



New South Wales

# Local Government Amendment (Elections) Bill 2008

## 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 *Local Government Act 1993* (the *Principal Act*) in connection with:

- the conduct of local government elections, and
- the alteration of ward boundaries, and
- applications for the reduction of councillor numbers, and
- the role of councils during election periods, and
- associated matters.

Amendments include the following:

- (a) to make it clear that an alteration of the number of a council's wards does not require approval at a constitutional referendum of electors,
- (b) to allow councils, for a limited period, to apply to reduce the number of councillors without having to conduct a constitutional referendum of electors,
- (c) to provide that the optional preferential voting system applies to elections where only one position is to be filled, and that the proportional voting system applies for elections where 2 or more positions are to be filled,

- (d) to provide expressly for the use of mobile pre-polling booths in accordance with the regulations,
- (e) to express electoral functions as being exercisable by the Electoral Commission rather than the Electoral Commissioner,
- (f) to transfer certain electoral functions from returning officers to the Electoral Commission,
- (g) to permit the Electoral Commission to appoint a returning officer for more than one local government area,
- (h) to provide for the appointment by the Electoral Commission of polling place managers and election assistants as well as returning officers (who are collectively referred to as election officials),
- (i) to make it clear that the Electoral Commission can authorise the sub-delegation of functions delegated to election officials,
- (j) to provide that information on candidates' information sheets must be available (rather than displayed) at polling places and must be published on the websites of the Electoral Commission and the council,
- (k) to vary the 3-week period (or 14-day period in the case of a first election) during which mayors are to be elected by councillors following an ordinary or first election, so that it commences from the date of declaration of the poll,
- (l) to clarify the procedures that are to be followed if a nominated candidate dies,
- (m) to amend a council's charter to state that the council is to exercise its functions responsibly, including during election periods for ordinary elections and to observe caretaker government conventions,
- (n) to provide that a person is validly nominated for election to civic office if the person is enrolled when the roll of electors closes,
- (o) to confirm that the Director-General or other officer of the Department of Local Government may be appointed as an administrator of a council.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

**Schedule 1 [1]** amends section 8 to include in a council's charter an obligation to exercise its functions responsibly, including during election periods for ordinary elections and in particular to observe caretaker government conventions consistently with relevant guidelines. Section 8 (2) provides that a council must pursue its charter but nothing in the charter or section 8 gives rise to, or can be taken into account in, any civil cause of action.

**Schedule 1 [2] and [3]** amend section 210 to make it clear that an alteration of the number of a council's wards is an alteration of ward boundaries that does not require approval at a constitutional referendum of electors.

The procedure set out in section 210A has to be complied with before a council can alter its ward boundaries. That procedure involves consultation with the Electoral Commission and the Australian Statistician, the public exhibition of a ward boundary plan, and the consideration by the council of submissions made in response to the ward boundary plan.

**Schedule 1 [4], [15], [27] and [28]** amend various provisions to replace references to the Electoral Commissioner with references to the Electoral Commission. **Schedule 1 [23]** makes a consequential amendment to section 296 (7). New provisions also refer to the Electoral Commission. The Electoral Commission is a corporation constituted under section 21A of the *Parliamentary Electorates and Elections Act 1912*, which provides that the functions of the Electoral Commission are exercisable by the Electoral Commissioner. The term ***Electoral Commission*** is defined in the Dictionary in the Principal Act (see Schedule 1 [47] below).

**Schedule 1 [5]** amends section 224A to permit a council to apply to the Minister to reduce the number of councillors, but such an application may be made only within a period, which must end on or before 30 June 2008, determined by the Minister by order published in the Gazette.

**Schedule 1 [6]** omits section 224A (9), which currently provides that an application cannot be made if it would result in the number of councillors for each ward being fewer than 3, on the basis that the voting system for an election for 2 councillors will now be proportional instead of optional preferential (see Schedule 1 [9] below).

**Schedule 1 [7]** inserts a note at the end of section 224A, drawing attention to provisions of the Principal Act that require the same number of councillors to be elected for each ward.

