

**ELECTORAL BILL 2017***First Reading*

**Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.**

*Second Reading*

**Mr ANTHONY ROBERTS ( Lane Cove—Minister for Planning, Minister for Housing, and Special Minister of State) (16:21):** I move:

That this bill be now read a second time.

The Electoral Bill 2017 is the product of an extensive review of the Parliamentary Electorates and Elections Act 1912, which governs the conduct of State parliamentary elections in New South Wales. In its 2013 report on the State's electoral legislation, the Joint Standing Committee on Electoral Matters—hereafter, "the committee"—concluded that:

...whilst the essential principles of our representative democracy remain valid, the legislative framework through which they are given effect, requires modernisation.

This bill honours the Government's longstanding commitment to undertake that significant task in respect of the Parliamentary Electorates and Elections Act. The bill updates that Act, which was passed more than 100 years ago, to reflect contemporary electoral practices. It will simplify, modernise and improve the conduct of elections in New South Wales. The revision of the current Act has involved a meticulous rewrite and implements many recommendations made by the committee following its inquiries into the State's electoral legislation and the administration of the 2011 and 2015 State elections.

The bill also contains a number of reforms requested by the Electoral Commissioner of New South Wales, which align with the overarching goal of this update—to refresh and modernise the legislation. This bill benefits from the input of the many organisations and individuals who made submissions on an exposure draft that was released for public consultation in August. Each one of those submissions has been considered closely in preparing the bill for Parliament. I turn now to the specific provisions of the bill. As I have mentioned, the bill is an update of the Parliamentary Electorates and Elections Act but it is not a radical overhaul of the electoral system in this State. In substance, there is much that this bill carries over from the current Act. In outlining the bill, I will seek to highlight those aspects that introduce key reforms.

Part 1 contains preliminary machinery provisions. It includes a definitions section, which updates terminology used throughout the bill to take account of modern electoral practice and technological advances. In line with the intent of this rewrite that the legislation be clarified and simplified, and consistent with a recommendation of the committee, it also includes a general objects provision to assist with judicial interpretation. Part 2 is concerned with the administration of elections in New South Wales and contains provisions relating to the NSW Electoral Commission, the New South Wales Electoral Commissioner and the staff of the Electoral Commission. As with the current Act, the bill makes it clear that the Electoral Commission has the function of instituting proceedings for electoral offences under the proposed Act and other electoral legislation. It also provides that the Electoral Commission may make applications to the Supreme Court for injunctions, declarations or other orders within the jurisdiction of the court for the purpose of ensuring compliance with these same Acts.

A robust electoral system is one of the cornerstones of our democracy. This bill will give the Electoral Commission a clear mandate to enforce the provisions of the proposed Act and related legislation, and to maintain the integrity of the electoral process in New South Wales. Part 3 sets out the scheme for the redistribution of electoral districts in New South Wales in accordance with the Constitution Act 1902. Similarly to the current Act, it provides for a three-person redistribution panel

comprising a current or former judge appointed by the Governor as the chairperson of the redistribution panel, the Electoral Commissioner and the Surveyor-General. Part 4 provides for a person's entitlement to enrol and vote. The bill does not depart in substance from the current Act in terms of the franchise in New South Wales. However, in keeping with the general, modernising tenor of this bill, it does clarify that the Electoral Commissioner is required to keep and maintain an accurate electoral information register rather than a roll for each district. This reflects the shift from paper-based rolls for each district to a centralised electronic register of New South Wales electors, which is used to generate the printed rolls for each district at an election,

The bill also provides for a system whereby enrolment is a legal status conferred on a person by the Electoral Commissioner, rather than the process of the person's name being entered on a roll for a district by the Electoral Commissioner. Part 5 establishes enrolment procedures in New South Wales and is also concerned with electoral information, including its collection and distribution. As with the current Act, the bill requires persons who are entitled to vote to enrol and keep their enrolment updated. It also maintains the practice of SmartRoll enrolment, which allows the Electoral Commissioner to enrol persons automatically on the Electoral Commissioner's own initiative. The bill will repeal outdated procedures governing objections to enrolment in the current Act. It simplifies this process, imposing a duty upon the Electoral Commissioner to investigate complaints about enrolment errors, and providing complainants with the right to seek a review by the NSW Civil and Administrative Tribunal, rather than the local court, of enrolment decisions made by the Electoral Commissioner.

The processes and procedures for the registration of political parties are provided for in part 6. This part substantially replicates the relevant provisions in the current Act, with some enhancements. Consistent with recommendation 12 of the committee's 2013 report on its review of the State's electoral laws, the bill will ensure that a party is required, at the time of applying for registration, to provide sufficient information about its internal governance rules to enable the Electoral Commission to carry out its statutory functions. The NSW Electoral Commission considers that access to accurate and detailed information of this kind is critical to its ability to perform its functions. For example, it may be necessary for the Electoral Commission to confirm that an office bearer in a party was validly appointed or discharged in accordance with the party's internal governance rules. The bill would facilitate this.

The most significant reforms in the bill are contained in part 7, which provides for the conduct of parliamentary elections. One reform in this part stems from a committee recommendation that the Government review the current role of a returning officer in New South Wales State elections to "determine whether there is a more effective and efficient way to carry out the functions associated with this position."

Consistent with that recommendation, the bill designates the Electoral Commissioner as the "returning officer" responsible for the conduct and administration of all parliamentary elections and provides for the appointment of election officials to assist the Electoral Commissioner. The bill implements two additional committee recommendations, made following both the 2011 and the 2015 State elections, by fixing the date for the issue of the writs for normal quadrennial elections, so that the writs must be issued on the Monday following the expiry of the Legislative Assembly. There is no fixed date in the current Act, as the writs are only required to be issued within four clear days after the assembly has been allowed to expire by effluxion of time. This change ensures that the Electoral Commissioner can publicise the dates for the close of the authorised rolls and the close of nominations in advance of the formal election period.

