

FREQUENTLY ASKED QUESTIONS

Part 1 Decision making on the administration of elections

What decisions must councils make on the administration of their elections?

Under section 296AA of the the Act, each council must resolve by **11 March 2019** either:

- to engage the NSWEC to administer the council's elections, polls and referenda or
- that the council's elections are to be administered by the general manager of the council.

What happens if a council fails to make a decision on the administration of its elections by 11 March 2019?

If a council fails to make a decision on the administration of its elections, polls and referenda by 11 March 2019, it will not be able to engage the NSWEC to administer its ordinary election and it will be required to make its own arrangements for the administration of its elections.

A council that fails to make a decision on the administration of its elections by 11 March 2019 will also be required to publish a notice of that failure on the council's website.

Part 2 Election arrangements with the NSWEC

What election arrangements can councils enter into with the NSWEC?

The election arrangement is a standardised contract for all councils. The service schedule and costs schedule of the standardised contract will vary between councils and are made by the NSWEC in consultation with each council.

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, the election arrangement with the NSWEC will apply to the 2020 ordinary election and every election, poll and referendum including any by-election or countback election until the contract is automatically terminated 18 months before the following ordinary election of councillors.

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, it should use the model resolutions provided below.

If a council wishes to engage the NSWEC to administer its elections, polls and referenda what form should its resolution take?

Councils wishing to make a resolution that an election arrangement be entered into for the NSWEC to administer all elections, polls and referenda under section 296(3) of the Act should use the following model resolution:

The [insert full description of council] ("the Council") resolves:

- 1. pursuant to s. 296(2) and (3) of the Local Government Act 1993 (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.*
- 2. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.*
- 3. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.*

When must the election arrangements with the NSWEC be finalised?

Where councils have resolved to enter into an election arrangement with the NSWEC, the contract with the NSWEC must be finalised no later than 15 months before the next ordinary elections (ie **11 June 2019**).

Can election arrangements with the NSWEC be terminated?

Yes, but only after the council's ordinary election. An election arrangement for the NSWEC to administer all elections, polls and referenda of a council can be terminated by the council or the NSWEC at any time after the ordinary election by giving written notice of termination and in accordance with any notification requirements set out in the contract.

If the election arrangement is not terminated by either party, the arrangement is automatically terminated 18 months before the following ordinary election when the council will be required to determine who will conduct its next ordinary election.

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If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election?

Yes. Where a council does not enter into an election arrangement with the NSWEC to administer its ordinary election, the council may resolve to enter into an election arrangement with the NSWEC to administer a particular by-election, poll or referendum following the ordinary election.

If councils resolve to engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election, they should use the model resolutions provided below.

If a council wishes to engage the NSWEC to administer a particular by-election or countback election, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular by-election or countback election after the ordinary election should use the following model resolution:

The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW) that:

- 1. an election arrangement is to be entered into for the Electoral Commissioner to administer [insert description of the particular election but do not do so by date in case the election date is changed or postponed]; and*
- 2. such election arrangement is to be entered into by contract between the Electoral Commissioner and the Council.*

Note: Please refer below for additional information concerning limitations with respect to countback elections.

If a council wishes to engage the NSWEC to administer a particular poll, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular poll after the ordinary election should use the following model resolution:

The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:

- 1. a council poll arrangement be entered into for the Electoral Commissioner to administer [insert description of the council poll but do not do so by date in case the poll date is changed or postponed]; and*
- 2. such council poll arrangement be entered into by contract between the Electoral Commissioner and the Council.*

If a council wishes to engage the NSWEC to administer a particular referendum, what form should its resolution take?

Councils wishing to engage the NSWEC to administer a particular referendum after the ordinary election should use the following model resolution:

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The [insert full description of council] (“the Council”) resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:

- 1. a constitutional referendum arrangement be entered into for the Electoral Commissioner to administer [insert description of the constitutional referendum but do not do so by date in case the referendum date is changed or postponed]; and*
- 2. such constitutional referendum arrangement be entered into by contract between the Electoral Commissioner and the Council.*

If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a countback election following the ordinary election?

