

Local Government Amendment Bill 2003

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* so as:

- (a) to introduce a scheme for formulating and implementing proposals for the structural reform of local government areas and councils, and
- (b) to preserve and make amendments to the existing provisions relating to the constitution, dissolution, amalgamation and boundary alterations of local government areas, and
- (c) to amend arrangements regarding the discipline of councillors, council staff and council delegates, including matters connected with the following:
 - (i) codes of conduct,
 - (ii) formal censure of councillors,
 - (iii) suspension of councillors or their remuneration,
 - (iv) surcharges, and
- (d) to make a number of other amendments about the following matters:
 - (i) postponement of local government elections,
 - (ii) altering the number of councillors on a council or the number of wards in an area,
 - (iii) the independence of council staff from direction in certain circumstances,
 - (iv) preliminary enquiries preceding a decision to institute an investigation,
 - (v) proclamations under the *Local Government Act 1993*,
 - (vi) the constitution, procedure and operations of the Local Government Boundaries Commission,
 - (vii) changing the name of the Local Government Pecuniary Interest Tribunal to the Local Government Pecuniary Interest and Disciplinary Tribunal,
 - (viii) savings and transitional matters consequent on the enactment of the proposed Act, and
- (e) to make a number of consequential amendments.

The Bill also amends the *Independent Commission Against Corruption Act 1988* with regard to the jurisdiction of the Independent Commission Against Corruption to deal with conduct that could constitute or involve a substantial breach of a code of conduct applying to a council.

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 Schedules 1–4.

Clause 4 is a formal provision giving effect to the consequential amendment to the *Independent Commission Against Corruption Act 1988* set out in Schedule 5.

Schedule 1 Amendments relating to local government areas and structural reform

The Schedule makes the amendments to the *Local Government Act 1993* referred to in paragraphs (a) and (b) of the Overview.

Modification of existing scheme for constitution, dissolution, amalgamation or boundary alteration of areas

Schedule 1 [1] inserts section 209 to enable a proclamation constituting an area to include provisions making determinations about any of the following:

- (a) the division of the area into wards,
- (b) ward boundaries and ward names,
- (c) the number of councillors to be elected at the next ordinary election,
- (d) the popular election of the mayor,
- (e) the initial term of office of the mayor,
- (f) establishing a community consultative committee,
- (g) a scheme for limiting the council's general income for a period of up to 7 years,
- (h) directing the Remuneration Tribunal to make a remuneration determination for the councillors or mayor.

Schedule 1 [2] amends section 212 to enable the dissolution of an area without a public inquiry if the Boundaries Commission recommends the dissolution of the area.

Schedule 1 [3] amends section 213 to enable the inclusion in a proclamation constituting or dissolving an area of provisions authorising the Minister to make determinations about the transfer or apportionment of assets, rights and liabilities and the transfer of staff, rather than these matters being specified in detail in the proclamation.

Schedule 1 [4] amends section 215 to authorise the Director-General of the Department of Local Government to make proposals for the constitution of areas to the Minister. At present, these proposals can only be made by the Minister, a council or a minimum number of electors.

Schedule 1 [5] amends section 218 to provide an express power to make a proclamation to implement a proposal for the constitution of an area.

Schedule 1 [6] amends section 218C to provide that a proclamation implementing an amalgamation proposal or boundaries proposal may contain provisions of the kind referred to in section 209 (see Schedule 1 [1]), and in addition may include provisions for any of the following:

- (a) redetermining ward boundaries and ward names,
- (b) abolishing all wards.

Schedule 1 [7] amends section 218D as a consequence of the proposed scheme relating to structural reform proposals.

Schedule 1 [8] amends section 218E to authorise the Director-General to make amalgamation proposals and boundaries proposals to the Minister. At present, these proposals can only be made by the Minister, a council or a minimum number of electors.

