

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [2.50 p.m.]: I move:

That this bill be now read a second time.

This bill was introduced in the other place on Wednesday 15 June 2011. This is an important bill for New South Wales. The bill fulfils the Government's commitment to return autonomy to local councils by giving them back the powers they enjoyed in the past to conduct their own elections. The Local Government Amendment (Elections) Bill 2011 reflects the Government's commitment to provide a transparent and effective legislative framework for the administration of local government in New South Wales. The bill also ensures that councils in certain circumstances do not need to fill casual vacancies by way of by-elections, with resultant significant savings on the costs of holding those by-elections.

The bill also provides a window of opportunity to those councils that wish to reduce their councillor numbers and abolish wards without the need to hold a constitutional referendum. These proposals will also save councils considerable expenses. The proposals in the bill have been developed to address recurring and significant issues identified in the review of local government election provisions conducted following the last council ordinary elections. The bill will address concerns raised by the public, councils and the Local Government and Shires Associations of New South Wales regarding the conduct and cost of local government elections. I seek leave to have the balance of the second reading speech incorporated in *Hansard*.

Leave granted.

I will now turn to the detail of the Local Government Act amendments.

The first proposal is designed to transfer the conduct of local council elections, constitutional referendums and polls to councils while maintaining the option of contracting their conduct to the Electoral Commissioner.

The bill makes it clear that where a council decides to conduct its own elections, referendums and polls the general manager is responsible for their conduct. However, where a council decides to contract the conduct of its elections, referendums and polls to the New South Wales Electoral Commissioner, the Electoral Commissioner is responsible for their conduct.

Currently, the Local Government Act provides that the Electoral Commissioner is responsible for the conduct of all local Government elections (ie, ordinary elections, by-elections, elections of mayors elected by the public) constitutional referendums and polls.

The expenses incurred in conducting these elections, referendums and polls are met by the councils for which they are conducted.

The Electoral Commissioner has been conducting local government elections and referendums since 1987. The Local Government (Elections) Amendment Act 1987 transferred this responsibility from Town and Shire Clerks to the Electoral Commissioner.

Prior to 1987 all councils in New South Wales had conducted their respective elections

independently. This arrangement had been in place since 1867.

The transfer of the conduct of council elections to the Electoral Commissioner occurred as a result of a commitment made by the then Labor Government that the Electoral Commissioner would assume responsibility for the conduct of all council elections and referendums, commencing with the ordinary elections held in September 1987. This was to reflect the arrangements at Commonwealth and State level.

In 2008, following a review of local government election pricing by the Council on the Cost and Quality of Government, the New South Wales Electoral Commission, for the first time, conducted the September 2008 ordinary elections on a full cost recovery basis.

The sudden increase in costs for those elections caused a dramatic number of complaints from councils. Those complaints were supported by the Local Government and Shires Associations of New South Wales [LGSA].

Thus, in its publication titled "NSW Election Priorities 2011" the Local Government and Shires Associations of New South Wales stated that the increase in costs and "the cost shift from the New South Wales Government to councils totalling \$9,050,150 made it clear that the responsibility of conducting local government elections should stay within individual councils should the council wish to do so."

The Local Government and Shires Associations of New South Wales further stated that councils are better placed to conduct their own elections with more efficient use of council staff and revenue.

The Government accepts the Local Government and Shires Associations of New South Wales's position.

The Government is of the view that returning the conduct of elections to councils would see council revenue better spent on community infrastructure and services, restore community involvement in the local government election process and provide speedier results for candidates and communities.

While providing for the powers for council general managers to conduct council elections, the bill also ensures that councils may decide to continue to have their elections conducted by the Electoral Commissioner. Thus the proposal is flexible enough to cater for those councils that choose not to conduct their own elections.

Where a council determines to conduct its own elections, the responsibilities of the general manager will include the appointment of a suitably qualified independent returning officer and a substitute returning officer for the council's area, appoint the polling places and determine the fees payable to the returning officer, substitute returning officer and electoral officials.

A returning officer may be sourced from a neighbouring council or another council in New South Wales. This could be an experienced member of senior staff of that councillor or a suitable member of the public.

Importantly, the general manager will not be able to be appointed as a returning officer to conduct an election of a neighbouring council because they are charged with the responsibility for the administration of their own council's election.

