

# Memo

Friday 8 July 2011

**To:** Mayor and Councillors  
**From:** Director Technology and Corporate Services (Troy Green)  
**Subject:** Division of Local Government Circular to Councils 11/12 - Constitutional Arrangements for Councils - Amendments to the Local Government Act 1993  
**Reference:** Local Government Department - Circulars; Local Government Act

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Attached is the Division of Local Government Circular to Councils 11/12 - Constitutional Arrangements for Councils - Amendments to the Local Government Act 1993.

The NSW Parliament has passed the *Local Government (Amendment) Elections Act 2011* (the Amending Act). The Amending Act was assented to by the Governor on 27 June 2011 and its provisions commenced on that date. The purpose of the circular was to advise councils of the resulting changes to the *Local Government Act 1993* (the Act) concerning constitutional arrangements for councils.

An item of interest is the *Local Government Act 1993* now enables councils, in certain circumstances, to make an application to the Minister for Local Government for approval to reduce the number of their councillors without constitutional referendum.

For your information,

**Troy Green**  
**DIRECTOR TECHNOLOGY AND CORPORATE SERVICES**

Attach

Circular No. 11-12  
Date 29 June 2011  
Doc ID. A249154 (B)

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### **CONSTITUTIONAL ARRANGEMENTS FOR COUNCILS – AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1993**

The NSW Parliament has passed the *Local Government (Amendment) Elections Act 2011* (the Amending Act). The Amending Act was assented to by the Governor on 27 June 2011 and its provisions commenced on that date. The purpose of this circular is to advise councils of the resulting changes to the *Local Government Act 1993* (the Act) concerning constitutional arrangements for councils.

A copy of the Amending Act can be found on the NSW Parliamentary Counsel's Office legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

The *Local Government Act 1993* now:

1. enables councils, in certain circumstances, to make an application to the Minister for Local Government for approval to reduce the number of their councillors without the need for approval at a constitutional referendum
2. enables councils, in certain circumstances, to make an application to the Minister for approval to abolish all wards in their areas without the need for approval at a constitutional referendum
3. provides 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
4. enables councils to apply to the Minister for an order dispensing with the requirement to hold a by-election where a casual vacancy in the office of a councillor (including a mayor elected by the electors of an area) occurs within 18 months before an ordinary election, and
5. contains provisions of a consequential, savings and transitional nature.

#### **Ministerial approvals for reduction in number of councillors without constitutional referendum**

Section 224A of the Act now provides councils with a further limited opportunity to make application to the Minister for approval to reduce their councillor numbers without the need for approval at a constitutional referendum.

Applications must be made no later than 5 months after the commencement of the Amending Act, that is, no later than 28 November 2011.

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Section 224A now requires a council to give not less than 42 days public notice of its proposal to resolve to apply to the Minister for Local Government for approval to reduce its councillor numbers. Formerly, not less than 21 days notice was required. In all other respects the procedure for making an application remains the same.

The procedure can now be summarised as follows:

- A council must give not less than 42 days public notice of its proposal to resolve to apply to the Minister for approval to reduce its councillor numbers
- The public notice must:
  - state the place at which, the dates on which, and the times during which the public may inspect the proposed resolution, and
  - invite public submissions on the proposal
- The council must bring the notice to the attention of as many people in its area as possible This is commonly done by doing all of the following:
  - advertising in a newspaper regularly circulating in the council area
  - exhibiting the notice in public areas such as community centres, libraries and public notices boards, and
  - posting the notice on the council's website
- After passing the resolution the council must forward to the Minister:
  - a copy of the resolution
  - a summary of any submissions received by it, and
  - its comments concerning those submissions.

Councils are reminded that section 224A still prevents such applications being made where:

- the reduction would result in the council having less than 5 councillors
- the council is divided into wards and the reduction would result in the number of councillors for each ward being fewer than 3.

Further, as was the case before the amendment:

- where a council receives approval to reduce the number of councillors, the reduction will not take place until the next ordinary elections, however
- by reason of section 294A of the Act, any casual vacancies that occur during this period will not be required to be filled unless the number of councillors on the council would become less than the reduced number approved by the Minister.

### **Ministerial approvals for abolition of wards without constitutional referendum**

Section 210B of the Act allows councils a one-off opportunity to resolve to apply to the Minister to approve the abolition of all wards of their council areas.

Applications must be made no later than 5 months after the commencement of the Amending Act, that is, no later than 28 November 2011.

The steps in the application process are generally the same as those required for the application to reduce councillor numbers as noted above.

**Casual vacancies need not to be filled where approval has been obtained at a constitutional referendum to reduce councillor numbers**

Section 294B of the Act provides that a by-election is not to 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.

**Increase of period before an ordinary election during which by-elections may be dispensed with**

Section 294 of the Act now provides that 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) that has occurred during the 18 months immediately before an ordinary election of the councillors.

Previously, such applications could only be made during the 12 months immediately before an ordinary election of the councillors.

**Other amendments concerning the administration of elections**

The Amending Act has made councils responsible for the administration of their elections, constitutional referendums and polls. Details of these amendments are provided in Circular to Councils No 11-11.



**Ross Woodward**  
**Chief Executive, Local Government**  
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