



New South Wales

Local Government Amendment (Elections) Bill 2011

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***) as follows:

- (a) to provide that councils, in general, are to administer council elections, council polls and constitutional referendums rather than the New South Wales Electoral Commissioner (the ***Electoral Commissioner***),
- (b) to enable a council in certain circumstances to make an application to the Minister for Local Government (the ***Minister***) for approval to reduce the number of its councillors without the need for approval at a constitutional referendum,
- (c) to enable a council in certain circumstances to make an application to the Minister for approval to abolish all wards in the council's area without the need for approval at a constitutional referendum,
- (d) to provide that a by-election need not be held to fill a casual vacancy in the office of a councillor (but not a mayor elected by the electors) if a constitutional referendum has approved a reduction in the number of councillors for the council area but the reduction has not yet taken effect,

- (e) to increase the period before the next ordinary election of the councillors during which a council may apply to the Minister to dispense with the requirement to hold a by-election for a casual vacancy in the office of a councillor (including a mayor elected by the electors of an area) from the current effective 12 months to 18 months,
- (f) to make amendments of a consequential, savings and transitional nature.

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.

Schedule 1 Amendment of Local Government Act 1993 No 30

Councils to administer council elections, council polls and constitutional referendums

Schedule 1 [9] provides that council elections (and, by operation of section 18 of the Principal Act, council polls and constitutional referendums) are to be administered by the general manager of the council concerned.

The general manager is to appoint a returning officer and a substitute returning officer for each such election. The returning officer is to appoint one or more electoral officials. 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. A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.

However, a council may, within 12 months after an ordinary election of councillors for the area, 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 (other than elections of mayors and deputy mayors by councillors). 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.

Schedule 1 [17] inserts a savings and transitional provision into the Principal Act to provide that a council may resolve, before 31 October 2011 (or such later date as may be prescribed by the regulations under the Principal Act), to retain the Electoral Commissioner to administer its elections (other than elections of mayors and deputy mayors by councillors), council polls and constitutional referendums until the conclusion of the 2012 ordinary election for councillors.

Schedule 1 [5], [6], [10]–[13] and [15] make consequential amendments.

Schedule 1 [1] makes a consequential amendment to provide that a council need not invite tenders before entering into a contract with the Electoral Commissioner for the administration of the council's elections, council polls and constitutional referendums.

Schedule 1 [14] provides that the Director-General of the Department of Premier and Cabinet (the *Director-General*) may recover the reasonable expenses incurred by the Director-General in, or in respect of, the preparation a Departmental representative's report under Division 1 (Inquiries and reviews) of Part 5 (Inquiries, reviews and surcharging) of Chapter 13 (How are councils made accountable for their actions?) of the Principal Act that relates to the administration of an election by a general manager, including investigation expenses of the Director-General or the Departmental representative.

Ministerial approvals for reduction in number of councillors without constitutional referendum

Section 224A of the Principal Act (Approval to reduce number of councillors) was inserted into that Act by the *Local Government Amendment Act 2005* and provides that the Minister may approve a reduction in the number of councillors of a council without the need for approval at a constitutional referendum. Under the section, at least 21 days' public notice of the council's proposal is required and submissions made to the council by interested members of the public must be forwarded to the Minister. An application for reduction under that section could be made by a council only within the period of 12 months after the section's commencement (that is before 15 July 2006).

Schedule 1 [4] provides that a new application may be made under section 224A during the 5 month period after the proposed Act's commencement.

Schedule 1 [3] provides that at least 42 days' public notice (rather than 21 days) of the council's proposal is required.

Ministerial approvals for abolition of wards without constitutional referendum

Schedule 1 [2] enables the Minister, on application by a council, to approve the abolition of all wards of the council's area. At least 42 days' public notice of the council's proposal is required to be given and submissions made to the council by interested members of the public must be forwarded to the Minister. An application for approval of such an abolition may be made by a council only within the period of 5 months after the commencement of the proposed Act.

