



New South Wales

Cross-Border Commission Bill 2011

Explanatory note

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

Overview of Bill

The object of this Bill is to establish the Cross-Border Commission of New South Wales to inquire into matters affecting border communities.

Outline of provisions

Part 1 Preliminary

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 the date of assent.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Cross-Border Commission

Clause 4 provides for the constitution of the Cross-Border Commission of New South Wales. The Commission is to consist of the Chairperson and between 4 and 8 part-time members appointed by the Premier. The part-time members are to be residents of New South Wales who, in the opinion of the Premier, are suitably

qualified to represent various interests in relation to border communities. A person cannot be a part-time member if he or she is a member of the Parliament of New South Wales or of the Commonwealth.

Clause 5 provides that the Chairperson is to be appointed by the Governor on the recommendation of the Premier after consultation by the Premier with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties).

Clause 6 makes provision for the appointment by the Premier, after consultation with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties), of an acting Chairperson during the illness or absence of the Chairperson.

Clause 7 enables staff to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* to assist the Commission. Clause 7 also enables the Commission to utilise staff or facilities of a government department or a public or local authority and to engage consultants.

Clause 8 sets out the following functions of the Commission:

- (a) to invite members of a border community to make submissions to the Commission in relation to matters affecting that community,
- (b) to conduct inquiries into such matters affecting border communities as are referred to it by the Premier or as the Commission considers appropriate,
- (c) to identify issues affecting border communities and to make recommendations to the Premier regarding such issues,
- (d) to prepare an annual report for tabling in Parliament in relation to the results of its inquiries into matters affecting border communities, and in relation to any action taken by the Government as a consequence of any recommendations referred to in paragraph (c),
- (e) other functions conferred or imposed on the Commission by or under any other Act or law.

Clause 9 requires the Commission to prepare an annual report and to forward it to the Premier. The Premier is to cause the report to be tabled in each House of Parliament as soon as practicable after the report is forwarded to the Premier. Clause 9 also makes provision for the tabling of such a report if a House of Parliament is not sitting when the Premier seeks to table the report.

Part 3 Miscellaneous

Clause 10 absolves a member of the Commission, or a person acting under the direction of the Commission, from personal liability for anything done or omitted in good faith for the purpose of executing an Act (including the proposed Act).

Clause 11 requires the Premier to review the functions of the Commission 5 years after the commencement of the proposed Act and to report the outcome of the review to each House of Parliament.

Cross-Border Commission Bill 2011

Explanatory note

Schedule 1 contains provisions relating to the constitution and procedure of the Commission, including terms of office of members, voting and quorum for meetings.

Schedule 2 makes a consequential amendment to the *Public Sector Employment and Management Act 2002*.



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New South Wales

Cross-Border Commission Bill 2011

No. , 2011

A Bill for

An Act to establish the Cross-Border Commission to inquire into matters affecting border communities; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Cross-Border Commission Act 2011*. 4

2 Commencement 5

This Act commences on the date of assent. 6

3 Definitions 7

In this Act: 8

border community means a community of people who live or work within a border region. 9
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border region means: 11

(a) a region that is partly in New South Wales and partly outside New South Wales, or 12
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(b) a region that is wholly in New South Wales and near the border of New South Wales and another State or a Territory. 14
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Chairperson means the Chairperson of the Commission appointed under section 5 (1). 16
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Commission means the Cross-Border Commission of New South Wales constituted by this Act. 18
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exercise of a function includes the performance of a duty. 20

function includes a power, authority or duty. 21

part-time member means a part-time member of the Commission referred to in section 4 (2) (b). 22
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Part 2	Cross-Border Commission	1
4	Constitution of Commission	2
(1)	There is constituted by this Act the Cross-Border Commission of New South Wales.	3 4
(2)	The Commission is to consist of between 5 and 9 members as follows:	5
(a)	the Chairperson,	6
(b)	not fewer than 4 and not more than 8 part-time members who are to be appointed by the Premier.	7 8
(3)	The part-time members are to be persons who reside in New South Wales and who, in the opinion of the Premier, are suitably qualified to represent one or more of the following interests in relation to border communities:	9 10 11 12
(a)	the interests of consumers,	13
(b)	the interests of business,	14
(c)	the interests of farmers,	15
(d)	the interests of local government.	16
(4)	A person is not eligible to be a part-time member of the Commission if the person is a member of:	17 18
(a)	the Legislative Assembly or Legislative Council of the New South Wales Parliament, or	19 20
(b)	the House of Representatives or Senate of the Commonwealth Parliament.	21 22
(5)	Schedule 1 contains provisions with respect to the constitution and procedure of the Commission.	23 24
5	Chairperson	25
(1)	The Governor, on the recommendation of the Premier, is to appoint a person to be Chairperson of the Commission.	26 27
(2)	Such a recommendation is not to be made unless the Premier has consulted with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties) in relation to the proposed appointment.	28 29 30 31 32
(3)	The employment of the Chairperson is subject to Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , but is not subject to Chapter 1A of that Act.	33 34 35