Schedule 1 [9] omits section 218F and substitutes sections 218EA–218F, in order to set out clearly and to revise the process of dealing with an amalgamation proposal or boundaries proposal that has been made by or to the Minister, as follows:

- Proposed section 218EA makes it a requirement that a proposal must address and address adequately the matters listed in section 263 (which are the matters the Boundaries Commission is required to address).

- Proposed section 218EB substantially re-enacts the current provisions of section 218F (1) and requires a proposal that is proceeding to be referred to the Boundaries Commission, or (except in the case of a proposal made by the Director-General himself or herself) to the Director-General, for examination and report.

- Proposed section 218EC deals with a proposal that is referred to the Boundaries Commission. Subsections (2) and (3) require the Commission to publish a notice advertising the proposal, calling for submissions and specifying a 28-day period in which submissions must be lodged. Subsection (4) requires the Commission to consider submissions received within the 28-day period. Subsection (5) requires the Commission to disregard a late submission, unless the Commission accepts it and is satisfied that consideration of the submission will not delay finalisation of the report.

Subsection (6) requires the Commission to finalise the matter within 42 days after the 28-day period, but the Minister may approve an extension of 28 days if requested. Subsection (7) authorises the Commission to recommend modifications to the proposal, unless they would constitute a new proposal.

- Proposed section 218ED deals with a proposal that is referred to the Director-General. Subsection (2) substantially re-enacts section 218F (2) and applies to the Director-General provisions that apply in an amended form to the Boundaries Commission. Subsections (3) and (4) require the Director-General to publish a notice advertising the proposal, calling for submissions and specifying a period in which submissions must be lodged. Subsection (5) requires the Director-General to consider submissions received within the specified period. Subsection (6) requires the Director-General to disregard a late submission, unless he or she accepts it and is satisfied that consideration of the submission will not delay finalisation of the report. Subsection (7) authorises the Director-General to recommend modifications to the proposal, unless they would constitute a new proposal. Subsection (8) substantially reenacts current section 218F (7) and provides that the Director-General's report on a proposal referred to the Director-General must be furnished to the Boundaries Commission for comment, except in the case of a boundaries proposal that is supported by the affected councils.

- The process contained in proposed sections 218EC and 218ED does not authorise the Boundaries Commission or Director-General to hold public meetings or to conduct postal surveys, opinion polls or formal polls.

- New section 218F deals with the process to be followed after the Minister receives the report on a proposal from the Boundaries Commission or Director-General. Subsections (2) and (4) substantially re-enact the current section 218F (7) and (8) and permit the Minister to recommend implementation of the proposal, with such modifications (if any) as do not constitute a new proposal. Subsection (3) provides an express power to make a proclamation to implement the proposal.

Schedule 1 [10] repeals Division 2C of Part 1 of Chapter 9 (sections 218G–218K). This Division deals with the postponement of elections where amalgamation proposals are being formulated or have been made to the Minister. This matter is covered by proposed Part 6A of Chapter 10 (see Schedule 3).

Role of Boundaries Commission regarding amalgamation proposals and boundaries proposals

As mentioned above, Schedule 1 [9] omits section 218F and does not re-enact the provisions of section 218F (3) and (4) that currently require the Boundaries Commission (or the Director-General) to hold public meetings or to conduct postal surveys, opinion polls or formal polls.

Schedule 1 [11] amends section 263 so that the Boundaries Commission may hold a public meeting if the Minister so approves, must hold a public meeting if the Minister so directs, and may not otherwise hold a public meeting. The same arrangement continues to apply with regard to inquiries.

Schedule 1 [12] omits section 263 (2A), which currently requires the Boundaries Commission to hold an inquiry in relation to an amalgamation proposal.

Schedule 1 [13] amends section 263 to empower the Boundaries Commission to recommend the dissolution of the whole or part of an area when making a report or furnishing comments. In these circumstances, a proclamation may be made under section 212 without the need for a public inquiry (see

Schedule 1 [2]).

Schedule 1 [14] amends section 265 to provide that the power of the Boundaries Commission to conduct opinion surveys or polls under that section does not apply in the case of an amalgamation proposal or boundaries proposal supported by the affected councils.