A countback election to fill a casual vacancy must be conducted by the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected. If that is not possible, the countback election must be conducted by the substitute returning officer at that election and if that is not possible, by another returning officer appointed in accordance with the Act.

If a council appoints a returning officer and substitute returning officer who are employees of a commercial electoral services provider, the council's option to resolve to enter into an election arrangement with the NSWEC for the administration of a particular countback election may be limited by both the Act as well as the contractual arrangements agreed to between the council and the commercial electoral services provider.

For example, the NSWEC will not be able to administer a countback election for a council where it did not administer its ordinary election if the NSWEC does not have access to the electoral material, data and other information held by the council or a commercial electoral services provider in relation to the ordinary election.

To retain the option to engage the NSWEC to conduct a particular countback election, councils must ensure (amongst other things) that any contractual arrangement they enter into with commercial electoral services providers to manage their ordinary election allows them to retain or to have ongoing access to ballots cast and other electoral material, information and data relating to the ordinary election.

Even where contractual arrangements between the council and a commercial electoral services provider make provision for the retention of electoral material, information and data, it may still not be possible for the NSWEC to undertake a particular countback election for a council because the provider's systems and procedures with respect to electoral material, information and data may not be compatible with the NSWEC's systems and procedures.

Part 3 Decisions by councils to administer their own elections

Where a Council resolves that the council's elections are to be administered by the general manager, what information must be included in the resolution?

Under section 296AA, where a council resolves to administer its own elections, it must include the information specified below in the resolution:

- whether the general manager intends to administer elections personally or to engage an electoral services provider
- if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer and, if so, their names
- if the general manager intends to engage an electoral services provider, whether the general manager has identified an electoral services provider and, if so, the name of that provider.

As soon as practicable after the resolution is made, the general manager must publish a copy of the resolution on the council's website.

What should the general manager consider when identifying persons to be appointed as a returning officer and substitute returning officer?

The general manager must ensure that the persons they identify for appointment as the returning officer and substitute returning officer (who exercises the functions of the returning officer in that person's absence), is **suitably qualified** and **independent**.

What skills and attributes are required to be a returning officer or substitute returning officer?

The returning officer is the front-line manager for the conduct of elections for a particular council area. The role involves:

- managing the returning officer's office
- appointing and training staff including polling place managers on how to conduct a count and how to determine formality of ballot papers
- developing procedures to be followed by electoral officials issuing pre-poll, declared institution, postal and election day votes
- preparing all necessary printed election materials such as forms, declaration envelopes, signs etc
- obtaining all necessary election material for use in pre-poll and election day venues such as voting screens, ballot boxes, pencils etc
- determining the quantity of ballot papers required and arranging for their printing, delivery and secure storage
- making Braille ballot papers available, if requested
- dealing with political parties, candidates and the public
- processing candidates' nominations including acceptance of the deposit and conducting the draw for position of candidates on the ballot paper
- registering 'how to vote' material
- putting in place all necessary arrangements to enable pre-poll, declared institution, postal and election day voting including booking the appropriate venues

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- ensuring delivery and collection of election materials to and from pre-poll and election day polling venues
- conducting the 'check count' of the votes and the distribution of preferences
- declaring the election
- arranging storage (and ultimate destruction) of ballot papers and voting-related materials and data for the statutory period of 18 months
- ensuring the security of ballot papers and voting-related materials and data (including with respect to potential cyber attacks)
- conducting a countback election, if required in the first 18 months following the ordinary election.

