

Passed by both Houses



New South Wales

# Local Government Amendment (Elections) Bill 2011

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2011*



New South Wales

## **Local Government Amendment (Elections) Bill 2011**

Act No , 2011

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An Act to amend the *Local Government Act 1993* in relation to the administration of local council elections, the process for reducing councillor numbers and the abolition of wards in a council area and by-elections for civic office; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Local Government Amendment (Elections) Act 2011*.

**2    Commencement**

This Act commences on the date of assent to this Act.

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## **Schedule 1      Amendment of Local Government Act 1993 No 30**

### **[1]    Section 55 What are the requirements for tendering?**

Insert at the end of section 55 (3):

- a contract or arrangement between a council and the Electoral Commissioner for the Electoral Commissioner to administer the council's elections, council polls and constitutional referendums.

### **[2]    Section 210B**

Insert after section 210A:

#### **210B    Approval to abolish all wards in council's area**

- (1) A council may resolve to make an application to the Minister to approve the abolition of all wards of the council's area.
- (2) The council must give not less than 42 days' public notice of its proposed resolution.
- (3) After passing the resolution, the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.
- (4) The Minister may approve the application or may decline to approve it.
- (5) If the Minister approves the application, all the wards in the council's area are abolished with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.
- (6) Section 16 does not apply to a resolution of a council to make an application to the Minister under this section.
- (7) An application may be made under this section only within the period of 5 months from the commencement of this section.
- (8) Nothing in this section prevents a council from making more than one application under this section or from taking action under section 210 to abolish all wards of the council's area.

### **[3]    Section 224A Approval to reduce number of councillors**

Omit "21 days' public notice" from section 224A (2).

Insert instead "42 days' public notice".

**[4] Section 224A (7)**

Omit the subsection. Insert instead:

- (7) An application may be made under this section after the commencement of the *Local Government Amendment (Elections) Act 2011* but before the expiry of 5 months after that commencement.

**[5] Chapter 10, introduction note**

Insert “the general manager of the council or” before “the Electoral Commissioner”.

**[6] Section 292**

Omit the section. Insert instead:

**292 When is a by-election to be held?**

A by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that:

- (a) falls not later than 3 months after the vacancy occurs, and
- (b) is fixed by the general manager (in relation to an election administered by the general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner).

**[7] Section 294 Dispensing with by-elections**

Omit “on or after 1 October last preceding the end of the term of a council” from section 294 (1).

Insert instead “within 18 months before the date specified for the next ordinary election of the councillors for the area”.

**[8] Section 294B**

Insert after section 294A:

**294B Casual vacancy not to be filled where councillor numbers reduced—approved by constitutional referendum**

- (1) Despite section 17 (2), a casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if a constitutional referendum has approved a reduction in the number of councillors but the reduction has not yet taken effect.

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- (2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the constitutional referendum.
  - (3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the constitutional referendum.

**[9] Chapter 10, Part 6, Division 1**

Omit the Division. Insert instead:

**Division 1 Administration of elections**

**296 Elections to be administered by general manager of council or Electoral Commissioner**

- (1) Elections for the purposes of this Chapter are to be administered by the general manager of the council concerned.  
**Note.** Section 18 provides that certain provisions of this Act (relating to the conduct of elections) apply to council polls and constitutional referendums, with such modifications as may be necessary, in the same way as they apply to elections.
- (2) Despite subsection (1), a council may resolve that the council is to enter into a contract or make arrangements with the Electoral Commissioner for the Electoral Commissioner to administer all elections for the council for the purposes of this Chapter.
- (3) Such a resolution may only be made within 12 months after an ordinary election of councillors for the council's area.
- (4) If such a contract is entered into or such arrangements made, the Electoral Commissioner is to administer all the elections of the council until the conclusion of the following ordinary election for councillors.
- (5) In this section, *election* does not include an election of the mayor or a deputy mayor by the councillors.

**296A Elections administered by a general manager**

- (1) This section applies to an election administered by the general manager of a council.
- (2) The general manager is to appoint a returning officer and a substitute returning officer for the election. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.

- (3) The returning officer is to appoint one or more electoral officials.
- (4) An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.
- (5) A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.
- (6) For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.
- (7) For the purpose of administering an election, the general manager is to:
  - (a) appoint the polling places, and
  - (b) determine the fees payable to the returning officer, substitute returning officer and electoral officials.
- (8) For the purpose of conducting an election, the returning officer is to determine any matter not provided for by this Act or the regulations.
- (9) Expenses incurred by the returning officer, substitute returning officer and electoral officials in connection with an election are to be met by the council.
- (10) The returning officer and the substitute returning officer must not vote at any election that they are conducting.

**296B Elections administered by the Electoral Commissioner**

- (1) This section applies to an election administered by the Electoral Commissioner.
- (2) The Electoral Commissioner is to appoint a returning officer and a substitute returning officer for each area. The returning officer is to conduct elections on behalf of, and under the direction of, the Electoral Commissioner. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.
- (3) The returning officer is to appoint one or more electoral officials.
- (4) An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.



