

<b>Circular Details</b>	24-01 / 18 January 2024 / A857671
<b>Previous Circular</b>	20-39 Constitutional referendums and council polls
<b>Who should read this</b>	Councillors / General Managers / Council Governance Staff
<b>Contact</b>	Council Governance Team / 02 4428 4100 / <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>Action required</b>	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 September 2024 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 2021*.
- Any changes approved at a constitutional referendum held in September 2024 will come into effect at the September 2028 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](mailto:Steve.Robb@elections.nsw.gov.au).
- See attachment to this Circular for further information.



**Douglas Walther**  
A/Deputy Secretary, Local Government

## 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 2021*.

This includes notifying the Electoral Commissioner within 21 days of council resolving to conduct a constitutional referendum. Where the constitutional referendum is to be held in conjunction with the 14 September 2024 ordinary election of councillors, the council must notify the Electoral Commissioner of the question to be asked at the constitutional referendum by no later than 12 noon on the closing date for that election on 5 August 2024.

It is critical that the referendum question or questions are carefully worded to ensure workable outcomes. Questions should be clear, concise, and be capable of being responded to with a 'yes' or 'no' answer.

If more than one question is asked on a 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 all wards

Under section 210(5) of the *Local Government Act 1993* (the Act), a council must not divide its area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum.

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 Act. This includes consulting with the Electoral Commissioner and the Australian Statistician together with 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.)

Changes to wards approved at a constitutional referendum conducted in September 2024 come into effect for the electoral term commencing in September 2028.

### 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 a council has determined to change the number of its councillors, it must obtain approval at a constitutional referendum. Approval at a constitutional referendum conducted in September 2024 changes the number of councillors for the electoral term starting September 2028.

If a reduction in councillor numbers is approved at a referendum and has not yet taken effect, a casual vacancy in the office of a councillor (but not a mayor elected by the councillors), 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 for electing a mayor — 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 wards are reminded that sections 280(2) and 281(2) of the Act require the same number of councillors to be elected for each ward. A popularly elected mayor is not 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 following the September 2024 election, electors approve a change to the way the mayor is elected, that change will come into effect for the electoral term commencing in September 2028.

#### Changing the method of electing councillors

The councillors for an area 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 2024 ordinary elections approve a change to the method for electing councillors, this will come into effect for the electoral term commencing in September 2028.