The general manager will also be responsible for managing the relevant election costs and prepare, for the Minister, a report on the conduct of each election. The report will disclose, among other things, full and transparent costings for that election. This is already the practice of the Electoral Commissioner to report to the Government on the outcome of council ordinary elections.

While the latter requirement is not included in this bill, it is intended that it will form part of the new regulation or guidelines proposed to be developed by the Division of Local Government in conjunction with the New South Wales Electoral Commission [NSWEC].

The guidelines will assist councils to clearly understand the level of service and accountability required of them so that they can make an informed choice whether to conduct their elections.

It is important that councils do not make a final decision on who is to conduct their 2012 elections until they have considered the guidelines.

It is also important that any savings and efficiencies in the conduct of elections and referendums by councils do not come at the expense of the principles of openness, transparency and accountability that underpin the arrangements of elections for the other tiers of Government.

The Local Government and Shires Associations of New South Wales expects that the proposed amendments not only will substantially reduce the costs of council elections but will also result in more prompt reporting of the results of elections.

Those councils that wish to have their elections, referendums and polls conducted by the Electoral Commissioner may by resolution decide to do so by entering into appropriate contractual arrangements with the NSWEC.

To this end, a council will need to resolve within 12 months after the ordinary election that the council is to enter into a contract or make arrangements with the NSWEC to administer all council elections (other than the elections of a mayor by councillors), referendums and polls for the balance of a term of a council including the following ordinary election. This will provide the necessary certainty required.

However, in the event a council and the NSWEC cannot agree on the terms of a contract, the bill provides that the general manager is responsible for the conduct of elections, referendums and polls of the council concerned.

The bill has a number of transitional provisions that ensure that councils may retain the services of the Electoral Commissioner to administer their elections, referendums and polls until the conclusion of the September 2012 ordinary elections.

Where a council chooses to use the NSWEC to conduct its ordinary elections in 2012, the council must pass a resolution to this effect before 31 October 2011 or before a later date specified in the regulation.

The council must also notify the NSWEC and the Division of Local Government of its decision as soon as possible to enable the NSWEC to commence the necessary preparations for the election.

The expenses incurred by the Electoral Commissioner in connection with any such election are to be met by the council for which it is conducted.

After the 2012 ordinary elections but before the expiry of a 12 month period councils will be able to make a further decision whether their elections, referendums and polls are to be conducted by the NSWEC or by the councils.

Another important aspect of this proposal covers allegations of maladministration of elections, referendums and polls conducted by councils.

Some complaints alleging maladministration would require review and possible formal investigation by the Division of Local Government. If such an investigation is warranted the Act already provides powers to the chief executive to authorise an investigation of a council under section 430.

The bill additionally provides that the expenses associated with the preparation of a report under section 430 arising out of the conduct of elections, referendums and polls by a council can be recovered by the division from the council.

Other complaints, depending on their nature, will be dealt with by the Independent Commission Against Corruption, the police or the Ombudsman.

Candidates aggrieved about an election result, qualifications of candidates, etc will continue to avail themselves of the jurisdiction of the New South Wales Administrative Decisions Tribunal and the Supreme Court of New South Wales.

The proposal ensures that the Government's promise to return autonomy to councils to enable them to conduct their own elections is fulfilled.

The proposal will enhance autonomy of local government and is likely to achieve savings of election costs to councils.

The second and third proposals in the bill will offer opportunities, for a limited time only, to those councils that wish to reduce their councillor numbers or abolish all wards without the need for approval at a constitutional referendum.

Honourable members may be aware that in 2005 a scheme was introduced allowing councils, for a limited time, to reduce their councillor numbers without having to first obtain approval to do so at a constitutional referendum.

The scheme was introduced following requests from a number of councils to reduce their councillor numbers without the need to hold costly referendums.

The total savings from this initiative, across New South Wales, are between \$298,600 and \$589,000 or approximately \$15,000 to \$27,000 per council area. The reductions took effect from the ordinary elections on 13 September 2008.

In 2008 a bill was introduced into the Parliament which contained among other things a proposal for a one-off reduction of councillor numbers.

The bill was however withdrawn for a number of reasons including that due to the passing of

time it no longer had any utility as it was designed specifically for the 2008 ordinary elections.

The proposal in this bill therefore offers councils a further opportunity to reduce their councillor numbers.

It also responds to the interest shown by several other councils that missed the closing date for applications under the previous scheme.

As with the 2005 proposal, the councillor reduction opportunity is proposed to be available to those councils that will have three or more councillors per ward upon reduction.

