



New South Wales

Local Government (General) Amendment (Elections) Regulation 2019

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

SHELLEY HANCOCK, MP
Minister for Local Government

Explanatory note

The object of this Regulation is to make amendments with respect to the conduct and procedures for local government elections, including as follows—

- (a) to make amendments consequential on the *Local Government Amendment Act 2019*, which required local government elections to be administered by the Electoral Commissioner or by an electoral services provider engaged by a council (instead of by the Electoral Commissioner or the general manager of the council itself),
- (b) to update requirements relating to publishing notices and information about elections on the election manager's and the Electoral Commissioner's websites instead of in newspapers,
- (c) to further provide for the circumstances in which a ballot-paper is not taken to be informal,
- (d) to update the documents and procedures for postal voting,
- (e) to amend the procedures for appointing scrutineers,
- (f) to further provide for canvassing on pre-poll voting days and the display of posters on election days,
- (g) to amend the procedures for countback elections held to fill casual vacancies,
- (h) to make minor amendments to the procedures for counting votes under the optional preferential system and the proportional system,
- (i) to replace various references to the Electoral Commission with references to the Electoral Commissioner where the provision relates to a function of the Electoral Commissioner,
- (j) to make other miscellaneous amendments of a minor or law revision nature.

This Regulation is made under the *Local Government Act 1993*, including section 748 (the general regulation-making power) and item 14 of Schedule 6.

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1 Name of Regulation

This Regulation is the *Local Government (General) Amendment (Elections) Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Local Government (General) Regulation 2005

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

Secretary means the Secretary of the Department of Planning, Industry and Environment.

[2] Clauses 235, 285(a) and (b), 391(6) and 397C(2) and Schedule 7A, clauses 2(b), 3(1) and 15(b)

Omit “Departmental Chief Executive” wherever occurring.

Insert instead “Secretary”.

[3] Clause 235 Report of Secretary to be tabled at council meeting

Omit “Departmental Chief Executive’s”. Insert instead “Secretary’s”.

[4] Part 11 and Schedule 9A (except as otherwise amended by this Schedule)

Omit “internet website” wherever occurring. Insert instead “website”.

[5] Clause 275 Definitions

Insert in alphabetical order in clause 275(1)—

approved means approved by the election manager.

electoral services provider means an electoral services provider engaged by a council under the Act to administer an election, council poll or constitutional referendum.

postal vote certificate means a certificate in the approved form provided to an elector for the purposes of postal voting under Subdivision 1 of Division 7 or voting at postal elections under Division 8A.

[6] Clause 275(1), definition of “driver licence”

Insert “or a digital driver licence” after “a driver licence”.

[7] Clause 275(1), definition of “election manager”

Omit paragraph (a). Insert instead—

- (a) in relation to an election, council poll or constitutional referendum administered by an electoral services provider—a person appointed by the electoral services provider, or

[8] Clause 275(1), definition of “electoral paper”

Omit “prescribed form”. Insert instead “other form”.

[9] Clause 275(4)(a)

Omit the paragraph. Insert instead—

- (a) in relation to an election, council poll or constitutional referendum administered by an electoral services provider—both the council’s website and the electoral services provider’s website, or

[10] Clause 275A

Insert after clause 275—

275A Functions of election manager

- (1) The election manager may consult with the council in the exercise of the election manager's functions under this Part.
- (2) The election manager may use computer and other electronic resources to assist in the conduct and administration of elections under this Part.

[11] Clause 277 Notice of changes to wards

Omit clause 277(1) and (2). Insert instead—

- (1) If a council divides its area into wards, abolishes all its wards, alters its ward boundaries or names or renames a ward in its area, the general manager of the council—
 - (a) must notify the Electoral Commissioner in writing, and
 - (b) must publish notice of the change on the council's website, and
 - (c) may publish notice of the change in any other manner the general manager considers necessary to bring the change to the attention of members of the public in the area.

[12] Clause 277(3)

Omit "a written description of, and a map showing,". Insert instead "a map showing".

[13] Clause 277A Effect of changes to wards on approaching elections

Omit "6 months" from clause 277A(2). Insert instead "10 months".

[14] Clause 277A(2)

Omit "unless the Electoral Commission approves in special circumstances determined by the Commission".

Insert instead "unless the Electoral Commissioner otherwise approves in special circumstances".

[15] Clause 277A(4)

Omit "September 2008". Insert instead "September 2020".

[16] Clause 277B Advertising by election manager

Omit clause 277B(2). Insert instead—

(2) Types of advertising

The information may be published on the election manager's website and in any other manner that the election manager considers necessary to bring the information to the attention of members of the public in the area.