Casual vacancies need not to be filled where councillor numbers reduced and approved by constitutional referendum

Schedule 1 [8] provides that a by-election is not to be held to fill a casual vacancy in the office of a councillor (but not a mayor elected by the electors) if a constitutional referendum has approved a reduction in the number of councillors for the council area but the reduction has not yet taken effect.

Increase of period during which by-elections may be dispensed with

Section 294 of the Principal Act provides that a council may apply to the Minister to dispense with the requirement to hold a by-election for a casual vacancy in the office of a councillor (including a mayor elected by the electors of an area) that has occurred during the 12 months before an ordinary election of the councillors. **Schedule 1 [7]** provides that such an application may be made if the casual vacancy occurs 18 months (rather than 12 months) before an ordinary election of the councillors.

Savings and transitional provisions

Schedule 1 [16] and [17] make amendments of a savings and transitional nature.

First print



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New South Wales

Local Government Amendment (Elections) Bill 2011

No. , 2011

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Elections) Act 2011</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Local Government Act 1993 No 30	1 2
[1]	Section 55 What are the requirements for tendering?	3
	Insert at the end of section 55 (3):	4
	<ul style="list-style-type: none">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.	5 6 7 8
[2]	Section 210B	9
	Insert after section 210A:	10
	210B Approval to abolish all wards in council's area	11
	(1) A council may resolve to make an application to the Minister to approve the abolition of all wards of the council's area.	12 13
	(2) The council must give not less than 42 days' public notice of its proposed resolution.	14 15
	(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.	16 17 18
	(4) The Minister may approve the application or may decline to approve it.	19 20
	(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.	21 22 23 24
	(6) Section 16 does not apply to a resolution of a council to make an application to the Minister under this section.	25 26
	(7) An application may be made under this section only within the period of 5 months from the commencement of this section.	27 28
	(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.	29 30 31
[3]	Section 224A Approval to reduce number of councillors	32
	Omit "21 days' public notice" from section 224A (2).	33
	Insert instead "42 days' public notice".	34

[4] Section 224A (7)	1
Omit the subsection. Insert instead:	2
(7) An application may be made under this section after the commencement of the <i>Local Government Amendment (Elections) Act 2011</i> but before the expiry of 5 months after that commencement.	3 4 5 6
[5] Chapter 10, introduction note	7
Insert “the general manager of the council or” before “the Electoral Commissioner”.	8 9
[6] Section 292	10
Omit the section. Insert instead:	11
292 When is a by-election to be held?	12
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:	13 14 15
(a) falls not later than 3 months after the vacancy occurs, and	16
(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).	17 18 19 20
[7] Section 294 Dispensing with by-elections	21
Omit “on or after 1 October last preceding the end of the term of a council” from section 294 (1).	22 23
Insert instead “within 18 months before the date specified for the next ordinary election of the councillors for the area”.	24 25
[8] Section 294B	26
Insert after section 294A:	27
294B Casual vacancy not to be filled where councillor numbers reduced—approved by constitutional referendum	28 29
(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.	30 31 32 33 34

(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.	1 2 3 4
(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.	5 6 7
[9]	Chapter 10, Part 6, Division 1	8
	Omit the Division. Insert instead:	9
	Division 1 Administration of elections	10
296	Elections to be administered by general manager of council or Electoral Commissioner	11 12
(1)	Elections for the purposes of this Chapter are to be administered by the general manager of the council concerned.	13 14
	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.	15 16 17 18
(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.	19 20 21 22
(3)	Such a resolution may only be made within 12 months after an ordinary election of councillors for the council's area.	23 24
(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.	25 26 27 28
(5)	In this section, <i>election</i> does not include an election of the mayor or a deputy mayor by the councillors.	29 30
296A	Elections administered by a general manager	31
(1)	This section applies to an election administered by the general manager of a council.	32 33
(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.	34 35 36 37

