

The object of this Bill is to amend the Parliamentary Electorates and Elections Act 1912 (the Principal Act) in connection with electoral administration, redistribution of electoral districts, the conduct of State elections, and associated matters, and in particular to make the following amendments:

(a) with respect to electoral administration:

(i) to replace the State Electoral Office with a New South Wales Electoral Commission, which is to be administered by the Electoral Commissioner,

(ii) to revise provisions for the appointment, tenure and functions of the Electoral Commissioner,

(iii) to revise provisions for the appointment and functions of returning officers,

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 2

(iv) to provide for the appointment of polling place managers and election assistants,

(v) to abolish the position of Principal Returning Officer,

(vi) to transfer the responsibility for carrying out certain duties from returning officers to the Electoral Commissioner,

(vii) to replace references to deputy returning officers, poll clerks and similar officials with references to the new categories of election officials,

(b) with respect to electoral redistributions:

(i) to make adjustments to the procedures to be followed by the Electoral Districts Commissioners when preparing a redistribution of electoral districts,

(ii) to provide for the boundaries of electoral districts to be described by reference to maps in digital or electronic form,

(c) with respect to overseas electors—to extend to 6 years the period for which electors may remain enrolled and vote after leaving Australia, with similar arrangements for spouses and children,

(d) with respect to the joint roll arrangements with the Commonwealth:

(i) to ensure that privacy legislation does not affect the furnishing of information to the Australian Electoral Commission under those arrangements,

(ii) to provide for local councils to contribute one-half of the amounts payable by the State to the Commonwealth under those arrangements,

(e) with respect to the electoral rolls:

(i) to revise provisions for the inspection of the rolls and the provision of enrolment information,

(ii) to revise requirements for State agencies to provide information to the Electoral Commissioner for purposes connected with the rolls,

(iii) to provide that an elector's date of birth will be included on the roll,

(iv) to provide that particulars of an elector's occupation will form part of enrolment information but will not appear on the copies of the rolls used at elections,

(v) to provide that a person is not entitled to be enrolled or to remain enrolled if the person, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting, but to require production of a medical certificate before a person's name can be removed from the roll on that ground,

(f) with respect to elections for the Legislative Assembly:

(i) to provide that the Electoral Commissioner is responsible for the conduct of elections, and that the returning officer for a district is

responsible to the Electoral Commissioner for the administration of the election within the district,

(ii) to provide that the writs are to be directed to and returnable by the Electoral Commissioner,

(iii) to provide that it is the responsibility of the Electoral Commissioner to give public notice of a writ, the nomination day, polling day and return day, and the places at which nominations will be received,

(iv) to enable the registered officer of a party to deliver nomination papers to the Electoral Commissioner up to noon on the day before the day by which nominations must be made (without affecting the right to deliver nomination papers to the returning officer up to noon on the day by which nominations must be made),

(v) to require details of nominations to be placed on the Commission's internet website as soon as practicable after they are received,

(vi) to provide for the return of a candidate's deposit to the registered officer of the party to which the candidate belongs,

(vii) to provide that it is the responsibility of the Electoral Commissioner to give public notice of a declaration by the returning officer for a district that a sole candidate is elected or of an announcement by the returning officer that a poll will be held because there are two or more candidates,

(viii) to require the suburb, town or other locality of the place of residence of each nominated candidate to be included in the announcement and public notice of a poll,

(g) with respect to elections for the Legislative Council:

(i) to require details of nominations to be placed on the Commission's internet website as soon as practicable after they are received,

(ii) to provide for the return of a candidate's deposit to the registered officer of the party to which the candidate belongs or to the nominated person in the case of a group to which the candidate belongs,

(h) with respect to elections generally:

(i) to remove the provision declaring polling day to be a public holiday,

(ii) to enable licensed premises to be used as polling places, subject to certain restrictions,

(iii) to require assignment of a polling place manager and election assistants to each polling place,

(iv) to require ballot papers to be initialled on the front instead of being signed or initialled on the back,

(v) to require electors seeking to vote to state their date of birth, for the purpose of checking entitlement to vote,

(vi) to provide that the Electoral Commissioner is responsible for preparing a list of electors who appear not to have voted at an election,

(vii) to require ballot papers and other material relating to an election to be retained by the Electoral Commissioner for 6 months after polling day or until the election cannot be challenged or all challenges have been determined, after which the ballot papers and other material are to be destroyed,

