



New South Wales

# Local Government Amendment (Elections) Bill 2014

## 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 **LG Act**) as follows:

- (a) to enable, in certain circumstances, a casual vacancy in the office of councillor to be filled by a candidate determined by a countback of votes rather than a by-election,
- (b) to promote planning for the administration of ordinary elections of councillors by requiring each council that resolves to have its general manager administer its elections (instead of the Electoral Commissioner) to publish on its website a resolution, dealing with various election administration matters, at least 18 months before the ordinary election,
- (c) to require the Electoral Commissioner to provide each general manager of a council who is administering the elections of the council with a printed and an electronic copy of the residential roll for the local government area concerned,
- (d) to provide that persons who are entitled to enrol on a roll of non-resident owners of rateable land or a roll of occupiers and ratepaying lessees are not required to re-enrol after each ordinary election of councillors,
- (e) to enable the Council of the City of Sydney (and any other local council prescribed by the regulations), by a resolution made at least 18 months before an ordinary election of councillors, to determine that voting at that election is to be conducted exclusively by means of postal voting.

## 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 a day or days to be appointed by proclamation.

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

### **Amendment relating to countback elections to fill casual vacancies**

**Schedule 1 [1]** inserts proposed section 291A into the LG Act to give effect to the object set out in paragraph (a) above. The proposed section provides that a casual vacancy in the office of councillor to which the proposed section applies is to be filled by a countback election conducted in accordance with the regulations.

The proposed section applies to a casual vacancy in the office of a councillor if:

- (a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the local government area, and
- (b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.

The proposed section does not apply if the councillor who vacated office was elected:

- (a) in an election using the optional preferential voting system, including the election of a mayor elected by the electors of an area (that is, in single member elections), or
- (b) in an election without a poll being required to be held.

If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election, a by-election must be held to fill the casual vacancy.

### **Amendment relating to planning for administration of elections**

**Schedule 1 [2]** inserts proposed section 296AA into the LG Act to give effect to the object set out in paragraph (b) above. The proposed section provides that, at least 18 months before the next ordinary election of councillors for a council, the council must resolve:

- (a) to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296 of the LG Act), or
- (b) that the elections of the council are to be administered by the general manager of the council.

A resolution that the elections of the council are to be administered by the general manager of the council must include the following information:

- (a) whether the general manager intends to administer elections personally or to engage an electoral services provider,
- (b) if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer for the next ordinary election of councillors and, if so, the names of those persons,
- (c) if the general manager intends to engage an electoral services provider, whether the general manager has identified the electoral services provider and, if so, the name of that provider,
- (d) any other information required by the regulations.

As soon as practicable after making any such resolution, the general manager of the council must publish a copy of the resolution on the council's website. If a council fails to comply with the proposed section, the general manager must publish a notice of that failure on the council's website.

### **Amendment relating to provision of residential roll**

**Schedule 1 [3]** inserts proposed section 298 (3)–(8) into the LG Act to give effect to the object set out in paragraph (c) above. The proposed subsections provide that, as soon as practicable after the closing date for the rolls for an election that is to be administered by the general manager of the council concerned, the Electoral Commissioner is to provide the general manager with a printed and an electronic copy of the residential roll for the area and, if the area is divided into wards, a separate printed and electronic copy of the roll for each ward. The electronic copy of the residential roll is to be provided in the format specified by the regulations (if any). The costs of providing these copies of the roll are to be met by the relevant council.

Proposed section 298 (5) makes it an offence for a general manager of a council or any other person to use or disclose any information provided in a residential roll under section 298 of the LG Act other than for the purpose of administering an election under that Act.

Proposed section 298 (6) makes it an offence for any person to use or disclose any such information for a commercial purpose.

The proposed offences carry a maximum penalty of 1,000 penalty units (currently \$110,000).

### **Amendment relating to provision of roll of non-resident owners of rateable land and roll of occupiers and ratepaying lessees**

**Schedule 1 [4]–[9]** amend sections 299 and 300 of the LG Act to give effect to the object set out in paragraph (d) above.

Currently, under sections 299 (2) and 300 (2) of the LG Act each roll of non-resident owners of rateable land and roll of occupiers and ratepaying lessees lapses after the election for which it is prepared. New rolls are to be prepared for each new election which are to consist only of the names of those non-resident owners of rateable land and those occupiers and ratepaying lessees who have applied for the inclusion of their names for the purposes of the election for which the rolls are being prepared. **Schedule 1 [5] and [8]** remove that requirement.

