

INQUIRY INTO LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2025

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Submission to the inquiry into the Local Government Amendment (Elections) Bill 2025

Legislative Council Standing Committee on State Development

NSW Government Submission

July 2025

Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction

The Local Government Amendment (Elections) Bill 2025 (**the Bill**) seeks to amend the *Local Government Act 1993* (**the LG Act**) and the Local Government (General) Regulation 2021 (**the Regulation**) to make reforms to the administration of council elections. The Bill has been introduced into the Legislative Assembly by the Hon. Ron Hoenig MP, Minister for Local Government.

The principal object of the Bill is to remove the option for councils to engage a private electoral service provider to administer their elections. The amendments will reverse changes made by the previous Government in 2011 to allow councils to engage an electoral service provider other than the NSW Electoral Commissioner (**NSWEC**) to administer their elections. The proposed amendments will operate to provide that the NSWEC is to administer all council elections in the future.

The Bill contains measures to:

- remove the existing option to engage a private electoral service provider to conduct local council elections,
- remove barriers to participation in council elections by candidates,
- address the confusion voters face when voting at polling places located outside their local area, and
- reform the method for filling casual vacancies that occur in councillors' civic offices.

This submission is focused around the four principal policy changes identified above, providing background to the issues, an outline of the policy intent and operation of the proposed provisions of the Bill. The submission also provides the Legislative Council Standing Committee on State Development with an understanding of existing provisions of the legislation.

The Bill was prepared based on policy decisions proposed by the Government but has been improved and refined through consultation with the NSW Electoral Commission (**the Commission**). As an independent authority, the Commission has limited its comments to guidance on the operation of the proposed provisions.

The Office of Local Government (OLG) would be happy to assist the Committee with its examination of the Bill.

Policy area 1 – Proposed measures relating to the administration of council elections

The current provisions

Under current provisions, the LG Act gives councils the option of engaging either the NSWEC or a private electoral services provider to administer their elections. Where a council has not entered into an arrangement with the NSWEC to administer their elections, the council is required to engage another provider to do so.

To facilitate planning for council elections, councils are required to make decisions on the administration of their ordinary elections no later than 18 months before the elections. Under section 296AA of the LG Act, at least 18 months before their ordinary elections, councils must resolve to either:

- enter into an arrangement with the NSWEC to administer their elections (as provided by section 296), or
- that the elections of the council are to be administered by another electoral services provider engaged by the council.

If the council resolves under section 296AA that its elections are to be administered by an electoral services provider other than the NSWEC, the resolution must state whether the general manager of the council has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider.

Where councils enter into an arrangement with the NSWEC to administer their elections, those arrangements are regulated under section 296 of the LG Act. To enter into such an arrangement:

- a council must resolve at least 18 months before the next ordinary election that such an arrangement is to be entered into, and
- the arrangement must be entered into no later than 15 months before the next ordinary election of councillors.

A council can enter into an arrangement with the NSWEC outside these timeframes if:

- the council has resolved that an election arrangement for the election is to be entered into, and
- the NSWEC is satisfied that there are exceptional circumstances that make it necessary or desirable for the election to be administered by the NSWEC.

Election arrangements with the NSWEC have a term of four years unless terminated early and allow the NSWEC to administer all elections for the council while it is in force, including countback elections and by-elections.

Where a council has not entered into an arrangement with the NSWEC to administer its elections under section 296, it can still engage the NSWEC to administer individual by-elections for the council but not its ordinary election.

The NSWEC is not able to conduct a countback election for a council where it did not administer its ordinary election because it will not have access to the data or systems on which

that data is held. This data will be held by the private electoral services provider who administered the ordinary election for the council.

The history of the current provisions

The current provisions were originally legislated in 2011 but have been substantially amended since to address issues with their workability.

Amendments made to the LG Act by the previous Government in 2011 gave councils the option to administer their own elections or to engage a private electoral services provider to do so. The amendments made by the *Local Government Amendment (Elections) Act 2011* were part of an election commitment to reduce councils' election costs through contestability in the delivery of electoral services for councils. The election commitment followed the NSWEC moving to a full cost recovery model for council elections at the 2008 ordinary local government elections and the subsequent council complaints over increased election costs.