[17] Clauses 280(1), 281(1)(a), (2)(a) and (4)(a), 283, 284A(1) and (2), 284B(2), 332A(1)–(3) and (7), 340(4), 341(2) and 359(1) and Schedule 10, clauses 3(c) and 4(a) and (a1)

Omit "Electoral Commission" and "the Commission" wherever occurring.

Insert instead "Electoral Commissioner" and "the Commissioner", respectively.

[18] Clause 280 Advertising of enrolments

Omit clause 280(3)–(5). Insert instead—

- (3) The notice must be published on the Electoral Commission's website for the period commencing at least 14 days before the closing date for the election,

constitutional referendum or council poll and ending at 6 pm on the closing date.

- (4) The notice may also be published in any other manner that the Electoral Commissioner considers necessary to bring the notice to the attention of members of the public in the area.

[19] Clause 287 Place of nomination

Omit the clause.

[20] Clause 288 Notice of election and call for nomination proposals

Omit clause 288(1). Insert instead—

- (1) The election manager must publish notice of an election on the election manager's website for the period commencing at least 1 week before the nomination day and ending at 12 noon on the nomination day.

[21] Clause 288(2)(c)

Omit "place of nomination". Insert instead "approved place".

[22] Clause 288(4)

Omit clause 288(4) and (5). Insert instead—

- (4) The election manager may also publish notice of an election in any other manner the election manager considers necessary to bring the notice to the attention of members of the public in the area.

[23] Clause 289 Nomination proposals

Omit "the closing date" from clause 289(1)(a). Insert instead "6 pm on the closing date".

[24] Clause 289(5AA)(d)

Omit the paragraph. Insert instead—

- (d) through an approved website or online electronic nomination system.

[25] Clause 289(8)

Insert "in the approved manner" after "paid".

[26] Clause 289(9)

Omit the subclause.

[27] Clause 290 Candidate information sheets

Omit clause 290(1)(e). Insert instead—

- (e) whether the proposed candidate is a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*).

Note. *Property developer* within the meaning of that Division includes a person who is a close associate of a property developer.

[28] Clause 290(5)

Omit the subclause.

[29] Clause 293 Refund of deposit

Omit clause 293(2). Insert instead—

- (2) The deposit of a candidate that is required to be returned is to be returned to the person who paid the deposit.

[30] Clause 294 Inspection of names of persons proposed for nomination

Omit “between the time when the first name is placed on the list and noon on the nomination day” from clause 294(2).

Insert instead “from the time the first name is placed on the list until the returning officer has nominated candidates under clause 295”.

[31] Clause 295 Returning officer to nominate candidates

Omit “On the nomination day, and in the presence of such scrutineers and such reasonable number of other persons as choose to be present, the returning officer is to do the following, commencing at 12 noon” from clause 295(1).

Insert instead “On the day after the nomination day, or as soon as practicable after that day, and in the presence of scrutineers and any reasonable number of other persons who choose to be present, the returning officer is to do the following”.

[32] Clause 295(1)(a)

Omit “attend at the place of nomination”.

Insert instead “attend an approved place”.

[33] Clause 295(4) and (5)

Omit clause 295(4). Insert instead—

- (4) Within 6 days after the nomination day, the returning officer (in relation to an election administered by an electoral services provider) is to deliver or send to the Electoral Commissioner copies of all nomination papers (including the candidate information sheets that accompany the nomination papers).
- (5) The Electoral Commissioner may use the information contained in any copy of a nomination paper sent to the Electoral Commissioner under subclause (4), and any nomination paper in the possession of a returning officer for an election administered by the Electoral Commissioner, for the purpose of ensuring compliance with the Act and this Regulation and exercising functions under the *Electoral Funding Act 2018*.

[34] Clause 296 Declaration of uncontested election

Omit “on the nomination day” from clause 296(1).

Insert instead “after the returning officer has nominated candidates under clause 295”.

[35] Clause 296(3)(b)

Omit “Director-General, the Secretary of the Local Government and Shires Association of New South Wales,”.

Insert instead “Secretary, the Chief Executive Officer of Local Government NSW”.

[36] Clause 296(3A) and (3B)

Omit clause 296(3A). Insert instead—

- (3A) The election manager must publish the information contained in the written declaration on the election manager’s website for at least one month.
- (3B) The election manager may also publish the information contained in the written declaration in any other manner the election manager considers

necessary to bring the notice to the attention of members of the public in the area.