The bill would also allow for the opening of nominations before the issue of the writs for normal quadrennial elections, which will in turn allow for a longer period between the close of nominations, the subsequent ballot draw, and the opening of the pre-poll period. Part 7 also makes a number of improvements relating to the nomination of candidates for elections. For example, the

bill increases the number of required nominators for independent Legislative Assembly and Legislative Council candidates from 15 to 50, which is intended to ensure that candidates have a reasonable level of community support before being eligible to nominate for election. The bill would also ensure that the number of candidates in a Legislative Council group must not exceed the number of members required to be elected.

These two reforms both derive from recommendations made by the committee in its report on the 2015 State election, and would help to reduce the size, cost and complexity of the ballot papers. Following a recommendation in the committee's 2013 report, the bill will also strengthen the existing requirement that a child-related conduct declaration accompany the nomination paper of a candidate by enhancing the declaration process and ensuring greater consistency with the Child Protection (Working with Children) Act 2012. In particular, the bill would ensure that candidates have to declare: whether or not they hold a Working With Children Check clearance and whether or not any apprehended violence order has ever been made against them for the purposes of protecting a child from sexual assault.

In addition, candidates who do not hold a Working With Children Check clearance must declare whether: they have made a current application for a Working With Children Check clearance, they have been refused a clearance, and they have ever been convicted of any of the offences or been the subject of any of the proceedings listed in Schedules 1 and 2 to the Child Protection (Working with Children) Act. These child protection declarations are to be made public by the Electoral Commissioner and, after the election, the Children's Guardian is to audit the child protection declarations of candidates elected to Parliament for accuracy. These provisions will require that a candidate's past history of child-related conduct is disclosed to the voting public before they cast their vote.

The bill would also clarify and improve the provisions that provide for alternative means of casting a vote. The Government has reviewed the categories of voters that are eligible to vote by way of technology assisted voting, including the iVote system, to ensure that the policy grounds for providing access to technology assisted voting are clear and consistent, and that it is available to those who face barriers to voting in person. To this end, the bill enables technology assisted voting to be used by additional classes of persons, including silent electors and registered early voters. It also enables technology assisted voting to be used at by-elections by electors who will not, throughout the hours of voting on the election day, be within the electoral district concerned. In addition, the bill will streamline the multiple criteria for early voting and postal voting so that they are clear and concise.

The bill also provides new powers for the Electoral Commissioner, with the approval of the Secretary of the Department of Premier and Cabinet, to requisition the use of rooms and halls in certain premises as voting centres in specified circumstances—for example, to enable wheelchair accessibility. Put simply, these reforms strengthen the electoral system by making it easier for people to vote. As for how these votes are counted, the bill adopts a centralised model for the counting of postal votes and declaration votes. This is intended to achieve greater efficiencies and cost savings, higher-quality scrutiny, and expedite the counting and declaration of the result. A key reform in part 7 responds to a 2013 committee recommendation that the Government undertake a comprehensive review of the penalties that currently apply for breaches of the Parliamentary Electorates and Elections Act to ensure that they deter non-compliance and are consistent with the penalties in the Election Funding, Expenditure and Disclosures Act 1981.

The bill: maintains or increases the penalties for offences under the current Act, repeals redundant offences, and consolidates a large number of existing offences into fewer, more general offences. It also provides that penalty notices can be issued for offences prescribed by the regulations. In updating the penalties that currently apply, there has been concern to ensure that the level of the penalty is commensurate with the prohibited conduct. In particular, the increases

reflect the importance of protecting the secrecy of the vote, the integrity of the vote and the privacy of New South Wales citizens participating in the electoral process. The public consultation on the draft bill helped to determine the penalties that should apply for offences against the proposed Act. The bill before the House maintains the significant penalties that apply to some of the more serious offences, including the offence of electoral bribery.

Part 8 sets out the provisions that govern the Court of Disputed Returns. This part substantially replicates the existing provisions in the current Act. Part 9 deals with enforcement of the proposed Act. Notably, it includes a provision that would clarify the process for prosecuting parties that are unincorporated by providing that proceedings for an electoral offence alleged to be committed by a party that is unincorporated may be brought against the party in its own name and not in the name of any of its members. This is consistent with the United Kingdom approach and with the recent recommendations of the committee following its review of the Schott report on political donations. That provision also provides that any penalty imposed on an unincorporated party is payable out of the property of the party, which is consistent with section 113 of the Election Funding, Expenditure and Disclosures Act.

Part 10 contains miscellaneous machinery provisions, including a regulation-making power and a requirement that an approval by the Electoral Commission or Electoral Commissioner under the proposed Act must be published on the commission's website. Finally, the schedules to the proposed Act deal with a range of matters and include provisions relating to the Electoral Commission, the Electoral Commissioner and the redistribution panel. Schedule 6 provides that a person who has been convicted of multiple voting, or is suspected on reasonable grounds to have engaged in multiple voting, may be designated by the Electoral Commissioner as a "special elector" and may only cast a declaration vote. This is consistent with recommendation No. 2 of the committee's 2015 election report.

This bill will refresh the legislative framework for elections in New South Wales, modernising and streamlining the existing legislation for the benefit of all participants in the electoral process. The content of this bill was developed in close consultation with the Electoral Commissioner and members of staff of the NSW Electoral Commission. I thank them for their active participation in this process and for their dedication to improving the State's electoral laws. I am also grateful to everyone who made submissions on the exposure draft of this bill that was released for public consultation. Each submission has helped to enhance it. I commend the bill to the House.

**Debate adjour ned.**