It should be noted that a different funding model now operates for council elections under which the Government funds a significant proportion of the cost of delivering council elections. This decision has reduced the extent to which councils are responsible for election funding and ensures election costs are shared across between the State and local Governments. Under the current model, councils are only responsible for the direct costs of their elections and the Government funds NSWEC to deliver the core costs of providing the service. More information about this is provided below.

The 2011 amendments provided, as a default, that the general managers of councils were to administer council elections unless the council resolved within 12 months after an ordinary council election to enter a contract with the NSWEC to administer its election.

In response to concerns by councils, this timeframe was subsequently altered in 2013 by an amendment made by the *Local Government Amendment (Conduct of Elections) Act 2013*. The 2013 amendments provided that council elections were to be administered by the general manager of the council unless the council resolved to enter into an election arrangement with the NSWEC 18 months before the next ordinary election and entered into the arrangement 15 months before the election.

There was an immediate impact and at the 2012 ordinary local government elections, 14 councils opted to administer their own elections. Thirteen of these engaged a private electoral services provider to administer their elections though the level of services provided varied among councils. One council administered its own election wholly in-house. Most of the councils that did not use the NSWEC reported that they had achieved cost savings as a result.

However, over time the number of councils opting for private election providers declined. At the 2016/2017 ordinary local government elections, the number of councils that opted to administer their own elections, or to use a private electoral services provider was reduced to six. One council administered its own election wholly in-house.

In 2019, crossbench amendments to the *Local Government Amendment Bill 2019* resulted in amendments being made to the LG Act to remove the ability of council general managers to administer their council's elections. As a result of the amendments, councils had the option to either engage a private electoral services provider to administer their elections or the NSWEC.

At the subsequent 2021 ordinary local government elections, only two councils, Fairfield and Penrith City Councils, used a provider other than the NSWEC to administer their elections. At the 2024 ordinary elections, again, only two councils, Fairfield and Liverpool City Councils, engaged a provider other than the NSWEC to administer their elections.

Why is the Government proposing to remove the option for councils to engage private providers to administer their elections?

The original intent of the current provisions were to drive down councils' election costs by introducing contestability. However, 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 private electoral services provider has diminished rapidly from 14 at the 2012 ordinary local government elections to two at the most recent 2021 and 2024 ordinary local government elections.

The low number of councils prepared to engage the only existing private electoral services provider has resulted in a loss of the economies of scale to administer elections. This loss of scale has meant in turn that there are no longer savings to be achieved by engaging the provider. While in 2012, most councils using the private electoral services provider reported that they had achieved savings, these savings have become less apparent over time.

For example, Penrith City Council engaged the private provider to conduct its election in 2021. When Council invited quotes from both the private provider and the NSWEC for its 2024 election, the private provider's quote (\$1,475,387.02) exceeded the quote provided by the NSWEC (\$1,276,230). As a result, Penrith City Council engaged the NSWEC instead of the private provider to conduct its election in September 2024, the first time it had done so in the 13 years the option of using another provider has been available.

Under the previous Government, contestability in the delivery of election services did not result in any reduction in the costs of delivering council elections. Each successive local government election have seen an increase in councils' election costs. The cost of the local government elections held in 2012 after contestability was introduced was \$23.4 million, a slight decrease in cost from the previous 2008 local government elections (\$25.9 million). Since then, election costs have increased significantly. The 2024 local government elections cost approximately \$122.8 million (up from \$108.3 million at the 2021 local government elections).

The impact of these cost increases on councils has been absorbed to an extent by the Government through the implementation in 2019 of a new funding formula for local government elections. Under the funding formula, councils are invoiced for the direct costs of conducting their elections while the Government funds the NSWEC's "core costs" or corporate overheads (e.g. staff payroll, training, and maintenance of the electoral roll). Previously, these costs had been passed onto councils.