**Schedule 1 [8]** amends section 256 to confirm that the same person is eligible (and is taken always to have been eligible) to be appointed and hold office as an administrator of a council and the Director-General or other officer of the Department of Local Government.

**Schedule 1 [9]** amends the introduction to Chapter 10 consequentially on the substitution of section 285 (see Schedule 1 [11] below).

**Schedule 1 [10], [22], [38] and [40]** amend various sections to transfer electoral responsibilities from returning officers to the Electoral Commission.

**Schedule 1 [11]** substitutes section 285, so that the voting system in contested elections is to be:

- optional preferential, if only 1 councillor is to be elected (instead of 1 or 2 councillors), or
- proportional, if the number of councillors to be elected is 2 or more (instead of 3 or more councillors).

**Schedule 1 [12]–[14]** amend section 290 to alter the period in which the election of a mayor by the councillors is to be held. At present, the election of a mayor is to be held within a period of 3 weeks after an ordinary election of councillors (or a period of 14 days after a first election). Under the amended section, that period will start from the date of the declaration of the poll for the election of councillors.

**Schedule 1 [16]–[18], [20], [21] and [25]** amend section 296 to provide for the appointment by the Electoral Commission of returning officers, polling place managers and election assistants (collectively called “election officials” instead of “electoral officials”). The terminology is consistent with that used in the *Parliamentary Electorates and Elections Act 1912*. A person may be appointed as returning officer for one or more areas. The position of substitute returning officer is abolished. The functions of election officials are as specified by the Principal Act, the regulations and the Electoral Commission.

**Schedule 1 [19]** amends section 296 (5) to provide that the Electoral Commission as well as the returning officer is entitled to have access to relevant council papers.

**Schedule 1 [24]** inserts proposed section 296 (7A) to make explicit provision for regulations to permit the use of mobile polling booths and mobile polling teams before polling day.

**Schedule 1 [26]** amends section 297 to ensure that election officials who are delegates of the Electoral Commission can be authorised to sub-delegate functions to other election officials.

**Schedule 1 [29], [37] and [39]** amend sections 303, 314 and 317 to substitute the term “election day” for the term “polling day” in order to achieve consistency with proposed amendments to the regulation under the Principal Act.

**Schedule 1 [30] and [32]** amend sections 305 and 308 to substitute the term “election official” for “electoral official”, consistently with the terminology used in the *Parliamentary Electorates and Elections Act 1912*.

**Schedule 1 [31]** amends section 306 to provide that the validity of the nomination for election to civic office of a person who is enrolled at the date prescribed for the closing of the roll of elections is not affected merely because the person ceases or has ceased to be a resident, owner, occupier or ratepaying lessee entitling the person to enrolment.

**Schedule 1 [33] and [34]** amend section 308 so that candidate information sheets are to be available for inspection (rather than displayed) at polling places, and information in candidate information sheets must be published on the websites of the Electoral Commission and the council. The council need only provide a link to the Electoral Commission's website.

**Schedule 1 [35] and [36]** amend section 309 to deal with the consequences of the death of a nominated candidate at a contested election. If the candidate dies before 6pm on election day, the election fails in respect of the ward or area concerned. If the candidate dies after 6pm on election day, counting is to proceed as if the candidate had not died and, if that candidate is declared elected, a casual vacancy is taken to occur.

**Schedule 1 [41] and [42]** amend section 368 in relation to the quorum for council meetings. The quorum consists of the majority of the total number of councillors. The amendments make it clear that, in determining the total number of councillors, any casual vacancies in councillor positions and any suspended councillors are not to be counted. The amendments will, in particular, be relevant where a casual vacancy is not to be filled because of a reduction of councillor numbers under amended section 224A (see Schedule 1 [5] above).

**Schedules 1 [43] and [44]** amend sections 744 and 745 to ensure that delegates of the Minister and Director-General can be authorised to sub-delegate delegated functions. This complements the amendment to section 297 (see Schedule 1 [26] above).

**Schedule 1 [45]** amends Schedule 8 to authorise the making of regulations of a savings, transitional or other nature consequent on the enactment of the proposed Act.