General managers must identify for appointment as returning officer and substitute returning officer, persons who are capable of undertaking all these requirements proficiently. It is suggested that key skills and competencies include:

- demonstrated leadership and management experience
- excellent communication skills
- excellent interpersonal skills including an ability to deal with people from all backgrounds
- excellent organisation and time management skills
- ability to work under pressure and meet deadlines as required
- ability to deal with challenging situations and determine appropriate solutions
- ability to work in a methodical manner and with attention to detail

Additionally, to be employed as an electoral official, including as a returning officer, a person must be on an electoral roll and eligible to vote at either New South Wales state or federal elections.

What is meant by 'independent'?

To ensure the conduct of an election is seen to be at arms' length from the council, an employee of a particular council cannot be appointed as a returning officer or substitute returning officer for a particular area (section 296A(4)).

To avoid any perception of bias, friends or relatives of the mayor, councillors, general manager or candidates for election should not be appointed as the returning officer or substitute returning officer.

It is also important that electoral officials, including the returning officer are, and are seen to be politically neutral. For example, they must not have current or recent political affiliations with any political party, candidate, councillor or mayor.

A general manager of any council is ineligible for appointment as a returning officer, substitute returning officer or an electoral official (section 296A(5)).

Is it possible to use the services of a returning officer previously engaged by the NSWEC?

Unlike the Australian Electoral Commission, the NSWEC does not retain a pool of permanent returning officers. General managers are permitted to approach a person who has had prior experience as a returning officer for the NSWEC.

Is it possible for the returning officer appointed by the council to be trained by the NSWEC?

The NSWEC has advised that its returning officer training program is customised specifically to complement the NSWEC's own business processes, procedures and IT systems. It combines on-line and face to face training and is centred around training the returning officers in using the NSWEC's computer applications. As such, this training program is not transferable to the differing operating environments of individual councils. Similar constraints apply to any manuals or handbooks prepared by the NSWEC.

The training of returning officers, appointed by general managers administering their council's elections, will necessarily be informed by that council's own procedures and systems.

Is it possible for councils to share a returning officer to conduct several elections concurrently?

The legislation permits councils to share a returning officer. In this way costs (wages of the returning officer, office staff, and office accommodation) could be apportioned to participating councils.

If the decision is taken by councils to engage a single returning officer to conduct a number of concurrent elections, the general manager of each participating council will nonetheless retain ultimate responsibility for the conduct of their council elections.

As many election-related tasks and activities have legislative timetables that are non-negotiable, strategies will need to be put in place to address the challenges of having only one returning officer, and detailed project plans will be required to ensure the delivery of the individual elections satisfies the legislation.

Each general manager in the combined group must issue an instrument of appointment nominating the same person as the returning officer for the group. The allocation of tasks (for example, one council may nominate a staff member to source the cardboard material, another council may nominate someone to work with Vision Australia on the arrangements for Braille ballot papers) and the costs to be apportioned to each council in the group also need to be documented.

Can the services of a commercial electoral services provider be used?

Yes. There are a number of private sector companies providing electoral services for company boards of directors, sporting clubs and associations and the like. Similarly, some electoral commissions, such as the Australian Electoral Commission, may conduct fee for service elections.

While the Act permits the use of such commercial electoral services providers, the general manager will still retain overall responsibility for the administration of the elections.

In considering the use of such providers, it is important to clarify that they can deliver the elections for the council. For example, although the Australian Electoral Commission is not involved in local government elections, its overall election experience may lead a general manager to believe a suitably qualified officer from

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the Australian Electoral Commission could be engaged as the returning officer for the council's elections.

The general manager would also need to be satisfied that if the provider claims to be able to obtain all the electoral material, or hire the necessary venues, or arrange the printing of the ballot papers, or conduct the count, that they can demonstrate their successful completion of these tasks in similar circumstances.

A key consideration will be whether the provider is able to administer the complex counts required under the weighted inclusive Gregory method of preference allocation that will soon be prescribed under the *Local Government (General) Regulation 2005* (the Regulation) for council elections.

