



LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The principal purpose of the *Local Government Amendment (Election) Bill 2025 (Bill)* is to remove the option for councils to engage a private electoral service provider to administer their elections. The Bill provides that all council elections are to be administered by the NSW Electoral Commissioner (NSWEC).

Councils have had the option to use persons other than the NSWEC to administer their elections since 2011. Councils were given this option to reduce their election costs by introducing contestability in the delivery of electoral services for councils. Giving councils a choice in the providers they can use to administer their elections has failed to deliver the promised benefits and there is no longer any compelling policy reason for retaining this option for councils.

The competition the current legislation was designed to deliver has failed to materialise. In the 13 years the choice of provider has been in place, there has only been one alternative provider to the NSWEC.

Over the same period, councils' appetite to take on the risk of outsourcing the delivery of their elections to a provider other than the NSWEC has diminished rapidly from 14 at the 2012 ordinary local government elections to 2 at the most recent 2021 and 2024 ordinary local government elections. The loss of the economies of scale that has resulted from the low number of councils prepared to engage the alternative provider to administer their elections has meant that there are no longer savings to be achieved by engaging the provider. While in 2012, most councils using the private provider reported that they had achieved savings by using the provider, these savings have become less apparent over time.

The Bill also includes a measure to restrict the availability of pre-poll voting at council elections to the period commencing on the Monday before election day. This will remove a barrier to participation in council elections by candidates who do not have the resources to maintain a presence at pre-poll voting venues over an extended period, impacting on their ability to compete with candidates who have been endorsed by major political parties or local political groups and who benefit from the support and resources of the party or group.

An amendment is also being proposed to restrict polling places at council elections to the council's area to increase formal voting and address the confusion that has arisen where electors have sought to vote outside their local government area and are provided 'how to vote' material that is not relevant to them. Because absentee voting is not available at local government elections, the NSWEC maintains multi-council polling places that are located on or near the boundary between two or more council areas where ballots may be issued for more than one council area. This has led to confusion among some electors seeking to vote at these polling places and a reported increase in the informal vote at these booths.

The Bill also contains several amendments relating to countback elections. Among other things, it will provide a time-limited mechanism to allow a by-election to be held for Brewarrina Shire Council outside the 3-month period currently permitted under the *Local*

Government Act 1993 (LG Act) after the Council failed to notify the NSWEC of a vacancy. Without this amendment, the Council may not be able to fill the vacancy.

The Bill also extends the timeframe for by-elections to be held where a countback election has been held and failed to elect a candidate or cannot be held for any reason.

Under the measures proposed in the Bill, the option for councils to use countbacks to fill vacancies will no longer be available from the 2028 local government elections. The use of countbacks to fill vacancies can result in the political composition of councils being altered. To address this, the measures contained in the Bill will require that where the vacating councillor was a member of a group on the ballot paper at the election at which they were elected, they are to be replaced by the highest listed candidate from the same group who was not elected at that election. Other vacancies will be filled using a by-election.

Objectives: What is the policy's objective couched in terms of the public interest?

Even if the introduction of contestability in the delivery of council elections had delivered the promised benefits of reducing councils' election costs, these benefits are vastly outweighed by the risks of allowing council elections to be administered by persons other than the NSWEC.

Community confidence in the way council elections are conducted is critical to the health of our democratic system of local government. Conferring responsibility for conducting elections at Federal and State levels on an independent electoral commission has meant that Australia has been able to avoid the loss of public confidence in elections and election outcomes that has been experienced elsewhere in the world. Allowing council elections in NSW to be administered by a provider other than an independent electoral commission puts this at risk.

Allowing elected representatives to choose who administers an election to determine if they continue to hold office could potentially be open to abuse and result in a loss of community confidence in the electoral process. While the way in which the NSWEC exercises their functions is subject to Parliamentary scrutiny, no such oversight or scrutiny exists in relation to the administration of elections by private electoral service providers.

The need to mitigate the potential risks associated with allowing persons other than the NSWEC to administer council elections has resulted in a level of regulatory complexity that would not exist if all council elections were administered by the NSWEC. The LG Act currently prescribes complex rules governing the content and timing of decisions by councils on the administration of their elections that are designed to ensure councils make these decisions in a timely way to ensure adequate planning for their elections.

