

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***) to authorise councils to enter into environmental upgrade agreements with building owners and finance providers.

An ***environmental upgrade agreement*** is an agreement under which:

- (a) a building owner agrees to carry out environmental upgrade works in respect of a building (that is, works to improve the energy, water or environmental efficiency or sustainability of the building), and
- (b) a finance provider agrees to advance funds to the building owner to finance those environmental upgrade works, and
- (c) the advance is repaid by means of a charge on the relevant land that is levied by the council.

Outline of provisions

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

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

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1 [1] makes the amendment described in the Overview.

In addition to authorising a council to enter into an environmental upgrade agreement, the amendment makes provision for the following:

- (a) the buildings that can be the subject of an environmental upgrade agreement (commercial buildings and strata buildings),
- (b) the types of works that can be authorised by an environmental upgrade agreement,
- (c) requirements as to the content of environmental upgrade agreements.

The amendment authorises a council to levy a charge (an ***environmental upgrade charge***) in respect of the land on which a building to which the environmental upgrade agreement relates is erected or, in the case of a strata building, the land that is the subject of the relevant strata scheme.

Money paid to the council in respect of an environmental upgrade charge is to be paid by the council to the finance provider under the environmental upgrade agreement, after deduction of any council fees that the council is authorised to retain.

The amendment applies various provisions of the principal Act that relate to the levying and payment of charges on rateable land to an environmental upgrade charge. This means that the charge will be recoverable against any occupier of the land on which it is charged.

In relation to strata buildings, the amendment requires the owners corporation for the building to pay the environmental upgrade charge.

An environmental upgrade charge must be paid within 28 days after notice of the charge is served on the person liable to pay it. A council must hold the charge, pending its payment to the finance provider, in a separate account in its trust fund. A council is to use its best endeavours to recover a charge, but a failure by a person to pay the charge does not make the council liable to pay the charge to a finance provider.

The amendment also allows a provision of a lease to require a lessee to pay to the lessor a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement that relates to the premises that are the subject of the lease. The amount recoverable by the lessor as a contribution must not exceed a

reasonable estimate of the cost savings to be made by the lessee, as a consequence of the environmental upgrade works provided for by the environmental upgrade agreement, during the period to which the contribution relates. An environmental Explanatory note page 3

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upgrade agreement may make provision for the methodology for determining those cost savings. However, the parties to a lease may agree on a different method of calculation of the lessee's contribution.

Entry into an environmental upgrade agreement is voluntary, and a council cannot require a person to enter into an agreement, whether by condition of a development consent, order or otherwise.

The amendment also requires a council to include information relating to environmental upgrade agreements in its annual report and authorises a council to provide information to the Director-General of the Department of Environment, Climate Change and Water.

The Minister for Climate Change and the Environment may, with the concurrence of the Minister administering the principal Act, make guidelines relating to environmental upgrade agreements and the functions of councils under the new provisions. In particular, the guidelines may make provision for the terms that may be included in environmental upgrade agreements with respect to the recovery of contributions towards environmental upgrade charges by lessees and the progress or implementation reports to be made by a building owner under an agreement. The regulations may make any of these requirements mandatory requirements.

The amendment also makes it clear that the functions of a council under an environmental upgrade agreement may be exercised by any council to which the assets, rights and liabilities of the council entering the agreement are transferred (for instance, in the event of a change to the council's area).

Schedule 1 [2] provides that the public tendering requirements do not apply in respect of an environmental upgrade agreement.

Schedule 1 [3] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] provides for transitional matters. In particular, the amendment makes it a term of any existing lease that already requires the lessee to pay council charges that the lessee pay a contribution towards environmental upgrade charges in accordance with the arrangements for contributions referred to above. However, the parties to a lease may agree that a contribution is not required.