



New South Wales

Electoral Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to make provision for the conduct of State Parliamentary elections.

This Bill repeals and replaces the *Parliamentary Electorates and Elections Act 1912* (**the PE&E Act**). In particular, this Bill:

- (a) updates terms and practice to take account of modern electoral practice and technological advances, and
- (b) in general, increases penalties for electoral offences, and
- (c) makes it clear that the New South Wales Electoral Commission (the **Electoral Commission**) has the function of instituting proceedings for electoral offences under the proposed Act and other electoral legislation and 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 such legislation, and
- (d) allows the New South Wales Electoral Commissioner (the **Electoral Commissioner**) to conduct elections for a person or organisation on the payment of a fee or charge, and
- (e) changes the system of enrolment from one that required the Electoral Commissioner to keep separate, permanent rolls of electors for each electoral district to a system that provides for:
 - (i) a concept of enrolment as a legal status conferred on a person by the Electoral Commissioner (and is not linked to having the person's name entered in any written or electronic roll), and
 - (ii) the Electoral Commissioner to keep and maintain records of all electors enrolled under the proposed Act in an Electoral Information Register, and

- (f) requires the Electoral Commissioner to prepare authorised rolls for each election, and
- (g) simplifies the process for making complaints to the Electoral Commissioner about decisions relating to enrolment and for seeking administrative review of the Electoral Commissioner's decisions regarding those complaints, and
- (h) enables the Electoral Commissioner, before providing any enrolment information to any person or body (as permitted by the proposed Act), to require the person or body to provide the Electoral Commissioner with an undertaking that the person or body's systems and procedures are adequate to preserve the security of that information, and
- (i) removes a requirement that the Electoral Commissioner must publish a registered party information sheet for each registered party on the Electoral Commission's website at least one month before the date on which the Assembly is due to expire or, if it is dissolved earlier, as soon as practicable after its dissolution, and
- (j) requires the registered officer of a registered political party to make an application to amend the Register of Parties in relation to an amendment to the party's written constitution, a change of registered officer or a change in certain other specified particulars relating to the party, and
- (k) clarifies the dates for the issue of writs for elections and the contents of such writs and the dates for the close of nominations, and
- (l) enables nomination deposits of candidates for election to be paid by methods other than in cash, and
- (m) enables the registered officer of a registered party to nominate candidates for more than one electoral district and candidates for a periodic Council election in a single nomination document, and
- (n) provides that a nomination of a candidate must be accompanied by a child protection declaration stating:
 - (i) whether or not the candidate holds a working with children check clearance, and
 - (ii) if the candidate does not hold a working with children check clearance:
 - (A) whether or not the candidate has made a current application for a working with children check clearance (and if so, details of that application), and
 - (B) whether the candidate has been refused a working with children check clearance, and
 - (C) whether the candidate has 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 2012*, and
 - (iii) whether or not any apprehended violence order has ever been made against the candidate for the purposes of protecting a child from sexual assault, and
- (o) provides that details of such declarations are to be published on the Electoral Commission's website, and
- (p) provides that the Children's Guardian, after the election, is to audit the child protection declarations of candidates elected to Parliament for accuracy, and
- (q) enables the Electoral Commissioner, with the approval of the Secretary of the Department of Premier and Cabinet, to requisition the use of certain rooms and halls as voting centres for no cost (other than reasonable costs for lighting, heating, air conditioning and cleaning and costs for damage) in certain specified circumstances (for example, to enable wheelchair accessibility or because other voting centres in the district have become unavailable due to fire, flood or other emergency), and
- (r) simplifies and makes consistent the criteria that enable an elector to be permitted to vote at an early voting centre or to vote by post, and
- (s) enables postal votes and declaration votes to be scrutinised and counted at central ballot counting places approved by the Electoral Commissioner, and