The final overall cost to councils of the 2024 local government elections was \$55.67 million representing about 45 per cent of the total cost of running the elections. The Government funded the remaining 55 per cent.

Recent Independent Pricing and Regulatory Tribunal (IPART) rate cap determinations have included a factor for the increase in councils' election costs allowing councils to fund any election cost increases via rates. The 2025-26 rate peg includes a council specific adjustment of up to 0.8 per cent to help councils cover the costs of running the 2024 local government elections.

It is unlikely that there will be any change to the current lack of competition in the delivery of electoral services for councils. Changes to the prescription of the counting of votes and allocation of preferences under the proportional system in 2018 saw the introduction of the weighted inclusive Gregory method of preference allocation. This involves the fractional transfer of preferences requiring sophisticated counting software. The significant capital investment required to develop the necessary software is likely to be a barrier to future market entrants.

How do the measures contained in the Bill facilitate planning for council elections?

If passed, the proposed amendments state that the NSWEC may prepare an election services plan for the administration of council elections, polls and referenda.

Where the NSWEC prepares an election services plan, it must include an estimate of the expenses to be incurred by the NSWEC in connection with the administration of the election, poll or referendum. However, expenses incurred by the NSWEC in connection with the administration of an election, poll or referendum are recoverable by the NSWEC, whether the expenses have been estimated in an election services plan or not.

The NSWEC must consult with councils when preparing an election services plan to ensure that it meets the councils' needs, and that the council understands the expenses involved.

To facilitate centralised planning of council elections and thereby reduce costs, the amendments vest all decision making in relation to council elections in the NSWEC including decisions relating to appointments, polling places and the remuneration to be paid to election officials.

How do the measures contained in the Bill allow the recovery of election costs?

The proposed amendments provide that expenses in connection with the administration of an election, poll or referendum, (including where an election is uncontested, has failed or is postponed) must be met by the council and are recoverable from the council as a debt owed to the NSWEC.

The expenses that may be recovered include, but are not limited to remuneration, allowances and reasonable expenses paid to election officials and members of staff of the Commission, and the costs of making appropriate administrative arrangements for the administration of elections, polls and referenda.

The amendments allow significant flexibility in how these expenses may be met. They allow the NSWEC to apportion election expenses between two or more councils thereby promoting efficiencies and economies of scale to reduce election costs. They also confer on the NSWEC discretion in what expenses may be recovered. The NSWEC may decide to recover all, or part of the expenses incurred in the administration of an election, poll or referendum.

As noted above, in practice, councils' election costs are absorbed to an extent by the Government through the implementation in 2019 of a new funding formula for local government elections whereby councils are invoiced for the direct costs of administering their elections while the NSW Government funds the Commission's "core costs" or corporate overheads. At the 2024 local government elections, the application of this formula saw the Government contribute approximately 55 per cent to the total cost of council elections. Councils in turn funded the remaining 45 per cent.

The amendments will allow the Government to continue to contribute to the cost of council elections.

Will the loss of competitive pressure result in an increase in councils' election costs?

The Government is aware of concerns raised by the local government sector that the loss of competitive pressure in the administration of council elections may lead to increased costs. However, as noted above, the current arrangements have also failed to deliver any reduction in councils' election costs through competitive pressures introduced by the previous Government.

It should also be noted that despite having the option to engage an alternative provider to conduct their elections, a diminishing number of councils have chosen to engage the only existing private provider to administer their elections. As stated above, at the 2021 and 2024 local government elections, all but two council elections were administered by the NSWEC.

Importantly, the NSWEC does not profit from the administration of council elections. The NSWEC provides an estimate of the cost of conducting council elections prior to each local government election and receives funding from the Government to cover those costs. Following the elections the NSWEC invoices councils for the direct costs incurred in running their elections and this and any surplus left over from the Government's funding allocation is returned to the Government.

The Government is also aware of the suggestion that IPART should be empowered to exercise oversight of the NSWEC's pricing to ensure that it is reasonable.