6 Acting Chairperson	1
(1) The Premier may from time to time appoint a person to act in the office of Chairperson during any illness or absence of the Chairperson (or during any vacancy in the office of Chairperson) and the person, while so acting, has all the functions of the Chairperson.	2 3 4 5
(2) The Premier may, at any time, remove a person from the office of acting Chairperson.	6 7
(3) Action of the kind referred to in subsection (1) or (2) may not be taken unless the Premier has consulted with the Leader of the Opposition in the Legislative Assembly (or, if the Opposition comprises 2 or more recognised political parties, the leaders of those parties) in relation to the proposed action.	8 9 10 11 12
(4) The acting Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine.	13 14 15
7 Staff	16
(1) Such staff as may be necessary to assist the Commission are to be employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> .	17 18 19
(2) The Chairperson may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or a public or local authority. For the purposes of this Act, a person whose services are utilised under this subsection is a member of the staff of the Commission.	20 21 22 23 24
(3) The Chairperson may engage such consultants as the Commission requires to assist it in the exercise of its functions.	25 26
8 Functions of Commission	27
The Commission has the following functions:	28
(a) to invite members of a border community to make submissions to the Commission in relation to matters affecting that community,	29 30
(b) to conduct inquiries into such matters affecting border communities as are referred to it by the Premier or as the Commission considers appropriate,	31 32 33
(c) to identify issues affecting border communities and to make recommendations to the Premier regarding such issues,	34 35
(d) to prepare an annual report for tabling in Parliament in relation to the results of its inquiries into matters affecting border communities, and in relation to any action taken by the	36 37 38

	Government as a consequence of any recommendations referred to in paragraph (c),	1 2
(e)	such other functions as are conferred or imposed on it by or under any other Act or law.	3 4
9	Reports	5
(1)	As soon as practicable after 30 June (but on or before 31 December) in each year, the Chairperson must provide the Premier with a report on the operations of the Commission for the period ending on 30 June in that year.	6 7 8 9
(2)	The report must include details of any recommendations made to the Premier during the period to which the report relates as well as details of any Government action in relation to those recommendations.	10 11 12
(3)	The Premier is to table the report, or cause it to be tabled, in each House of Parliament as soon as practicable after the report is forwarded to the Premier.	13 14 15
(4)	If a House of Parliament is not sitting when the Premier seeks to table the report, the Premier is to present copies of the report to the Clerk of the House concerned.	16 17 18
(5)	A report presented to the Clerk of a House of Parliament:	19
(a)	on presentation and for all purposes, is taken to have been laid before that House, and	20 21
(b)	is to be printed by authority of the Clerk of that House, and	22
(c)	for all purposes, is taken to be a document published by order or under the authority of that House, and	23 24
(d)	is to be recorded:	25
(i)	in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, or	26 27
(ii)	in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,	28 29
	on the first sitting day of that House after receipt of the report by the Clerk.	30 31

Part 3	Miscellaneous	1
10	Personal liability	2
	A matter or thing done or omitted to be done by the Commission, a member of the Commission, or a person acting under the direction of the Commission does not, if the matter was done or omitted in good faith for the purpose of executing this or any other Act, subject the member or person so acting personally to any action, liability, claim or demand.	3 4 5 6 7 8
11	Review of Commission's functions	9
(1)	The Premier is to conduct a review of the effectiveness with which the Commission exercises its functions.	10 11
(2)	The review is to be conducted as soon as possible after the period of 5 years from the commencement of this Act.	12 13
(3)	The Premier is to cause a report of the results of that review to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	14 15 16

