

Local Government Act 1993
Local Government (General) Regulation 2021
Local government by-elections
26 February 2022

Direction under s 337A(1)(a) - Special provisions about scrutineers for COVID-19 pandemic

Pursuant to section 296(2) of the *Local Government Act 1993* and section 275(1) of the *Local Government (General) Regulation 2021* (the **Regulation**), the Electoral Commissioner is election manager of the local government by-elections of the councils listed in **Schedule 1** to this Direction.

Section 337 of the Regulation provides that local government by-election candidates and groups may appoint scrutineers to be present at each place at which polling is carried out, ballot-papers are scrutinised, or votes are counted.

Section 337A(1)(a) provides that, despite section 337, the election manager may direct that scrutineers are prohibited from being physically present at a relevant place.

Pursuant to section 337A(3), a direction under section 337A(1) may be made only if the election manager is satisfied—

- (a) there are alternative scrutiny arrangements for each relevant place, and
- (b) the direction is necessary—
 - (i) to comply with a public health order that is in force at the time of the election or counting of votes, or
 - (ii) to reduce the risk of infection from COVID-19 to a scrutineer or another person present at a relevant place.

Section 337A(7) provides that, in section 337A, **relevant place** means a place at which polling is carried out, ballot-papers are scrutinised or votes are counted.

Therefore, to reduce the risk of infection from COVID-19 to a scrutineer or another person present at a relevant place, I direct that scrutineers are prohibited from being

present at a relevant place in respect of the by-elections of the councils listed in **Schedule 1** to this Direction.

I am satisfied that there are alternative scrutiny arrangements, as required under section 337A(3)(a) of the Regulation, which are set out in the NSW Electoral Commission’s *COVID-19 Protocol for Scrutineers* at **Annexure A** to this Direction.

This Direction does not apply if scrutineers have been given permission by a Returning Officer or another election official to enter an election venue to conduct scrutiny in accordance with the arrangements set out in the *COVID-19 Protocol for Scrutineers* at **Annexure A** to this Direction (or as may be updated from time to time to respond to changes in public health circumstances) and published on the website of the NSW Electoral Commission.



John Schmidt
Electoral Commissioner for New South Wales

Dated: 22 January 2022

SCHEDULE 1

Council by-elections on 26 February 2022 to which this Direction applies

- Cobar
- Murray River, Greater Murray Ward
- Murray River, Greater Wakool Ward
- Tenterfield, Ward C
- Tenterfield, Ward E

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Annexure A



COVID-19 Protocol for Scrutineers at February 2022 Local Government and State by-elections

The Electoral Commission acknowledges the importance of scrutineering in ensuring confidence in the NSW electoral process. This Protocol has been developed to ensure the safe conduct of by-elections in February 2022 in the circumstances of the COVID-19 pandemic.

The COVID-19 safety processes for scrutineering set out in this Protocol will be implemented in a fair and impartial manner. The number of scrutineers at a venue will only be limited where this is required to maintain social distancing within the context of the specific size of the venue. It is anticipated that all scrutineers will be able to be accommodated safely, providing they also follow the other COVID-19 safety processes set out in this Protocol.

The terms of this Protocol are as follows:

- (i) The total number of scrutineers present in an election venue at any time will be limited by the NSW Electoral Commission to maintain a COVID-safe venue capacity of 1 person per 4 square metres.
- (ii) At most election venues, candidates and parties can safely send **one** scrutineer without obtaining the NSW Electoral Commission's prior permission, subject to the usual requirements for appointing scrutineers.
- (iii) At some smaller election venues, however, the NSW Electoral Commission may notify candidates or parties that COVID-safe venue capacity could be exceeded by the attendance of one scrutineer each, and in those cases proposed scrutineers must first seek permission to attend by pre-registering their attendance.
- (iv) Pre-registration for a venue may be done by way of telephone to the Candidates Helpdesk on 1300 022 011 or by email to candidates@elections.nsw.gov.au
- (v) Permission for a pre-registered scrutineer to attend at a venue at the proposed time and date will be granted on a 'first come first served' basis.

- (vi) If a scrutineer’s application to register to attend at a particular venue would mean the venue’s COVID-safe capacity was exceeded, the NSW Electoral Commission may arrange for scrutiny by way of attendance at:
 - (a) an alternative venue within the same local government area or ward or electoral district; or
 - (b) an alternative time at the same venue.

- (vii) Scrutineers must maintain a physical distance of 1.5m from any other person in attendance at an election venue at all times, which shall be maintained by way of:
 - (a) Scrutineers refraining from shaking hands or attempting to do so;
 - (b) Scrutineers only inspecting ballot papers when the relevant election official has stepped away to allow the scrutineer to step closer, and not returning until the scrutineer has again moved away 1.5m; and
 - (c) Scrutineers being permitted reasonable use of their own hand-held, non-recording devices within an election venue to assist them to see electoral officials undertake their voting or counting duties better where it is not practicable to stand 1.5m away.

- (viii) Scrutineers must not attend any election venue if they have not been fully vaccinated for COVID-19 or do not have a medical contraindication in the correct form from their doctor, using the NSW Health [form](#).

- (ix) Scrutineers must show evidence to staff of the NSW Electoral Commission before they enter any election venue that they have had two doses of a COVID-19 vaccination (or have a medical contraindication in the correct form from their doctor, using the NSW Health [form](#)).

- (x) Scrutineers must “check in” to election venues using the Service NSW App (or register manually if they do not own a smartphone), wear a mask at all times and comply with all hand hygiene directions from staff of the NSW Electoral Commission.

- (xi) Additional scrutineers beyond one per candidate or party may be permitted, on a ‘first come first served’ basis, where the venue capacity of 1 person per 4 square metres would not be exceeded. Additional scrutineers may be directed to leave an election venue, however, at any time venue capacity may be exceeded.

- (xii) In attending an election venue, scrutineers acknowledge that they are visitors to NSW Electoral Commission workplaces and have responsibilities under work health and safety laws to take reasonable steps to reduce the risk of their actions causing harm to other persons on the premises, including

Electoral Commission staff and other scrutineers. Each scrutineer also acknowledges that if they fail to comply with reasonable directions in relation to the safety measures set out in this Protocol, an election official may instruct them to leave the election venue, including pursuant to section 369(1A) of the *Local Government Regulation 2021* [the **Regulation**], due to contravene the Electoral Commissioner’s Direction under section 337A(1) of the Regulation.

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