



New South Wales

Local Government Amendment (Elections) Act 2014 No 80

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Local Government Amendment (Elections) Act 2014 No 80

Act No 80, 2014

An Act to amend the *Local Government Act 1993* to make further provision in relation to elections to civic office; and for related purposes. [Assented to 19 November 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Elections) Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

[1] Section 291A

Insert after section 291:

291A Countback to be held instead of by-election in certain circumstances

- (1) This section applies to a casual vacancy in the office of a councillor if:
 - (a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and
 - (b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.
- (2) This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected:
 - (a) in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or
Note. See section 285 (Voting system for election of councillors).
 - (b) in an election without a poll being required to be held.
Note. See section 311 (Uncontested elections).
- (3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations.
- (4) A countback election to fill a casual vacancy to which this section applies must be conducted:
 - (a) by the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected, or
 - (b) if that is not possible, by the substitute returning officer at that election, or
 - (c) if that is not possible, by a returning officer appointed in accordance with this Act.
- (5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election:
 - (a) the returning officer must notify the general manager of the council concerned, and
 - (b) a by-election in accordance with this Part must be held to fill the casual vacancy.

[2] Section 296AA

Insert before section 296:

296AA Councils to plan for administration of elections

- (1) At least 18 months before the next ordinary election of councillors for a council, the council must resolve:
 - (a) to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296), or
 - (b) that the elections of the council are to be administered by the general manager of the council.

- (2) A resolution referred to in subsection (1) (b) must include the following information:
 - (a) whether the general manager intends to administer elections personally or to engage an electoral services provider,
 - (b) if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer for the next ordinary election of councillors and, if so, the names of those persons,
 - (c) if the general manager intends to engage an electoral services provider, whether the general manager has identified an electoral services provider to be engaged for the next ordinary election of councillors and, if so, the name of that provider,
 - (d) any other information required by the regulations.
- (3) As soon as practicable after the making of a resolution referred to in subsection (1) (b), the general manager of the council must publish a copy of the resolution on the council's website.
- (4) If a council fails to comply with subsection (1), the general manager of the council must publish a notice of that failure on the council's website.

[3] Section 298 Residential roll

Insert after section 298 (2):

- (3) As soon as practicable after the closing date for an election that is to be administered by the general manager of the council concerned, the Electoral Commissioner is to provide the general manager with a printed and an electronic copy of the residential roll for the area and, if the area is divided into wards, a separate printed and electronic copy of the roll for each ward.
- (4) The electronic copy of the residential roll is to be provided in the format specified by the regulations (if any).
- (5) A general manager of a council or any other person must not use or disclose any information provided in a residential roll under this section other than for the purpose of administering an election under this Act.
- (6) A person must not use or disclose any such information for a commercial purpose.
- (7) Without limiting subsection (6), information is used for a commercial purpose if it is sold or offered for sale.
- (8) The costs of the Electoral Commissioner with respect to the carrying out of any function under subsection (3) are to be met by the council concerned and are recoverable from the council as a debt.

Maximum penalty (subsections (5) and (6)): 1,000 penalty units.

[4] Section 299 Non-residential roll

Omit section 299 (1). Insert instead:

- (1A) As soon as is practicable after a roll of non-resident owners of rateable land for an election lapses under this section, the general manager is to prepare a new roll of non-resident owners of rateable land within the area for the next election and keep it updated.

- (1) Not later than the closing date for an election, the general manager is to finalise that roll of non-resident owners of rateable land for confirmation as the roll of non-resident owners of rateable land within the area for that election.

[5] Section 299 (2)

Omit “, and it consists only of the names of those non-resident owners of rateable land who have applied for the inclusion of their names for the purposes of the election for which it is being prepared”.

[6] Section 299 (2A)

Insert after section 299 (2):

- (2A) The roll of non-resident owners of rateable land prepared by the general manager is to include the names of the persons who:
- (a) have applied, at any time, for the inclusion of their names in any such roll, and
 - (b) on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.

[7] Section 300 Roll of occupiers and ratepaying lessees

Omit section 300 (1). Insert instead:

- (1A) As soon as is practicable after a roll of occupiers and ratepaying lessees for an election lapses under this section, the general manager is to prepare a new roll of occupiers and ratepaying lessees (of land within the area) for the next election and keep it updated.
- (1) Not later than the closing date for an election, the general manager is to finalise that roll of occupiers and ratepaying lessees for confirmation as the roll of occupiers and ratepaying lessees (of land within the area) for the election.

[8] Section 300 (2)

Omit “, and it consists only of the names of those occupiers and ratepaying lessees who have applied for the inclusion of their names for the purpose of the election for which it is being prepared”.

[9] Section 300 (2A)

Insert after section 300 (2):

- (2A) The roll of occupiers and ratepaying lessees prepared by the general manager is to include the names of the persons who:
- (a) have applied, at any time, for the inclusion of their names in any such roll, and
 - (b) on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.

[10] Section 310B

Insert after section 310A:

310B Elections may be conducted exclusively by postal voting

- (1) This section applies to:
- (a) the City of Sydney local government area, and

- (b) any other local government area prescribed by the regulations for the purposes of this section.
- (2) A council may by a resolution made at least 18 months before the next ordinary election of councillors determine that voting at that election is to be conducted:
 - (a) by means of attendance and postal voting, or
 - (b) exclusively by means of postal voting.
- (3) Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by a resolution that complies with subsection (2) to change the means of conducting the voting.
- (4) Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.
- (5) Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting.
- (6) An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.

[Second reading speech made in—
Legislative Assembly on 22 October 2014
Legislative Council on 12 November 2014]