(3)	The returning officer is to appoint one or more electoral officials.	1
(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.	2 3 4 5
(5)	A general manager cannot be appointed as a returning officer, substitute returning officer or electoral official for any area.	6 7
(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.	8 9 10
(7)	For the purpose of administering an election, the general manager is to:	11 12
	(a) appoint the polling places, and	13
	(b) determine the fees payable to the returning officer, substitute returning officer and electoral officials.	14 15
(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.	16 17 18
(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.	19 20 21
(10)	The returning officer and the substitute returning officer must not vote at any election that they are conducting.	22 23
296B	Elections administered by the Electoral Commissioner	24
(1)	This section applies to an election administered by the Electoral Commissioner.	25 26
(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.	27 28 29 30 31 32
(3)	The returning officer is to appoint one or more electoral officials.	33
(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.	34 35 36 37

(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.	1 2 3
(6)	For the purpose of conducting an election, the Electoral Commissioner is to:	4 5
	(a) appoint the polling places, and	6
	(b) determine the fees payable to the returning officer, substitute returning officer and electoral officials, and	7 8
	(c) determine any matter not provided for by this Act or the regulations.	9 10
(7)	The Electoral Commissioner, the returning officer and the substitute returning officer must not vote at any election that they are conducting.	11 12 13
297	Delegation of functions by the Electoral Commissioner	14
	The Electoral Commissioner may delegate to a person any of the Electoral Commissioner's functions under this Act, other than this power of delegation.	15 16 17
[10]	Chapter 10, Part 6, Division 2, note	18
	Omit the note.	19
[11]	Sections 299 and 300	20
	Omit the sections. Insert instead:	21
299	Non-residential roll	22
(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.	23 24 25 26
(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.	27 28 29 30 31
(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	32 33 34 35

	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.	1 2 3
(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.	4 5 6 7 8 9 10
300	Roll of occupiers and ratepaying lessees	11
(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.	12 13 14 15 16
(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.	17 18 19 20 21
(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.	22 23 24 25 26 27 28
(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.	29 30 31 32 33 34 35
[12]	Section 313	36
	Omit the section. Insert instead:	37
313	List of residents failing to vote	38
(1)	After the close of the poll at a contested election, the general manager (in relation to an election administered by the general	39 40

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.	1 2 3 4 5 6
(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.	7 8 9 10 11
[13] Section 317 Validity of elections	12
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).	13 14 15 16
[14] Section 434B	17
Insert after section 434A:	18
434B Expenses to be borne by council	19
(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.	20 21 22 23 24 25
(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.	26 27 28 29
(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.	30 31 32
(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.	33 34 35
(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.	36 37 38

(6)	A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.	1 2
[15]	Schedule 6 Regulations	3
	Insert the following at the end of the list of examples to item 14 (Elections):	4
	Compliance with Director-General's guidelines relating to the administration of elections	5 6
[16]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	7 8
	Insert at the end of clause 1 (1):	9
	<i>Local Government Amendment (Elections) Act 2011</i>	10
[17]	Schedule 8	11
	Insert at the end of the Schedule, with appropriate numbering:	12
Part	Provisions consequent on enactment of Local Government Amendment (Elections) Act 2011	13 14 15
	Definition	16
	In this Part, <i>amending Act</i> means the <i>Local Government Amendment (Elections) Act 2011</i> .	17 18
	Dispensing with by-elections	19
	Section 294, as amended by the amending Act, extends to a casual vacancy occurring before the commencement of that Act.	20 21
	Council may retain Electoral Commissioner to administer elections, polls and referendums until end of 2012 ordinary election	22 23 24
	(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.	25 26 27 28 29
	(2) The council must, as soon as possible, notify the following persons of the making of such a resolution:	30 31
	(a) the Electoral Commissioner,	32
	(b) the Director-General.	33

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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. | 1
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| (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
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| (5) | In this clause, <i>election</i> does not include an election of the mayor or a deputy mayor by the councillors. | 11
12 |