However, a council will not be permitted to reduce its numbers to less than five councillors per council which is the minimum set under the Act.

The steps in the application process will generally be the same as those under the previous scheme.

A resolution must first be passed by a council indicating its intention to apply to the Minister for approval to reduce the number of councillors on the council. The council must allow a period of 42 days public notice during which submissions can be made to it about the draft resolution. This consultation period is more generous than the previous scheme.

An applicant council that decides to proceed to apply for a reduction will be required to provide the Minister with a summary of the submissions and relevant comments received during the public consultation.

An application period will apply during which councils may seek my approval as Minister to reduce councillor numbers. The application may be made only within the five months from the commencement of the proposed amendments. The period is necessary as the proposal will impact on the New South Wales Electoral Commission's preparations for the 2012 ordinary elections.

I want to stress that this opportunity to reduce the number of councillors without a constitutional referendum is for a limited time only, and the process will be driven by the councils themselves and their communities.

Successful applications will take effect at the 2012 ordinary council elections.

As was the case under the previous councillor reduction scheme, the bill again provides that a casual vacancy in the office of a councillor is not to be filled before the reduction takes effect (unless the vacancy will result in the council having less councillors than the approved reduction).

The third proposal in the bill will allow councils to abolish all wards without the need for approval at a constitutional referendum. Similar to the second proposal, councils will be able to apply to me as Minister for approval to abolish all wards for a limited period of five months starting on the commencement of the proposed amendment. The council must also allow an extended consultation period of 42 days.

The Local Government Act provides that a council must not divide an area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum.

In New South Wales 62 local councils are divided into wards. Many of those councils work effectively and efficiently and are regarded as proven leaders in community engagement and service delivery.

However the functioning of other councils may be impeded or even compromised because their governance structure is not appropriate.

The Local Government Act provides that if a council is divided into wards, the same number of councillors is to be elected for each ward and the mayor is to be excluded when determining that number if the mayor is to be elected by all the electors for the area.

The above qualification means that if a legislative proposal to allow councils a one-off opportunity to reduce their councillor numbers without the need to hold a constitutional referendum is implemented, those councils that have wards and a popularly elected mayor will be necessarily restricted in determining the number of councillors that would best represent their community.

If a proposal to allow councils a one-off opportunity to reduce their councillor numbers without the need to hold a constitutional referendum is implemented, a number of councils consisting of fewer than three councillors per ward will not be able to benefit from it. This is despite the fact that those councils were keen to reduce their councillor numbers in the past.

The steps in the application process are proposed to be similar to those suggested for a council application to reduce councillor numbers.

For those councils that have a one or two councillor per ward structure, the proposed amendments will mean that the method of electing councillors will change from optional preferential to proportional representation. This is because the Act provides that the voting system in a contested election is to be:

- optional preferential, if the number of councillors to be elected is one or two; or
- proportional, if the number of councillors to be elected is three or more.

The proportional voting system is generally used across all levels of Government in multi-member electorates because it is designed to allocate seats or offices in proportion to the overall number of votes obtained by the candidates.

The abolition of wards in any given local government area will lead to a lower quota which is expected to encourage more people to stand for office and, therefore, enhance the democratic process. The second and third proposals therefore complement each other and are in line with the Government's commitment to provide a legislative framework that would enhance councils' ability to engage in structural reform.

The proposed amendments will introduce the necessary flexibility and will enhance councils' ability to determine the best possible governance structure without impediments that currently exist in the Act.

Finally, as with the proposal to reduce councillor numbers, the opportunity to abolish all wards without a constitutional referendum is for a limited time only, and the process will be driven by the councils themselves and their communities.

The next proposal in the bill is to provide that where a casual vacancy occurs in the office of a councillor (but not a mayor elected by the electors) the council need not fill that vacancy if it has obtained approval to reduce councillor numbers at a constitutional referendum and the reduction has not yet taken place. The Act provides that a decision made at a constitutional referendum binds the council until changed by a subsequent constitutional referendum.

The Act further provides however that such a decision does not apply to a by-election held after the constitutional referendum and before the next ordinary election.

This means that if a constitutional referendum decides that the number of councillors of a council is to be reduced, the decision will take effect only after the next ordinary election and the requirement to fill any casual vacancy within three months of the vacancy occurring stands.

Honourable Members are no doubt aware that the cost of holding a by-election is significant.