(viii) to provide that a ballot paper is not informal merely because the elector has placed a number, tick or cross adjacent to but outside the square, if the elector's intention is clearly indicated,

(i) with respect to postal voting:

(i) to provide for the Electoral Commissioner to be responsible for administering the scheme for postal voting,

(ii) to revise the provisions relating to the registration of general postal voters and applications for registration,

(iii) to permit silent electors to be registered as general postal voters,

- (iv) to permit any Australian citizen to be an authorised witness for postal voting outside Australia,
- (j) with respect to scrutineers:
 - (i) to revise the provisions relating to the appointment of scrutineers and the making of declarations by scrutineers,
 - (ii) to require a scrutineer to present a completed form of appointment and declaration each day at the place at which he or she will act as scrutineer,
- (k) with respect to posters and other printed electoral matter or material:
 - (i) to remove the limit on the size of posters that may be exhibited,
 - (ii) to revise the provisions relating to the registration of electoral material,
 - (iii) to authorise returning officers, polling place managers and police officers to confiscate posters that are illegally exhibited or electoral material that is being illegally distributed,
- (l) with respect to canvassing on polling day—to prohibit canvassing on polling day within a polling place, at an entrance to a polling place or on any public or private place within 6 metres of an entrance to a polling place,
- (m) with respect to the offence of “electoral treating”—to modernise the provisions creating the offence,
- (n) with respect to polls and elections under other Acts, regulations or by-laws—to provide for the accreditation by the Electoral Commissioner of election service providers, who may be appointed under the other legislation to conduct polls and elections (but not State or local government elections),
- (o) to make amendments by way of statute law revision,
- (p) to make amendments of a savings or transitional nature,
- (q) to make other amendments of a minor, consequential or ancillary nature.

The Bill also amends:

- (a) the Election Funding Act 1981, to enable applications for registration in the Register of Candidates to be lodged with the Election Funding Authority of New South Wales (as an alternative to lodging them with returning officers) and to make other consequential amendments, and
- (b) the Public Sector Employment and Management Act 2002 and the Public Finance and Audit Act 1983, consequentially on the establishment of the New South Wales Electoral Commission, and
- (c) the Surveying Act 2002, to require the register of public surveys to include details of the areas of electoral districts, and
- (d) other Acts and instruments, to enable accredited election service providers to be authorised or appointed to conduct polls and elections (but not State or local government elections).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the Principal Act set out in Schedules 1–18.

Clause 4 is a formal provision giving effect to the amendments to other legislation set out in Schedule 19.

Clause 5 provides for the repeal of the proposed Act after all the amendments have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Part 1 of Principal Act

Schedule 1 amends Part 1, which contains introductory matters, including section 3 containing definitions of various terms used in the Principal Act.

Definitions

New definitions of terms are inserted, including definitions of Polling place manager, Election assistant, Election official (to mean a returning officer, polling place manager or election assistant), and Silent elector (to mean a person whose residence is not shown on a roll because of a request made under section 38A of the Principal Act).

Schedule 2 Amendment of Part 2 of Principal Act

Schedule 2 amends Part 2, which deals with the distribution of electorates.

Amendments include the following:

Procedures for determining boundaries

Substituted section 14 (4) requires the Electoral Districts Commissioners to complete the first (or only) round of inquiries within 60 days or, at their discretion, a further 10 days. Substituted section 14 (12) requires the commissioners, after they have completed the first (or only) round of inquiries to make a final determination, or a draft determination if their revised proposals are significantly different from their original proposals. New section 14 (14A) requires the commissioners to complete the second round of inquiries (into objections to the proposals in the draft determination) as soon as practicable and, if a period is prescribed, within that prescribed period. Section 14 (15) is amended to provide that the commissioners are not required to invite further submissions or hold further inquiries.

Maps of electoral districts

New section 14 (16) requires maps of proposed electoral districts to be available for inspection at the office of the Electoral Commission, at local council offices and on the Electoral Commission's internet website.

New section 14A requires the Electoral Districts Commissioners to determine the boundaries of electoral districts by determining the areas of each district. Maps of electoral districts are to be available in digital or electronic format, and a printed version is to be lodged with the Surveyor-General.

Section 15 is amended to require a printed version of electoral maps to be published in the Gazette.