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- (5) For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.
  - (6) For the purpose of conducting an election, the Electoral Commissioner is to:
    - (a) appoint the polling places, and
    - (b) determine the fees payable to the returning officer, substitute returning officer and electoral officials, and
    - (c) determine any matter not provided for by this Act or the regulations.
  - (7) The Electoral Commissioner, the returning officer and the substitute returning officer must not vote at any election that they are conducting.

**297 Delegation of functions by the Electoral Commissioner**

The Electoral Commissioner may delegate to a person any of the Electoral Commissioner's functions under this Act, other than this power of delegation.

**[10] Chapter 10, Part 6, Division 2, note**

Omit the note.

**[11] Sections 299 and 300**

Omit the sections. Insert instead:

**299 Non-residential roll**

- (1) Not later than the closing date for an election, the general manager is to prepare a roll of non-resident owners of rateable land for confirmation as the roll of non-resident owners of rateable land within the area.
- (2) The roll of non-resident owners of rateable land lapses after the election for which it is prepared, 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.
- (3) The general manager (in relation to an election administered by the general manager) is to confirm as the roll of non-resident owners of rateable land for the election the roll referred to in subsection (1) if, in the general manager's opinion, the roll

contains the names of the persons who on the closing date are qualified for inclusion in the roll of non-resident owners of rateable land.

- (4) The Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) is to confirm as the roll of non-resident owners of rateable land for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of non-resident owners of rateable land.

**300 Roll of occupiers and ratepaying lessees**

- (1) Not later than the closing date for an election, the general manager is to prepare the roll of occupiers and ratepaying lessees for confirmation as the roll of occupiers (of land within the area) and ratepaying lessees (of rateable land within the area) for the election.
- (2) The roll of occupiers and ratepaying lessees lapses after the election for which it is prepared, 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.
- (3) The general manager (in relation to an election administered by the general manager) is to confirm as the roll of occupiers and ratepaying lessees for the election the roll referred to in subsection (1) if, in the general manager's opinion, the roll contains the names of the persons who on the closing date are qualified for inclusion in the roll of occupiers and ratepaying lessees.
- (4) The Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) is to confirm as the roll of occupiers and ratepaying lessees for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of occupiers and ratepaying lessees.

**[12] Section 313**

Omit the section. Insert instead:

**313 List of residents failing to vote**

- (1) After the close of the poll at a contested election, the general manager (in relation to an election administered by the general

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manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) is to prepare a list of the names of the persons on the residential roll for the election who, although entitled to vote at the election, appear to have failed to vote and do not appear to have a sufficient reason for the failure.

- (2) The general manager (in relation to an election administered by the general manager) must forward that list to the Electoral Commissioner within 14 days (or within such longer period as may be prescribed by the regulations) after the close of the poll at the election.

**[13] Section 317 Validity of elections**

Insert “(in relation to an election administered by the Electoral Commissioner) or the general manager or returning officer (in relation to an election administered by the general manager)” after “returning officer” in section 317 (1) (c).

**[14] Section 434B**

Insert after section 434A:

**434B Expenses to be borne by council**

- (1) The Director-General may recover the reasonable expenses incurred by the Director-General in, or in respect of, the preparation of a Departmental representative’s report under this Division that relates to the administration of an election by a general manager, including investigation expenses of the Director-General or the Departmental representative.
- (2) The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the expenses.
- (3) An amount equal to the expenses as so determined is payable to the Director-General as a debt by the council concerned, except as determined by the Director-General.
- (4) The council may apply to the Administrative Decisions Tribunal for a review of whether any part of the expenses so determined are not reasonable expenses.
- (5) The Director-General must give effect to any decision of the Tribunal on a review of the determination of the amount of the expenses.

- (6) A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.

**[15] Schedule 6 Regulations**

Insert the following at the end of the list of examples to item 14 (Elections):

Compliance with Director-General's guidelines relating to the administration of elections

**[16] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of clause 1 (1):

*Local Government Amendment (Elections) Act 2011*

**[17] Schedule 8**

Insert at the end of the Schedule, with appropriate numbering:

**Part Provisions consequent on enactment of Local Government Amendment (Elections) Act 2011**

**Definition**

In this Part, *amending Act* means the *Local Government Amendment (Elections) Act 2011*.

**Dispensing with by-elections**

Section 294, as amended by the amending Act, extends to a casual vacancy occurring before the commencement of that Act.

**Council may retain Electoral Commissioner to administer elections, polls and referendums until end of 2012 ordinary election**

- (1) Despite section 296, a council may resolve, before 31 October 2011 (or such later date as may be prescribed by the regulations), that the Electoral Commissioner is to administer its elections (including the 2012 ordinary election for councillors), council polls and constitutional referendums.
- (2) The council must, as soon as possible, notify the following persons of the making of such a resolution:
  - (a) the Electoral Commissioner,
  - (b) the Director-General.

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- (3) The Electoral Commissioner is to administer all the elections, council polls and constitutional referendums of a council that has made such a resolution until the conclusion of the 2012 ordinary election for councillors.
  - (4) Expenses incurred by the Electoral Commissioner, returning officer, substitute returning officer and electoral officials in connection with any such election, council poll or constitutional referendum are to be met by the council for which it is conducted and are recoverable from the council as a debt owed to the Electoral Commissioner as the holder of that office.
  - (5) In this clause, *election* does not include an election of the mayor or a deputy mayor by the councillors.