



New South Wales

# Local Government Amendment (National Competition Policy Review) Bill 2002

## 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*) as follows, in connection with national competition policy reform:

- (a) to enable persons prescribed by the regulations to specify contracts for the purchase of goods, materials or services that will be exempt from the tendering provisions of the Principal Act,
- (b) to remove the requirement that a person operating an undertaker's business or a mortuary must hold a council approval,
- (c) to remove the restrictions on councils on their use of rents and other proceeds derived from community land,
- (d) to allow certain deductions (in the nature of a return on capital invested payments (dividend)) to be made from money required to be used only for

restricted purposes and to allow those deductions to be applied towards any purpose allowed for the expenditure of money by councils by the Principal Act or any other Act,

- (e) to provide for a more flexible procedure for the setting of fees for the services of a council that relate to certain business activities,
- (f) to amend the definition of *domestic waste* in the Principal Act to make it clear that domestic waste includes waste that may be recycled, but does not include sewage.

## 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 giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

## Schedule 1 Amendments

### Amendments relating to tendering

**Schedule 1 [1]** creates an additional exemption from the requirement on councils to tender before entering certain contracts. Currently, councils are not required to tender before entering a number of specified contracts, including contracts for the purchase of goods, materials or services that have been specified by the State Contracts Control Board or the Commonwealth Department of Administrative Services. This amendment also exempts certain contracts for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified. **Schedule 1 [14]** makes a related amendment to enable regulations to be made for or with respect to the contracts specified by those prescribed persons. Such regulations could relate to the general obligations of prescribed persons, reporting requirements of prescribed persons, probity requirements relating to prescribed persons or the provision of information by prescribed persons to the Department of Local Government.

### Amendment relating to council approvals

**Schedule 1 [3]** removes the requirement for a person operating an undertaker's business or a mortuary to obtain a council approval.

### **Amendments relating to restricted use of council funds**

**Schedule 1 [5] and [6]** provide that money that has been received by a council as rents, profits or other proceeds from a lease, licence or other estate granted in respect of community land need not be expended on community land acquisition and community land management requirements (as is currently the case), but may be used for any purpose allowed by the Principal Act or any other Act.

**Schedule 1 [7]** provides that a council may deduct from money currently required to be used only for the specific purpose of water supply or sewerage services an amount in the nature of a return on capital invested payment (dividend). Any amount so deducted may be applied towards any purpose allowed for the expenditure of money by councils by the Principal Act or any other Act. A council may only make such a deduction if it complies with certain guidelines published by the Minister for Land and Water Conservation with the concurrence of the Minister for Local Government.

The Minister for Land and Water Conservation may, with the concurrence of the Minister for Local Government, direct a council to comply with any aspect of the guidelines before making a further deduction if of the opinion that the council has failed to substantially comply with the guidelines.

### **Amendments relating to the setting of fees for services**

**Schedule 1 [8]–[11]** provide for a more flexible procedure for the setting of fees for the services that a council provides as part of a business activity. Currently, under section 612 of the Principal Act, the proposed amount of a fee must be set out in a council's draft management plan for the year in which the fee is to be made.

**Schedule 1 [10]** inserts proposed Division 2 into Part 10 of Chapter 15 of the Principal Act. The proposed Division applies to a fee charged by a council for any service relating to the following business activities:

- (a) the operation of an abattoir,
- (b) the operation of a gas production or reticulation service,
- (c) the carrying out of certain water supply or sewerage services,
- (d) the carrying out of work under section 67 (Private works) of the Principal Act,
- (e) the carrying out of graffiti removal work under section 67A of the Principal Act,
- (f) any other activity prescribed by the regulations.

The proposed Division does not apply to a fee charged by a council for a service relating to the following activities:

- (a) the issuing of a certificate under Part 4A of the *Environmental Planning and Assessment Act 1979*,
- (b) an activity prescribed by the regulations.

A council may determine a fee to which the proposed Division applies only in accordance with a pricing methodology adopted by the council in its plan of management. However, a council may at any time determine a fee otherwise than in accordance with its adopted pricing methodology, but only if the determination is made by a resolution at an open meeting of the council.