Schedule 3 Amendment of Part 3 of Principal Act

Schedule 3 amends Part 3, which deals with qualifications of electors. Amendments include the following:

Enrolled persons overseas

Section 20A is amended to permit an enrolled elector who leaves Australia to remain enrolled and to vote for 6 years (instead of 3 years).

Section 20B is amended to permit the spouse and children of an enrolled elector referred to in section 20A to be enrolled and vote for a similar period.

Disqualifications from voting

Section 21 is amended to provide that a person is not entitled to be or remain enrolled if the person is, because of being of unsound mind, incapable of understanding the nature and significance of enrolment and voting. Removal of a person's name from the roll on that ground is subject to production of a medical certificate under new section 47 (4).

Schedule 4 Substitution of Part 3A of Principal Act

Schedule 4 substitutes Part 3A, which deals with electoral administration.

Amendments include the following:

Electoral Commission

New section 21A constitutes the New South Wales Electoral Commission. Its functions are exercisable by the Electoral Commissioner, and it replaces the State Electoral Office.

Electoral Commissioner

New section 21AA provides for the appointment by the Governor of the Electoral Commissioner.

New section 21AB provides for the initial term of office of an Electoral

Commissioner to be for a period of up to 10 years, with one extension for a further period of up to 10 years. Current provisions for the Electoral Commissioner to vacate office on reaching 65 years of age are not included. The office becomes vacant in certain specified circumstances, including removal following resolutions of both Houses of Parliament. A person is not eligible for appointment to the office if he or she is a member of a party or has been a member of a party at any time during the 5-year period before appointment.

New section 21AC provides that the Electoral Commissioner is not subject to the Public Sector Employment and Management Act 2002 and is entitled to remuneration under the Statutory and Other Offices Remuneration Act 1975, and that the Governor may fix the terms and conditions of the Commissioner's appointment.

New section 21AD provides for the appointment of an acting Electoral Commissioner to act during the illness or absence of the Electoral Commissioner or during a vacancy in the office of Electoral Commissioner.

Election officials

New section 21AE provides for the appointment of election officials by the Electoral Commissioner. Election officials are of three kinds: returning officers, polling place managers and election assistants. Election officials are appointed for a particular district and for a specified term, which may be for the duration of a particular election. Their functions are as provided by the Principal Act and as specified by the Electoral Commissioner.

Other officials

New sections 21AI–21AK provide for the appointment of assistants for the Electoral Commissioner in his or her role as returning officer for Legislative Council elections, and for the appointment of postal voting officers, deputy postal voting officers and assistants for postal voting officers.

Other provisions

Substituted Part 3A contains other provisions regarding electoral personnel appointed under the Part. New section 21AM provides for the delegation of the functions of the Electoral Commission and Electoral Commissioner.

Schedule 5 Amendment of Part 3B of Principal Act

Schedule 5 amends Part 3B, which deals with the joint arrangements with the Commonwealth for electoral rolls. Amendments include the following:

Provision of information to Australian Electoral Commission

Section 21B is amended to ensure that privacy legislation does not affect the furnishing of information to the Australian Electoral Commission under the joint roll arrangements.

Local council contributions

New section 21E provides for local councils to contribute up to one-half of the amounts payable by the State to the Commonwealth under the joint roll arrangements. The contribution scheme extends to Lord Howe Island.

Schedule 6 Amendment of Part 4 of Principal Act

Schedule 6 amends Part 4, which deals with enrolment and electoral rolls.

Amendments include the following:

Particulars of date of birth

Section 26 is amended to add the date of birth of an elector to the particulars to be included in a roll.

Supplemental rolls

Section 29 is amended to omit a provision requiring the preparation and printing of supplemental rolls, as these are no longer required.

Provision of information to Electoral Commissioner

Section 31 is amended to clarify the power of the Electoral Commissioner to obtain information from State agencies in relation to electoral rolls and persons eligible to be enrolled.

Inspection of rolls and provision of enrolment information

New Division 3A (sections 31A–31H) sets out a scheme for the inspection of rolls and the provision of enrolment information. Current section 30 is accordingly omitted.

New section 31A provides that the Electoral Commissioner may determine the manner and form in which enrolment information (including the inspection of rolls) is to be provided under the Division. Disclosure of the residence of a silent elector is specifically prohibited.

New section 31B provides for the public inspection of a copy of a district roll as in force for the last general election or by-election. No fee is payable to inspect the roll. A person inspecting the roll is not permitted to use a device (such as a photocopier, camera or voice recorder) to record any contents of the roll, but may make hand-written notes.

