



New South Wales

# Parliamentary Electorates and Elections Amendment (Joint Parliamentary Committee) Bill 2003

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Parliamentary Electorates and Elections Act 1912* to establish a Joint Parliamentary Committee (to be known as the Committee on the State Electoral Office) which will:

- (a) have the power to veto the proposed appointment of a person as Electoral Commissioner, and
- (b) monitor and review the exercise by the Electoral Commissioner of the Commissioner's functions under the *Parliamentary Electorates and Elections Act 1912* and any other Act.

However, the Committee's functions will not extend to the monitoring or review of a decision made by an electoral official in the scrutiny of votes in a particular election.

The powers, functions and procedures of the proposed Joint Committee are similar to those of existing Joint Committees under the *Ombudsman Act 1974*, the *Independent Commission Against Corruption Act 1988* and the *Health Care Complaints Act 1993*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on its assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Parliamentary Electorates and Elections Act 1912* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [3]** inserts a new Part 9, consisting of proposed sections 189–200, into the *Parliamentary Electorates and Elections Act 1912*.

Proposed section 189 provides for the establishment of the Committee on the State Electoral Office as a Joint Committee of Parliament.

Proposed section 190 sets out the functions of the Joint Committee. These include the following:

- (a) monitoring and reviewing the exercise by the Electoral Commissioner of his or her functions,
- (b) reporting to Parliament on such matters relating to the Electoral Commissioner as the Joint Committee considers should be brought to Parliament's attention,
- (c) examining annual and other reports of the Electoral Commissioner and reporting to Parliament on those reports,
- (d) reporting to Parliament any changes that the Joint Committee considers desirable to the functions, structures and procedures of the State Electoral Office,
- (e) inquiring into any question in connection with its own functions that is referred to it by Parliament, and reporting accordingly.

The functions may be exercised in respect of matters that occurred before the establishment of the proposed Joint Committee. However, the functions of the Joint Committee will not extend to the monitoring or review of a decision made by an electoral official in the scrutiny of votes in a particular election.

Proposed section 191 enables the Joint Committee to veto the proposed appointment of a person as Electoral Commissioner.

Proposed section 192 provides that the Joint Committee is to consist of 9 members (4 being members of the Legislative Council (appointed by the Council) and 5 being members of the Legislative Assembly (appointed by the Assembly)).

Proposed section 193 specifies the circumstances in which a member of the Joint Committee ceases to hold office, and provides for the filling of any vacancies.

Proposed section 194 provides for a Chairperson and Vice-Chairperson of the Joint Committee.

Proposed section 195 sets out the procedure of the Joint Committee.

Proposed section 196 provides a mechanism by which the Joint Committee can report to Parliament when Parliament is not sitting.

Proposed section 197 enables the Joint Committee to send for persons, papers and records and requires the Joint Committee to take evidence in public (unless reasons of confidentiality dictate otherwise).

Proposed section 198 deals with confidentiality and sets out the circumstances in which evidence must be taken in private, documents produced to the Joint Committee must be treated as confidential and the members of the Joint Committee are prohibited from disclosing evidence or the contents of documents. (Matters relating to the proposed appointment of a person as Electoral Commissioner are confidential.)

Proposed section 199 specifies the way in which the Joint Committee is to be regarded for certain purposes (such as the purposes of the *Parliamentary Evidence Act 1901*).

Proposed section 200 makes it clear that acts and proceedings of the Joint Committee are valid despite any technical deficiency in the Joint Committee as constituted at the time of the act or proceeding.

**Schedule 1 [2]** inserts a new section 21AA, which prohibits a person from being appointed as Electoral Commissioner while the Joint Committee is considering the proposed appointment or if the Joint Committee has exercised its right to veto the proposed appointment.

**Schedule 1 [1]** inserts a definition of *Joint Committee* into section 3 of the *Parliamentary Electorates and Elections Act 1912*.





New South Wales

# Parliamentary Electorates and Elections Amendment (Joint Parliamentary Committee) Bill 2003

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New South Wales

# Parliamentary Electorates and Elections Amendment (Joint Parliamentary Committee) Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Parliamentary Electorates and Elections Act 1912* so as to provide for the constitution and functions of a Joint Parliamentary Committee to monitor the work and activities of the Electoral Commissioner for New South Wales; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Parliamentary Electorates and Elections Amendment (Joint Parliamentary Committee) Act 2003</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent.	6
<b>3 Amendment of Parliamentary Electorates and Elections Act 1912 No 41</b>	7 8
The <i>Parliamentary Electorates and Elections Act 1912</i> is amended as set out in Schedule 1.	9 10

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*Joint Committee* means the Joint Committee called the Committee on the State Electoral Office constituted under Part 9.

### [2] Section 21AA

Insert after section 21A:

#### 21AA Veto of proposed appointment of Electoral Commissioner

- (1) A person is not to be appointed as Electoral Commissioner until:
  - (a) a proposal that the person be appointed has been referred to the Joint Committee under section 191, and
  - (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 191, *appointment* includes re-appointment.

### [3] Part 9

Insert before Schedule 1:

## Part 9 Joint Parliamentary Committee

### 189 Constitution of Joint Committee

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the State Electoral Office, is to be appointed.

