

ELECTORAL AND LOBBYING LEGISLATION AMENDMENT (ELECTORAL COMMISSION) BILL 2014

Bill introduced on motion by Mr Mike Baird, read a first time and printed.

Second Reading

Mr MIKE BAIRD (Manly—Premier, Minister for Infrastructure, Minister for Western Sydney) [4.38 p.m.]: I move:

That this bill be now read a second time.

This bill has two key components. Firstly, it will establish new institutional arrangements for the oversight of elections and election funding matters, in particular by establishing a new Electoral Commission for New South Wales. Secondly, it will strengthen the regulation of third party and other lobbyists, and confer functions in relation to the regulation of lobbyists on the independent Electoral Commission. I will first outline the substance of the institutional reforms, which are contained in schedules 1 and 2 to the bill.

In line with a 2013 recommendation of the Parliamentary Joint Standing Committee on Electoral Matters, this bill will abolish the Election Funding Authority and create a new Electoral Commission. The reconstituted commission will combine the functions of the current Electoral Commission and the Election Funding Authority. The new Electoral Commission will undertake the existing functions of the Election Funding Authority, which include administering the election funding, expenditure and disclosure scheme in New South Wales. In addition, the bill will enable the Electoral Commission to provide assistance to the Electoral Commissioner in administering the conduct of elections. It will also enhance the commission's educational role by providing it with the express functions of conducting and promoting research into electoral matters and other matters that relate to its functions, and promoting public awareness of electoral matters that are in the general public interest.

The new commission will also have a clear mandate to institute criminal and civil proceedings for breaches of electoral laws, as well as the same investigative functions as the Election Funding Authority currently has under the Election Funding, Expenditure and Disclosures Act 1981. The bill will enable the new commission to exercise these investigative functions for the purpose of enforcing compliance with both the Election Funding, Expenditure and Disclosures Act 1981 and the Parliamentary Electorates and Elections Act 1912. The establishment of the new Electoral Commission to replace the existing Electoral Commission and the Election Funding Authority will help to streamline the regulation of the electoral process, including the conduct of State elections and the regulation of campaign finance and expenditure.

In keeping with the Electoral Commissioner's proposal to the Joint Standing Committee on Electoral Matters, the new commission will be constituted by members with appropriate skills and qualifications. It will comprise the Electoral Commissioner and two other independent members—a former judge as chairperson and a person with financial or audit

skills and qualifications relevant to the functions of the commission. The amendments contained in this bill will establish requirements pertaining to the procedure of the Electoral Commission, the terms of office and remuneration, and eligibility for appointment to the commission. These eligibility requirements will align with the requirements that will apply to the Electoral Commissioner's appointment. The amendments also allow for the appointment of deputies of the appointed members of the commission, who will be able to act in the place of the relevant appointed member in that member's absence.

Schedule 2 to the bill will also insert a list of new objects into the Election Funding, Expenditure and Disclosure Act, which will include objects relating to transparency and reducing undue influence in the political system. These objects will emphasise the purpose of New South Wales election funding laws and Parliament's intent in relation to these laws. This Government is committed to cleaning up political donations in this State and is concerned to ensure this commitment is expressly reflected in the legislation. The new objects will also help to guide the new Electoral Commission in the exercise of its functions.

I turn now to address the lobbying reforms contained in schedule 3 to the bill, which proposes amendments to the Lobbying of Government Officials Act 2011. The amendments in schedule 3 form part of the package of reforms I announced on Tuesday 13 May 2014 to increase transparency and enhance regulation of lobbying. As I said then, I am determined to restore the public's trust in our political system. In summary, this bill establishes the Electoral Commission as an independent regulator of lobbyists; it applies a set of ethical standards to all third party lobbyists and other individuals and organisations that lobby government; and it enables the independent regulator to investigate alleged breaches and impose sanctions, which could result in lobbying firms being removed from the Register of Lobbyists and other organisations being placed on a watch list.

