



## Full Day Hansard Transcript (Legislative Council, 29 May 2013, Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday, 29 May 2013 (Proof).

### LOCAL GOVERNMENT AMENDMENT (CONDUCT OF ELECTIONS) BILL 2013

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.**

#### Second Reading

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [11.34 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Local Government Amendment (Conduct of Elections) Bill 2013. The purpose of the bill is to increase the flexibility of councils to manage their own elections, and to address timing issues that have become apparent following the implementation of the 2011 amendments to the Local Government Act 1993. The 2011 amendments were implemented to fulfil the Government's election commitment to enhance the autonomy of local government by allowing councils to conduct their own elections, constitutional referendums and polls, while maintaining the option of engaging the Electoral Commissioner should councils wish to do so. The implementation of this Government's election commitment saw the successful conduct of 14 local council elections in 2012. The Government wants all councils to have the opportunity to run their own elections. Although the current legislation technically allows this, in practice the autonomy of councils is unnecessarily constrained by a time limit for making a decision on the conduct of local elections. This means they are forced to make a decision without adequate information on costs or alternative options. Both councils and the Electoral Commissioner want to see this time limit changed.

The Act, as amended in 2011, provides that council elections are to be administered by the general manager of the council concerned. The Act also provides that a council may, within 12 months after an ordinary election, resolve to enter into a contract or make arrangements with the Electoral Commissioner to administer all elections for the council. If such a contract is entered into, the Electoral Commissioner is to administer all the elections, constitutional referendums and polls of the council until the conclusion of the following ordinary election.

The practical impacts of the current provisions in the Act are: to require councils to decide whether to use the services of the Electoral Commissioner for the September 2016 elections three years in advance, that is, by September 2013; and to bind councils that have engaged the Electoral Commissioner to conduct a by-election in the first 12 months since the 2012 election to continue using the services of the Electoral Commissioner for all subsequent elections, including the next ordinary election in 2016. Clearly, the current timeframes do not allow councils sufficient time to test the market and make a fully informed decision about an event that is to occur in three years time. Similarly, the Electoral Commissioner is not in a position to determine and quote service levels and costs for an election to be conducted three years in the future.

Reducing the cost of local elections to ratepayers was one of the key reasons for returning the conduct of elections to councils. It is essential, therefore, that councils have the ability to test the market in order to choose the most cost-effective option. This ability is currently unnecessarily limited in the Act and risks undermining the original policy intent. The bill deals with this by permitting a council to make a decision on the conduct of all its elections, referendums and polls up to 18 months prior to an ordinary election, with a view to finalising all election arrangements, by contract or otherwise, with the Electoral Commissioner no later than 15 months before the election. The contract will expire 18 months prior to the next ordinary election unless terminated by either party at any time by notice in writing following the ordinary election. This proposal also allows councils to opt out of any contract with the Electoral Commissioner after the ordinary election if they want to, thereby freeing them to conduct any by-election, polls or referendums that arise in the new term of the council.

The bill further provides that a council may decide to enter into an election arrangement with the Electoral Commissioner to conduct the council's individual elections, other than ordinary elections. This arrangement may be made at any time and will provide increased flexibility for councils. Another important proposal in the bill is designed to limit the risk of a failed election. It provides that the Electoral Commissioner may agree to conduct a council's ordinary election even after the 15-month deadline if the Electoral Commissioner is satisfied that there are exceptional circumstances that make it necessary or desirable for the election to be administered by the Electoral Commissioner. The expectation is that this provision will be used only in emergency situations where,

for example, a council, having determined to conduct its election, is no longer able to do so for reasons that are beyond its control. The decision on whether to conduct an election for a council in such circumstances ultimately rests solely with the Electoral Commissioner.

Further, it is proposed that all first elections of a council for an area after its constitution and following the establishment of a new council are to be conducted by the Electoral Commissioner. This is because new councils are unlikely to have the resources or capacity in place to allow the first election to be conducted in-house. In the case of first elections, a new council will be charged by the Electoral Commission on a cost-recovery basis. This will avoid the need for what may be complex commercial negotiations between the Electoral Commission and an administrator during a short period between the constitution of a new area and the council election date.

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Finally, the bill provides for a transitional provision that ensures that councils and the Electoral Commissioner are not bound by any existing contracts to conduct elections for a council. To minimise the disruptions to elections that have already commenced, the transitional provision preserves those contracts where preparations for an election have commenced. These contracts will then be terminated at the conclusion of the election. The Division of Local Government has consulted the local government sector and the Electoral Commissioner about the proposals in the bill. The Electoral Commissioner and Local Government NSW support the need for amendments. However, Local Government NSW is of the view that the required timing for a council to enter into a contract with the Electoral Commissioner should be three months shorter than is proposed.

Given the Government's election commitment to return powers to councils to conduct elections, it recognises the importance to maximise the opportunity for councils to use these powers. However, this should not be at the expense of ensuring that council elections are conducted appropriately and effectively. The proposals in the bill strike an appropriate balance between these positions. They are designed to reconcile the desire of councils to have greater flexibility with the Electoral Commissioner's need for certainty to allow forward planning and to put in place the logistical arrangements necessary to ensure that council elections are conducted properly and effectively. I commend the bill to the House.