- (t) enables technology assisted voting (such as internet 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, and
- (u) enables technology assisted voting to be used by additional classes of persons, including silent electors and registered early voters, and
- (v) clarifies and simplifies the requirements for the registration of electoral material, and
- (w) creates a new offence to prohibit an owner or occupier of premises being used as a voting centre from interfering with or removing (or causing to be removed) any election poster at the voting centre, and
- (x) clarifies the consequences of a death of a candidate during an election period, and
- (y) removes the redundant offence of wagering on the result of an election (as such wagering is already prohibited under the *Unlawful Gambling Act 1998* and the *Totalizator Act 1997*), and
- (z) removes the offences relating to display of posters exceeding 8,000 square centimetres in area within, or on walls, fences or other boundaries of, the grounds of an enclosure in which a building used for polling, and
- (aa) creates a new offence to prohibit a person from displaying, publishing or distributing material (or causing or permitting material to be displayed, published or distributed) where the person knows, or is reckless as to whether, the material falsely appears to have been authorised by the Electoral Commission or Electoral Commissioner, and
- (ab) provides for a method of prosecuting parties that are unincorporated associations, and
- (ac) requires the Electoral Commissioner to conduct a review of the administration of each State Parliamentary general election and by-election, and
- (ad) enables the Electoral Commissioner to declare electors who have been convicted of the offence of multiple voting, or whom the Electoral Commissioner has reasonable grounds to suspect have contravened the prohibition against multiple voting, as special electors who are required to vote by means of a declaration vote (similar to the way silent electors vote).

Outline of provisions

Part 1 Preliminary

Part 1 of the proposed Act contains preliminary machinery provisions, including provisions that:

- (a) set out the name of the proposed Act, and
- (b) provide that the proposed Act will commence on a day or days to be appointed by proclamation, and
- (c) set out the objects of the proposed Act, and
- (d) define certain terms, phrases and concepts used in the proposed Act.

Part 2 Electoral administration

Part 2 of the proposed Act provides for the administration of the proposed Act. It contains provisions providing for:

- (a) the constitution of the Electoral Commission, consisting of 2 appointed members and the Electoral Commissioner, and
- (b) the appointment of members, and the functions of, the Electoral Commission, and
- (c) the appointment and the functions of the Electoral Commissioner, and
- (d) the employment of staff in the Public Service to enable the Electoral Commission and the Electoral Commissioner to exercise their functions.

Part 3 Redistribution of electoral districts

Part 3 of the proposed Act sets out the scheme for the redistribution of electoral districts in accordance with the *Constitution Act 1902*. It contains provisions providing for:

- (a) the establishment of an Electoral Districts Redistribution Panel (the ***Redistribution Panel***) consisting of 3 members, being a Chairperson of the Redistribution Panel (who is to be a current or former Judge), the Electoral Commissioner and the Surveyor-General, and
- (b) the powers and immunities of Redistribution Panel members, and
- (c) the process for conducting redistributions, including provision for the following:
 - (i) the criteria for redistributions,
 - (ii) the public notice and public consultation required at different stages of redistributions,
 - (iii) the process of preparing draft, revised and final determinations of redistributions by the Redistribution Panel,
 - (iv) the proclamation of redistributed electoral districts by the Governor.

Part 4 Entitlement to enrol and vote

Part 4 of the proposed Act sets out a person's entitlement to be enrolled and to vote.

The Part provides that a person is entitled to be enrolled if the person has attained 16 years of age, is an Australian citizen and has resided at an address in New South Wales for at least 1 month before the enrolment. The Part also provides that certain other persons who are entitled to be enrolled on a Commonwealth roll under the *Commonwealth Electoral Act 1918* of the Commonwealth are entitled to be enrolled (for example, Australian citizens living overseas and certain British subjects enrolled before 26 January 1984). A person is not entitled to be enrolled if the person has been convicted of an offence, whether in New South Wales or elsewhere, and has been sentenced in respect of that offence to imprisonment for 12 months or more and is in prison serving that sentence.

The Part provides that a person who is enrolled in respect of an address in an electoral district is entitled to vote at an election for that district, but only if the person has attained 18 years of age on or before the date appointed as the election day for the election.