Allowing councils to engage a person other than the NSWEC to conduct their elections has also necessitated a two-tier system of council elections where voting channels available at elections administered by the NSWEC are not available at council elections administered by other persons. Technology assisted voting is only available at council elections administered by the NSWEC because of the inability to guarantee that a private provider will have the necessary technical and security infrastructure in place to ensure data integrity.

The proposed amendments to the LG Act will eliminate this regulatory complexity by simply providing that the NSWEC is to administer all council elections in the future.

Options: What alternative policies and mechanisms were considered in advance of the Bill?

The alternative to the measures proposed in the Bill is to retain the existing arrangements.

Analysis: What were the pros/cons and benefits/costs of each option considered?

There is no benefit in retaining the existing arrangements for the administration of council elections. As noted above, the current arrangements have failed to deliver any benefit to councils in terms of increased choice in providers, greater efficiencies and innovation, or reduced election costs. They have in turn created a heightened risk to the integrity of council elections and public confidence in them. This has in turn necessitated a level of regulatory complexity to address these risks that would not have otherwise been required if the NSWEC administered all council elections.

A potential disadvantage of the measures contained in the Bill is that they will result in a loss of competitive pressures in the administration of council elections and lead to increased costs. However, as noted above, the current arrangements have also failed to deliver these benefits.

The measure restricting the pre-poll period for council elections to 5 days will remove barriers to participation in council elections by less well-resourced candidates. However, it does have the potential to disenfranchise some voters. At the last 2024 local government elections, the NSW Electoral Commission was able to minimise the impact of a reduced pre-poll voting period from 13 to 7 days on voter participation by using larger pre-poll voting centres that could accommodate larger numbers of electors over a shorter period. There is no reason to assume that a similar strategy cannot be used at future local government elections. Electors also have the option of postal voting.

The measure restricting polling places at council elections to the council's area will increase formal voting and address the confusion that has arisen where electors have sought to vote outside their local government area and are provided 'how to vote' material that is not relevant to them. However, it has the potential to disenfranchise electors seeking to vote outside their local government area. Affected voters will have the opportunity of postal and pre-poll voting. The relevant provision will also allow the Regulation to prescribe circumstances in which electors can vote at a polling place outside their area potentially allowing the operation of voting venues for multiple council elections in major centres.

The measure requiring vacancies to be filled by councillors from the same group as the vacating councillor will ensure greater stability in councils by maintaining the current political composition of the council where possible. The measure changes the role and importance of countback elections, which sees casual vacancies being filled based on electors' preferences. While there is a risk voters will perceive a diminution of the value of their preferences, this perceived loss is outweighed by the benefits of increased stability in the affected council which will allow improved delivery of services to the community. If it is not possible to replace the vacating councillor with a candidate from the same group, the vacancy will be filled at a by-election giving electors a fresh choice on who they want to represent them on the council.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

If passed by Parliament, the amendments will commence on assent.

From commencement, all council elections will be required to be administered by the NSWEC. However, the Bill contains transitional provisions that allow the private electoral services provider engaged by Fairfield City Council to administer its election in September 2024 to conduct countbacks to fill any vacancies that arise in the 18 months

following the election. Because the private electoral services provider who administered Fairfield City Council's ordinary election holds the voting data and counting systems required to undertake a countback, it would not be feasible for the NSWEC to conduct a countback for that council. In the unlikely event a candidate is not elected at a countback election, a by-election to fill the vacancy will be administered by the NSWEC.

The Brewarrina measure is a time-limited one and will be automatically repealed on 1 September 2025. This should be sufficient time to allow a by-election to be held if required. Once the vacancy is filled, the provision will no longer be required.

In recognition of the significance of the change, the amendments creating the new system to fill casual vacancies will not take effect until after the September 2028 local government elections. This will see councils continuing to be able to use the option for countbacks to fill vacancies based on the voting patterns of the September 2024 election. When voting occurs at the September 2028 elections it will be clear to electors their vote will mean vacancies will be filled from candidates of the same group.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Local Government NSW, the peak body for local government in NSW, has been informed of the Government's intention to remove the option for councils to engage electoral services providers other than the NSWEC to administer their elections.

The NSWEC has been consulted on the drafting of the Bill.