Schedule 1	Constitution and procedure of Commission	1
		2
	(Section 4 (5))	3
Part 1	Constitution	4
1	Term of office	5
	Subject to this Schedule, a part-time member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	6 7 8 9
2	Remuneration	10
	A part-time member of the Commission is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.	11 12 13
3	Deputies	14
(1)	The Premier may, from time to time, appoint a person to be the deputy of a part-time member, and the Premier may revoke any such appointment.	15 16 17
(2)	In the absence of a part-time member, the part-time member's deputy may, if available, act in the place of the member.	18 19
(3)	While acting in the place of a part-time member, a person:	20
(a)	has all the functions of the part-time member and is taken to be a part-time member, and	21 22
(b)	is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the person.	23 24 25
(4)	For the purposes of this clause, a vacancy in the office of a part-time member is taken to be an absence of the part-time member.	26 27
4	Vacancy in office of part-time member	28
(1)	The office of a part-time member becomes vacant if the part-time member:	29 30
(a)	dies, or	31
(b)	completes a term of office and is not re-appointed, or	32
(c)	resigns the office by instrument in writing addressed to the Premier, or	33 34

(d)	is removed from the office by the Premier under this clause, or	1
(e)	is absent from 4 consecutive meetings of the Commission of which reasonable notice has been given to the part-time member personally or by post, except on leave granted by the Premier or unless the part-time member is excused by the Premier for having been absent from those meetings, or	2 3 4 5 6
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	7 8 9 10
(g)	becomes a mentally incapacitated person, or	11
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	12 13 14 15 16
(i)	becomes a member of the Legislative Assembly or Legislative Council of the New South Wales Parliament, or	17 18
(j)	becomes a member of the House of Representatives or Senate of the Commonwealth Parliament, or	19 20
(k)	ceases to be a resident of New South Wales.	21
(2)	The Premier may at any time remove a part-time member from office.	22
5	Filling of vacancy in office of part-time member	23
	If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	24 25
6	Disclosure of pecuniary interests	26
(1)	If:	27
(a)	a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and	28 29 30
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	31 32 33
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.	34 35 36

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| (2) | A disclosure by a member at a meeting of the Commission that the member: | 1 |
| | (a) is a member of, or is in the employment of, a specified company or other body, or | 2 |
| | (b) is a partner of, or is in the employment of, a specified person, or | 3 |
| | (c) has some other specified interest relating to a specified company or other body or to a specified person, | 4 |
| | is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). | 5 |
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| (3) | Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Commission. | 12 |
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| (4) | After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Commission otherwise determines: | 16 |
| | (a) be present during any deliberation of the Commission with respect to the matter, or | 17 |
| | (b) take part in any decision of the Commission with respect to the matter. | 18 |
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| | | 20 |
| (5) | For the purposes of the making of a determination by the Commission under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: | 21 |
| | (a) be present during any deliberation of the Commission for the purpose of making the determination, or | 22 |
| | (b) take part in the making by the Commission of the determination. | 23 |
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| (6) | A contravention of this clause does not invalidate any decision of the Commission. | 29 |
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| 7 | Effect of certain other Acts | 31 |
| (1) | The <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of any part-time member and a part-time member, in the member's capacity as such a member, is not subject to the provisions of that Act. | 32 |
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| (2) | If by or under any Act provision is made: | 36 |
| | (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or | 37 |
| | | 38 |

(b) prohibiting the person from engaging in employment outside the duties of that office,	1 2
the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.	3 4 5
Part 2 Procedure	6
8 General procedure	7
The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Commission.	8 9 10
9 Quorum	11
The quorum for a meeting of the Commission is 3 members, of whom one must be the Chairperson.	12 13
10 Presiding member	14
(1) The Chairperson is to preside at a meeting of the Commission.	15
(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	16 17
11 Voting	18
A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present is the decision of the Commission.	19 20 21
12 Transaction of business outside meetings or by telephone	22
(1) The Commission may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Commission for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Commission.	23 24 25 26
(2) The Commission may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	27 28 29 30 31
(3) For the purposes of:	32
(a) the approval of a resolution under subclause (1), or	33

(b) a meeting held in accordance with subclause (2),	1
the Chairperson and each member have the same voting rights as they	2
have at an ordinary meeting of the Commission.	3
(4) A resolution approved under subclause (1) is to be recorded in the	4
minutes of the meetings of the Commission.	5
(5) Papers may be circulated among the members for the purposes of	6
subclause (1) by facsimile or other transmission of the information in	7
the papers concerned.	8
13 First meeting	9
The Premier may call the first meeting of the Commission in such	10
manner as the Premier thinks fit.	11

Schedule 2	Amendment of Public Sector	1
	Employment and Management Act 2002	2
	Schedule 2 Executive positions (other than non-statutory SES positions)	3
	Insert at the end of Part 2:	4
	Chairperson of the Cross-Border Commission	5