It is also a requirement that the method proposed to be used by the provider to conduct the count of the ballot papers (whether through the use of data entry or scanning equipment) can comply with the formality, scrutiny and record keeping provisions contained in the Act and Regulation.

If the services of a commercial electoral services provider are to be used, the contract must specify a 'natural person' as the returning officer, not simply name the particular company. It is also necessary to ensure that the person engaged as either the returning officer or substitute returning officer is indemnified by the council or has sufficient professional indemnity insurance in the event that an election is challenged or declared void due to any irregularity in the way it was run.

Councils are not restricted to relying on the services of one service provider to deliver all election-related items. For example, while a commercial electoral services provider may be engaged to conduct the count, the council may decide to make its own arrangements in relation to the appointment of a returning officer, the purchase of cardboard material or the printing of the ballot papers.

If council decides to use a commercial electoral services provider is it necessary to go to tender?

Section 55 of the Act exempts councils from tendering when entering into a contract or arrangement for the NSWEC to administer the council's elections, referendums and polls. This exemption does not apply to contracts or arrangements with any other service provider.

As the amount involved in conducting council elections can be significant it is important to ensure that any commercial organisation is providing value for money. It is also important to ensure that as public funds are being expended, principles of openness, transparency and accountability are not compromised.

Unless the cost of administering the elections is under \$150,000 or any of the other exemptions provided for in section 55 apply, councils will be required to go to tender or to conduct a selective tender when engaging a commercial electoral services provider.

What should councils consider when entering into a contract with a commercial electoral services provider?

In negotiating arrangements for the administration of their elections with commercial electoral services providers, councils need to ensure that:

- there will be an appropriate number of pre-poll and polling places
- there will be adequate staffing levels
- the provider uses counting software that is able to undertake counts using the soon to be prescribed weighted inclusive Gregory method
- the potential need for the contractor to administer countback elections in the 18 months following the ordinary election
- that the provider is able to meet the new requirements recommended by the NSW Parliament's Joint Standing Committee on Electoral Matters (JSCEM) which are outlined below.

What is the appropriate number of polling places?

The appropriate number of polling places for any one council will depend on its individual characteristics and factors such as the number of electors, the geographic area it covers, available transport options and suitable venues.

While the cost of hiring venues will be a consideration, general managers should also have regard to the following when determining the number and type of venues to be used:

- How many voters are there in total in the area, and how many voters can each particular venue comfortably handle?
- What venues have been used in the past by either the Australian Electoral Commission for federal elections or the NSWEC for either state or local government elections? What was the previous attendance pattern at these venues?
- Is the venue conveniently located, particularly in light of transport options?
- Is it suitable for the purpose of conducting an election? For example, is there sufficient space for the various tables, voting screens, ballot boxes, throughput of voters? Is there appropriate furniture for electoral officials? For example, if small tables and chairs are used in a primary school these are not appropriate for adults involved in election-related activities.
- Is it easily accessible for all voters and in particular those with a disability, mobility issues, the elderly or frail, parents with prams?
- Are there venues located close to ward boundaries that are able to issue ballot papers for both the ward in which they are located as well as votes for adjoining ward/s? Or in the case of an undivided council, venues located close to the boundary of another council or councils?
- Is appropriate public liability insurance in place?

It is likely that the more electors a council has, the more polling places it will need.

What are the appropriate staffing levels for a council election?

Determining the appropriate number of staff required for any particular council area depends on the estimated number of votes likely to be taken and the volume for each particular voting option (pre-poll, declared institution, postal and election day) as this will have an impact on the categories of staff recruited. For example, if it is anticipated

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that there will be a high demand for pre-poll voting it may be necessary to have more office assistants available in the returning officer's office than in an area where it is likely that more votes will be taken on election day at polling places.

Under the legislation all polling places must have a minimum of two staff, one of whom is the polling place manager.

