



New South Wales

Electoral and Lobbying Legislation Amendment (Electoral Commission) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to reconstitute the New South Wales Electoral Commission (so that it is constituted by the Electoral Commissioner, a former Judge as Chairperson of the Commission and a member with financial or audit skills, instead of it being constituted only by the Electoral Commissioner),
- (b) to abolish the Election Funding Authority of New South Wales and to confer its functions on the reconstituted New South Wales Electoral Commission,
- (c) to provide for a Register of Third-Party Lobbyists, a Lobbyists Watch List and a Code of Conduct for third-party and other lobbyists, and to confer on the New South Wales Electoral Commission the function of keeping the Register and Watch List and of enforcing compliance with the Code,
- (d) to make other consequential amendments.

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.

Schedule 1 Amendment of Parliamentary Electorates and Elections Act 1912 No 41

Schedule 1 [1] substitutes Division 1 of Part 3A of the Act to reconstitute the New South Wales Electoral Commission.

The Electoral Commission will consist of:

- (a) a former Judge appointed by the Governor as the Chairperson of the Commission, and
- (b) a person appointed by the Governor who is to have financial or audit skills and qualifications relevant to the functions of the Commission, and
- (c) the Electoral Commissioner.

The functions of the Electoral Commission will include:

- (a) the provision of assistance for the conduct of elections by the Electoral Commissioner, and
- (b) functions under the *Election Funding, Expenditure and Disclosures Act 1981* (which are currently exercised by the Election Funding Authority), including functions relating to:
 - (i) the administration of the election funding, expenditure and disclosure scheme under that Act, and
 - (ii) the registration of electoral participants, and
- (c) functions under the *Lobbying of Government Officials Act 2011* (conferred by the amendments made by Schedule 3 to the Bill), including functions relating to:
 - (i) the keeping of the Register of Third-Party Lobbyists and the Lobbyists Watch List, and
 - (ii) enforcing compliance with the Lobbyists Code and that Act, and
- (d) the institution of proceedings for offences against the Act, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*, and
- (e) the conduct and promotion of research into electoral matters and other matters that relate to its functions, and the publication of the results of that research, and
- (f) the promotion of public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs.

The Electoral Commission is not subject to the direction or control of the Minister in the exercise of its functions. It is the duty of the Electoral Commission to exercise its functions in a manner that is not unfairly biased against or in favour of any particular parties, groups, candidates or other persons or bodies.

The functions under the Act of conducting elections will remain with the Electoral Commissioner.

Schedule 1 [2] and [3] amend section 21AB to provide the same grounds of ineligibility for appointment as the Electoral Commissioner as are proposed under Schedule 1 [5] for appointment as other members of the Electoral Commission.

Schedule 1 [4] inserts proposed section 184A into the Act to enable the Electoral Commission, for the purpose of enforcing compliance with the Act, to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981* for the purpose of enforcing compliance with that Act.

Schedule 1 [5] inserts proposed Schedule 21A into the Act. The Schedule contains provisions relating to the members and procedure of the Electoral Commission, including the following:

- (a) eligibility for appointment as a member of the Commission,
- (b) the term of office of appointed members,
- (c) the appointment of deputies of appointed members,

- (d) the remuneration of appointed members and deputies,
- (e) vacancies in office of appointed members and deputies,
- (f) suspension and removal from office by Parliament.

Schedule 2 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78

Schedule 2 [4] inserts proposed section 4A to set out the objects of the Act. The objects are as follows:

- (a) to establish a fair and transparent election funding, expenditure and disclosure scheme,
- (b) to facilitate public awareness of political donations,
- (c) to help prevent corruption and undue influence in the government of the State,
- (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,
- (e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

Schedule 2 [1]–[3] and [5]–[14] make consequential amendments to the Act relating to the abolition of the Election Funding Authority and its replacement by the Electoral Commission. In exercising its functions, the Electoral Commission is to have regard to the objects of the Act.

Schedule 2 [15] amends Schedule 2 to make savings, transitional and other provisions consequent on the enactment of the proposed Act.

Under the provisions, the Election Funding Authority is formally abolished and its assets, rights and liabilities transferred to the Electoral Commission.

Schedule 3 Amendment of Lobbying of Government Officials Act 2011 No 5

Schedule 3 [1] and [2] revise the definitions of terms and expressions used in the Act. In particular:

- (a) a *third-party lobbyist* (to whom the Act is currently limited) is defined as an individual or body carrying on the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body,
- (b) a *lobbyist* is defined as a third-party lobbyist or any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist),
- (c) *lobbying* is defined (with relevant exceptions) as communicating with Government officials on designated official matters for the purpose of representing the interests of others (so as to extend to lobbying whether or not as part of a lobbying business, lobbying for the purpose of representing the interests of an organisation for which the person works, lobbying for the purpose of representing community interests and lobbying of a kind prescribed by the regulations).

Schedule 3 [3] inserts proposed Part 2 into the Act in relation to the Lobbyists Code of Conduct. The Code is to be prescribed by the regulations and is to set out the ethical standards of conduct to be observed by third-party and other lobbyists when lobbying Government officials in order to promote transparency, integrity and honesty.

Schedule 3 [3] also inserts proposed Parts 3 and 4 into the Act in relation to the Register of Third-Party Lobbyists and the Lobbyists Watch List. Third-party lobbyists (and individuals engaged to lobby for third-party lobbyists) are required to be registered on application to the

Electoral Commission (with information required to be included in the Register relating to their clients and to persons having a management, financial or other interest in the business of the lobbyist). The Electoral Commission is also required to maintain a Lobbyists Watch List that contains the names of lobbyists that the Commission considers should be on the Watch List because they have contravened the Lobbyists Code of Conduct or the Act. Under codes and official rules applying to Government officials, special procedures may apply to communications with persons on the Watch List and communications with unregistered lobbyists may be precluded. The Register and the Watch List are to be published on a website maintained by the Electoral Commission.

Schedule 3 [7] inserts proposed section 19 into the Act to confer on the Electoral Commission the function of enforcing compliance by lobbyists with the Lobbyists Code of Conduct and the Act, and for that purpose to enable the Commission to exercise any investigative or other functions it has under the *Election Funding, Expenditure and Disclosures Act 1981*. Schedule 3 [7] also inserts proposed section 20 to protect the Electoral Commission and others from liability in defamation or breach of confidence in connection with the exercise in good faith of the functions of the Commission.

Schedule 3 [4], [5] and [6] renumber existing Parts and sections of the Act as a consequence of the insertion of new Parts 2, 3 and 4 and make other consequential amendments.

Schedule 3 [8]–[10] amend Schedule 1 to make savings, transitional and other provisions consequent on the enactment of the provisions relating to the Register of Third-Party Lobbyists, the Lobbyists Watch List and the Lobbyists Code. In particular, the existing administrative Register of Lobbyists maintained by the Secretary of the Department of Premier and Cabinet is to be carried over to the Register established by the new Part 3 of the Act.

Schedule 4 Consequential amendments of other Acts and instruments

Schedule 4 makes consequential amendments to various Acts and regulations consequent on the proposed replacement of the Election Funding Authority with the Electoral Commission.