[37] Clause 300

Omit the clause. Insert instead—

300 Notice of contested election

- (1) If there is to be a contested election in respect of any ward or area, the election manager must publish notice of the contested election on the election manager's website for the period commencing on or as soon as practicable after the nomination day and ending no earlier than election day.
- (2) The notice must include the following information—
 - (a) that a poll will be taken in respect of the ward or area,
 - (b) whether the poll will be conducted by means of attendance and postal voting or conducted exclusively by means of postal voting,
 - (c) in relation to an attendance election—
 - (i) the date of the poll, and
 - (ii) the location of the pre-poll voting office or offices and the hours and days that the pre-poll voting office or offices will be open for pre-poll voting, and
 - (iii) the location of the polling places where the poll will be taken on election day,
 - (d) in relation to a postal election—
 - (i) the week in which postal ballot envelopes are likely to be posted or delivered to voters, and
 - (ii) the date and time by which completed postal votes must reach the returning officer,
 - (e) the full names of the persons who have become candidates and the names under which those persons have been nominated as candidates,
 - (f) the names of the political parties (if any) that must be printed adjacent to the names of the candidates on the ballot-papers,
 - (g) whether the word "Independent" must be printed adjacent to the name of any candidate on the ballot-papers,
 - (h) any other information relating to the election the election manager considers necessary.
- (3) The election manager may also publish notice of the contested election in any other manner the election manager considers necessary to bring the notice to the attention of members of the public in the area.

[38] Clause 301 Claims for grouping of candidates

Omit "in the form approved by the election manager" wherever occurring in clause 301(2) and (3)(b).

Insert instead "in an approved form".

[39] Clause 302

Omit the clause. Insert instead—

302 Order of ungrouped candidates and groups on ballot-papers

If, after the returning officer has nominated candidates under clause 295, there are two or more candidates not included in a group or two or more groups of candidates for the election, the returning officer must, as soon as practicable, determine the order of those candidates' names or those groups' names on the ballot-papers by—

- (a) a ballot in accordance with clause 303 or 304 (as appropriate), or
- (b) an approved method of random selection (including by electronic means).

[40] Clauses 303(1)(a) and 304(1)(a)

Omit “the place of nomination” wherever occurring.

Insert instead “an approved place”.

[41] Clauses 305(2)(a), 335(5)(a) and 344B(1)

Omit “a general manager” wherever occurring.

Insert instead “an electoral services provider”.

[42] Clause 314

Omit the clause. Insert instead—

314 Applications for postal voting

- (1) A person qualified under this Subdivision may apply, in the approved form and manner, to the election manager for a postal ballot-paper and postal vote certificate envelope.
- (2) An application under this clause must be received by the election manager before 5 pm on the fifth day before election day.

Note. Clause 388A provides that an application for postal voting is taken to be duly made if an elector intending to vote by a postal vote applies under that clause for a ballot-paper in braille format.

[43] Clause 316 Electors entitled to postal vote

Omit “The Electoral Commission must forward to the returning officer” from clause 316(2).

Insert instead “In the case of an election administered by an electoral services provider, the Electoral Commissioner must forward to the election manager”.

[44] Clause 317 Issue of postal ballot-paper

Omit clause 317(1). Insert instead—

- (1) On receiving the elector's duly made application for a postal vote or the list on which the elector's name appears, the election manager is to make a record that a ballot-paper is being issued to the elector and deliver or send the following to the elector—
 - (a) a ballot-paper that is initialled on the front by an election official (by hand or by electronic or mechanical means),
 - (b) a postal vote certificate printed on an envelope on which is recorded the full name of the elector, the address of the land to which the elector's voting entitlement relates, the date of the election and the names of the area and the ward (if any) and number (if any) given to the elector's application or registration,

- (c) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—another envelope addressed to the returning officer,
- (d) information as to how to access the candidate information sheets of the candidates in the election that have been published on the election manager’s website under clause 290(4).

[45] Clauses 318(1)(a) and (3)(c) and (d) and 344C(1)(a) and (3)(c) and (d)

Omit “Form 8 declaration” wherever occurring. Insert instead “postal vote certificate”.

[46] Clauses 318(1)(b) and (2) and 344C(1)(b) and (2)

Omit “declaration” wherever occurring. Insert instead “certificate”.

[47] Clauses 318(6) and (7) and 344G(1)(d) and (3)

Omit “declaration envelope” wherever occurring.

Insert instead “postal vote certificate envelope”.

[48] Clauses 318(7) and 348(2)

Omit “the form approved by the Director-General (in relation to an election administered by the general manager of a council) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner)” wherever occurring.

Insert instead “an approved form”.

[49] Clause 325 Surrender of postal ballot-papers

Omit “form of declaration” wherever occurring. Insert instead “postal vote certificate”.