The watch list will be published on the same website as the register and will contain the names of lobbyists who have contravened the Lobbyist Code of Conduct or the Lobbying of Government Officials Act. These amendments respond to a recommendation made by the Independent Commission Against Corruption in its 2013 report entitled "Reducing the opportunities and incentives for corruption in the State's management of coal resources". In that report ICAC recommended that the Government review ICAC's recommendations in its 2010 report entitled "Investigation into corruption risks involved in lobbying", which have not been implemented to date. These amendments implement, in particular, the recommendations to provide a legislative basis for the regulation of lobbying and to appoint an independent body to maintain and monitor the Register of Lobbyists and to impose sanctions for breaches.

The public has a right to know who is gaining access to government. This will be achieved by giving legislative backing to the registration requirements for third party lobbyists by imposing ethical obligations on all lobbyists and by the obligation I have introduced for Ministers to publish quarterly diary summaries of scheduled meetings with external organisations on portfolio-related activities. These reforms build on the existing provisions of

the Lobbying of Government Officials Act 2014, which was introduced by this Government in 2011 and which bans lobbyist success fees and restricts lobbying by former Ministers and Parliamentary Secretaries.

Amendments in this bill will strengthen the regulation of lobbying, firstly, by imposing a new code of conduct on all organisations who seek to influence government policy and decision-making and, secondly, by conferring power on the Electoral Commission to monitor and enforce compliance by lobbyists with the code and legislation. The amendments to the Lobbying of Government Officials Act 2011 proposed in this bill will provide legislative underpinning for a new code of conduct for lobbyists to be prescribed that will apply ethical standards to all organisations who seek to influence government policy or decision-making. It will apply to board members, executives and other employees of companies and their professional advisers, including legal advisers. It will apply also to people who work for peak bodies, special interest groups, charities, trade unions, developers and community groups.

The new code will not apply to constituents meeting with members of Parliament in their capacity as elected representatives. Similarly, the code will not apply to government officials acting in their official capacity. This exemption will apply, for example, to a member of Parliament who is making a representation to a government Minister on behalf of their constituent, and to public servants who need to negotiate government policy with other government officials. The new code will require all lobbyists who seek to influence government policy or decision-making to disclose to the government, when seeking a meeting with a government official, the person or body on behalf of whom the meeting is sought, the nature of the matter proposed to be discussed and whether any registered lobbyists will be present; to disclose any interest in the matter proposed to be discussed at a meeting with a government official prior to the meeting commencing; to not engage in any conduct that is misleading, deceptive, corrupt, or otherwise unlawful; and to use all reasonable endeavours to satisfy themselves of the truth and accuracy of all material information provided in a meeting with a government official.

The Electoral Commission will have responsibility for administering, monitoring and enforcing compliance with the new code of conduct. The commission will be responsible for investigating alleged breaches of the Lobbying of Government Officials Act 2011, the new code and any regulations. The commission will be able to impose sanctions on lobbyists for non-compliance with the obligations contained in the new code and institute proceedings for a breach of the Act. The primary sanction for a breach by a registered third party lobbyist now will be deregistration, which effectively amounts to a suspension or a ban on lobbying. Third party lobbyists may also be placed on a new watch list as an interim sanction. The primary sanction for a breach by other lobbyists subject to the code of conduct will be their inclusion on the new public watch list.

Through their relevant codes of conduct, government officials will be required to observe additional meeting protocols if meeting with a person on the watch list. It will be a matter for government officials to determine whether it would be better to avoid meeting with them at

all. The existing register of third party lobbyists will be continued to ensure transparency about professional lobbyists and their clients. Through relevant codes of conduct governing government officials, third party professional lobbyists will still be prohibited from lobbying New South Wales government officials unless they are registered. The bill makes provision for regulations to be prescribed providing further detail, for example in relation to the register, registration requirements and the watch list. In closing, I note that the Electoral Commissioner and representatives from the NSW Electoral Commission have been consulted closely in relation to these reform proposals, and that the reforms are supported by the Electoral Commissioner. I commend the bill to the House.

Debate adjourned on motion by Ms Anna Watson and set down as an order of the day for a future day.