



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 4: ELECTIONS

The *Constitution Act 1902* provides for a Legislative Council consisting of 42 members elected for two terms of the Legislative Assembly (eight years) and a Legislative Assembly consisting of 93 members elected for a term of four years, subject to earlier dissolution in special circumstances. The Council is constituted in such a way that the term of one-half of its members (21) expires at the end of each term of the Assembly. An election for 21 Council members, known as a periodic Council election, is held in conjunction with the general election for the members of the Assembly every four years.

Issue of writs

Periodic Council elections, and general elections for members of the Assembly, are held according to writs issued by the Governor. The writs must be issued within four clear days after either the term of the Assembly has expired, or a proclamation dissolving the Assembly has been published in the Government Gazette. The writ for a periodic Council election must not be issued until after the issue of the writs for the general election.

The writ for a periodic Council election specifies the day for the taking of the poll, which must be the same as the day of the general election for the Assembly, the date by which nominations must be made, and the date by which the writ must be returned to the Governor. The date by which the writ must be returned is a day not later than the 60th clear day after the writ was issued, or such later day as the Governor may direct. The day for the taking of the poll is either:

- the fourth Saturday in March next following the expiry of the Assembly; or
- if the Assembly is dissolved, a day not later than the 40th day after the issue of the writs.

Political party registration

The *Parliamentary Electorates and Elections Act 1912* provides for the registration of political parties in New South Wales. Registration entitles a party to funding under the *Electoral Funding Act 1981*, the right to nominate candidates for elections, endorsement of the party name on the ballot paper and the right to distribute registered electoral advertising material.

To be eligible for registration a party must have at least 750 members, and a written constitution setting out its platform or objectives. The term 'party' is defined in the Act as:

[A] body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Assembly or the Council of a candidate or candidates endorsed by it or by a body or organisation of which it forms part.

Registered parties are required to lodge annual returns as to their continued eligibility for registration. If this requirement is not observed, the party's registration may be cancelled.

Loss of a party's registration has no effect on the eligibility of a member of a party to become, or continue to be, a member of the House.

Electoral rolls

The electoral rolls contain the list of electors entitled to vote in an election for the Assembly and at a periodic Council election. A separate roll is kept for each electoral district for the Assembly.

A person is eligible for enrolment if the person is:

- 18 years of age or older; and
- an Australian citizen, or a British subject who was on an Australian electoral roll on 25 January 1984.

Enrolment is compulsory for all eligible persons.

Polling

Polling takes place between the hours of 8.00 am and 6.00 pm on election day. The returning officer for each district arranges for the provision of booths or rooms for the conduct of the election at each polling place and for delivery of the ballot papers and electoral rolls. Other facilities such as ballot boxes and writing implements for the booths are arranged by polling place managers.

Voting

Voting is compulsory for all eligible voters. The penalty for failing to vote without sufficient reason is a maximum of \$25, or 0.5 penalty units if the matter is dealt with by a court.

The ballot paper

The ballot paper for the Council has two parts: an upper part and a lower part, often referred to as 'above the line' and 'below the line'. Voters must vote either above or below the line.

The section of the ballot paper 'above the line' consists of a series of 'group voting squares', each representing a particular group or party. To be entitled to a group voting square, a group must have at least 15 candidates. The individual candidates to which each group voting square relates are listed underneath the square in the section of the ballot paper 'below the line'.

Currently, to vote 'above the line', a voter must write '1' in one of the group voting squares. If this is done, a vote is taken to have been recorded for all the individual candidates listed on the ballot paper underneath the group voting square, below the line, in the order in which they are listed. A voter may choose to record additional preferences for other parties or groups in the order of their choice, by consecutively numbering other group voting squares above the line. This will record a vote for all the candidates listed underneath each of the group voting squares in which the voter has indicated a preference.

The section of the ballot paper 'below the line' lists all the candidates individually in their respective groups.

To vote 'below the line', the numbers '1' to '15' must be written in the squares opposite the names of 15 candidates in the order of the voter's choice. Votes may also be recorded for as many additional candidates as the voter wishes, by placing consecutive numbers beginning with '16' next to the remaining candidates.

Counting the votes

Members of the Council have been elected according to a system of proportional representation using optional preferential voting. For the purposes of the election, the whole State of New South Wales is a single electorate. Under this system, the quota required for election to the Council is around 4.55 per cent of the total votes cast State-wide.

Declaration of the poll

As soon as practicable after the count has been completed, the Electoral Commissioner must announce the result of the election by notice, which must be published in a newspaper circulating in the State.

Return of writs

After the declaration of the result of a periodic Council election, the Electoral Commissioner endorses on the writ the names of the candidates elected, and returns the writ to the Governor by the date specified in the writ. The date for return of the writ must be not later than the 60th clear day after the date of issue, or such later day as the Governor may direct by proclamation in the Government Gazette. The writ returned to the Governor is then transmitted to the Clerk of the House for announcement of the names of the candidates elected when the House is first convened following the election.

The *Parliamentary Electorates and Elections Act 1912* requires that the Council and the Assembly meet not later than the seventh clear day after the date of the return of the writs.