New scheme for structural reform

Schedule 1 [15] inserts a new Part 4 into Chapter 9 containing sections 265A–265G, and sets out a new scheme for local government structural reform, as follows:

- Proposed section 265A authorises the Director-General to formulate a structural reform proposal, which may include any of the following, namely, an amalgamation proposal, a boundaries proposal, a proposal that may be included in an amalgamation proposal or boundaries proposal, or a proposal

about the exercise of council functions about management or organizational matters.

- Proposed section 265B permits the Minister to call for structural reform submissions for the purpose of assisting in the formulation of a structural reform proposal. Submissions will not be considered unless they are lodged within a 28-day period specified in the call for submissions.

- Proposed section 265C empowers the Director-General to appoint an independent facilitator to conduct a regional review for the purpose of making recommendations that may form the basis for the making of a structural reform proposal. The facilitator is required to have regard to the factors that the Boundaries Commission is required to take into account when it is considering an amalgamation proposal or boundaries proposal, and may consult widely with a view to ensuring that any recommended reforms will assist in providing adequate, equitable and appropriate services to residents, ratepayers and other persons.

- Proposed section 265D authorises the Director-General to present a structural reform proposal to the Minister. So far as the proposal includes an amalgamation proposal or boundaries proposal, the proposal is to be dealt with under the other provisions of Chapter 9 (that is, the Boundaries Commission becomes involved), unless the Director-General certifies that the structural reform proposal was formulated in that respect on the basis of recommendations made by a facilitator following a regional review.

- Proposed section 265E authorises the Minister to recommend the implementation of a structural reform proposal.

- Proposed section 265F states how implementation of a structural reform proposal may be effected.

- Proposed section 265G authorises inclusion of ancillary provisions in a proclamation implementing a structural reform proposal.

Schedule 1 [16] inserts sections 738A and 738B:

- Proposed section 738A provides that a proclamation constituting or dissolving an area or implementing an amalgamation proposal, boundaries proposal or structural reform proposal is not invalid because of any non-compliance with Chapter 9 or the rules of natural justice.

- Proposed section 738B provides protection from legal challenge for functions exercised in connection with those matters.

Schedule 2 Amendments relating to discipline

The Schedule makes the amendments to the *Local Government Act 1993* referred to in paragraph (c) of the Overview.

Schedule 2 [1] substitutes section 248A. The proposed section provides the express prohibition on payment of remuneration to a councillor who is suspended from civic office or whose right to receive remuneration is suspended.

Schedule 2 [2] amends section 435 to remove the requirement that the negligence for which a councillor

or a member of council staff can be surcharged has to be “culpable” negligence.

Schedule 2 [3] substitutes section 440. The proposed section empowers the regulations to prescribe a model code of conduct (which may be done by reference to a code identified in the regulations), and indicates what may be included in it. A council is required to adopt the model code, and the adopted code may include supplementary provisions. The adopted code has no effect to the extent that it is inconsistent with the model code as in force for the time being. Councillors, council staff and council delegates are bound by the council’s adopted code, and by the model code to the extent the adopted code is inconsistent with the model code or the model code contains provisions not included in the adopted code.

Schedule 2 [4] inserts a new Division 3 of Part 1 of Chapter 14 containing sections 440F–440Q, as follows:

