



Tabled, by leave, Ms Sharpe  
DB  
Clerk of the Parliaments  
9 / 5 / 2024

LOCAL GOVERNMENT AMENDMENT (DE-AMALGAMATIONS) BILL 2024  
STATEMENT OF PUBLIC INTEREST

**Need: Why is the policy needed based on factual evidence and stakeholder input?**

The purpose of the Bill is to replace existing provisions (s218CC) of the *Local Government Act 1993 (LG Act)* which set out the process to be followed when an amalgamated council seeks to de-amalgamate into its former areas.

Currently, s218CC of the LG Act provides a process by which amalgamated councils can, within a 10-year period, seek to de-amalgamate. However, based on obtained Crown Solicitor's advice, s218CC is legally deficient as it does not provide the legal power for the Minister for Local Government to recommend to the Governor a proclamation to create the new council areas even if the appropriate steps have been followed and the de-amalgamation proposal has been supported by the Minister.

The current provisions of s218CC of the LG Act also put an uncapped financial liability on the Government, requiring the Government to ensure that de-amalgamation costs are fully funded by the Government.

Further, the processes set out under s218CC are mis-aligned to other provisions within the Act governing the creation of new local government areas and the amalgamation or boundary alteration of current local government areas.

The Bill provides for a new process for de-amalgamation that addresses the above deficiencies and additionally provides for fully informed community consultation on a de-amalgamation proposal, and business case, via a de-amalgamation constitutional referendum (referendum).

**Objectives: What is the policy's objective couched in terms of the public interest?**

The bill seeks to resolve the deficiencies of the current legislation by providing a legal pathway for de-amalgamation proposals to be proclaimed and implemented. Resolution of the above deficiencies will provide clarity and certainty to communities seeking to de-amalgamate, and the inclusion of a referendum will embed whole-of-community support as a fundamental element of the de-amalgamation process.

Community consultation on the business case and de-amalgamation proposal, followed by council resolution to support these, will ensure the community and councillors (as the governing body) are aware of, and supportive of, the financial and other implications of a potential de-amalgamation.

In addition, for transparency and public decision-making purposes, the de-amalgamation business case will need to be made available to the community prior to a referendum being held, to ensure the financial and other implications of the de-amalgamation, including the mechanism to finance these, are known by the community at the time of the referendum.

The continued inclusion of the NSW Local Government Boundaries Commission in the process will enable de-amalgamation proposals to be consistently and independently assessed and impartial recommendations formed about the proposal's viability.

**Options: What alternative policies and mechanisms were considered in advance of the Bill?**

Consideration was given to whether minor amendments could be made to the current s218CC provisions to address their identified deficiencies.

It is not possible to 'do nothing' as the existing legislative provisions in section 218CC create an expectation that demergers are possible, without providing legal power to give effect to the decision through proclamations.

**Analysis: What were the pros/cons and benefits/costs of each option considered?**

*Current provisions of the Act*

Maintaining the current provisions under s218CC of the LG Act is not in the public interest. It will continue the flawed process that is legally unworkable. Replacing the current provisions under S218CC with the new process in the bill provides an opportunity to rectify deficiencies.

Maintaining the current provisions would also significantly risk councils and communities not being fully informed and supportive of the financial and other implications of de-amalgamation. By contrast, the bill will establish a robust and democratic way forward for councils and communities wanting to de-amalgamate including processes that ensure the community is fully informed of the financial and other implications and that a majority of electors across the current council support the de-amalgamation.

Maintaining the current provisions under s218CC of the LG Act will also continue an unknown and unlimited financial liability on the Government. Repealing the current provisions under s218CC will limit this cost burden from the Government, and in turn from the NSW community as a whole. The costs of de-amalgamations cannot be quantified at a sector level and will differ on a case-by-case basis.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The amendments will commence on proclamation and will be administered by the Office of Local Government, Department of Planning, Housing and Infrastructure.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

Councils and their communities seeking to de-amalgamate recognise that the existing legislation is deficient and requires amendment. The policy objectives seek to address stakeholder interests by resolving issues with the current legislation that have prevented the implementation of supported de-amalgamation proposals, and by providing a community-led process for de-amalgamation that is clear, democratic, and robust.