All other fees for services will continue to be set in accordance with the current fee setting procedure (see proposed Division 3 of Part 10 of Chapter 15 of the Principal Act).

**Schedule 1 [2], [4], [12], [13] and [16]** make consequential amendments.

**Amendment relating to the definition of “domestic waste”**

**Schedule 1 [17]** replaces the definition of *domestic waste* in the Dictionary to the Principal Act. The new definition makes it clear that domestic waste includes waste that may be recycled, but does not include sewage.

**Savings and transitional provisions**

**Schedule 1 [15]** enables regulations to be made of a savings and transitional nature consequent on the enactment of the proposed Act.

First print



New South Wales

# Local Government Amendment (National Competition Policy Review) Bill 2002

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New South Wales

# **Local Government Amendment (National Competition Policy Review) Bill 2002**

No. , 2002

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## **A Bill for**

An Act to make miscellaneous amendments to the *Local Government Act 1993* in connection with national competition policy reform; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Local Government Amendment (National Competition Policy Review) Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Local Government Act 1993 No 30</b>	8
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	9

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<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 55 What are the requirements for tendering?</b>	3
	Insert before the first bullet point paragraph of section 55 (3):	4
	• subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and at a rate not exceeding the rate so specified	5 6 7 8 9
<b>[2]</b>	<b>Section 67 Private works</b>	10
	Omit section 67 (2). Insert instead:	11
	(2) A council must not carry out work under this section unless:	12
	(a) it proposes to charge an approved fee for carrying out the work as determined by the council in accordance with Division 2 of Part 10 of Chapter 15, or	13 14 15
	(b) if it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.	16 17 18 19 20
<b>[3]</b>	<b>Section 68 What activities, generally, require the approval of the council?</b>	21 22
	Omit Items 8 and 9 of Part F of the Table to section 68.	23



<b>[4] Section 404 Contents of draft management plan with respect to council's revenue policy</b>	1 2
Omit the fourth, fifth and sixth bullet point paragraphs of section 404 (1).	3
Insert instead:	4
• a statement of the types of fees proposed to be charged by the council and, if the fee concerned is a fee to which Division 3 of Part 10 of Chapter 15 applies, the amount of each such fee	5 6 7 8
• a statement of the council's proposed pricing methodology for determining the prices of goods and the approved fees for services provided by it, being an avoidable costs pricing methodology determined by the council in accordance with guidelines issued by the Director-General	9 10 11 12 13 14
<b>[5] Section 409 The consolidated fund</b>	15
Omit "purpose, and" from section 409 (3) (c). Insert instead "purpose."	16
<b>[6] Section 409 (3) (d)</b>	17
Omit the paragraph.	18
<b>[7] Section 409 (5)-(7)</b>	19
Insert after section 409 (4):	20
(5) Despite subsections (3) and (4), a council may:	21
(a) deduct, from the money required by subsection (3) to be used only for the specific purpose of water supply or sewerage services, an amount in the nature of a return on capital invested payment (dividend), and	22 23 24 25
(b) apply that amount towards any purpose allowed for the expenditure of money by councils by this Act or any other Act.	26 27 28

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(6) The Minister for Land and Water Conservation, with the concurrence of the Minister administering this Act:	1
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(a) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and	3
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(b) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).	6
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(7) Before making a deduction under subsection (5), a council must:	11
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(a) comply with the guidelines published under subsection (6) and any direction given under that subsection, and	13
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(b) indicate in an open meeting of the council that the guidelines and any such direction have been complied with in relation to the making of the deduction.	16
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<b>[8] Chapter 15, Part 10, Division 1</b>	19
Insert after the heading to Part 10 of Chapter 15:	20
<b>Division 1 Council fees—general</b>	21
<b>607A Interpretation</b>	22
In Division 2 of this Part, a reference to a fee is a reference to a fee to which Division 2 applies and, in Division 3 of this Part, a reference to a fee is a reference to a fee to which Division 3 applies.	23
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<b>[9] Sections 609 and 610A</b>	27
Omit the sections.	28