- Proposed section 440F defines “misbehaviour” of a councillor as a contravention of the *Local Government Act 1993* or the regulations under that Act, a failure to comply with the council’s code of conduct, or an act of disorder at a council or committee meeting, but not including a contravention of disclosure requirements (which are dealt with differently under existing provisions).
- Proposed section 440G allows a council to pass a resolution formally censuring a councillor for misbehaviour.
- Proposed sections 440H–440Q provide a system for the suspension of a councillor from civic office for misbehaviour. Provision is made for suspension to be ordered by the Director-General for a period of up to one month or for the referral of a matter to the Pecuniary Interest and Disciplinary Tribunal for it to consider and impose suspension on a councillor for a period of up to 6 months.
- Proposed section 440H provides that the process of suspension can be initiated by the council concerned, by a request by the Director-General for a report or by a report of the Independent Commission Against Corruption or the Ombudsman.
- Proposed section 440I specifies the grounds on which a councillor can be suspended.
- Proposed section 440J provides for departmental investigations and reports when the process of suspension has been initiated.
- Proposed section 440K authorises the Director-General to suspend a councillor for a period of up to one month after consideration of a report of the Independent Commission Against Corruption or the Ombudsman.
- Proposed section 440L deals with the start of a period of suspension. • Proposed section 440M enables a councillor to appeal to the Pecuniary Interest and Disciplinary Tribunal against suspension ordered by the Director-General.
- Proposed section 440N enables the Director-General to refer matters to the Pecuniary Interest and Disciplinary Tribunal for possible imposition of suspension of a councillor.
- Proposed section 440O allows the Director-General in appropriate cases to take no action regarding suspension, or to refer a case back to the council concerned with appropriate recommendations.
- Proposed section 440P provides for the council concerned to bear the costs of the suspension process if initiated by the council.
- Proposed section 440Q requires the Director-General to give reasons for suspending a councillor or taking other action.

Schedule 2 [5] amends the heading to Division 2 of Part 3 of Chapter 14 in consequence of the amendment made by Schedule 2 [6].

Schedule 2 [6] inserts a new Division containing sections 470A and 470B, as follows:

- Proposed section 470A empowers the Pecuniary Interest and Disciplinary Tribunal to decide whether to conduct proceedings into a misbehaviour matter referred to it by the Director-General.
- Proposed section 470B provides that the Tribunal may determine any such proceedings without a

hearing in certain cases.

Schedule 2 [7]–[11] make consequential amendments.

Schedule 2 [12] amends section 482 to enable the Pecuniary Interest and Disciplinary Tribunal to impose suspension of a councillor's right to remuneration for up to 6 months for pecuniary interest matters, as an alternative to suspension from civic office.

Schedule 2 [13] inserts a new section 482A, which empowers the Pecuniary Interest and Disciplinary Tribunal, when dealing with a misbehaviour matter, to counsel or reprimand the councillor, or suspend the councillor from civic office for up to 6 months, or suspend the councillor's right to remuneration for up to 6 months.

Schedule 2 [14] makes a consequential amendment.

Schedule 2 [15] provides that an appeal does not lie to the Supreme Court from a decision of the Pecuniary Interest and Disciplinary Tribunal in an appeal to the Tribunal concerning a suspension imposed by the Director-General.

Schedule 2 [16] inserts a new section 485A, which requires the costs of the Pecuniary Interest and Disciplinary Tribunal and Department of Local Government to be reimbursed by the council concerned when a councillor is dealt with by the Tribunal and the process was initiated by the council.

Schedule 2 [17] inserts a new Part 5 of Chapter 14 containing sections 490A and 490B, as follows:

- Proposed section 490A defines “act of disorder” for the purposes of Chapter 14 and Schedule 6A as anything done by a councillor at a council or committee meeting that is prescribed as an act of disorder by the regulations.
- Proposed section 490B makes it clear that nothing in Chapter 14 affects any regulations made under other provisions regarding the keeping of order at council or committee meetings.

Schedule 2 [18] amends section 674 to provide that the power of the Land and Environment Court to make orders to remedy or restrain breaches of the *Local Government Act 1993* does not extend to matters relating to the formal censure or suspension of councillors.

Schedule 2 [19] inserts a new Schedule 6A, which lists matters that may be dealt with in a code of conduct.

Schedule 3 Other amendments

The Schedule makes the amendments to the *Local Government Act 1993* referred to in paragraph (d) of the Overview.

Schedule 3 [1] inserts a new section 262A, which allows the Director-General to provide people to assist the Boundaries Commission in the exercise of its functions.