New section 31C provides for the provision of enrolment information to registered parties, members of the Legislative Assembly and Legislative Council, and candidates for election.

New section 31D provides for the provision of enrolment information to other persons at their request, but the Electoral Commissioner must consider the public interest before agreeing to such a request. The person receiving the information must give an undertaking to treat the information confidentially.

New section 31E makes it an offence to use enrolment information provided under the new Division, unless the use is for a permitted purpose.

New section 31F makes it an offence to disclose enrolment information provided under the new Division, unless the disclosure would be for a permitted purpose. The section also makes it an offence to use such information for a commercial purpose, including selling it or offering it for sale.

New section 31G authorises the Electoral Commissioner to provide internet on-line access to information on a roll for the purpose of allowing a person to ascertain whether or not he or she is correctly enrolled, subject to such security measures as the Commissioner considers necessary.

New section 31H makes it clear that the new Division does not apply to the provision of enrolment information to the Australian Electoral Commission. Enrolment at an address

Section 33 is amended to provide that enrolment is for an address in a subdivision rather than just for the subdivision.

Removal of name from roll

Section 47 is amended to provide that a medical certificate is needed before a person's name can be removed from a roll on the ground that the person, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting, and that the person's name can be removed on this ground even after the issue of the writ for an election.

Schedule 7 Amendment of Divisions 1A–7 of Part 5 of Principal Act

Schedule 7 amends Divisions 1A–7 of Part 5. That Part deals with the conduct of elections. Amendments include the following:

Writs for elections

Section 72 is amended to provide that the writ for the return of a member to serve in the Legislative Assembly is to be directed to the Electoral Commissioner instead of the returning officer for the district concerned.

Substituted sections 74 and 74D set out the duties of the Electoral Commissioner on receipt of a writ for an Assembly or Council election, including the giving of public notice of the writ and the places for receiving nominations.

Electoral Commissioner's responsibility for general conduct of elections

New sections 75 and 76 set out the overall responsibility of the Electoral Commissioner in the general conduct of Assembly and Council elections. The sections replace other provisions in Part 5.

Nomination of Assembly candidates

Section 79 is amended to provide a candidate is nominated for the Legislative Assembly by delivering a nomination paper (in the case of a nomination made by the registered officer of a party) to the Electoral Commissioner up to noon on the day before the final day for making nominations or (in any case) to the returning officer for the district concerned up to noon on that final day.

Section 79 is also amended to require details of a candidate's name, the district for which the candidate is nominated and the suburb, town or other locality of the candidate's place of residence to be placed on the Commission's internet website as soon as the candidate's nomination for election to the Legislative Assembly is received.

Deposit for Assembly candidate

Section 79 is amended to revise the provisions requiring a deposit to be made for an Assembly candidate, and to provide for the return of the candidate's deposit to the registered officer of the party to which a candidate belongs if the candidate was nominated by the registered officer.

Withdrawal of nomination by Assembly candidate

Section 79A is amended to provide that an Assembly candidate's notice of withdrawal of nomination is to be delivered to the official (ie the Electoral Commissioner or returning officer) to whom the original nomination paper was delivered.

Procedure where only one candidate nominated for Assembly election

Substituted section 80 provides that, where only one candidate is nominated for a district at an Assembly election, the returning officer is to declare the candidate elected and notify the Electoral Commissioner of the outcome. The Electoral Commissioner is then responsible for publishing the declaration in a newspaper and for the return of the writ.

Procedure where two or more candidates nominated for Assembly election

Substituted section 81 provides that, where two or more candidates are nominated for a district at an Assembly election, the returning officer is to announce that a poll will be taken, the name of each candidate and the suburb, town or other locality where each candidate resides.

Nomination of Council candidates

Section 81B is amended to require details of a candidate's name and the suburb, town or other locality of the candidate's place of residence to be placed on the Commission's internet website as soon as the candidate's nomination for election to the Legislative Council is received.

Deposit for Council candidate

Section 81F is amended to revise the provisions requiring a deposit to be made for a Council candidate, and to provide for the return of the candidate's deposit, if it is returnable, to:

- the registered officer of the party to which the candidate belongs, if the candidate was nominated by the registered officer, or
- a nominated person in the case of a group to which the candidate belongs, if all the members of the group nominate the same person.