The NSWEC's polling place staffing formula is based on 600 votes per issuing table (at one election official per table) and the overall projected number of votes for the polling place determines the number of issuing tables. The number of issuing tables determines whether a particular polling place requires a deputy polling place manager, a ballot box guard and/or an enquiry officer.

Is it possible to conduct the count and distribution of preferences manually?

No. Under proposed amendments to the Regulation a new method of preference allocation will be used for council elections. The new method, the weighted inclusive Gregory method, uses a fractional transfer system. All ballot papers of the elected candidate are used to distribute the surplus (instead of a sample). The ballot papers are distributed at a reduced rate with each transfer of votes by applying a transfer value, making manual counts impossible.

Councils should ensure that any commercial electoral services provider they engage to conduct their elections is able to undertake a count utilising counting software that allocates preferences using the soon to be prescribed weighted inclusive Gregory method.

What arrangements should be made for countback elections?

Under amendments proposed to the Regulation, councils will have the option of filling vacancies that occur in the 18 months following the September 2020 council elections using a countback of the votes cast at the ordinary election instead of a by-election. Countback elections are not available for elections using the optional preferential voting system (including elections for popularly elected mayors).

In order to fill vacancies using a countback election, councils must resolve at their first meeting following the ordinary election that any casual vacancy is to be filled by a countback election.

If councils are proposing to fill vacancies using a countback election, they should factor this into their contractual arrangements with commercial electoral services providers. Among other things, the contractual arrangements should ensure the following:

- the retention of all electoral material, information and data for the 18 month period following the ordinary election during which countback elections may be used
- the safe storage and security of electoral material, information and data (including from cyber attack)
- the council has ongoing access to the electoral material, information and data from the ordinary election.

What other considerations should councils factor into their contractual arrangements with commercial electoral services providers?

In its inquiry into preference counting in local government elections, the JSCEM made a number of recommendations to improve the transparency of council elections. The key recommendations are recommendations 3 – 7. These are as follows:

- That the NSWEC works with relevant stakeholders to develop a policy that makes it easier for scrutineers to examine paper ballots, electronic records and data entry records (Recommendation 3).
- That the Office of Local Government ensures that councils which administer their own elections be required to adhere to any scrutineering policy developed by the NSWEC (Recommendation 4).
- That an audit process be introduced to ensure that data entry of ballots is accurate in every local government election count that uses electronic counting. The JSCEM also recommended that scrutineers be allowed to observe this audit process and the results (Recommendation 5).
- That the Government outlines minimum levels of data, including full preference data, which is to be released following a local government election regardless of whether the election is run by the NSWEC, a commercial provider, or a council themselves (Recommendation 6).
- That the source code of counting software used in local government elections, whether those elections are conducted by the NSWEC or a commercial provider, be subject to an external audit at least once every five years, subject to reasonable restrictions which protect the Intellectual Property of the organisations involved (Recommendation 7).

The Government has accepted these recommendations. The JSCEM's report and the Government Response can be accessed [here](#).

The Office of Local Government will provide more detailed guidance to councils administering their own elections on compliance with these requirements closer to the election. However, councils should factor compliance with these requirements into their contractual arrangements with commercial electoral services providers. In particular, councils should ensure the following:

- that the commercial electoral services provider has a formal policy that ensures that scrutineers are given as much opportunity as possible to be involved in the counting process by allowing the examination and comparison of ballot papers, the data entry of votes recorded on ballot papers (whether by manual data entry or digital scanning) and electronic or data entry records
- that the commercial electoral services provider has an audit system in place for checking ballot papers against the information entered into the electronic counting system used by the provider and that scrutineers are permitted to observe the audit process and its results
- that the commercial electoral services provider will make full preference data available for publication
- that the source code of counting software used by the commercial electoral services provider has been independently audited by an accredited source code auditor. The audit should be undertaken after the counting software has

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been updated to undertake counts using the new weighted inclusive Gregory method.