Schedule 3 [2] inserts a new Part 5 of Chapter 9 containing sections 265H–265J: • Proposed section 265H enables 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 Minister concerning it by interested members of the public. • Proposed section 265I enables the Minister, on the recommendation of the Boundaries Commission, to change the number of councillors of a council or the number of wards in an area or both. • Proposed section 265J provides machinery provisions regarding determinations made under Parts 1 and 4 of Chapter 9 in connection with the constitution, amalgamation or boundary alterations of areas or structural reform or made under proposed section 265I in connection with ward boundaries or ward names. The section provides that certain determinations cannot be altered by councils within a period of 12 months, or a longer period specified in the relevant proclamation or order, except as provided in the

determination or with the concurrence of the Minister. **Schedule 3 [3]** inserts a new Part 6A of Chapter 10 containing sections 318A–318C, as follows:

- Proposed section 318A defines “election requirements of this Act” as the requirements of Parts 4 and 5 of Chapter 10 with respect to the holding of an ordinary election or a by-election. These are described in the explanatory note as “election requirements”.

- Proposed section 318B allows the Minister to order the postponement of election requirements in relation to a council in connection with:

- (a) an amalgamation proposal, boundaries proposal or structural reform proposal affecting the council, or
- (b) an investigation or public inquiry being held into the council, or
- (c) a matter affecting the boundaries of the council’s areas that is under consideration by the Boundaries Commission. • Proposed section 318C allows the Minister to revoke an order postponing election requirements.

Schedule 3 [4] substitutes section 352. The section provides that council staff are not subject to direction by a councillor (as well as a council) as to the content of any advice or recommendation, but this does not prevent the mayor (as well as the council) from directing staff to provide advice or a recommendation.

Schedule 3 [5] inserts a new section 734A, which enables the Director-General to make preliminary enquiries for the purpose of deciding whether to conduct or authorise an investigation under the *Local Government Act 1993*.

Schedule 3 [6] amends section 736 to make it clear that a power exercisable by proclamation may be exercised by one or more proclamations.

Schedule 3 [7]–[10] amend Schedule 2 in relation to the Boundaries Commission, and authorise the appointment of a temporary commissioner for the purposes of a particular examination or inquiry.

Schedule 3 [11] and [12] amend Schedule 4 in relation to the Pecuniary Interest and Disciplinary Tribunal, and authorise the member’s deputy to act as the member so that the Tribunal proceedings can be conducted concurrently.

Schedule 3 [13] and [14] amend Schedule 8 in relation to savings and transitional provisions consequent on the enactment of the proposed Act, including the following:

- A provision enables the new arrangements for amalgamation proposals and boundaries proposals to be applied to pending proposals in respect of which no public steps had been taken under the old arrangements.
- A provision empowers the postponement of election requirements for a council that has been the subject of an inquiry or Boundaries Commission consideration at any time since 1 August 2003.
- A provision states that Local Government Pecuniary Interest Tribunal is to be known as the Local Government Pecuniary Interest and Disciplinary Tribunal.

Schedule 4 Consequential amendments

The Schedule makes the amendments to the *Local Government Act 1993* referred to in paragraph (e) of the Overview.

The amendments are mainly consequential on:

- (a) amendments made by Schedule 1 in connection with determinations made in proclamations implementing amalgamation proposals, boundaries proposals and structural reform proposals, and
- (b) amendments made by Schedule 3 in connection with codes of conduct applying to councils, and (c) amendments made by Schedule 3 that change the name of the Pecuniary Interest Tribunal.

Schedule 5 Consequential amendment of Independent Commission Against Corruption Act 1988

The Schedule makes the amendment to the *Independent Commission Against Corruption Act 1988* referred to in the Overview. The amendment is made to section 9 of that Act and provides that a

reference to a disciplinary offence in that Act extends to a substantial breach of an applicable requirement of a code of conduct applying to a council. The result is that the Independent Commission Against Corruption will be able to deal with conduct that is corrupt conduct (as defined in section 8 of that Act) and that could constitute or involve a substantial breach of a code of conduct.