Part 5 Enrolment procedures and information

Part 5 of the proposed Act contains provisions relating to enrolment and enrolment information. The Part includes provisions that:

- (a) require persons who are entitled to vote to enrol and keep their enrolment updated, and
- (b) enable the Electoral Commissioner to enrol persons on the Electoral Commissioner's own initiative (also known as automatic enrolment or SmartRoll enrolment), and
- (c) enable persons to apply to be enrolled (including to be enrolled as silent electors), and
- (d) enable a person to make a complaint to the Electoral Commissioner about the enrolment of a person or the failure to enrol a person and to apply to the Civil and Administrative Tribunal for an administrative review of the decision of the Electoral Commissioner regarding such a complaint, and
- (e) empower the Electoral Commissioner to collect such information as is necessary for the preparation of authorised rolls for elections, and require the Electoral Commissioner to maintain and regularly update that information and require certain persons and bodies to provide information for that purpose, and
- (f) require the Electoral Commissioner to keep and maintain records of all electors enrolled under the proposed Act in a register (the ***Electoral Information Register***), and
- (g) require the Electoral Commissioner to prepare authorised rolls of electors for use at voting centres at elections, and

- (h) deal with public access to such rolls and information.

Part 6 Registration of political parties

Part 6 of the proposed Act deals with the registration of political parties for the purposes of the proposed Act and the *Election Funding, Expenditure and Disclosures Act 1981*. The Part substantially mirrors Part 4A of the PE&E Act. The Part contains a new provision requiring a registered political party to provide the following information in its application for registration (which is then included in the publicly available Register of Parties):

- (a) the party's objects,
- (b) the procedure for amending the party's written constitution,
- (c) the rules for membership of the party, including the procedure for accepting a person as a member and ending a person's membership,
- (d) a description of the party structure and of how the party manages its internal affairs,
- (e) the procedure for selecting a person to hold an office in the party and for removing a person from office,
- (f) the names of the officers or members of the party responsible for ensuring the party complies with the proposed Act and the *Election Funding, Expenditure and Disclosures Act 1981*.

Part 7 Conduct of Parliamentary elections

Part 7 of the proposed Act deals with the conduct of Parliamentary elections.

The Part makes provision for the following:

- (a) the manner and timing of the issue of writs for elections,
- (b) the conduct and administration of all Parliamentary elections by the Electoral Commissioner as returning officer and the appointment of election officials to assist the Electoral Commissioner,
- (c) the process of nomination of candidates for election,
- (d) the preparation of ballot papers for election,
- (e) the appointment and operation of voting centres, including provisions dealing with early voting centres and mobile voting centres,
- (f) the appointment and entitlements of scrutineers,
- (g) the process of ordinary voting at voting centres,
- (h) the process of declaration voting at voting centres, including absent voting and provisional voting,
- (i) postal voting procedures,
- (j) technology assisted voting procedures,
- (k) the determination of election results,
- (l) the regulation of certain activities during the election period, including the publication of certain electoral material,
- (m) offences in relation to elections,
- (n) other miscellaneous and machinery matters.

Part 8 Court of Disputed Returns

Part 8 of the proposed Act deals with the constitution and functions of the Court of Disputed Returns. The Part substantially mirrors Part 6 of the PE&E Act.

Part 9 Enforcement

Part 9 of the proposed Act deals with the enforcement of the proposed Act. The Part contains provisions dealing with proceedings for offences and the issue of penalty notices for certain offences. Special provision is made for the issue of penalty notices for the offence of failing to vote at an election.

Part 10 Miscellaneous

Part 10 of the proposed Act contains miscellaneous machinery provisions, including provisions dealing with the following:

- (a) the making of regulations for the purposes of the proposed Act,
- (b) the prohibition of the disclosure of any information obtained in connection with the administration or execution of the proposed Act (or any other Act conferring or imposing functions on the Electoral Commission or Electoral Commissioner) unless that disclosure is made in specified permitted circumstances,
- (c) the publication of approvals of the Electoral Commissioner or the Electoral Commission on the Electoral Commission's website,
- (d) the conduct of a review by the Electoral Commissioner of each State Parliamentary general election and by-election under the proposed Act,
- (e) the repeal of the PE&E Act, an uncommenced Act that amends the PE&E Act and the PE&E Act's associated regulations.

Schedule 1 Provisions relating to Electoral Commission

Schedule 1 contains provisions relating to the members of the Electoral Commission (other than the Electoral Commissioner), including their appointment, term of office and suspension and removal. The Schedule also deals with the procedure of meetings of the Electoral Commission.