In any other case, a returnable deposit is to be returned to the candidate, a person authorised by the candidate to receive it, or the candidate's personal representatives.

Provision of ballot papers for Assembly elections

Section 82 is amended to provide that the Electoral Commissioner is responsible for providing ballot papers for Assembly elections.

Division of booths according to alphabetical list of names

Section 85 is amended to remove the provision for assigning polling booths according to the alphabetical order of the names of electors.

Licensed premises

Section 85 is amended to enable licensed premises to be used as polling places, but only if:

- liquor will not be available on polling day in the area where polling will take place, and
- that area will be segregated from any place where liquor will be sold, and
- access to that area will not involve passing through any place where liquor will be available.

Assignment of polling place managers and election assistants at polling places
Substituted section 87 requires the returning officer to assign a polling place manager to each polling place, and requires the returning officer or polling place manager to assign at least one election assistant to each polling place. The returning officer may assign himself or herself to a polling place to act as polling place manager, if authorised to do so by the Electoral Commissioner.

Declarations by returning officers and others

Section 88 is repealed. It provides for the making of declarations by returning officers and other officials, and is replaced by new section 21AO.

Ballot papers to be initialled on front

Section 89 is amended to require ballot papers to be initialled on the front.

Scrutineers

Section 91 is repealed. It provides for the making of declarations by scrutineers.

New section 137 contains provisions relating to the appointment of and declarations by scrutineers.

Schedule 8 Amendment of Division 8 of Part 5 of Principal Act

Schedule 8 amends Division 8 of Part 5. Amendments include the following:

Public holiday on polling day

Section 92 as currently in force is repealed. It provides for a half-day holiday on polling day. It is replaced by a provision relating to election assistants being authorised to exercise functions under Division 8.

Persons who may be present at polling place

Section 93 is amended to revise the provisions relating to who may be present at a polling place during the taking of a poll, and in particular removes the ceiling on the number of voters who may be present at any one time.

Polling places outside district

Section 98 is amended to make it the responsibility of the Electoral Commissioner to appoint polling places for a district outside the area of the district, for the convenience of a large number of electors, and to dispense with the restriction on abolishing such a polling place during an election period.

Questions to be asked of electors

Section 99 is amended to require electors intending to vote to answer the question "What is your date of birth?".

Maintaining order

Section 114 is amended to enable returning officers and polling place managers to give directions to maintain order at an election. It will be an offence to contravene such a direction without lawful authority.

Schedule 9 Amendment of Division 9 of Part 5 of Principal Act

Schedule 9 amends Division 9 of Part 5. Division 9 deals with postal voting.

Amendments include the following:

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 14

Applications for postal voting

Section 114A is amended to enable applications for postal ballot papers to be made to and granted by the Electoral Commissioner as well as returning officers, and to add silent electors to the categories of persons who can apply for and be granted

postal ballot papers.

Registration of general postal voters

Section 114AA is amended to extend the categories of persons who can apply for registration as general postal voters to include silent electors, carers of seriously ill or infirm persons and certain members of religious orders, and to provide that an Australian (rather than just a locally registered) medical practitioner can provide a medical certificate as to an applicant's physical incapacity. Section 114AA (18) is amended to permit the Electoral Commissioner to exercise all or any functions of a registrar under the section.

Schedule 10 Amendment of Divisions 10–12 of Part 5 of Principal Act

Schedule 10 amends Divisions 10, 11, 11A and 12 of Part 5. Amendments include the following:

Voting before polling day (Division 10)

Division 10 (sections 114P–114Z) is revised in connection with voting before polling day.

Sections 114P and 114Q are amended to revise the procedure for voting before polling day, and to add silent electors to the categories of persons who can apply for permission to vote before polling day.

Section 114R is repealed. It provides for the public inspection of applications for permission to vote before polling day.

Section 114U (2) and (3) are substituted and authorise a scrutineer to be present, at any part of a place in which voting before polling day takes place, during the ordinary business hours of that place on that day.

Section 114U (5) and (6) are repealed. Those subsections provide for the making of declarations by scrutineers. New section 137 contains provisions relating to the appointment of and declarations by scrutineers.

Voting outside the State by post (Division 11)

Division 11 (sections 114ZA–114ZL) is revised in connection with voting outside the State by post.

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 15

Voting before polling day at declared institutions (Division 11A)

Division 11A (sections 114ZM–114ZY) is revised in connection with pre-poll voting in nursing homes and other declared institutions.