[50] Clause 332A Mobile booths for pre-poll voting in remote local government areas

Omit “Electoral Commission’s” from clause 332A(1).

Insert instead “Electoral Commissioner’s”.

[51] Clause 337 Scrutineers

Omit “, by instrument in writing signed by the candidate,” from clause 337(1).

[52] Clause 337(3)–(4E)

Omit clause 337(3) and (4). Insert instead—

- (3) The election manager may approve a form that provides for both—
 - (a) the appointment of a scrutineer by a candidate, and
 - (b) a declaration to be made and signed by the scrutineer.
- (4) The appointment by a candidate of a scrutineer is to be made in a form approved under subclause (3).
- (4A) A person appointed as a scrutineer is to make and sign a declaration in a form approved under subclause (3).
- (4B) A person appointed as a scrutineer cannot act as scrutineer on any day unless the person presents the completed form (comprising a single document) on that day to an election official.
- (4C) The declaration is to be made and signed on each day on which the person intends to act as scrutineer before an election official at the place at which the scrutineer intends to act as scrutineer.

(4D) A reference in this clause to a completed form includes a reference to a copy of a completed form, but the copy is to be duly signed on each day as required by subclause (4C).

(4E) Part 4 of the *Oaths Act 1900* applies to a declaration made under this clause as if it were made under that Act.

[53] Clause 339 Questions put to elector

Omit clause 339(6). Insert instead—

(6) However, a silent elector is not required to indicate a place of living in response to a requirement under subclause (1).

[54] Clause 340 Voting by elector with confidential address

Omit the clause.

[55] Clause 344A Scrutineers

Omit clause 344A(1)–(4). Insert instead—

- (1) Candidates may appoint scrutineers under clause 337 to be present at the following—
- (a) the opening and emptying of a ballot-box,
 - (b) the receipt and processing of postal vote certificate envelopes,
 - (c) the scrutiny of ballot-papers and the counting of votes.

[56] Clause 344B Issue of postal ballot-paper

Omit “returning officer (in relation to an election administered by a general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner)” from clause 344B(1).

Insert instead “election manager”.

[57] Clause 344B(2)

Omit the subclause. Insert instead—

- (2) The election manager is to make a record that a ballot-paper is being issued to the elector and deliver or send the following to the elector—
- (a) a ballot-paper that is initialled on the front by an election official (by hand or by electronic or mechanical means),
 - (b) a postal vote certificate printed on an envelope on which is recorded the full name of the elector, the address of the land to which the elector’s voting entitlement relates, the date of the election and the names of the area and the ward (if any) and number (if any) given to the elector’s application or registration,
 - (c) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—another envelope addressed to the returning officer,
 - (d) information as to how to access the candidate information sheets of the candidates in the election that have been published on the election manager’s website under clause 290(4).

[58] Clause 344F Request to redirect postal ballot-paper and envelope

Omit “returning officer or Electoral Commissioner, as the case requires,” from clause 344F(1).

Insert instead “election manager”.

[59] Clause 344F(2)

Omit “the closing date”. Insert instead “6 pm on the closing date”.

[60] Clause 344F(3)

Omit “returning officer or Electoral Commissioner”. Insert instead “election manager”.

[61] Clause 344G Request for replacement voting materials

Omit “declaration on the envelope” from clause 344G(1)(d).

Insert instead “postal vote certificate envelope”.

[62] Clause 344G(5)

Omit “declaration on an envelope”. Insert instead “postal vote certificate envelope”.

[63] Clause 345 Informal ballot-papers

Omit clause 345(2)–(7) (excluding the note). Insert instead—

- (2) However, a ballot-paper is not informal in the following circumstances—
 - (a) in relation to an election in which only 1 or 2 candidates are to be elected, by reason only of the elector having placed a tick or cross in one square and left the other square or squares blank, but the tick or cross is to be treated as a first preference,
 - (b) in relation to a ballot-paper on which the elector has recorded a vote by placing in one square the number “1”—
 - (i) by reason only that the elector has recorded the same preference (other than the elector’s first preference) on the ballot-paper for more than 1 candidate, but the ballot-paper is to be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or
 - (ii) by reason only of there being a break in the order of preferences recorded on the ballot-paper, but the ballot-paper is to be treated as if any subsequent preference had not been recorded on the ballot-paper,
 - (c) by reason only that it is not initialled on the front by an election official if it bears the mark referred to in clause 305(2),
 - (d) by reason only of having any unnecessary mark or writing on the ballot-paper if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot-paper,
 - (e) by reason only that the elector has recorded a vote by placing the number “1” or a tick in a square and placing a cross in (or a line through) all or some of the other squares on the ballot-paper, but the ballot-paper is to be treated as if the marks in those other squares did not appear on the ballot-paper and any tick were the number “1”,
 - (f) by reason only that the elector has placed one or more numbers, a tick or one or more crosses adjacent to but outside a square or squares if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot-paper, but each number, tick or cross is taken to have been placed within the relevant square,
 - (g) in relation to any ballot-paper written by hand—by reason of the inclusion only of a candidate’s surname (if no other candidate with the

same surname is on the ballot-paper) or by reason of any mistake in spelling, if the elector has made clear the elector's intention.