What services will the NSWEC provide to councils that administer their own elections?

The NSWEC provides enrolment services to councils conducting their own elections such as the provision of authorised rolls, candidates' rolls, an online look-up facility for non-residential electors, a list of general postal voters and enrolment declaration envelopes. These products and services will be provided at cost to the relevant councils.

What information are councils that administer their own elections required to provide to the NSWEC?

Councils conducting their own elections are required to provide certain information to the NSWEC to support it in the exercise of its statutory functions in connection with the administration of candidate registration and other electoral funding and disclosure requirements and the enforcement of the failure to vote provisions of the Act and Regulation.

How should election costs be managed?

General managers should prepare a budget for all facets of council elections, and record and monitor expenditure to ensure a shortfall does not occur. Activity based costing will need to be applied to ensure that all costs and expenses are identified.

Areas to be covered include:

- wages of all electoral officials and any council staff engaged in election-related work
- recruitment and training
- advertising including the placement of statutory advertisements
- candidate and elector information
- hire of venues, furniture and equipment
- production of all election-related material, including forms, envelopes and cardboard material
- printing of ballot papers including in Braille, if requested
- transportation of election-related materials
- IT software and hardware
- administration expenses such as telephone, postage, courier services, photocopiers and printers
- insurance

A number of key variables will not be known until the close of nominations, namely whether an election will be uncontested, whether there will need to be a by-election due to insufficient nominations, whether candidates will form groups and request group voting squares, and whether as a result, ballot papers will need to be printed to allow 'above the line' and 'below the line' voting.

These factors will have an impact on costs. However given the lead time required to ensure voting can go ahead at the prescribed times, provision for all likely costs has to be made.

What are the reporting requirements on election costs?

Within six months of the election, the general manager must prepare a report for the Minister for Local Government on the conduct of each election. Full and transparent costings for each election must be disclosed in this report.

What is meant by 'full and transparent costings'?

It needs to be acknowledged that although council staff may be used to undertake administrative tasks related to the conduct of elections, this comes at a cost. Notably any time spent on election-related work is time not spent on other council duties. Similarly use of council office space or office equipment or resources for election-related work is at the expense of other day to day council activities.

The following list is not exhaustive but contains a number of items that should be reported on:

- the proportion of the general manager's time spent on election-related activities (such as training the returning officer, ensuring all aspects of the election have been identified, scoped and are on track, preparing and managing the budget) as a proportion of salary
- proportion of other council staff time spent on election-related activities (such as processing payroll and payables, sourcing suppliers of election material, providing IT support, and legal advice) as a proportion of salary
- wages of council staff hired specifically to assist with election-related activities
- wages of the returning officer, substitute returning officer, and all electoral officials (polling place managers, officers issuing votes, others who may be required in larger polling places, such as queue controller and ballot box guard, as well as office assistants in the returning officer's office)
- cost of recruiting all electoral officials
- cost of training all electoral officials including the production of any manuals or guides
- cost of conducting candidate information seminars.
- cost of the returning officer's office
- cost of hiring venues or using council venues for any additional pre-poll locations and election day voting
- cost of hiring furniture or equipment or using council furniture and equipment
- cost of electoral material including forms, envelopes, production of candidate information sheets, stationery and cardboard material required for polling places
- cost of developing and managing the tender process for the delivery and collection of election-related material and furniture
- cost of courier services and postage, particularly in relation to dispatch of postal votes
- cost of advertising and any elector information produced including cost of translations
- cost of printing ballot papers including any Braille ballot papers
- IT-related costs particularly the development of counting software
- cost involved in producing the report to the Minister on the conduct of the election

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Such identification of activity based costs and expenses will also enable a comparison with the fees charged by the NSWEC, to see whether one option is better value than the other for ratepayers.

Even in the case of an uncontested election or where there are insufficient nominations to enable the election to proceed on election day, there will be costs associated with having reached that stage, which also need to be reported.