New section 114ZR (6A) and (6B) provide a scheme for enabling electors to view "how to vote" electoral material when they are about to engage in pre-poll voting in declared institutions.

Absent voters (Division 12)

Division 12 (sections 115–119) is revised in connection with absent voters.

Schedule 11 Amendment of Divisions 13 and 13A of Part 5 of Principal Act

Schedule 11 amends Divisions 13 and 13A of Part 5.

List of voters failing to vote

Substituted section 120B makes the Electoral Commissioner responsible for preparing a list of the names of enrolled electors who did not vote.

Schedule 12 Amendment of Divisions 14 and 14A of Part 5 of Principal Act

Schedule 12 amends Divisions 14 and 14A of Part 5, which provide for the procedure to be followed after the close of poll. Amendments include the following:

Certain ballot papers not informal

Sections 122A and 129F are amended to provide that a ballot paper is not informal

merely because the elector has placed a number, tick or cross adjacent to but outside the square, if the elector's intention is clearly indicated.

Keeping and destruction of ballot papers and other material

Sections 127 and 129H are amended to require ballot papers and other material relating to an election to be retained by the Electoral Commissioner for 6 months after polling day or until the election cannot be challenged or all challenges have been determined, after which the ballot papers and other material are to be destroyed.

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 16

Schedule 13 Amendment of Divisions 15–17 of Part 5 of

Principal Act

Schedule 13 amends Divisions 15–17 of Part 5. Amendments include the following:

Scrutineers

New section 137 makes provision for scrutineers appointed under other sections of the Principal Act. There will be a single form for scrutineers, containing the form of appointment of the scrutineer and the form of declaration to be made by the scrutineer. The completed form, or a copy of it signed by the scrutineer, is to be presented each day at the place at which the scrutineer intends to act as scrutineer.

Electoral treating

Substituted section 149 and amended section 150 modernise the offence of “electoral treating”.

Posters—size and removal

Section 151B is amended to remove the prohibition on the size of posters that may be exhibited.

Substituted section 151D provides for the removal and confiscation of illegally exhibited posters by electoral officials (within a polling place or within 6 metres of an entrance to a polling place) or by police officers (in any place).

Distribution of electoral material on polling day

Section 151F is amended to widen the scope of the unregistered electoral material that is not to be distributed on polling day, and provides protection for newspaper vendors.

Registration of electoral material

Section 151G is amended to revise the procedures for the registration of electoral material by the Electoral Commissioner and widens the scope of the material to which they apply.

Canvassing near polling places

New section 151H (1) prohibits canvassing for votes or a similar activity on polling day within a polling place, at the entrance to a polling place or within 6 metres of an entrance to a polling place. New section 151H (2) prohibits the use of loud speakers or similar equipment on polling day for canvassing for votes or a similar activity, if the activity is audible within a polling place, at the entrance to a polling place or within 6 metres of an entrance to a polling place.

Electoral material—confiscation

New section 151I provides for the confiscation of electoral material being illegally distributed on polling day. The confiscation is to be effected by electoral officials

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 17

(within a polling place, within 6 metres of an entrance to a polling place or in the vicinity of a polling place) or by police officers (in any place).

Application of new sections 151D, 151H and 151I

New section 151J provides that, for the purposes of sections 151D, 151H and 151I, the grounds of a building used as a polling place are not part of the polling place unless they are designated as such by the Electoral Commissioner when appointing the polling place or by the returning officer by notice on election day.

Schedule 14 Amendment of Division 18 of Part 5 of Principal Act

Schedule 14 amends Division 18 of Part 5. Amendments include the following:

Administrative arrangements relating to voting in Antarctica

Division 18 (sections 154AA–154AP) is amended to make minor amendments to the administrative arrangements relating to voting in Antarctica.

Schedule 15 Insertion of Part 6A into Principal Act

Schedule 15 inserts Part 6A, which deals with accredited election service providers.

Accreditation of election service providers

New Part 6A (sections 175K–175M) provides a scheme for the accreditation by the Electoral Commissioner of persons as election service providers. Other legislation (including the Acts, regulations and by-laws to be amended by Schedule 19 to the proposed Act) may in the future contain provisions for authorising or appointing accredited election service providers to conduct elections and polls under the other legislation. State and local government elections are not affected.