- (3) Nothing in subclause (2) authorises any person to encourage an elector to place a tick or cross in a square on a ballot-paper.

[64] Clause 347 Preliminary scrutiny of postal voting envelopes

Omit "a time and place approved by the election manager" from clause 347(1)(a).

Insert instead "an approved time and place".

[65] Clause 347(2)–(2B)

Omit clause 347(2). Insert instead—

- (2) The returning officer must then do the following—
- (a) if the envelope on which the postal vote certificate is printed is sealed inside another envelope addressed to the returning officer—take out the envelope on which the certificate is printed,
 - (b) if satisfied that the postal vote certificate has been properly signed and witnessed and that the elector is entitled to vote in the ward or area to which the postal vote certificate relates—accept the envelope for further scrutiny, but if not satisfied, disallow the ballot-paper without opening the envelope.
- (2A) If a ballot-paper is accompanied by, but is not inside, a postal vote certificate envelope that has been properly signed and witnessed, the returning officer may accept the ballot-paper for further scrutiny, but only if satisfied that the postal vote certificate relates to that ballot-paper.
- (2B) If the returning officer accepts an envelope for further scrutiny, the returning officer must do the following—
- (a) open the envelope without destroying it,
 - (b) withdraw the postal ballot-paper,
 - (c) without inspecting the ballot-paper or allowing any other person to do so, place the ballot-paper in a ballot-box for further scrutiny.

[66] Clause 348 Initial scrutiny of ballot-papers and counting of votes at polling places

Insert "postal vote certificates or other" after "containing" in clause 348(1)(e)(iii).

[67] Clause 349 Polling place managers to send ballot-papers to returning officer

Omit clause 349(1). Insert instead—

- (1) As soon as practicable after counting the votes at the polling place under clause 348, the polling place manager must, in the presence of any scrutineers who choose to be present and in the approved manner, package and secure the ballot papers and other materials used and provided for use at the polling place.

[68] Clause 349(2) and (3)

Omit "parcels" and "parcel" wherever occurring.

Insert instead "packages" and "package", respectively.

[69] Clauses 351(1)(e)(iii) and 351A(3)(d)(iii)

Omit "a notice under clause 356(5) is to be published on the election manager's internet website" wherever occurring.

Insert instead “the returning officer’s declaration under clause 356 will be published on the election manager’s website”.

[70] Clauses 351(2) and 351A(4)

Omit “arrangements approved by the election manager” wherever occurring.

Insert instead “approved arrangements”.

[71] Clause 356 Declaring the election

Omit clause 356(3)(b). Insert instead—

- (b) deliver or send a copy of the written declaration to the Secretary, the Chief Executive Officer of Local Government NSW and the relevant general manager (in relation to an election administered by the Electoral Commissioner) or the Electoral Commissioner (in relation to an election administered by an electoral services provider), and
- (c) publish the following on the election manager’s website for at least one month after the declaration—
 - (i) the information contained in the written declaration,
 - (ii) a statement that the detailed results of the election are available on the election manager’s website or for inspection at the office of the relevant council,
 - (iii) any other information relating to the election the election manager considers necessary.

[72] Clause 356(5)–(8)

Omit the subclauses.

[73] Clause 356A Interpretation

Omit the definition of *electoral material* from clause 356A(1). Insert instead—

electoral material means any thing, including without limitation a how-to-vote card, poster or advertisement, containing electoral matter (whether in a tangible or an electronic form).

[74] Clause 356B Non-complying electoral material

Insert at the end of clause 356B(h)—

, or

- (i) the material is intended or likely to mislead an elector that the material is an official communication from the Electoral Commissioner, the Electoral Commission or an electoral services provider.

[75] Clause 356G Name and address on electoral material

Insert “, published, distributed or displayed” after “printed” in clause 356G(1)(a).

[76] Clause 356G(1)(b)

Insert “if the material has been printed,” before “the name”.

