

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,

Explanatory note page 2

Local Government Amendment (Elections) Bill 2011

Explanatory note

(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.

Explanatory note page 3

Local Government Amendment (Elections) Bill 2011

Explanatory note

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.