

First print



New South Wales

Local Government Amendment Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Local Government Act 1993* and, in particular, to amend that Act in relation to a council's exercise of its functions, its financial and annual reports, the Local Government Pecuniary Interest Tribunal and the sale of land for unpaid rates and charges.

Outline of provisions

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

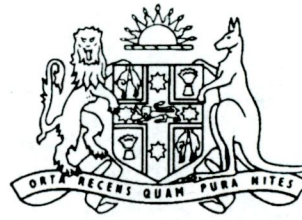
Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Clause 4 makes it clear that the explanatory notes in Schedule 1 to the proposed Act do not form part of the Act.

Schedule 1 sets out the amendments to the *Local Government Act 1993* together with explanations of those amendments.

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New South Wales

Local Government Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Local Government Act 1993* in relation to a council's exercise of its functions and its financial and annual reports, the Local Government Pecuniary Interest Tribunal, the sale of land for unpaid rates and charges, and other matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

4 Explanatory notes 10

The matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 8 The council's charter

Omit from section 8 (1):

- to exercise its functions with due regard for the cultural and linguistic diversity of its community 5

Insert instead:

- to exercise its functions in a manner that is consistent with and actively promotes the principles of cultural diversity 10

Explanatory note

The proposed amendment alters the present requirement that a council exercise its functions "with due regard for the cultural and linguistic diversity of its community" so as to require, instead, that a council exercise its functions in a way that actively promotes the principles of cultural diversity. Item [25] of the proposed amendments inserts a definition of *principles of cultural diversity* in the Dictionary to the *Local Government Act 1993* by way of reference to the *Ethnic Affairs Commission Act 1979*. 15

[2] Section 234 When does a vacancy occur in a civic office?

Insert "(unless the holder is absent because he or she has been suspended from office under section 482)" after "the council" where lastly occurring in section 234 (d). 20

Explanatory note

The proposed amendment makes it clear that, if the Local Government Pecuniary Interest Tribunal established by section 487 of the *Local Government Act 1993* suspends a councillor from office under section 482 of that Act, the suspension does not operate to create a vacancy in the civic office of the suspended councillor. (By amendments proposed to be made by item [17], the maximum period of suspension is increased from 2 months to 6 months.) 25

[3] Section 355 How does a council exercise its functions?

Omit section 355 (d) and (e). Insert instead:

- (d) jointly by the council and another council or councils (including by means of a Voluntary Regional Organisation of Councils of which the councils concerned are members), or 5
- (e) by a delegate of the council (which may, for example, be a Voluntary Regional Organisation of Councils of which the council is a member).

Explanatory note 10

The proposed amendment makes it clear that a council may exercise its functions through a Voluntary Regional Organisation of Councils of which it is a member.

[4] Section 413 Preparation of financial reports

Omit "within 2 months" from section 413 (1).
Insert instead "as soon as practicable (having regard to the requirements of section 416 (1))". 15

[5] Note to section 413 (1)

Insert after section 413 (1):

Note. Under section 416 (1), a council's financial reports for a year must be prepared and audited within 4 months after the end of the year concerned, and under section 428 (2) (a) the audited financial reports must be included in the council's annual report. 20

[6] Section 414 Extension of time for preparation of financial reports

Omit the section. 25

[7] Section 415 Auditing of financial reports

Omit section 415 (1) and the note following that subsection.

Insert instead:

- (1) A council's auditor must audit the council's financial reports as soon as practicable (having regard to the requirements of section 416 (1)) after they are referred for audit. 5

[8] Section 415 (3)

Insert after section 415 (2):

- (3) The regulations may prescribe matters that an auditor must consider and provide comment on in auditing a council's financial reports. 10

[9] Section 416 Extension of time for auditing of financial reports

Omit the section. Insert instead:

416 Time for preparation and auditing of financial reports 15

- (1) A council's financial reports for a year must be prepared and audited within the period of 4 months after the end of that year.
- (2) A council may from time to time apply to the Director-General for an extension of that period. 20
- (3) A council must make such an application if requested to do so by its auditor.
- (4) Before deciding whether or not to grant an extension, the Director-General may require the council to give reasons, additional to those set out in the application, as to why the extension should be granted. 25
- (5) The Director-General may grant an extension of such period as, in the opinion of the Director-General, is necessary in the particular circumstances of the case.
- (6) A council must notify its auditor of any application for an extension made under this section and of the outcome of the application. 30

[10] Section 418 Public notice to be given of presentation of financial reports

Omit section 418 (2) and the note following that subsection.
Insert instead:

- (2) The date fixed for the meeting must be at least 7 days 5
after the date on which the notice is given, but not more
than 6 weeks after the auditor's reports are given to the
council.

Note. Unless an extension is granted under section 416, the 10
meeting must be held on or before 12 December after the end of
the year to which the reports relate.

[11] Section 420 Submissions on financial reports and auditor's reports

Omit "14 days" from section 420 (2). Insert instead "7 days".

Explanatory note (items [4]–[11]) 15

At present:

- (a) section 413 (1) requires a council to prepare financial reports for each 20
year, and to refer them for audit within 2 months after the end of the year
to which they relate, and
- (b) section 414 permits the council to request an extension of the period 20
within which the reports must be referred for audit, and
- (c) section 415 (1) requires the council's auditor to audit the reports as soon
as practicable (and, in any case, within 2 months) after they are so
referred, and
- (d) section 416 permits the council's auditor to request an extension of the 25
period within which the reports must be audited.

