

City of Sydney Amendment (Elections) Bill 2014

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to require the general manager of the Council of the City of Sydney (the *general manager*) to keep and maintain a register of all persons entitled to be enrolled (including persons who may be taken to be entitled to be enrolled) on the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees (the *non-residential rolls*) under the *City of Sydney Act 1988* (the *CoS Act*), and
- (b) to revise and update provisions relating to entitlement to enrolment on those non-residential rolls, and
- (c) to provide for the general manager to automatically enrol persons onto those non-residential rolls, and
- (d) to provide that if a corporation is the owner, ratepaying lessee or occupier of rateable land in the City of Sydney, the corporation may nominate 2 natural persons to be enrolled as electors instead of the corporation, and
- (e) to provide that if a corporation fails to make such a nomination at least 28 days before the closing date for an election, the first 2 company secretaries or directors of the corporation (taken alphabetically) are to be deemed to have been so nominated and are to be enrolled as electors instead of the corporation, and
- (f) to provide that no more than 2 owners, 2 ratepaying lessees or 2 occupiers are entitled to be enrolled as electors in respect of any one parcel of rateable land, and
- (g) to provide that if it appears to the general manager that there are more than 2 owners, 2 ratepaying lessees or 2 occupiers of any one parcel of rateable land, the general manager is to enrol:
 - (i) 2 of those owners, ratepaying lessees or occupiers in accordance with a written nomination signed by the majority of those owners, ratepaying lessees or occupiers submitted to the general manager at least 28 days before the closing date for an election, or
 - (ii) if no such nomination is made, the first 2 persons from a list of those owners, ratepaying lessees or occupiers (taken alphabetically), and
- (h) to provide that regulations made under the *Local Government Act 1993* may apply one or more of the provisions of Part 3 (Elections) of the CoS Act (with any specified modifications) to elections for such other local government areas as may be specified in those regulations.

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 City of Sydney Act 1988 No 48

Non-residential roll electoral information register—object (a)

Schedule 1 [10] inserts proposed section 18D into the CoS Act to give effect to object (a) set out in the Overview. The proposed section:

- (a) requires the general manager to keep and maintain a register of all persons entitled to be enrolled (including persons who may be taken to be entitled to be enrolled) on the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees under the CoS Act, and
- (b) sets out what information is to be included on that register, and
- (c) allows the register to be kept in an electronic form, and
- (d) requires the general manager to maintain and regularly revise the register to ensure that it is accurate, and
- (e) requires the general manager to ensure that the register is not available for public inspection, and
- (f) empowers the general manager, or a member of staff of the Council of the City of Sydney who is authorised by the general manager, to require certain persons to answer questions regarding the enrolment of persons under the CoS Act and provides that a refusal or failure to answer such a question (or giving an answer to such a question that the person knows is false or misleading in a material particular) is an offence, and
- (g) enables the general manager to request the assistance of the Electoral Commissioner, and requires the Electoral Commissioner to provide that assistance, in ascertaining certain information concerning a person who the general manager believes is entitled to be enrolled as an elector for the City of Sydney.

Entitlement to enrolment—object (b)

Schedule 1 [2] substitutes the definitions of *ratepaying lessee* and *occupier* in section 14 (1) of the CoS Act to give effect to object (b) set out in the Overview. These provisions define which persons are ratepaying lessees and occupiers for the purposes of enrolment under the CoS Act. The substituted definitions remove the requirement that the person be liable to pay annual rent and local government rates (in relation to a ratepaying lessee) or annual rent (in relation to an occupier) of at least \$5,000.

Schedule 1 [3] updates a reference in the definition of *rateable land* in section 14 (1) of the CoS Act. The amendment makes it clear that rateable land does not include a utility lot within the meaning of the *Strata Schemes Management Act 1996*, which is a lot designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like.

Schedule 1 [5] substitutes section 14 (2) of the CoS Act to provide that a person is not an owner, ratepaying lessee or occupier of rateable land, for the purposes of the enrolment provisions of that Act, merely because the person owns, holds or occupies:

- (a) a parcel of land designed, constructed or used solely or principally for the parking of no more than 2 motor vehicles, or
- (b) a self-storage unit used for the storage of boats, motor vehicles or goods.

Schedule 1 [5] also removes the requirement that, in order to be enrolled, a ratepaying lessee or occupier of rateable land must have his or her primary place of residence within New South Wales. It is noted that section 15 (2) of the CoS Act provides that a person is not entitled to be enrolled unless the person is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives.

Automatic enrolment of persons on non-residential rolls—object (c)

Schedule 1 [10] inserts proposed sections 18A–18C into the CoS Act to give effect to object (c) set out in the Overview.