Where a council is divided into wards it is only the electors in the ward in respect of which the casual vacancy arises who must vote. Consequently the cost to such a council will be less than that for an ordinary election.

However where a council is not divided into wards, the cost of holding a by-election may be as high as the cost of an ordinary election. This is because all the electors of the council's area must vote. Approximately 60 per cent of local councils in New South Wales are not divided into wards. Therefore the cost of holding a by-election for such councils is considerable.

The situation became worse in 2008.

Following a review of local government election pricing, the New South Wales Electoral Commission from 2008 has been conducting council elections by applying State wide consistent standards with full cost recovery. This change in approach resulted in many councils experiencing significantly increased costs from previous elections.

To give you an idea, in its report on the Local Government Elections 2008 the New South Wales Electoral Commission advised that the average cost of conducting the 2008 ordinary election for a metropolitan council was \$369,550 and for a rural council was \$92,796.

As the Act stands, each of these councils must hold a by-election to fill any casual vacancy that may arise prior to the September 2012 ordinary elections except if the vacancy occurs within 12 months immediately preceding the election. In this latter case the council may apply to the Minister under section 294 of the Act for approval not to conduct a by-election and allow the vacancy to be filled at the forthcoming ordinary election.

This proposal is aimed at providing councils with an option where they can decide for themselves whether or not they need to fill a casual vacancy where the electors of the area have already approved the reduction in councillor numbers at a constitutional referendum but the reduction has not yet taken place.

The proposal responds to numerous concerns regarding the cost of holding by-elections expressed by councils and their peak industry bodies, the Local Government and Shires Associations of New South Wales.

It is expected that the proposal will result in cost savings for those councils that decide not to fill a casual vacancy in these circumstances.

The last proposal is also about the dispensing with by-elections to fill casual vacancies within the certain timeframes.

Honourable members would be aware that an ordinary election of the councillors for an area is to be held every fourth year on the second Saturday after the September 2008 election.

The Act provides that if a casual vacancy occurs in a civic office, the office is to be filled by a by-election within three months.

As the Act stands now, if a casual vacancy in a civic office occurs within the last twelve months of a four year term, a council may resolve to apply to the Minister for approval not to conduct a by-election but allow the casual vacancy to be filled at the next ordinary election. This relieves a council from having to hold two elections within a 12 month period.

Casual vacancies in a civic office may occur for different reasons. For example, a vacancy may occur as a result of the resignation, disqualification or death of a councillor.

As previously noted, the cost of holding a by-election may be significant.

The size of the by-election can vary greatly. The variables that apply with respect to the cost of by-elections include:

- whether the election is for a ward/council area;
- number of electors for a particular ward/area; and
- geographical size of the electorate

These factors determine, among other things, the number of polling places that need to be declared, number of staff required to conduct the election, number of postal votes that need to be processed and other matters.

In the current financial year 2010-2011, 14 by-elections were held as at April 2011 with a range in cost of \$1,790 (Urana-A Ward) (the smallest Council in the State by population) to \$126,720 (Hawkesbury).

A number of issues were identified and considered during a review of the election provisions in the Act by the former Department of Local Government in 2007.

Of particular relevance were:

- the cost to councils of a by-election to fill casual vacancies; and
- the impact on communities where newly elected first-term councillors find themselves unable or unwilling to make the necessary commitment to their communities to be effective elected representatives, but who refrain from resigning because the resulting vacancy would trigger a costly by-election.

The bill proposes to extend the time during which councils need not fill casual vacancies

from 12 months to 18 months.

This measure is also introduced in response to numerous concerns regarding the cost of holding by-elections expressed by councils and their peak industry bodies, the Local Government and Shires Associations of New South Wales.

It is intended that the proposed amendment apply to any casual vacancy that occurred before or after the amendment is enacted. This will assist those councils that may be facing a by-election between now and when the amendment becomes operational.

At present, the Division of Local Government is aware of one council (Lake Macquarie City Council) that must hold a by-election to fill a casual vacancy within the three months period. The Council is not divided into wards. This means that Council's costs associated with the conduct of that by-election will be significant.

The proposal will result in significant cost savings for a council that decides to apply to the Minister for an order that a casual vacancy in the office of a councillor not be filled.

In closing, I would reinforce that all proposals in this bill demonstrate the Government's continued commitment to support the local Government sector by returning autonomy and promoting good governance.

I commend the bill to the House.