

Circular Details	Circular 19-23 / 30 September 2019 / A658394
Previous Circular	N/A
Who should read this	Councillors / General Managers / Governance staff
Contact	Council Governance Team / 4428 4100 / olg@olg.nsw.gov.au
Action required	Information

Constitutional referendums and council polls

What's new or changing

- Councils are reminded to inform the NSW Electoral Commissioner (NSWEC) if they have resolved for the NSWEC to administer a constitutional referendum or poll in conjunction with the 2020 local government elections.

What this will mean for your council

- Under section 16 of the *Local Government Act 1993*, a council must obtain the approval of its electors at a constitutional referendum to do each of the following:
 - divide a council area into wards or abolish wards
 - change the number of councillors
 - change the method of electing the mayor
 - change the method of election for councillors where the council's area is divided into wards.

Key points

- Councils should notify the NSWEC as soon as possible if they wish to enter into an arrangement for the administration of a referendum or poll.
- If a council resolves that a constitutional referendum or poll is to be conducted, it must comply with the notification requirements contained in Schedule 10 of the *Local Government (General) Regulation 2005*.
- Any changes approved at a referendum will come into effect at the September 2024 local government elections.

Where to go for further information

- For councils considering or that have resolved to have the NSWEC conduct a constitutional referendum or poll, contact Steve Robb at the NSW Electoral Commission on telephone 9290 5431 or Steve.Robb@elections.nsw.gov.au.
- See the attachment to this Circular for further information.



Tim Hurst
Deputy Secretary
Local Government, Planning and Policy

Attachment

Conducting a constitutional referendum

If a council resolves to conduct a constitutional referendum it must comply with the notification requirements contained in Schedule 10 of the *Local Government (General) Regulation 2005*.

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.

Dividing an area into wards or abolishing wards

After receiving elector approval at a constitutional referendum, and before dividing its area into wards, a council must undertake the consultation required by section 210A of the *Local Government Act 1993* (the Act). This includes consulting with the Electoral Commissioner and the Australian Statistician and public exhibition of the proposal. (Compliance with section 210A is not required where approval has been given by electors at a referendum to abolish wards.)

Any changes to wards will come into effect for the electoral term commencing in September 2024.

Changing the number of councillors

Section 224(2) of the Act requires that not less than 12 months before an ordinary election the council must determine the number of its councillors for the following term. If, as a result of doing so, a council has determined to change the number of its councillors, it must also obtain approval for the change at a constitutional referendum. Approval would have the effect of changing the number of councillors for the electoral term commencing in September 2024.

If following the approval of a reduction in councillor numbers, a casual vacancy occurs in the office of a councillor (but not a mayor elected by the councillors), and the reduction has not yet taken effect, the vacancy must not be filled if the number of councillors will remain at or above the number approved at the referendum (section 294B of the Act).

Changing the method of electing the mayor

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 requires the same number of councillors is to be elected for each ward. A popularly elected mayor is not to be included in this count. In such 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 2020 ordinary elections approve a change to the way the mayor is elected, that change will come into effect for the electoral term commencing in September 2024.

Changing the method of electing councillors

The councillors for an area that is divided into wards are to be elected in accordance with either method of election prescribed under 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 to alter the method of election to method 2 must also specify the number of councillors to be elected by the ward electorate and the number of councillors to be elected by the area electorate.

If electors at a constitutional referendum conducted in conjunction with the 2020 ordinary elections approve a change to the method for electing councillors, this change will come into effect for the electoral term commencing in September 2024.