Local government elections comprise of 128 separate elections that are undertaken in vastly different contexts. No two council elections will be the same. What may be reasonable for one council election may not be reasonable for another. For example, the cost per elector of an election conducted in a remote area with a small, dispersed population, will necessarily be different to the cost per elector of a council election conducted in a densely populated inner metropolitan location.

IPART already acknowledges the variance in council election costs through its reimbursement of these costs through the rate cap calculations for councils. As previously discussed, councils may increase their rates base to offset the cost of an election. This is in recognition that

election costs are outside their control. In setting these permissible rate increases, IPART recognises that council elections cost a different amount in different areas and sets rating increases differently in each council as a result.

More fundamentally, the independence of the NSWEC is critical to ensuring community confidence in the elections they administer. The principle of the independence of electoral commissions is a key feature of Australian democracy. That principle is embedded in the *Electoral Act 2017* which provides that neither the Commission nor the NSWEC are subject to control or direction in the exercise of their functions. Empowering IPART to exercise oversight over the NSWEC in relation to council elections compromises this independence.

The current arrangements pose significant risks creating a need for regulatory complexity

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 NSW council elections 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. How the NSWEC exercises their functions is subject to Parliamentary scrutiny, however 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 prescribes complex rules governing the content and timing of decisions by councils on the administration of their elections which are designed to ensure these decisions are made in a timely way so there is adequate planning for elections.

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.

Policy area 2 – Proposed measure to remove barriers to participation in council elections

The Bill proposes an amendment to restrict the availability of pre-poll voting at council elections to the period commencing on the Monday before election day, to remove barriers to participation in council elections.

It is noted that candidates for local government generally hold a full-time job and are active in their community outside of their political role. Many independent candidates do not have the resources to maintain a presence at pre-poll voting venues over such 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.

This change also aligns with the removal of private providers to introduce contestability into election costs. While the loss of market competition by other election providers may result in less competitive pressure on the NSWEC to keep their election costs affordable to councils, this can be mitigated by restricting the provision of early voting by the NSWEC to ensure that the elections are run as cost-effectively as possible. It is understood this proposed policy change has been well received by existing councillors, particularly in regional areas where there are relatively large distances between booths.

Policy area 3 – Proposed measures to address voter confusion

The Bill proposes an amendment to restrict polling places at council elections to the council's area to increase formal voting and address 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.

The existing regulatory provisions can create confusion where polling places serve multiple council areas.

The Regulation allows a single polling place to be appointed for two or more local government areas. It also allows a polling place to be appointed for an area whether or not the place is within or outside the area concerned.

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.

While voters who may not be able to vote in their area on election day have the option of postal and pre-poll voting, the existing measures to allow multi-council polling places makes it difficult to distinguish the election material for the individual's council.

The Bill addresses the risk voters will be disenfranchised

There is a risk that the proposed measure will result in electors being disenfranchised because they are not able to vote in their area on election day. To address this risk the proposed amendment will allow the Regulation to prescribe circumstances in which electors can vote at a polling place outside their area. The Regulation could permit, for example, centralised multi-council polling places in major centres such as the Sydney or Parramatta CBDs.

Policy area 4 – Proposed reforms to the filling of casual vacancies

The Bill proposes several amendments to the provisions governing the use of countbacks to fill vacancies to make the system closer to the practices of the NSW Legislative Council.

Existing casual vacancies are resolved through a combination of countback election and by-elections

Section 291A of the LG Act gives councils the option of using a countback of the votes cast at the ordinary election to fill vacancies in councillors' civic offices that occur in the first 18 months of their terms instead of holding a by-election.

To exercise this option, councils must resolve at the first meeting following the ordinary election to fill vacancies using a countback. This is to minimise the potential for decisions to use countbacks to be “gamed” by councils knowing the likely outcome and how this will impact on the political composition of the council.

The provisions of the new system will apply for the entirety of a Council term, allowing for the avoidance of by-elections for the full four years for Councils that primarily elect candidates on tickets.