Proposed section 18A (which is substituted for current section 18A) provides that not later than the closing date for an election, the general manager is to prepare the following rolls for the election:

- (a) the *roll of non-resident owners of rateable land*, being a roll of persons who are entitled to be enrolled as electors as owners of rateable land in the City of Sydney,
 - (b) the *roll of occupiers and ratepaying lessees*, being a roll of persons who are entitled to be enrolled as electors as ratepaying lessees or occupiers of rateable land in the City of Sydney.
- An owner, ratepaying lessee or occupier is not required to make an application for enrolment to be included on those rolls.

Proposed section 18B provides that, as soon as practicable after the closing date for an election for the City of Sydney, the Electoral Commissioner is to review those rolls and notify the general manager of any necessary corrections.

Proposed section 18C provides that as soon as practicable after correcting the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees (if required), the general manager is to confirm the rolls for the purpose of the election.

Schedule 1 [4] makes a consequential amendment.

Enrolment of nominee electors for corporations—objects (d) and (e)

Schedule 1 [8] inserts proposed sections 16AA–16AC into the CoS Act to give effect to objects (d) and (e) set out in the Overview.

Proposed section 16AA provides that if a corporation is the owner, ratepaying lessee or occupier of any rateable land, the corporation may submit a nomination in writing to the general manager of the names of 2 natural persons to be enrolled as electors instead of the corporation.

The provision also provides that if the joint owners, ratepaying lessees or occupiers of any rateable land consist of corporations or a combination of persons and corporations (of at least one person and one corporation), the joint owners, ratepaying lessees or occupiers may submit a nomination in writing to the general manager of the names of 2 natural persons to be enrolled as electors instead of the joint owners, ratepaying lessees or occupiers.

Proposed section 16AB contains provisions regarding the making and revocation of those nominations. A person may not be nominated under proposed section 16AA unless the person, at the time of the nomination:

- (a) is a director or company secretary of the corporation (or if the joint owners, ratepaying lessees or occupiers of any rateable land consist of a combination of corporations and natural persons, is a director or company secretary of the corporations or one of those natural persons), and
- (b) has reached 18 years of age or will attain the age of 18 years on or before the date of the next ordinary election of councillors, and
- (c) has consented in writing to be nominated, and
- (d) is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives, and
- (e) is not for any other reason already entitled to be enrolled as an elector for the City of Sydney.

Proposed section 16AC provides that if a corporation is the sole owner, ratepaying lessee or occupier of any rateable land in the City of Sydney and the general manager has not at least 28 days before the closing date for an election received a nomination in writing made by the corporation of 2 natural persons who are to be enrolled as an elector instead of the corporation, the first 2 of the following persons are taken to have been nominated by the corporation:

- (a) the company secretaries (however styled) of the corporation (taken alphabetically),
- (b) the directors (however styled) of the corporation (taken alphabetically).

(Proposed section 16AC (2) deals with the situation where a corporation validly nominates only one person.)

Proposed section 16AC (4) provides that if a person is:

- (a) otherwise entitled to be enrolled, or
 - (b) not entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives,
- that person is to be disregarded for the purposes of deeming a nomination under this proposed section.

The general manager must advise the corporation in writing of any person who has been enrolled as a nominee of the corporation under this proposed section.

Schedule 1 [6] and [7] make consequential amendments.

Multiple owners, ratepaying lessees or occupiers—objects (f) and (g)

Schedule 1 [9] inserts proposed section 16B into the CoS Act to give effect to objects (f) and (g) set out in the Overview.

Proposed section 16B provides that no more than 2 owners, 2 ratepaying lessees and 2 occupiers are entitled to be enrolled as electors in respect of any one parcel of rateable land.

The proposed section provides that if there are more than 2 owners, ratepaying lessees or occupiers of any one parcel of rateable land, the general manager is to enrol:

(a) 2 of those owners, ratepaying lessees or occupiers in accordance with a written nomination made by the majority of those owners, ratepaying lessees or occupiers, or

(b) if no such nomination is made—the first 2 persons from an alphabetical list of the names of the owners, ratepaying lessees or occupiers.

The proposed section also contains provisions dealing with the making and revocation of nominations.

Schedule 1 [5] also makes a consequential amendment by omitting current section 14 (1A)–(3) of the CoS Act which dealt with multiple ratepaying lessees and occupiers by determining an elector entitlement based on the amount of annual rent and local government rates (in relation to a ratepaying lessees) or annual rent (in relation to occupiers) divided by \$5,000.