

Circular No. 11-30
Date 6 October 2011
Doc ID. A259378

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CONSTITUTIONAL REFERENDUMS

Councils will be aware that the *Local Government Act 1993* has been amended by the *Local Government Amendment (Elections) Act 2011* (the Amending Act) to return responsibility for administering elections, constitutional referendums and polls to general purpose councils. If councils prefer, they can engage the services of the New South Wales Electoral Commission to administer the September 2012 elections on their behalf. A resolution to this effect must be made by 30 November 2011.

Further details of the arrangements arising from the legislative amendments made to return the administration of elections, constitutional referendums and polls can be found in Circular to Councils 11-11.

Councils will also be aware that the Amending Act introduced a number of new provisions in relation to councils' constitutional arrangements, including a one-off opportunity to reduce councillor numbers and abolish wards without the need to hold a constitutional referendum. For more information about these amendments, councils are referred to Circular to Councils 11-12.

While councils may decide to improve their governance structures without costly referendums by utilising these new provisions, it is open to councils to decide to hold a constitutional referendum if they consider it is in the best interests of their communities.

If councils choose to hold a constitutional referendum in conjunction with the 2012 elections, councils are reminded that the following matters can be determined through a constitutional referendum:

1. divide a council area into wards or abolish wards (sections 16, 210 and 210A of the Act);
2. change the number of councillors (section 224(2) of the Act);
3. change the method of electing the mayor to either direct election by the electors every 4 years or election by the councillors every year (sections 228 and 229 of the Act);
4. change the method by which councillors are elected where the council's area is divided into wards (sections 279(2), 280 and 281 of the Act).

Divide an area into wards or abolish wards

Section 210(5) of the Act requires a council to seek the approval of its electors at a constitutional referendum to either divide an area into wards or to abolish wards. After receiving elector approval, and before dividing its area into wards, a council must undertake the consultation required by section 210A of the Act.

A constitutional referendum held in conjunction with the next ordinary elections in 2012 where approval is given by electors to divide the council area into wards would, after compliance with the consultation required by section 210A of the Act, come into effect for the electoral term commencing in September 2016. Compliance with section 210A is not required in the instance where approval has been given by electors at a referendum to abolish wards.

Change the number of councillors

Section 224(2) of the Act requires that not less than 12 months before the next ordinary election the council must determine the number of its councillors for the following term.

Council must then seek and receive the approval of its electors at a constitutional referendum for any change. This approval would have the effect of changing the number of councillors for the electoral term commencing in September 2016.

However, if the approval to reduce the number of councillors was obtained at a constitutional referendum held in conjunction with the 2012 elections, then a casual vacancy in the office of a councillor (but not a mayor elected by the councillors) occurring at any time before the September 2016 elections should not be filled if the number of councillors will remain at or above the number approved at the referendum (section 294B of the Act).

Alter ward boundaries

The council of an area that is divided into wards is required by section 211 of the Act to keep ward boundaries under review. If a review is undertaken, the council is required, among other things, to consult the Electoral Commissioner.

The Electoral Commissioner has advised that any council seeking to refer an alteration of ward boundaries must do so by 31 December 2011. For more information about ward name changes and boundary alterations, councils are referred to Circular to Councils 11-26.

Change the way the mayor is elected

The Act provides two methods by which a mayor can be elected — by popular vote at an ordinary election or by vote among the councillors. Section 228 of the Act permits a council to change the way the mayor is elected by seeking approval of its electors at a constitutional referendum.

Councils with areas that are divided into wards are reminded that section 280(2) of the Act excludes a popularly elected mayor from consideration when determining the number of councillors to be elected for each ward.

In those circumstances councils should be mindful that changing the method of electing the mayor could result in an increase or decrease in the number of councillors to be elected.

If electors at a constitutional referendum conducted in conjunction with the 2012 ordinary council elections approve a change to the way the mayor is elected, that change will come into effect for the electoral term commencing in September 2016.

Alter the method of electing councillors

The councillors for an area that is divided into wards are to be elected in accordance with either section 280 or 281 of the Act.

The method of election under section 280 (method 1) is to apply unless a decision made at a constitutional referendum is in force, which requires the method of election to be conducted under section 281 (method 2).

The decision made at a constitutional referendum must also specify the number of councillors to be elected by the ward electorate and the number of councillors (if any) to be elected by the area electorate.

If electors at a constitutional referendum conducted in conjunction with the 2008 ordinary elections approve a change to the method for electing councillors, this change will come into effect for the electoral term commencing in September 2016.

Conducting a constitutional referendum

If a council resolves that a constitutional referendum is to be conducted by the Electoral Commissioner, the council should refer to clause 274(3) of the Local Government (General) Regulation 2005 and comply with the notification requirements contained in Schedule 10 of the Regulation.

It is of critical importance that the referendum question or questions are carefully framed to ensure that workable decisions are achieved. All questions put at a referendum should be clear, concise, and capable of being responded to with a 'yes' or 'no' answer.

If more than one referendum question is being asked on a particular subject then extra care needs to be taken to ensure that the possible combinations of 'yes' and 'no' answers do not produce a conflicting decision.

Councils are responsible for the preparation and publicity of the required explanatory material. Councils must ensure this material presents a balanced case both for and against any proposition to be put to a constitutional referendum.

This Circular supersedes Circular to Councils 07-30.

A handwritten signature in black ink, appearing to be 'S. Orr', written over a light-colored rectangular stamp or seal.

Steve Orr
Acting Chief Executive, Local Government
A Division of the Department of Premier and Cabinet