**Schedule 1 [46] and [47]** amend the Dictionary to insert definitions of terms used in the amended Principal Act.



First print



New South Wales

# Local Government Amendment (Elections) Bill 2008

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New South Wales

# Local Government Amendment (Elections) Bill 2008

No. , 2008

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## A Bill for

An Act to amend the *Local Government Act 1993* in relation to the conduct of local government elections, the alteration of ward boundaries, the reduction of councillor numbers, and the role of councils during election periods; 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>Local Government Amendment (Elections) Act 2008</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Amendment of Local Government Act 1993 No 30</b>	6
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	7
<b>4 Repeal of Act</b>	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

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<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 8 The council's charter</b>	3
	Insert at the end of section 8 (1):	4
	• to exercise its functions responsibly, including during election periods for ordinary elections, and in particular to observe caretaker government conventions consistently with any relevant guidelines issued by the Director-General.	5 6 7 8 9
<b>[2]</b>	<b>Section 210 Division of areas into wards</b>	10
	Insert "An increase or decrease in the number of wards (but not where this would result in there being no wards) is an alteration of ward boundaries." at the end of section 210 (3).	11 12 13
<b>[3]</b>	<b>Section 210 (5A)</b>	14
	Insert after section 210 (5):	15
	(5A) An alteration of ward boundaries does not require approval at a constitutional referendum.	16 17
	<b>Note.</b> The procedure set out in section 210A has to be complied with before a council can alter its ward boundaries.	18 19
<b>[4]</b>	<b>Sections 210A, 265, 292, 296 (except 296 (2)), 297–300, 302, 303, 313–315, 317, 319 and 739 and the introduction to Chapter 10</b>	20 21
	Omit "Electoral Commissioner" and "Electoral Commissioner's" wherever occurring.	22 23
	Insert instead "Electoral Commission" and "Electoral Commission's" respectively.	24 25
<b>[5]</b>	<b>Section 224A Approval to reduce number of councillors</b>	26
	Omit section 224A (7). Insert instead:	27
	(7) An application may be made under this section only within a period determined by the Minister by order published in the Gazette. The period so determined must end on or before 30 June 2008.	28 29 30 31
<b>[6]</b>	<b>Section 224A (9)</b>	32
	Omit the subsection.	33

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<b>[7] Section 224A, note</b>	1
Insert at the end of the section:	2
<b>Note.</b> Sections 280 (2) and 281 (2) provide that the same number of councillors is to be elected for each ward.	3 4
<b>[8] Section 256 Governor may appoint administrator or order fresh election</b>	5
Insert after section 256 (2):	6
(3) To avoid doubt, a person is eligible (and is taken always to have been eligible) to be appointed and to hold office at the same time as an administrator of a council and as the Director-General or other officer of the Department. In that case, the Director-General is to make such arrangements as the Minister directs or the Director-General considers appropriate in order to avoid any conflict of interest that may arise in the exercise of the functions of those offices.	7 8 9 10 11 12 13 14
<b>[9] Chapter 10 How are people elected to civic office?</b>	15
Omit “preferential (wherever 1 or 2 positions must be filled) and proportional (wherever 3 or more positions must be filled)” from the introduction to the Chapter.	16 17 18
Insert instead “preferential (wherever only 1 position must be filled) and proportional (wherever 2 or more positions must be filled)”.	19 20
<b>[10] Section 267 Who has the right to vote?</b>	21
Omit “returning officer” from section 267 (4).	22
Insert instead “Electoral Commission”.	23
<b>[11] Section 285</b>	24
Omit the section. Insert instead:	25
<b>285 Voting system for election of councillors</b>	26
The voting system in a contested election of a councillor or councillors is to be:	27 28
(a) optional preferential, if only 1 councillor is to be elected, or	29 30
(b) proportional, if the number of councillors to be elected is 2 or more.	31 32
<b>[12] Section 290 When is an election of a mayor by councillors to be held?</b>	33
Insert “the date of the declaration of the poll for” before “the ordinary election” in section 290 (1) (a).	34 35

