consenting candidates will be able to appoint scrutineers for a Legislative Council vacancy occurring during the term of a Parliament. Further, this section is amended so internet votes are included in the recount for a Legislative Council vacancy.

**CLAUSE 26 – SUMMARY CONVICTIONS**

Section 204 is amended so that a crime punishable by imprisonment can be considered by a Magistrates Court as a summary offence.

**CLAUSE 27– INTERNET VOTES INCLUDED IN COUNCIL COUNT**

Schedule 1 is amended to ensure all internet votes are included in Legislative Council elections.

**CLAUSE 28 – CONSEQUENTIAL AMENDMENTS**

Clause 28 is a consequential amendment to various headings throughout the Act.