



## NSW Legislative Council Hansard

### Parliamentary Electorates and Elections Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 26 September 2006.

#### Second Reading

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [6.02 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

#### Leave granted.

In this the 150th year of parliamentary democracy in New South Wales we can be very proud of an electoral system that is free, fair and independent. But there is always room for finetuning. In that spirit, I am pleased to introduce the Parliamentary Electorates and Elections Amendment Bill, a piece of legislation that aims to strengthen the conduct of elections in New South Wales and to improve the functioning of our State electoral authority. This bill implements recommendations made by the New South Wales Parliament's Joint Standing Committee on Electoral Matters, the electoral districts commissioners and the Council on the Cost and Quality of Government. It also includes numerous changes proposed by the Electoral Commissioner as well as measures arising from an extensive consultation process. In fact, the Joint Standing Committee on Electoral Matters received a number of submissions and held two public hearings as part of its inquiry into the administration of the 2003 State election. In addition, the bill was released on 3 July as a consultation bill for public comment, and 17 submissions were received by the Cabinet Office. I would like to take this opportunity to thank all those who made submissions on the draft bill.

Turning to the substance of the legislation, the bill makes a number of changes to modernise the arrangements for the conduct of elections, perhaps the most visible of which will be a change in the name of our electoral authority. Under this bill the State Electoral Office will be renamed the New South Wales Electoral Commission to bring our nomenclature into line with other States and Territories. Another important reform will be a change in the way that the Electoral Commissioner's term of office is decided. Currently the Electoral Commissioner's term is age defined—that is, he or she must retire at the age of 65 even if that falls just before an election when it would be highly inconvenient. This amendment will ensure that the Electoral Commissioner is appointed initially for 10 years and is eligible to be reappointed for any period up to another 10 years.

An appointment of 10 years is considered appropriate as it will ensure that any Electoral Commissioner will be in office for at least two general elections. This means that any given Electoral Commissioner will have time to gain the confidence of key stakeholders and will provide stability in the electoral administration of New South Wales. Transitional provisions will be required to ensure that the current Electoral Commissioner is appointed under the new provisions for a period of 10 years. When passed, the bill will mean that the current commissioner will remain in office from late 2006 until late 2016, allowing him to oversee the general elections in March 2007, 2011 and 2015 plus the local government elections in September 2008 and 2012. The Electoral Commissioner may also be reappointed for a further period—for example, long enough to oversee the local government election in September 2016.

The bill will redefine the roles of the Electoral Commissioner and the returning officers. Under current legislation many of the important functions associated with running an election are vested in individual returning officers, who have wide discretion. This reflects a bygone era when it was not possible to communicate readily with the State Electoral Office. This situation has persisted even though most people see the Electoral Commissioner as bearing the ultimate responsibility for conducting elections. The amendments will increase the Electoral Commissioner's control over the conduct of elections and therefore reduce inconsistent decision making by various returning officers. The bill will make it clear that returning officers are subject to the direction and control of the Electoral Commissioner.

The bill will also make several changes relating to enrolment. Under the legislation New South Wales residents will now be able to check their enrolments online. The bill will also clarify the Electoral Commissioner's power to obtain information from State agencies so that he can notify people about their obligation to enrol and also pass on this information to the Commonwealth. The rights of registered parties, members of Parliament and candidates to have access to the roll will be codified. The sale of the New South Wales electoral roll will be prohibited. Importantly, the Electoral Commissioner will be able to provide access to the electoral roll when this is in the public interest—for example, for the purpose of medical research. The bill will introduce a new requirement to collect date-of-birth information as part of the enrolment process, which will ensure consistency

with the Commonwealth. The requirement for voters to state their occupations when enrolling will also be retained for statistical purposes in line with a request made by the Electoral Commissioner.

A number of provisions in the bill have been designed to improve postal and pre-poll voting arrangements. For example, silent voters will be permitted to make pre-poll and postal votes and postal votes will now be able to be issued and received by the Electoral Commissioner as well as by returning officers. The eligibility criteria for becoming a registered general postal voter will be made consistent with the Commonwealth, which will reduce confusion for voters. Another important aspect of the bill relates to the use of certain licensed premises as polling places. The bill will permit premises with a liquor licence to be used as polling places in certain circumstances—a provision that was requested by the Electoral Commissioner and that has been modelled on the Commonwealth Electoral Act.

The Government wants to be clear about this: This provision exists to give people in rural and remote areas the best possible access to polling places. In many communities town halls and community halls have some type of a liquor licence, generally because they are used for functions such as wedding receptions and dances. Under the law as it stands the possession of such a licence rules them out as potential polling places even though they may be the only suitable location for a polling place in a town or hamlet. Under this clarification to the law such premises may be employed by the Electoral Commissioner as polling places but only under strict conditions—and I emphasise the word "strict". The first and most obvious of these conditions is that alcohol may not be served in the polling place during the hours of polling. Furthermore, the area in which alcohol is kept or served must not be accessible from the place where voting is occurring.