New section 175K contains accreditation provisions, and authorises regulations to be made in connection with the accreditation scheme. The Electoral Commission and the Australian Electoral Commission are taken to be accredited until regulations provide otherwise.

New section 175L allows a Minister to authorise or appoint an accredited election service provider for the purposes of the other legislation referred to above, if satisfied that there is or will be no provider to conduct or complete the election or poll. This could occur, for example, if a board with the responsibility for authorising or appointing the provider has not come into existence or has ceased to exist or to function. The section would operate only if there were no provision made for such a contingency in the other legislation.

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 18

New section 175M provides that the additional powers implied under section 47 of the Interpretation Act 1987 in relation to appointments extend to authorisations and appointments of accredited election service providers under the other legislation referred to above.

Schedule 16 Amendment of Part 7 of Principal Act

Schedule 16 amends Part 7, which contains miscellaneous provisions. Amendments include the following:

Destruction of ballot papers and other documents

New section 176A states that any provision of the Principal Act that provides for the destruction of ballot papers or other documents has effect despite section 21 of the State Records Act 1998. The section is inserted to ensure that section 21 of that Act does not operate to prevent or restrict the destruction of that material. Section 21 (7) of that Act provides that “[a]n Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise altering the effect or operation of this section except in so far as that Act provides expressly for that Act to have effect despite this section”. The new section 176A is expressed in terms of that subsection.

Institution of proceedings for offences

Substituted section 183 provides that proceedings for an offence against the Principal Act or the regulations may be dealt with summarily before a Local Court (in which case the maximum monetary penalty that can be imposed is 200 penalty

units) or the Supreme Court, and may be instituted by any person.

Schedule 17 Amendment of Principal Act—Schedules

Schedule 17 amends, omits and inserts certain Schedules.

Ballot paper for Assembly elections

Substituted Schedule 4 sets out a single form for ballot papers for elections for the Legislative Assembly. It replaces the forms currently set out in Schedules 4 and 15, the latter being the form for postal ballot papers. Schedule 15 is accordingly omitted (with corresponding amendments to sections 114D and 114ZB).

Ballot paper for Council elections

Schedules 4A and 15A set out the form for ballot papers for elections for the Legislative Council, the latter being the form for postal ballot papers. Schedule 15A is omitted so that Schedule 4A (with corresponding amendments to sections 114D and 114ZB) sets out a single form for ballot papers for the Council. This does not

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 19

affect Form 5 in the Parliamentary Electorates and Elections Regulation 2001, which sets out the form to be used in Council elections for which there are more than 33 groups. Minor amendments are also made to Schedule 4A.

Savings, transitional and other provisions

New Schedule 22 contains savings, transitional and other provisions, including the following:

- Regulations of a savings or transitional nature are authorised to be made (clause 1).
- The person holding office as Electoral Commissioner immediately before the commencement of new section 21AA is taken to have been appointed as Electoral Commissioner for a term of 10 years from that commencement, and will be eligible for re-appointment for a further term of up to 10 years (clause 4).
- Any current appointments of returning officers are terminated (clause 5).

Schedule 18 Amendment of Principal Act—general

Schedule 18 makes certain minor amendments to the whole Act.

Consistency of terms

Consistency in spelling is promoted by removing hyphens in the terms “ballot-box”, “ballot-paper”, “nomination-paper”, “polling-day”, “polling-place”, and associated terms, wherever occurring in the Principal Act.

Schedule 19 Amendment of other legislation

The Election Funding Act 1981 is amended to enable applications for registration in the Register of Candidates to be lodged with the Election Funding Authority of New South Wales (as an alternative to lodging them with returning officers) and to make other consequential amendments.

The Local Government (General) Regulation 2005 is amended to enable a candidate at a local government election to be provided with enrolment information, and places restrictions on its use.

The Public Sector Employment and Management Act 2002 and the Public Finance and Audit Act 1983 are amended consequentially on the establishment of the New South Wales Electoral Commission. References to the State Electoral Office are replaced by references to the Electoral Commission.

Parliamentary Electorates and Elections Amendment Bill 2006

Explanatory note

Explanatory note page 20

The Surveying Act 2002 is amended to require the register of public surveys kept under that Act to include details of the areas of electoral districts as determined by the Electoral Districts Commissioners.

Other Acts and instruments are amended to enable accredited election service providers to be authorised or appointed to conduct polls and elections (but not State or local government elections).