<b>[10] Chapter 15, Part 10, Divisions 2 and 3</b>	1
Insert after section 610:	2
<b>Division 2 Council fees for business activities</b>	3
<b>610A Application of Division</b>	4
(1) This Division applies to a fee charged by a council for any service relating to the following activities:	5
(a) the operation of an abattoir,	6
(b) the operation of a gas production or reticulation service,	7
(c) the carrying out of a water supply or sewerage service (other than a service provided, or proposed to be provided, on an annual basis for which the council is authorised or required to make an annual charge under section 501),	8
(d) the carrying out of work under section 67,	9
(e) the carrying out of graffiti removal work under section 67A,	10
(f) any other activity prescribed by the regulations for the purposes of this subsection.	11
(2) This Division does not apply to a fee charged by a council for a service relating to the following activities:	12
(a) the issuing of a certificate under Part 4A of the <i>Environmental Planning and Assessment Act 1979</i> ,	13
(b) an activity prescribed by the regulations for the purposes of this subsection.	14
<b>610B Fees to be determined in accordance with pricing methodologies</b>	15
(1) A council may determine a fee to which this Division applies only in accordance with a pricing methodology adopted by the council in its plan of management.	16
(2) However, a council may at any time determine a fee otherwise than in accordance with a pricing methodology adopted by the council in its plan of management, but only if the determination is made by a resolution at an open meeting of the council.	17
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<b>Division 3</b>	<b>Council fees for non-business activities</b>	1
<b>610C</b>	<b>Application of Division</b>	2
	This Division applies to a fee for a service other than a fee to which Division 2 applies.	3 4
<b>610D</b>	<b>How does a council determine the amount of a fee for a service?</b>	5
(1)	A council, if it determines the amount of a fee for a service, must take into consideration the following factors:	6 7
(a)	the cost to the council of providing the service,	8
(b)	the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,	9 10 11
(c)	the importance of the service to the community,	12
(d)	any factors specified in the regulations.	13
(2)	The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.	14 15 16
(3)	A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.	17 18
<b>610E</b>	<b>Council may waive or reduce fees</b>	19
(1)	A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.	20 21 22 23 24 25
(2)	However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F (2) or (3).	26 27 28 29 30

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Schedule 1 Amendments

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<b>[11] Chapter 15, Part 10, Division 4, heading</b>	1
Insert before section 611:	2
<b>Division 4      Certain annual charges</b>	3
<b>[12] Section 612 Public notice of approved fees</b>	4
Omit “an approved” wherever occurring in section 612 (1) and (4).	5
Insert instead “a”.	6
<b>[13] Section 612</b>	7
Renumber as section 610F and transfer to Division 3 of Part 10 of Chapter 15 (as inserted by this Act).	8 9
<b>[14] Schedule 6 Regulations</b>	10
Insert after clause 5:	11
<b>5A</b> Contracts referred to in the first bullet point paragraph of section 55 (3) (relating to exemptions from tendering requirements).	12 13
<b>Examples.</b>	14
General obligations of prescribed persons	15
Reporting requirements of prescribed persons	16
Probity requirements relating to prescribed persons	17
Provision of information by prescribed persons to the Department	18
<b>[15] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts</b>	19 20
Insert at the end of clause 1 (1):	21
<i>Local Government Amendment (National Competition Policy Review) Act 2002</i>	22 23
<b>[16] Dictionary</b>	24
Omit the definition of <i>approved fee</i> . Insert instead:	25
<i>approved fee</i> means:	26
(a) in relation to a fee to which Division 2 of Part 10 of Chapter 15 applies, a fee determined by the council in accordance with that Division, or	27 28 29

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(b)	in relation to a fee to which Division 3 of Part 10 of Chapter 15 applies:	1
(i)	the fee prescribed by the regulations for the purposes of the provision in relation to which the expression is used or determined by the council in accordance with any such regulations, or	2
(ii)	if no such regulations are in force, the fee (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used, or	3
(iii)	if no such regulations are in force and no fee is determined by the Director-General, the fee (if any) determined by the council for the purposes of the provision in relation to which the expression is used.	4
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<b>[17]</b>	<b>Dictionary</b>	17
	Omit the definition of <i>domestic waste</i> . Insert instead:	18
	<i>domestic waste</i> means waste on domestic premises of a kind and quantity ordinarily generated on domestic premises and includes waste that may be recycled, but does not include sewage.	19
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