



New South Wales

Local Government Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* (*the principal Act*):

- (a) to enable a council to make an application to the Minister for approval to reduce the number of its councillors (within certain limits), and
- (b) to require a council to adopt each year a policy concerning expenses and facilities, and
- (c) to enable the Director-General of the Department of Local Government to approve standard forms of contract relating to certain conditions of employment of general managers and other senior staff of councils, and
- (d) to enable a contempt in the face of the Pecuniary Interest and Disciplinary Tribunal to be referred to the Supreme Court, and
- (e) to clarify certain provisions relating to pecuniary interests.

* Amended in committee—see table at end of volume.

The Bill also makes the following amendments:

- (a) amends the *Freedom of Information Act 1989* to exempt from the operation of that Act the Department of Local Government in relation to its complaint handling and investigative functions,
- (b) amends the *Local Government Amendment (Public-Private Partnerships) Act 2004* in relation to the definition of a public-private partnership, the referral of public-private partnerships to the Local Government Project Review Committee and the quorum of that Committee.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Freedom of Information Act 1989* and the *Local Government Amendment (Public-Private Partnerships) Act 2004* set out in Schedule 2.

Schedule 1 **Amendment of Local Government Act 1993**

Reduction in number of councillors

Schedule 1 [1] inserts proposed section 224A into the principal Act to enable the Minister to approve a reduction in the number of councillors of a council if the council applies for a reduction. Public notice must be given of the application and submissions may be made to the council concerning it by interested members of the public. An application for reduction may be made by a council only within the period of 12 months after the commencement of the proposed section.

Schedule 1 [5] inserts proposed section 294A into the principal Act to provide that a council is not to fill a casual vacancy in the office of a councillor if the Minister has approved an application from the council under proposed section 224A to reduce the number of councillors. Proposed section 294A will not authorise a casual vacancy to remain unfilled if it results in the number of councillors being less than the reduced number approved by the Minister.

Policies concerning expenses and facilities of councils

Currently, a council must adopt a policy for the payment of expenses or provision of facilities under section 252 of the principal Act and must give public notice of the proposed adoption or amendment of such a policy under section 253.

Schedule 1 [2] amends section 252 of the principal Act to require councils to adopt such a policy within 5 months after the end of each year. *Year* is defined in the principal Act to mean the period from 1 July to the following 30 June.

Schedule 1 [3] amends section 252 of the principal Act to require a council to ensure that the policy adopted complies with the principal Act, the regulations under it and any relevant guidelines issued by the Director-General of the Department of Local Government under section 23A of the principal Act.

Schedule 1 [4] substitutes section 253 of the principal Act to make it clear that a council is to engage in public consultation before adopting such a policy each year (whether or not the policy is being amended) and whenever it amends the policy. The proposed section also requires a council to forward a copy of its policy, and the public submissions made on it, to the Director-General of the Department of Local Government after its adoption each year.

Employment of senior staff of councils

Schedule 1 [6] amends section 338 of the principal Act to enable the Director-General of the Department of Local Government to approve standard employment contracts for the general managers and other senior staff of councils. The standard contracts so approved are not to contain provisions relating to performance-based requirements, the duration of the contract or the level of remuneration or salary (including employment benefits) of the person employed under the contract. However, a council can add any such provisions (but no others) to the standard contract. A council is to use such standard contracts when employing senior staff. The requirements will not affect existing contracts unless they are renewed.

Pecuniary interest provisions

Schedule 1 [7]–[9] amend sections 442 and 443 of the principal Act to make it clear that a person has a pecuniary interest in a matter for the purposes of the principal Act if the person's spouse, de facto partner, relative, partner or employer has such an interest or if a company or other body has such an interest, being a company or body of which the person, or a nominee, partner or employee of the person, is a member.

Schedule 1 [10] and [11] make consequential amendments.

Schedule 1 [12] amends section 451 of the principal Act to make it clear that a person who is a councillor or member of a council committee is not prevented by that section from attending a meeting on, and voting on, a matter being considered by the council or committee merely because the person holds an interest specified in section 448 of that Act as being exempt from the disclosure requirements and other pecuniary interest requirements of Chapter 14 of that Act.

Contempt of Pecuniary Interest and Disciplinary Tribunal

Schedule 1 [13] enables the Pecuniary Interest and Disciplinary Tribunal to report certain behaviour that amounts to a contempt in the face of the Tribunal to the Supreme Court for punishment.

Savings and transitional provisions

Schedule 1 [14] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Freedom of Information Act 1989* to exempt from the operation of that Act the Department of Local Government (including the Director-General of the Department and Departmental representatives) but only in relation to complaint handling and investigative functions conferred by or under any Act on that Department.

Schedule 2.2 amends the *Local Government Amendment (Public-Private Partnerships) Act 2004*.

Schedule 2.2 [3] amends that Act to replace the definition of a *public-private partnership*. Currently, the term is defined to mean an entity (such as a partnership, trust or corporation) that is formed under an arrangement between a council and a private person for the purposes of providing public infrastructure or facilities (in respect of which the council retains a beneficial interest) or delivering services. The new definition of that term will provide that a public-private partnership is an arrangement (whether or not involving the formation of an entity) between a council and a private person for the purposes of providing public infrastructure or facilities (in respect of which the council has an interest, liability or responsibility) or delivering services. The regulations may exclude types of arrangements from the definition. **Schedule 2.2 [1], [2], [4]–[8], [10] and [12]–[14]** contain consequential amendments.

Schedule 2.2 [9] and [11] amend that Act to provide that the Minister can only direct that a public-private partnership (*PPP*) is to be referred to the Local Government Project Review Committee if the Minister is of the opinion that the council concerned in the PPP has not complied with the PPP guidelines issued by the Director-General of the Department of Local Government. Currently, the Minister may make such a referral on any grounds the Minister thinks fit.

Schedule 2.2 [15] amends the quorum provisions in that Act relating to the Local Government Project Review Committee to provide that a quorum will be achieved if a majority of the permanent members on the Committee are present. Currently, the provisions require a majority of members for the time being to be present which would include members appointed from time to time by the Director-General of the Department of Local Government to assist the Committee in the exercise of its functions.