I turn to other aspects of the bill relating to how-to-vote material. The bill extends the current registration requirements for how-to-vote material so that all election-related material to be distributed on election day in a public place must be registered by the Electoral Commissioner. Currently the legislation requires only the registration of materials concerned with the technical aspects of how voters mark their ballot papers. While those provisions will continue to apply, the bill will also require all other election-related material to be registered. That material must meet three reasonable criteria in order to be registered. The material must contain the name and address of the author and printer. It must not be obscene or offensive and it must not encourage informal votes.

Currently there is nothing in the Act that compels returning officers to make registered material available for inspection. The bill improves transparency by providing that all registered material proposed to be distributed in electorates must be available for inspection on election day at the office of the returning officer. The registered material may be requested by any scrutineer or by any person enrolled in that electorate. These reforms implement the recommendation of the Joint Standing Committee on Electoral Matters that all registered material should be available on election day. Following the consultation process, the bill has been amended to provide that when election officials attend declared institutions, such as nursing homes, to provide residents with a vote they must have a folder that contains the registered electoral material of candidates, parties and groups and they must ask each voter whether he or she would like to view any how-to-vote material.

This amendment will ensure that voters in declared institutions have access to how-to-vote cards to assist them in making a formal and informed vote, just as they would at a regular polling place. This bill will also change the laws governing election posters. For example, the bill will abolish the existing size restriction on posters so that posters of any size may be displayed on election day. We do not want returning officers running around with tape measures sizing up posters. They have better things to do, and the Government trusts political parties to apply a commonsense approach to the size of posters.

The bill will also abolish the power of returning officers to remove illegal posters on public and private property, except at polling places. This should be a matter for property owners to deal with because returning officers should not be required to divert resources to undertake this task. I add that all political parties can do better when it comes to cleaning up their posters after election day. We all can and must do better. This amendment will not, however, affect the ability of election officials to remove illegally placed posters on polling day at a polling place. Indeed, in accordance with the recommendation of the joint standing committee, enforcement powers are being expanded to ensure that election officials have the capacity to confiscate all unregistered material that is being distributed on polling day at polling places. There will be no requirement under the bill for posters to be registered, which continues the current practice.

Another recommendation of the joint standing committee that has been adopted is the proposal to prohibit the canvassing of votes within six metres of the entrance to a polling place. The amendment will ensure consistency with the Commonwealth and will therefore reduce confusion for persons handing out electoral material on polling day. The bill also carefully defines the entrance to the polling place as being the entrance to the actual building and not to the enclosed grounds where the building is located unless the returning officer puts up a notice to the contrary. Several recommendations of the electoral district commissioners arising from the recent electoral redistribution have been adopted in this legislation. In particular, electoral boundaries will now be shown in map form instead of being described in words using the traditional "metres and bounds" approach.

The bill also makes a number of provisions concerning local government. In particular the bill allows the Governor to make a regulation requiring local councils to contribute to the cost of maintaining the electoral roll. In response to concerns expressed during the consultation process, the Government proposes to consult further with local government about the amount and timing of this contribution before making any such regulation. I note that the Local Government (General) Regulation will be amended to codify the right of local government candidates to obtain a copy of the electoral roll for their area once an election is called. When this bill is passed the Government will also need to consider which of the new State electoral laws should also be applied to the conduct of local government elections. This will involve amending the Local Government Act and any regulations made under this bill. The Government proposes to consult further with local government and other stakeholders about the appropriate changes with a view to putting any changes into place well before the next general local government election in September 2008.

A number of other procedures will be streamlined under this bill. For example, registered political parties now have the option of lodging nominations for all endorsed candidates at the same time with the Electoral Commissioner instead of having to lodge individual nominations separately with each district returning officer. I note that bulk nominations of this kind will have to be lodged before noon on the day before the close of nominations. Similar amendments are to be made to the Election Funding Act so that registered parties will now have the option of applying for bulk registration of all candidates with the Electoral Commissioner at the same time as they nominate those candidates. Deposits for both Legislative Council and Legislative Assembly elections may now be returned to political parties and groups rather than individual candidates.

The bill will also provide that the form used to nominate scrutineers and the declaration form that scrutineers must sign are to be combined into one standard form. The bill will also provide for an elector to make an oral declaration instead of a written declaration that he or she fulfils one of the eligibility requirements for pre-poll voting. In addition, minor amendments to the ballot papers will ensure that the same ballot paper may be used for both postal votes and on polling day, which will save on printing and administration costs. The bill will also provide that a vote recorded by a voter placing numbers outside the squares but clearly beside the name of candidates is to be treated as a formal vote instead of as an informal vote, as is the case now. This is consistent with other Australian jurisdictions.

The bill also implements a proposal of the Council on the Cost and Quality of Government that the Electoral Commissioner no longer conduct elections for statutory boards or industrial organisations. Those elections will be conducted instead by external service providers who are accredited by the Electoral Commissioner. This reform will assist the Electoral Commissioner in focusing on his core responsibilities of conducting State and local government elections. The Electoral Commissioner has identified a number of additional minor and technical amendments that are required to be made to the legislation.

This legislation is about improving the conduct of elections in New South Wales to ensure our electoral system remains not only free and fair but also efficient and effective. I commend the bill to the House and once again thank all those who have contributed to the creation of these important reforms.