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## CONSTITUTIONAL REFERENDUMS

Before the ordinary elections in September 2008, councils should review their electoral and constitutional structures and determine whether to initiate a constitutional referendum under section 16 of the *Local Government Act 1993* where changes are desired. The NSW Electoral Commission has the responsibility to conduct referendums.

Approval from electors at a constitutional referendum is required for any proposal that:

1. divides a council area into wards or abolishes wards (sections 16, 210 and 210A of the Act)
2. changes the number of councillors (section 224(2) of the Act)
3. changes the method of electing the mayor to either direct election by its electors every 4 years or election by the councillors every year (sections 228 and 229 of the Act)
4. changes 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 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 2008 where approval is given by electors to divide its 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 2012. 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 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 2012.

#### 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 to, among other things, 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 2007.

#### 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 2008 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 2012.

#### 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 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 2012.

Conducting a constitutional referendum

If council intends to resolve to conduct a constitutional referendum, it 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.



**Garry Payne AM**  
**Director General**