Schedule 2 Provisions relating to Electoral Commissioner

Schedule 2 contains provisions relating to the office of Electoral Commissioner, including provisions dealing with the eligibility for appointment, the term of office and suspension and removal from that office. The Schedule also makes provision for an Acting Electoral Commissioner.

Schedule 3 Provisions relating to Redistribution Panel

Schedule 3 contains provisions relating to the constitution and procedure of the Redistribution Panel.

Schedule 4 Legislative Assembly ballot paper

Schedule 4 sets out the form for Legislative Assembly ballot papers.

Schedule 5 Legislative Council ballot paper

Schedule 5 sets out 2 forms for the Legislative Council ballot paper, one for periodic Council elections with 33 groups or fewer and one for periodic Council elections with more than 33 groups.

Schedule 6 Special provisions relating to multiple voters

Schedule 6 provides that the Electoral Commissioner may declare an elector to be a special elector if:

- (a) the elector has been convicted of the offence of multiple voting, or
- (b) the Electoral Commissioner has reasonable grounds to suspect that the elector has contravened the prohibition against multiple voting (whether or not the elector has been convicted of an offence for the contravention).

Special electors are required to vote by means of a declaration vote (similar to the way silent electors vote). The Schedule contains provisions to enable an elector who is the subject of a declaration based on the Electoral Commissioner having reasonable grounds to suspect the elector of multiple voting to make a complaint to the Electoral Commissioner and have that complaint investigated and dealt with. An elector who has made a complaint may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision of the Electoral Commissioner regarding the complaint.

Schedule 7 Savings, transitional and other provisions

Schedule 7 contains savings, transitional and other provisions consequent on the enactment of the proposed Act or any other Act that amends the proposed Act.

Schedule 8 Consequential amendment of other Acts and instruments

Schedule 8 makes consequential amendments to the Acts and instruments specified in the Schedule.

Table of concordance

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Secs 1–3	—
Sec 4	Sec 3
Secs 5–17	—
Sec 18	—
Sec 19	Sec 19
Sec 20	Sec 6
Sec 21	Sec 17A
Sec 22	Sec 13
Sec 23	—
Sec 24	Sec 14A
Sec 25	Sec 14
Secs 26–28	—
Sec 29	Sec 15
Sec 30	Secs 22 and 25
Sec 31	Secs 23 and 24

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 32	Sec 27
Sec 33	Sec 28
Sec 34	Sec 29
Sec 35	Sec 30
Sec 36	Sec 31
Sec 37	Sec 114AA
Secs 38 and 39	—
Sec 40	Secs 36 and 37
Sec 41	—
Sec 42	Sec 26
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Sec 47	Sec 39
Sec 48	Sec 38
Sec 49	Sec 40
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Sec 55	Sec 48
Sec 56	Sec 49
Part 6	Part 4A
Sec 57	Sec 66A
Sec 58	Sec 66C
Sec 59	Sec 66D
Sec 60	Sec 66DA
Sec 61	Sec 66E
Sec 62	Sec 66F
Sec 63	Sec 66FA
Sec 64	Sec 66G
Sec 65	—
Sec 66	Sec 66H
Sec 67	Sec 66HA

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 68	Sec 66I
Sec 69	—
Sec 70	Sec 66J
Sec 71	Sec 66K
Sec 72	Sec 66L
Sec 73	Sec 66M
Sec 74	Secs 68, 74A and 120I
Sec 75	Secs 72 and 74C
Sec 76 (1)	Sec 70
Sec 76 (3)	Secs 69A and 71
Sec 77	Secs 74 and 74D
Sec 78	Secs 69 and 74B
Sec 79	Sec 79 (8)
Sec 80	Sec 75
Sec 81	—
Sec 82	Sec 135A
Secs 83–85	—
Sec 86	Sec 81C
Secs 87 and 88	—
Sec 89	Secs 79A and 81G
Sec 90	Sec 81D
Sec 91	Secs 79 (7) and 81E
Sec 92	Secs 80 and 81H (1)
Sec 93	Secs 81 and 81H (3)
Secs 94–99	Secs 81J–81P
Part 7, Division 5, Subdivision 1	Part 5, Divisions 6 and 6A
Secs 100 and 101	—
Sec 102	Sec 83B
Sec 103	Sec 104A
Sec 104	Sec 83D
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Sec 106	Sec 83H
Sec 107	Sec 83I
Sec 108	Sec 84
Sec 109	Sec 95
Sec 110	Sec 85

