



City Of Sydney Amendment (Electoral Rolls) Bill.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources (Lands)) [2.55 p.m.]: I move:

That this bill be now read a second time.

This bill reflects the Government's continuing commitment to providing a transparent and effective legislative framework for the administration of local government in New South Wales. The Government is committed to ensuring that local government remains representative of the community and that the governing legislation is clear and workable. The amendments contained in this bill will ensure that clarity is given to an essential democratic process at this important level of government in the State's premier city. The bill amends the City of Sydney Act 1988 in relation to the preparation of electoral rolls for the purpose of elections for the Council of the City of Sydney. The general manager of a local council usually prepares electoral rolls for the purpose of local council elections. The City of Sydney Act specifically gives this function to the State Electoral Commissioner. The purpose of the amendments to the City of Sydney Act are to clarify the procedure for the preparation of the non-residential roll and the roll of occupiers and ratepaying lessees for the elections for the Council of the City of Sydney by the Electoral Commissioner.

The necessity for this amendment arises from an ambiguity as to what data the Electoral Commissioner is to use to prepare the rolls. Section 18A of the City of Sydney Act presently requires the Electoral Commissioner to prepare the non-residential roll and the roll of occupiers and ratepaying lessees for elections for the City of Sydney council. The Electoral Commissioner is also required by section 18A (3) to send a letter to persons on each electoral roll at least three months before the closing date for an election informing them that they are electors. However, the operation of the provision is unclear. Section 3 of the City of Sydney Act provides that the Act is to be read as if it forms part of the Local Government Act 1993—the principal Act. Sections 299 and 300 of the principal Act provide that the non-residential roll and the roll of occupiers and ratepaying lessees lapse after the election for which they were prepared. The essential question of interpretation is whether section 18A overrides the principal Act, and therefore whether the rolls lapse or continue in existence from election to election. The status of the rolls is critical to the responsibility of the Electoral Commissioner under section 18A to write to electors on a roll. The lack of clarity in the present position may jeopardise the result of any of the elections for the City of Sydney. It is necessary that the operation of section 18A be clarified in sufficient time before the next ordinary elections in March 2004.

The Electoral Commissioner has expressed particular concern about the present provision in view of the contentious nature of elections for the council. As the 1999 local government elections were the first time the non-residential rolls had been prepared under section 18A, the issue of the lapsing of the roll from a previous election did not then arise. Uncertainty in the provisions relating to the preparation of electoral rolls may leave the entire electoral process for the council open to legal challenge by persons who disagree with the Electoral Commissioner's approach to discharging his or her duties. The Electoral Commissioner has also obtained advice from the Crown Solicitor that has highlighted the uncertainty of the interpretation of section 18A. It is proposed to insert a provision to clarify that the non-residential roll and the roll of occupiers and ratepaying lessees lapse after the election for which they were prepared, as it does for all other local government elections.

The policy intent of the proposal is also to ensure that non-resident electors and electors who are occupiers and ratepaying lessees are provided with every opportunity to claim inclusion on the roll for elections for the City of Sydney. The proposed amendment will allow information on the rolls prepared for the previous election to be used by the Electoral Commissioner to send enrolment information by letter to persons who may wish to seek inclusion again on the non-residential roll and the roll of occupiers and ratepaying lessees. The purpose of the letter is to provide all electors with the best opportunity of becoming enrolled for council elections. This letter will provide notice of the requirements for claiming inclusion on the rolls and information as to the availability and lodgement of claim forms. The letter will be sent at least 90 days before the closing date for an election for the council to allow persons adequate time to claim enrolment. This 90-day period is longer than the 60 days general managers have to prepare the rolls for all other council elections under the Local Government (Elections) Regulation 1998. This extended period will afford eligible persons greater time to claim enrolment. All persons must lodge a claim of enrolment with the Electoral Commissioner, so no favourable franchise is created for any group of electors.

The proposed amendment also retains the independence of the Electoral Commissioner, as the Electoral Commissioner is not required to make judgments about the interpretation and method of implementation of

section 18A. It is critical to the effective operation of elections for the council that the Electoral Commissioner is perceived by the community to be independent in the enrolment process. The present difficulty of section 18A may be attributed to a series of amendments made to the Government's initial proposal during parliamentary debate on the Local Government Legislation Amendment (Elections) Bill 1998. The majority of members of the Legislative Council then supported the principles that non-residential electors should be required to apply for enrolment at each election and that the roll should elapse after each election. These principles are maintained in the proposed amendment. The defeat of the Government's proposal in 1998 may be attributed to other features of the bill, such as the preparation of the rolls by the General Manger of the City of Sydney—now the Electoral Commissioner—and the date by which the letter must be sent. The bill proposed one month prior to the closing date for enrolment; this bill proposes that it be 90 days. I commend the bill to the House.

[Your feedback](#) [Legal notice](#)

Refer updates to Hansard Office on 02 9230 2233 or use the feedback link above.