Ensuring a casual vacancy can be filled for the existing council term if timeframes are not met

The Regulation requires a countback election to be held within 49 days of the occurrence of a vacancy. Section 291A(5) of the LG Act provides that 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 vacancy. Section 292 requires a by-election to be held to fill a vacancy within 3 months of the occurrence of the vacancy.

A situation can arise where there is insufficient time to hold a countback election and then arrange to hold a by-election in the event the countback election fails to elect a candidate within the 3-month period currently required under the LG Act. To address this, the Bill contains an amendment to extend the timeframe for holding a by-election to fill a vacancy to 3 months after the returning officer notifies the general manager of the council concerned that the countback election has failed to elect a candidate or that they are otherwise unable to fill the casual vacancy by a countback election.

Reflecting voters intentions in filling casual vacancies

It has been recognised that countback elections have the potential to change the political composition of a council, impacting on its stability. There are examples where the balance of power has shifted in a council due to a councillor vacancy and a countback election throwing up a councillor with different political intents. This occurs as a result of the application of preference arrangements.

To address this, the Bill contains measures that, if passed will replace the use of countbacks with another method of filling casual vacancies from the September 2028 local government elections.

Under the new method, where the vacating councillor was a member of a group of candidates at the election at which they were elected, the vacancy is to be filled by the appointment of a person from the same group as the vacating councillor. This method will be available to fill casual vacancies that occur at any time during the council term, not just the first 18 months as is currently the case with countbacks, reducing the need to hold by-elections to fill vacancies for the vast majority of NSW electors who live in council areas where group voting exists.

Under measures contained in the Bill, the Governor will appoint persons to the vacant office on the recommendation of the Minister for Local Government. Where a vacancy occurs, the NSWEC will give notice to each person included in the same group of candidates on the ballot-papers at the election at which the vacating councillor was elected and invite them to apply to be appointed to the vacancy. The NSWEC will then give notice to the Minister whether a person is available for appointment and the Minister must recommend to the Governor the replacement.

Persons are to be appointed based on the order in which they appear on the ballot paper. If the person listed first is not available or eligible for appointment, the next person is to be appointed. A person must not be appointed if:

- they already hold civic office, or
- the person does not agree to being appointed to fill the casual vacancy, or
- the person has failed to make a statement to NSWEC, in the approved form, that they are not aware of any circumstances that may result in the person being disqualified from holding civic office under section 275 of the LG Act, or
- the person is prevented from holding civic office by section 276(2) of the LG Act (i.e. because they had resigned their civic office in the last 12 months or are disqualified), or
- where the vacating councillor was endorsed by a registered political party, the registered officer of the registered political party has advised the NSWEC that the political party does not endorse the person's appointment to fill the casual vacancy, or
- the person would not otherwise be eligible to be elected to the council at the time of the person's appointment (because they have ceased to be an elector in the area).

If there are no available or eligible persons for appointment, the NSWEC must give the general manager of the council notice that the vacancy cannot be filled and that a by-election will be required to fill the vacancy. A by-election must be held to fill the vacancy within 3 months of the NSWEC giving the general manager notice.

Where the vacating councillor is not a member of a group or the vacancy cannot otherwise be filled by this method, the vacancy will be filled instead using a by-election giving electors a fresh choice in who they want to fill the vacancy.

Where a by-election is required to fill a casual vacancy and the vacancy occurs in the last 18 months of the council term, it is open to councils under the existing provisions of the LG Act to apply to the Minister for order dispensing with the need to hold a by-election to fill the vacancy.

Conclusion

The Bill and its series of proposed amendments are designed to improve the performance of local government elections by making them simpler, fairer, and more straightforward. By ending the use of private providers, voters can be sure that their elections are being delivered by the trusted NSW Electoral Commission. By limiting pre-poll and keeping booths within the bounds of an electorate, the Bill will address voter confusion and ensure that candidates and volunteers are able to balance their work commitments with the expectations placed upon them by the electoral process. Finally, through a new process for the filling of vacancies, the Bill aims to avoid by-elections for the vast majority of NSW electors and provide the governance of a local council with greater stability over the course of an electoral term.