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<b>[13] Section 290 (1) (c)</b>	1
Insert “the date of the declaration of the poll for” before “the first election” where secondly occurring.	2 3
<b>[14] Section 290 (1) (d)</b>	4
Insert “the date of the declaration of the poll for the” before “election” where thirdly occurring.	5 6
<b>[15] Chapter 10, Part 6, Division 1, heading</b>	7
Omit “Electoral Commissioner”. Insert instead “Electoral Commission”.	8
<b>[16] Section 296 Elections to be conducted by the Electoral Commission</b>	9
Omit section 296 (2) and (3). Insert instead:	10
(2) The Electoral Commission may, by instrument in writing, appoint appropriate persons to be:	11
(a) returning officers, or	12
(b) polling place managers, or	13
(c) election assistants.	14
(3) An election official is to be appointed for a specified area for a specified term. The term may be specified by reference to a particular period of time or by reference to a particular election.	15 16 17 18
(3A) A person may be appointed as returning officer for one or more areas.	19 20
(3B) The functions of a class of election officials are:	21
(a) the functions specified by or under this Act in respect of that class of official, and	22 23
(b) any other functions not inconsistent with this or any other Act as may be specified by the Electoral Commission by:	24
(i) the instrument of appointment of officials of that class, or	25 26 27
(ii) another instrument applicable to officials of that class or a particular official of that class.	28 29
<b>[17] Section 296 (4)</b>	30
Omit “or substitute returning officer”.	31
<b>[18] Section 296 (4)</b>	32
Omit “electoral official”. Insert instead “election official”.	33

Local Government Amendment (Elections) Bill 2008

Schedule 1 Amendments

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<b>[19] Section 296 (5)</b>	1
Insert “Electoral Commission and” after “the” where secondly occurring.	2
<b>[20] Section 296 (5)</b>	3
Omit “and substitute returning officer”.	4
<b>[21] Section 296 (6) (b)</b>	5
Omit “returning officer, substitute returning officer and electoral officials”.	6
Insert instead “election officials”.	7
<b>[22] Section 296 (7)</b>	8
Omit “, returning officer, substitute returning officer and electoral officials”.	9
<b>[23] Section 296 (7)</b>	10
Omit “as the holder of that office”.	11
<b>[24] Section 296 (7A)</b>	12
Insert after section 296 (7):	13
(7A) Without affecting the operation of any other provisions of this Act, the Electoral Commission may, in accordance with the regulations, appoint places (whether or not those places are appointed polling places under subsection (6)) at which mobile polling booths and mobile polling teams, however described, may visit for the purpose of taking votes at an election before election day.	14 15 16 17 18 19 20
<b>[25] Section 296 (8)</b>	21
Omit “, the returning officer and the substitute returning officer”.	22
Insert instead “and the returning officer”.	23
<b>[26] Section 297 Delegation of functions by the Electoral Commission</b>	24
Insert at the end of the section:	25
(2) An election official who is a delegate of the Electoral Commission may sub-delegate the function to another election official to the extent the delegate is authorised to do so by the Electoral Commission.	26 27 28 29

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<b>[27] Chapter 10, Part 6, Division 2</b>	1
Omit “Electoral Commissioner” wherever occurring in the note before section 298.	2 3
Insert instead “Electoral Commission”.	4
<b>[28] Section 298 Residential roll</b>	5
Omit “the Commissioner’s” from section 298 (3).	6
Insert instead “the Commission’s”.	7
<b>[29] Section 303 Making of claims for inclusion in the roll</b>	8
Omit “polling day” from section 303 (5). Insert instead “election day”.	9
<b>[30] Section 305 Can an elector vote if his or her name is not on the roll of electors?</b>	10 11
Omit “electoral official”. Insert instead “election official”.	12
<b>[31] Section 306 Nominations</b>	13
Insert after section 306 (2):	14
(2A) A person who was or purported to be enrolled as an elector for a ward or an area at the closing date for an election is not disqualified from civic office, and in particular the validity of the person’s nomination for civic office is not affected, merely because the person ceases or has ceased to be:	15 16 17 18 19
(a) a resident of, or	20
(b) an owner of rateable land in, or	21
(c) an occupier or ratepaying lessee of rateable land in,	22
the ward or area. This subsection does not apply in circumstances prescribed by the regulations.	23 24
<b>Note.</b> The Dictionary in this Act defines the term <b>closing date</b> as the date prescribed by the regulations for the closing of the roll of electors.	25 26
<b>[32] Section 308 Candidate information sheets</b>	27
Omit “electoral official” from section 308 (4).	28
Insert instead “election official”.	29
<b>[33] Section 308 (4)</b>	30
Omit “displayed”. Insert instead “available for inspection”.	31