**Schedule 1 [4], [6], [7] and [9]** make amendments that provide that as soon as is practicable after a roll of non-resident owners of rateable land and a roll of occupiers and ratepaying lessees for an election lapses, the general manager of the council concerned is to prepare new rolls and keep them updated. The new rolls prepared by the general manager are to include the names of the persons who:

- (a) have applied, at any time, for the inclusion of their names in any such roll, and
- (b) on the closing date for the election are, in the opinion of the general manager, qualified for inclusion in the roll.

### **Amendment relating to exclusive postal voting elections**

**Schedule 1 [10]** inserts proposed section 310B into the LG Act to give effect to the object set out in paragraph (e) above. The proposed section applies to the City of Sydney local government area and any other local government area prescribed by the regulations for the purposes of the proposed section.

The proposed section provides that a council may, by a resolution made at least 18 months before the next ordinary election of councillors, determine that voting at that election is to be conducted exclusively by means of postal voting. Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by such a resolution to change the means of conducting the voting.

Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.

Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the

previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting.

An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.



New South Wales

# Local Government Amendment (Elections) Bill 2014

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Local Government Act 1993 No 30	3



New South Wales

# Local Government Amendment (Elections) Bill 2014

No. , 2014

---

## **A Bill for**

An Act to amend the *Local Government Act 1993* to make further provision in relation to elections to civic office; and for related purposes.

---

<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 2014</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5

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

### [1] Section 291A 2

Insert after section 291: 3

#### 291A Countback to be held instead of by-election in certain circumstances 4

(1) This section applies to a casual vacancy in the office of a councillor if: 5

(a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and 6  
7

(b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office. 8  
9  
10

(2) This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected: 11  
12

(a) in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or 13  
14

**Note.** See section 285 (Voting system for election of councillors). 15

(b) in an election without a poll being required to be held. 16

**Note.** See section 311 (Uncontested elections). 17

(3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations. 18  
19

(4) A countback election to fill a casual vacancy to which this section applies must be conducted: 20  
21

(a) by the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected, or 22  
23

(b) if that is not possible, by the substitute returning officer at that election, or 24  
25

(c) if that is not possible, by a returning officer appointed in accordance with this Act. 26  
27

(5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election: 28  
29

(a) the returning officer must notify the general manager of the council concerned, and 30  
31

(b) a by-election in accordance with this Part must be held to fill the casual vacancy. 32  
33

### [2] Section 296AA 34

Insert before section 296: 35

#### 296AA Councils to plan for administration of elections 36

(1) At least 18 months before the next ordinary election of councillors for a council, the council must resolve: 37  
38

(a) to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296), or 39  
40  
41

(b) that the elections of the council are to be administered by the general manager of the council. 42  
43

(2)	A resolution referred to in subsection (1) (b) must include the following information:	1
		2
(a)	whether the general manager intends to administer elections personally or to engage an electoral services provider,	3
		4
(b)	if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer for the next ordinary election of councillors and, if so, the names of those persons,	5
		6
		7
		8
(c)	if the general manager intends to engage an electoral services provider, whether the general manager has identified an electoral services provider to be engaged for the next ordinary election of councillors and, if so, the name of that provider,	9
		10
		11
		12
(d)	any other information required by the regulations.	13
(3)	As soon as practicable after the making of a resolution referred to in subsection (1) (b), the general manager of the council must publish a copy of the resolution on the council's website.	14
		15
		16
(4)	If a council fails to comply with subsection (1), the general manager of the council must publish a notice of that failure on the council's website.	17
		18
<b>[3]</b>	<b>Section 298 Residential roll</b>	19
	Insert after section 298 (2):	20
(3)	As soon as practicable after the closing date for an election that is to be administered by the general manager of the council concerned, the Electoral Commissioner is to provide the general manager with a printed and an electronic copy of the residential roll for the area and, if the area is divided into wards, a separate printed and electronic copy of the roll for each ward.	21
		22
		23
		24
		25
(4)	The electronic copy of the residential roll is to be provided in the format specified by the regulations (if any).	26
		27
(5)	A general manager of a council or any other person must not use or disclose any information provided in a residential roll under this section other than for the purpose of administering an election under this Act.	28
		29
		30
(6)	A person must not use or disclose any such information for a commercial purpose.	31
		32
(7)	Without limiting subsection (6), information is used for a commercial purpose if it is sold or offered for sale.	33
		34
(8)	The costs of the Electoral Commissioner with respect to the carrying out of any function under subsection (3) are to be met by the council concerned and are recoverable from the council as a debt.	35
		36
		37
	Maximum penalty (subsections (5) and (6)): 1,000 penalty units.	38
<b>[4]</b>	<b>Section 299 Non-residential roll</b>	39
	Omit section 299 (1). Insert instead:	40
(1A)	As soon as is practicable after a roll of non-resident owners of rateable land for an election lapses under this section, the general manager is to prepare a new roll of non-resident owners of rateable land within the area for the next election and keep it updated.	41
		42
		43
		44