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<b>190</b>	<b>Functions of Joint Committee</b>	1
(1)	The functions of the Joint Committee are as follows:	2
(a)	to monitor and to review the exercise by the Electoral Commissioner of the functions of the Commissioner under this or any other Act,	3 4 5
(b)	to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Electoral Commissioner or connected with the exercise of the functions of the Commissioner to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,	6 7 8 9 10 11
(c)	to examine each annual and other report made by the Electoral Commissioner, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,	12 13 14 15 16
(d)	to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the State Electoral Office,	17 18 19 20
(e)	to inquire into any question in connection with the Joint Committee's functions that is referred to it by both Houses of Parliament, and to report to both Houses on that question.	21 22 23 24
(2)	Nothing in this Part authorises the Joint Committee to monitor or review a decision made by an electoral official in the scrutiny of votes in a particular election.	25 26 27
(3)	The functions of the Joint Committee (other than the function referred to in subsection (1) (a)) may be exercised in respect of matters occurring before or after the commencement of this section.	28 29 30 31
<b>191</b>	<b>Power to veto proposed appointment of Electoral Commissioner</b>	32 33
(1)	The Minister is to refer a proposal to appoint a person as Electoral Commissioner to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.	34 35 36 37 38

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- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter. 1  
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- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it. 6  
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- (4) A referral or notification under this section is to be in writing. 9
- 192 Membership** 10
- (1) The Joint Committee is to consist of 9 members, of whom: 11
- (a) 4 are to be members of, and appointed by, the Legislative Council, and 12  
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- (b) 5 are to be members of, and appointed by, the Legislative Assembly. 14  
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- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament. 16  
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- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary. 20  
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- 193 Vacancies** 23
- (1) A member of the Joint Committee ceases to hold office: 24
- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or 25  
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- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or 27  
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- (c) if a member ceases to be a member of the Legislative Council or Legislative Assembly, or 29  
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- (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or 31  
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- (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
- (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.
- 194 Chairperson and Vice-Chairperson**
- (1) There is to be a Chairperson and a Vice-Chairperson of the Joint Committee, who are to be elected by and from the members of the Joint Committee.
- (2) A member of the Joint Committee ceases to hold office as Chairperson or Vice-Chairperson of the Joint Committee if:
- (a) the member ceases to be a member of the Committee, or
- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
- (c) the member is discharged from office by the Committee.
- (3) At any time when the Chairperson is absent from New South Wales or is, for any reason, unable to perform the duties of Chairperson or there is a vacancy in that office, the Vice-Chairperson may exercise the functions of the Chairperson under this Act or under the *Parliamentary Evidence Act 1901*.
- 195 Procedure**
- (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Joint Committee, 5 members constitute a quorum, but the Committee must meet as a joint committee at all times.

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| (4)        | The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson (or, in the absence of both the Chairperson and the Vice-Chairperson, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee. | 1<br>2<br>3<br>4<br>5 |
| (5)        | The Vice-Chairperson or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairperson.                                                                                                                                 | 6<br>7<br>8           |
| (6)        | The Chairperson, Vice-Chairperson or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.                                                                                               | 9<br>10<br>11<br>12   |
| (7)        | A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.                                                                                                                                                  | 13<br>14<br>15        |
| (8)        | The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.                                                                                                                                   | 16<br>17<br>18        |
| (9)        | The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.                                                                                                                                                                   | 19<br>20              |
| <b>196</b> | <b>Reporting when Parliament not in session</b>                                                                                                                                                                                                                                           | 21                    |
| (1)        | If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.                                                                                                               | 22<br>23<br>24        |
| (2)        | The report:                                                                                                                                                                                                                                                                               | 25                    |
| (a)        | on presentation and for all purposes is taken to have been laid before the House, and                                                                                                                                                                                                     | 26<br>27              |
| (b)        | may be printed by authority of the Clerk, and                                                                                                                                                                                                                                             | 28                    |
| (c)        | if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and                                                                                                                                                    | 29<br>30<br>31        |
| (d)        | is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.                                                                                                                                  | 32<br>33<br>34        |

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<b>197 Evidence</b>	1
(1) The Joint Committee has power to send for persons, papers and records.	2 3
(2) Subject to section 198, the Joint Committee must take all evidence in public.	4 5
(3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.	6 7 8 9 10 11
(4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.	12 13 14 15
<b>198 Confidentiality</b>	16
(1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:	17 18 19 20 21
(a) take the evidence in private, or	22
(b) direct that the document, or the part of the document, be treated as confidential.	23 24
(2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as Electoral Commissioner, the Committee must (despite any other provision of this section):	25 26 27 28 29
(a) take the evidence in private, or	30
(b) direct that the document, or the part of the document, be treated as confidential.	31 32

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- (3) Despite any other provision of this section except subsection (9), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies. 1  
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Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 6  
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- (4) Despite any other provision of this section except subsection (9), the Joint Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 191 (3), disclose whether or not the Joint Committee or any member of the Joint Committee has vetoed, or proposes to veto, the proposed appointment of a person as Electoral Commissioner. 8  
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Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 16  
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- (5) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee: 18  
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- (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and 20  
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- (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness. 24  
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- (6) If, at the request of a witness, evidence is taken by the Joint Committee in private: 26  
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- (a) the Committee must not, without the consent in writing of the witness, and 28  
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- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (8), 30  
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disclose or publish the whole or a part of that evidence. 33  
Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 34  
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- (7) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (8), disclose or publish the whole or a part of that evidence. 1  
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Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 6  
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- (8) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairperson, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (6). 8  
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- (9) Nothing in this section prohibits: 14  
(a) the disclosure or publication of evidence that has already been lawfully published, or 15  
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(b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee. 17  
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- (10) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*. 21  
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- (11) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section: 23  
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(a) sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and 25  
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(b) Division 5 of Part 3 of, and Schedule 2 to, the *Defamation Act 1974* apply to and in relation to that evidence as if it were taken by the Committee in public. 30  
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- 199 Application of certain Acts** 33  
For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes: 34  
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- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and 1  
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  - (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly. 4  
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**200 Validity of certain acts or proceedings** 7

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was: 8  
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- (a) a vacancy in the office of a member of the Committee, or 11  
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- (b) any defect in the appointment, or any disqualification, of a member of the Committee, 13  
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as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted. 15  
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