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<b>[34] Section 308 (5) and (6)</b>	1
Insert after section 308 (4):	2
(5) As soon as practicable after a candidate is nominated, the Electoral Commission must cause the information contained in the candidate information sheet to be published on the Electoral Commission’s internet website. The regulations may prescribe or limit the kinds of information that must be published.	3 4 5 6 7
(6) The council must cause the information referred to in subsection (5) to be published on the council’s internet website or provide a link on its website to the relevant part of the Electoral Commission’s website.	8 9 10 11
<b>[35] Section 309 Contested elections</b>	12
Omit “the day when the poll at a contested election closes, the election fails in respect of that civic office for the ward or area” from section 309 (3).	13 14
Insert instead “the close of poll at a contested election, the election fails in respect of that ward or area”.	15 16
<b>[36] Section 309 (4)</b>	17
Insert after section 309 (3):	18
(4) If a nominated candidate at a contested election dies after the close of the poll but before the declaration of the poll:	19 20
(a) the electoral process is to continue as if the candidate had not died, and	21 22
(b) the candidate, if declared elected, is taken to have died immediately after the declaration and a casual vacancy is taken to have occurred in the civic office concerned.	23 24 25
<b>[37] Section 314 Penalty notice to be issued for failure to vote</b>	26
Omit “polling day” from section 314 (6) (b). Insert instead “election day”.	27
<b>[38] Section 317 Validity of elections</b>	28
Omit “or returning officer conducting the election” from section 317 (1) (c).	29
<b>[39] Section 317 (1) (d)</b>	30
Omit “polling day” wherever occurring. Insert instead “election day”.	31

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<b>[40] Section 318 Lapsed or void election</b>	1
Omit “returning officer” from section 318 (1) (b).	2
Insert instead “Electoral Commission”.	3
<b>[41] Section 368 What is a quorum for a meeting?</b>	4
Insert “actually” after “who”.	5
<b>[42] Section 368</b>	6
Insert at the end of the section:	7
<b>Note.</b> The quorum consists of the majority of the total number of	8
councillors. In determining the total number of councillors, any casual	9
vacancies in councillor positions and any suspended councillors are not	10
to be counted.	11
<b>[43] Section 744 Delegation of functions by the Minister</b>	12
Insert at the end of the section:	13
(2) A delegate of the Minister may sub-delegate a delegated function	14
to another person to the extent the delegate is authorised to do so	15
by the Minister.	16
<b>[44] Section 745 Delegation of functions by the Director-General</b>	17
Insert at the end of the section:	18
(2) A delegate of the Director-General may sub-delegate a delegated	19
function to another person to the extent the delegate is authorised	20
to do so by the Director-General.	21
<b>[45] Schedule 8 Savings, transitional and other provisions consequent on</b>	22
<b>the enactment of other Acts</b>	23
Insert at the end of clause 1 (1):	24
<i>Local Government Amendment (Elections) Act 2008</i>	25

<b>[46] Dictionary</b>	1
Insert in alphabetical order:	2
<i>election assistant</i> means a person appointed as an election assistant under section 296.	3
<i>election official</i> means:	4
(a) a returning officer, or	5
(b) a polling place manager, or	6
(c) an election assistant.	7
<i>election period</i> for an election means the period starting with the closing date, and ending with the declaration of the poll, for the election.	8
<i>polling place manager</i> means a person appointed as a polling place manager under section 296.	9
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<b>[47] Dictionary</b>	14
Omit the definition of <i>Electoral Commissioner</i> . Insert instead:	15
<i>Electoral Commission</i> means the New South Wales Electoral Commission constituted by section 21A of the <i>Parliamentary Electorates and Elections Act 1912</i> .	16
	17
	18