(1)	Not later than the closing date for an election, the general manager is to finalise that roll of non-resident owners of rateable land for confirmation as the roll of non-resident owners of rateable land within the area for that election.	1 2 3
<b>[5] Section 299 (2)</b>		4
	Omit “, and it consists only of the names of those non-resident owners of rateable land who have applied for the inclusion of their names for the purposes of the election for which it is being prepared”.	5 6 7
<b>[6] Section 299 (2A)</b>		8
	Insert after section 299 (2):	9
(2A)	The roll of non-resident owners of rateable land prepared by the general manager is to include the names of the persons who:	10 11
(a)	have applied, at any time, for the inclusion of their names in any such roll, and	12 13
(b)	on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.	14 15
<b>[7] Section 300 Roll of occupiers and ratepaying lessees</b>		16
	Omit section 300 (1). Insert instead:	17
(1A)	As soon as is practicable after a roll of occupiers and ratepaying lessees for an election lapses under this section, the general manager is to prepare a new roll of occupiers and ratepaying lessees (of land within the area) for the next election and keep it updated.	18 19 20 21
(1)	Not later than the closing date for an election, the general manager is to finalise that roll of occupiers and ratepaying lessees for confirmation as the roll of occupiers and ratepaying lessees (of land within the area) for the election.	22 23 24
<b>[8] Section 300 (2)</b>		25
	Omit “, and it consists only of the names of those occupiers and ratepaying lessees who have applied for the inclusion of their names for the purpose of the election for which it is being prepared”.	26 27 28
<b>[9] Section 300 (2A)</b>		29
	Insert after section 300 (2):	30
(2A)	The roll of occupiers and ratepaying lessees prepared by the general manager is to include the names of the persons who:	31 32
(a)	have applied, at any time, for the inclusion of their names in any such roll, and	33 34
(b)	on the closing date are, in the opinion of the general manager, qualified for inclusion in that roll.	35 36
<b>[10] Section 310B</b>		37
	Insert after section 310A:	38
<b>310B Elections may be conducted exclusively by postal voting</b>		39
(1)	This section applies to:	40
(a)	the City of Sydney local government area, and	41

- |     |   |                                  |
|-----|---|----------------------------------|
| (b) | any other local government area prescribed by the regulations for the purposes of this section.   | 1<br>2                           |
| (2) | A council may by a resolution made at least 18 months before the next ordinary election of councillors determine that voting at that election is to be conducted:   | 3<br>4<br>5                      |
| (a) | by means of attendance and postal voting, or  | 6                                |
| (b) | exclusively by means of postal voting.  | 7                                |
| (3) | Voting at an ordinary election of councillors must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council has determined by a resolution that complies with subsection (2) to change the means of conducting the voting.  | 8<br>9<br>10<br>11<br>12         |
| (4) | Voting at a by-election must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made not later than 14 days after the casual vacancy occurred to change the means of conducting the voting.  | 13<br>14<br>15<br>16<br>17       |
| (5) | Voting at a constitutional referendum or council poll must be conducted by the same means, whether by means of attendance and postal voting or exclusively by means of postal voting, as the previous ordinary election of councillors was conducted unless the council determines by a resolution made at the same meeting that the council determined to hold the referendum or take the poll to change the means of conducting the voting. | 18<br>19<br>20<br>21<br>22<br>23 |
| (6) | An election, constitutional referendum or council poll to be conducted exclusively by means of postal voting is to be conducted in accordance with the regulations.   | 24<br>25<br>26                   |