[77] Clause 356G(4) and (5)

Insert after clause 356G(3)—

- (4) Subclause (1) does not apply in relation to the following—

- (a) a social media post made by an electoral participant (or on behalf of an electoral participant by an officer, employee or agent of the electoral participant), but only if:
- (i) the name and address of the electoral participant was included in or directly linked to the post, and
- Note.** For example, a name and address may:
- (a) be included at the end of a post, or
- (b) be included in a photograph or image attached to or embedded in the post, or
- (c) be included in the “about”, “bio” or “impressum” part of the webpage or profile of the person who made the post (or on whose behalf the post was made) that is accessible via a hyperlink or URL included in or accompanying the post.
- (ii) no amount was paid to the social media platform provider concerned in connection with the printing, publication, distribution or public display of the post,
- (b) a social media post that was not made by an electoral participant (or on behalf of an electoral participant), but only if no amount was paid to the social media platform provider concerned in connection with the printing, publication, distribution or public display of the post.
- (5) In this clause—
- address** of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day, but does not include a post office box.
- associated entity** means a person or body that operates solely for the benefit of one or more registered political parties or one or more councillors (including the mayor) of a council.
- electoral participant** means any of the following—
- (a) a candidate,
- (b) a group of candidates,
- (c) a registered political party,
- (d) a registered officer of a registered political party,
- (e) a third-party campaigner (within the meaning of paragraph (b) of the definition of *third-party campaigner* in section 4 of the *Electoral Funding Act 2018*),
- (f) an associated entity.

[78] Clause 356I Defences and exceptions

Omit clause 356I(1)(b).

[79] Clause 356I(1A)

Insert after clause 356I(1)—

- (1A) A person is not guilty of an offence for a breach of the following provisions of this Subdivision if it is established that the breach was not intended, or was not likely, to mislead an elector in or in relation to the casting of the elector’s vote—
- (a) clause 356D or 356E, to the extent that the offence relates to a contravention of clause 356B(e) or (f) or 356C(6),
- (b) clause 356H.

[80] Clause 356K Canvassing on pre-poll voting days

Insert “or near” after “in” wherever occurring in the headings to clause 356K(1) and (2).

[81] Clause 356K(1)

Insert “or within 6 metres of an entrance to a pre-poll voting office” before “on any day”.

[82] Clause 356K(2)(b)

Omit “any distance away from the”. Insert instead “6 metres or more from an entrance to a”.

[83] Clause 356K(2)(d)

Insert “or within 6 metres of an entrance to the pre-poll voting office” after “office”.

[84] Clause 356N Display of posters

Omit clause 356N(2) and (3).

[85] Clause 356N(4)

Omit “subclause (1)” wherever occurring. Insert instead “this clause”.

[86] Clause 356N(4)

Omit “, and subclause (2) does not apply”.

[87] Clause 356N, note

Insert at the end of the clause—

Note. The display of election posters also constitutes development for the purposes of the *Environmental Planning and Assessment Act 1979*. Subdivision 13 of Division 2 of Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that the display of election posters is exempt development, subject to conditions, during the period commencing 5 weeks before and ending 1 week after the election day concerned.

[88] Clauses 356OA(a) and 391A(1)

Omit “a general manager of a council” wherever occurring.

Insert instead “an electoral services provider”.

[89] Clause 356P Application for registration of electoral material

Omit clause 356P(9) and (10). Insert instead—

(9) Manner and form of application

An application under this clause—

(a) is to be in the approved form, and

(b) is to be verified by the applicant in the approved manner (if any), and

Note. For example, a written application may be verified by the signature of the applicant.

(c) may be lodged in written or electronic form.

[90] Clause 356Q Consideration of application for registration

Insert “, published, distributed or displayed” after “printed” in clause 356Q(3)(c)(i).

[91] Clause 356Q(3)(c)(ii)

Omit the subparagraph. Insert instead—

- (ii) if the material has been printed, the name of the printer and the street address at which it was printed, or

[92] Clause 356R Registration of electoral material

Omit clause 356R(2A). Insert instead—

(2A) Form of certificate

A certificate of registration issued under this clause is to be in the approved form.

[93] Clause 356R(7) and (8)

Omit clause 356R(7). Insert instead—

(7) Copy of material and certificate to be available for inspection

A copy of electoral material registered under this clause and the relevant certificate of registration must be made available for public inspection on the election manager's website during the hours of polling on election day and on all the days to which the polling is adjourned.

- (8) The election manager is not required to make copies of registered electoral material or certificates of registration.

[94] Clause 388A Special form of ballot-papers

Omit clause 388A(2)(d). Insert instead—

- (d) make the application no later than 6 pm on the closing date for the election.