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 111	—
Sec 112	Sec 89
Sec 113	Sec 114P
Sec 114	—
Sec 115	Sec 114PA
Sec 116	Sec 114R (5A)
Sec 117	—
Sec 118	Sec 87A
Sec 119	Secs 90 and 137
Secs 120–122	—
Sec 123	Sec 93
Sec 124	Sec 94
Sec 125	Sec 96
Sec 126	—
Sec 127	Sec 99
Sec 128	Sec 100
Sec 129	Secs 99A and 103A
Sec 130	Sec 101
Sec 131	Secs 102 and 102A
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Sec 134	Sec 108
Sec 135	Sec 115
Sec 136	Secs 99A and 103A
Sec 137	Secs 106 and 115A
Secs 138–140	—
Sec 141	Sec 116
Sec 142	Sec 117
Sec 143	Sec 114A
Sec 144	Sec 114AB
Sec 145	Sec 114D
Sec 146	Sec 114E
Sec 147	Sec 114F
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Sec 149	Sec 114L
Sec 150	Sec 114N

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 151	Sec 120AA
Sec 152	Sec 120AB
Secs 153 and 154	—
Sec 155	Sec 120AC
Sec 156	Sec 120AD
Sec 157	—
Sec 158	Sec 120AE
Sec 159	Sec 120AG
Sec 160	Sec 120AI
Sec 161	Sec 120AK
Sec 162	Sec 120AL
Sec 163	Sec 84
Sec 164	Secs 121 and 129B
Sec 165	Secs 122, 122A and 129F
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Sec 167	Sec 129EA
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Sec 169	Secs 123 and 129C
Sec 170	Sec 125A
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Sec 173	Secs 126 and 129G
Sec 174	Sec 126A
Sec 175	Secs 127 and 129H
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Sec 177	—
Sec 178	Sec 151J
Secs 179–181	—
Sec 182	Sec 151GA
Secs 183–202	—
Sec 203	Sec 114
Secs 204–206	—
Sec 207	Sec 120F
Sec 208	Sec 113
Sec 209	Sec 147
Sec 210	Sec 151
Sec 211	Sec 111

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 212	Sec 112
Sec 213	Sec 176B
Secs 214–216	—
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Sec 219	Sec 177
Sec 220 (2)	Secs 81A and 81H (2)
Sec 221	Sec 134
Sec 222	Sec 138
Sec 223	Sec 176C
Sec 224	Sec 156
Sec 225	Sec 161
Sec 226	—
Sec 227	Sec 166
Sec 228	Sec 169
Sec 229	Sec 175
Sec 230	Sec 175A
Sec 231	Sec 175AA
Sec 232	Sec 154A
Sec 233	Sec 155
Sec 234	Secs 157, 158 and 159
Sec 235	Sec 160
Sec 236	Sec 163
Sec 237	Sec 164
Sec 238	Sec 165
Sec 239	Sec 167
Sec 240	Sec 168
Sec 241	Sec 170
Sec 242	Sec 171
Sec 243	Sec 172
Sec 244	Sec 173
Sec 245	Sec 174
Sec 246	Sec 175B
Sec 247	Sec 175C
Sec 248	Sec 175D
Sec 249	Sec 175E

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of PE&E Act
Sec 250	Sec 175F
Sec 251	Sec 175G
Sec 252	Sec 175I
Sec 253	Sec 175J
Sec 254	Sec 183
Secs 255–258	—
Sec 259	Secs 120B and 120C
Sec 260	Sec 120D
Sec 261	Sec 120E
Sec 262	Sec 120G
Sec 263	—
Sec 264	Sec 176A
Sec 265	Sec 179
Sec 266	Sec 186
Sec 267	Sec 176
Sec 268	Secs 48 and 135
Sec 269	—
Sec 270	Sec 120AJ
Secs 271 and 272	—