[95] Clause 391 Security of election materials

Omit clause 391(1). Insert instead—

- (1) After the election has been declared, the returning officer must, in the approved manner, package and secure the ballot-papers and other materials used and provided for use at the election.

[96] Clause 391(2)–(6)

Omit “parcel”, “parcels” and “parcelled” wherever occurring.

Insert instead “package”, “packages” and “packaged”, respectively.

[97] Clause 391(4)(a) and (d)

Omit the paragraphs. Insert instead—

- (a) in the case of a council that has resolved to fill any casual vacancy by a countback election—the period of 18 months after the day of polling has expired,
- (a1) in the case of a council that has not so resolved—the period of 6 months after the day of polling has expired,

[98] Clause 391B Copies of nomination papers to be sent to Electoral Commissioner

Omit the clause.

[99] Clause 393A General manager to report on election

Omit “the general manager of a council” from clause 393A(1).

Insert instead “an electoral services provider”.

[100] Clause 393A(2)(n)

Insert after clause 393A(2)(m)—

- (n) the cost to the council of engaging the electoral services provider to administer the election.

[101] Clause 393C Countback elections

Insert after clause 393C(2)—

- (3) If a council resolves, at its first meeting following an ordinary election of councillors for the area, that a countback election is to be held to fill any casual vacancy that occurs within 18 months after the date of that ordinary election, the general manager is to notify the election manager of the ordinary election within 7 days of the resolution.

[102] Clauses 402 (1) and 412, Schedule 8, clause 3(1) and Schedule 9, clauses 2(1), 9(b) and 27

Omit “Director-General” wherever occurring. Insert instead “Secretary”.

[103] Schedule 4 Counting of votes under optional preferential system

Omit “Clause 351”. Insert instead “Clauses 351 and 351A”.

[104] Schedule 4, clause 3

Omit the heading. Insert instead “Counting of votes”.

[105] Schedule 4, clause 3

Omit “If only one candidate is to be elected, the”. Insert instead “The”.

[106] Schedule 4, clause 3(2)

Insert at the end of clause 3—

- (2) Any exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate.

[107] Schedule 4, clauses 4 and 5

Omit the clauses.

[108] Schedule 4, clause 6(1)(b)

Omit “the candidate whose name is on a slip drawn in accordance with subclause (2) is excluded”.

Insert instead “the returning officer is to exclude a candidate by an approved method of random selection (including by electronic means)”.

[109] Schedule 4, clause 6(2)

Omit the subclause.

[110] Schedule 4, clauses 8 and 9

Insert after clause 7—

8 Records and returns of voting

- (1) At each step of the proceedings the returning officer is to keep a record of the number of votes counted for each candidate, the exclusion of candidates and

the transfer of their votes, the votes that are found to be informal and the votes that at some stage become exhausted votes.

- (2) As soon as is reasonably practical after the declaration of the election, the election manager is to publish the results of the election (including a record of the voting, counting and transfers) on the election manager's website.

9 Electronic counting of votes

If votes are counted using electronic counting equipment, the returning officer may determine that a reference in this Schedule to the physical arrangement or movement of ballot-papers is not applicable if the equivalent process is performed electronically.

[111] Schedule 5 Counting of votes under proportional system

Omit "Clause 351". Insert instead "Clauses 351 and 351A".

[112] Schedule 5, clause 13

Omit the clause. Insert instead—

13 Deciding by random selection

A matter that is required to be decided by the returning officer by lot under this Schedule is to be decided by an approved method of random selection (including by electronic means).

[113] Schedule 7 Election of mayor by councillors

Omit "clause 345(1)(b) and (c) and (6)" from clause 5(2). Insert instead "clause 345".

[114] Schedule 7, clause 9(2)

Omit "clause 345(1)(b) and (c) and (5)". Insert instead "clause 345".

[115] Schedule 7, clause 13(b)

Omit the paragraph. Insert instead—

- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

[116] Schedule 7A Election of chairpersons of joint organisations

Omit "clause 345(1)(b) and (c) and (5)" from clauses 7(2) and 11(2) wherever occurring. Insert instead "clause 345".

[117] Schedule 8 Election of chairpersons of county councils

Omit "clause 345(1)(b) and (c) and (5)" from clauses 7(2) and 11(2) wherever occurring. Insert instead "clause 345".

[118] Schedule 8, clause 15(b)

Omit the paragraph. Insert instead—

- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

[119] Schedule 9A Countback elections

Omit clause 2(1) and (2). Insert instead—

- (1A) After a casual vacancy occurs that is to be filled by a countback election, the general manager of the council concerned must, in relation to an election administered by an electoral services provider, give notice of the vacancy to the electoral services provider within 7 days.
- (1) After a casual vacancy occurs that is to be filled by a countback election, the electoral services provider concerned (in relation to an election administered by an electoral services provider) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) must—
 - (a) give notice of the vacancy to the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected or, if it is not possible for the returning officer to conduct the countback election, the substitute returning officer at that earlier election, or
 - (b) if not possible for that returning officer or that substitute returning officer to conduct the countback election, appoint a returning officer in accordance with the Act.
- (2) The notice under subclause (1) must be given or appointment made—
 - (a) in relation to an election administered by an electoral services provider—within 14 days of the electoral services provider being notified of the casual vacancy under subclause (1A), or
 - (b) in relation to an election administered by the Electoral Commissioner—within 14 days of the Electoral Commissioner being notified of the casual vacancy under clause 285 of this Regulation.

[120] Schedule 9A, clause 2(3)(a)(i)

Omit the subparagraph. Insert instead—

- (i) in relation to an election administered by an electoral services provider—on both the council’s website and the electoral services provider’s website,

[121] Schedule 9A, clause 3(1)(a)

Omit “election at which the vacating councillor was elected”.

Insert instead “original election”.

[122] Schedule 9A, clause 3(1A)

Insert after clause 3(1)—

- (1A) A person elected to the office of councillor or mayor at the original election, or at a countback election under this Schedule, who subsequently vacates the office by resignation or disqualification may not apply to be a candidate in a subsequent countback election.

[123] Schedule 9A, clause 3(2)

Omit “the manner and form approved by the election manager”.

Insert instead “an approved manner and form”.

[124] Schedule 9A, clause 6(3)

Omit “by lot”.

[125] Schedule 9A, clause 6(3)

Insert “by an approved method of random selection (including by electronic means)” after “to be filled first”.

[126] Schedule 9A, clause 6(4)

Omit the subclause.

[127] Schedule 9A, clause 7(3)

Omit “a consenting”. Insert instead “an eligible”.

[128] Schedule 9A, clause 7(4A)

Insert after clause 7(4)—

- (4A) If, on any recount under this Schedule, more than one candidate would be elected, the following applies instead—
 - (a) only one candidate is taken to be elected, being the candidate who has the highest number of votes,
 - (b) if 2 or more candidates have an equal number of votes, the candidate who has the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is taken to be elected.

[129] Schedule 9A, clause 8(4)(b)

Omit the paragraph. Insert instead—

- (b) deliver or send a copy of the written declaration to the Secretary, the Chief Executive Officer of Local Government NSW and the relevant general manager (in relation to an election administered by the Electoral Commissioner) or the Electoral Commissioner (in relation to an election administered by an electoral services provider).

[130] Schedule 9A, clause 9

Omit the clause.

[131] Schedule 9A, clause 10(1)(a1)

Insert after clause 10(1)(a)—

- (a1) clause 346 (Persons present at scrutiny and count),

[132] Schedule 10 Constitutional referendums and council polls

Omit “Forms 1–12” from clause 1(c). Insert instead “Forms 1–6”.

[133] Schedule 10, clause 3(h)

Omit the paragraph.

[134] Schedule 11 Forms

Omit “State Electoral Office” from Form 1.

Insert instead “New South Wales Electoral Commissioner”.

[135] Schedule 11, Form 2

Omit items 5 and 6. Insert instead—

- 5 declare that, to the best of my knowledge and belief, *I am/*I am not a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) [**cross out whichever does not apply*].

[136] Schedule 11, Form 2

Omit notes 4 and 5. Insert instead—

- 4 In item 5, “property developer” (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) includes a close associate of a property developer.

[137] Schedule 11, Form 2

Omit paragraph (l) from the Statistical Information Sheet. Insert instead—

- (l) I am a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*)

[138] Schedule 11, Form 3

Omit items 4 and 5. Insert instead—

- 4 declare that, to the best of my knowledge and belief, *I am/*I am not a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) [**cross out whichever does not apply*].

[139] Schedule 11, Form 3

Omit notes 3 and 4. Insert instead—

- 3 In item 4, “property developer” (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) includes a close associate of a property developer.

[140] Schedule 11, Form 3

Omit paragraph (l) from the Statistical Information Sheet. Insert instead—

- (l) I am a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*)

[141] Schedule 11, Form 4

Omit “*only one candidate is to be elected*” from the Directions for Voting.

Insert instead “*1 or 2 candidates are to be elected*”.

[142] Schedule 11, Form 4

Omit “*2 or more candidates are to be elected*” from the Directions for Voting.

Insert instead “*3 or more candidates are to be elected*”.

[143] Schedule 11, Form 8

Omit the form.