Item [4] of the proposed amendments amends section 413 (1) so as to remove
the requirement that the reports be referred for audit within 2 months after the end
of the year to which they relate, and item [7] amends section 415 (1) so as to
remove the requirement that they be audited no later than 2 months after they are 30
referred for audit.

The new requirements are that the reports be referred for audit "as soon as
practicable" after the end of the relevant year, and that they be audited "as soon
as practicable" after they are so referred. Item [9] repeals and replaces section 35
416 so as to specify that the reports must be prepared and audited within 4
months after the end of the relevant year and to permit the granting of extensions
of that period. Item [6] is a consequential amendment, repealing section 414.

Item [10] reduces (from 2 weeks to 7 days) the period that must elapse between (on the one hand) the giving of notice of the meeting at which the council's audited financial reports (together with the auditor's reports) are to be presented to the public and (on the other hand) the holding of that meeting.

Item [11] reduces (from 14 days to 7 days) the period during which a person may make submissions to the council with respect to the council's audited financial reports or with respect to the auditor's reports. 5

Items [5] and [8] insert new matter. Item [5] provides a note to section 413 (1) in consequence of proposed item [13], and item [8] inserts a regulation-making power to enable the making of regulations prescribing matters that a council's auditor must consider and provide comment on in auditing a council's financial reports. 10

[12] Section 428 Annual reports

Omit "particulars" from section 428 (2).

[13] Section 428 (2) (a)

Omit the paragraph. Insert instead:

- (a) a copy of the council's audited financial reports,

Explanatory note (items [12] and [13])

At present, section 428 requires a council's annual report to contain, among other things, a statement (in respect of each of the council's principal activities) of the expenses incurred, revenue raised and assets acquired during the year to which the report relates and the assets held by the council at the end of that year. Item [13] of the proposed amendments replaces that requirement with a requirement that the annual report contain a copy of the council's audited financial reports. 20

Item [12] effects a minor amendment that is consequential on the change to section 428 (2) (a) proposed to be made by item [13]. 25

[14] Section 428 (2) (j)

Omit the paragraph. Insert instead:

- (j) details of programs undertaken by the council during that year to promote services and access to services for people with diverse cultural and linguistic backgrounds in a manner that is consistent with the principles of cultural diversity, 30

Explanatory note

The proposed amendment is consequential on the change to section 8 proposed to be made by item [1]. 35

[15] Section 443 Who has a pecuniary interest?

Insert “, partner, employer” after “relative” in section 443 (3) (a).

Explanatory note

Section 443 (2) (a) provides that a person is taken to have a pecuniary interest in a matter if any of the persons (being persons associated with the person, such as relatives) who are specified in that subsection has such an interest. Section 443 (3) (a) provides that the person is *not* taken to have such an interest if he or she is unaware of the relevant pecuniary interest of the relevant person specified in that subsection. However, the persons specified in section 443 (3) (a) do not include all those specified in section 443 (2) (a). 5
10

The proposed amendment removes this anomaly.

[16] Section 459 Disclosure of pecuniary interests when dealing with council matters

Insert after section 459 (1):

(1A) However, subsection (1) does not require a designated person who is a member of staff of the council to disclose such a pecuniary interest if the interest relates only to the person’s salary as such a member of staff or to his or her other conditions of employment or the like. 15

Explanatory note

At present, section 459 requires council employees who are *designated persons* (within the meaning of section 441) to disclose in writing to the general manager of the council (or to the council, if the designated person is the general manager) any pecuniary interest the person has in any council matter with which the person is dealing. The proposed amendment removes this requirement in cases in which the pecuniary interest relates only to the person’s salary or other conditions of employment or the like as an employee of the council. 20
25

[17] Section 482 Decision of Pecuniary Interest Tribunal

Omit “2 months” from section 482 (1) (c), (3) (c) and (4) (c) wherever occurring. 30

Insert instead “6 months”.

Explanatory note

The proposed amendments increase (from 2 months to 6 months) the maximum period for which the Local Government Pecuniary Interest Tribunal may suspend from civic office a councillor (section 482 (1) (c)), a member of a council committee (section 482 (3) (c)) or an adviser to a council (section 482 (4) (c)) against whom it finds a complaint proved. 35

[18] Section 486 Referral of matters by Pecuniary Interest Tribunal

Omit "The" from section 486.

Insert instead "Despite section 489 (1) and (1A), the".

[19] Section 489 Functions of Pecuniary Interest Tribunal

Omit section 489 (1). Insert instead:

5

(1) The Pecuniary Interest Tribunal has exclusive jurisdiction at first instance to decide allegations of contraventions of Part 2 of this Chapter.

(1A) Accordingly, proceedings at first instance to decide allegations of contraventions of Part 2 of this Chapter may not be brought before, or entertained by, any other tribunal or any court.

10

Explanatory note (items [18] and [19])

Item [19] of the proposed amendments makes it clear that the Local Government Pecuniary Interest Tribunal has the exclusive jurisdiction at first instance to decide alleged contraventions of the duties of disclosure provisions concerning councillors, council delegates and staff of councils. However, item [18] ensures that the Tribunal retains its right to refer a matter before it to another authority if the Tribunal considers that it is more appropriate that the authority deal with the matter (and if the authority agrees to the referral).

15

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[20] Section 615 What are the functions of the Grants Commission and the Minister under this Part?

Omit "*Local Government (Financial Assistance) Act 1986*" from section 615 (1).

Insert instead "*Local Government (Financial Assistance) Act 1995*".

25

Explanatory note

The proposed amendment updates a reference to a Commonwealth statute.

[21] Section 673 Remedy or restraint of breaches of this Act—the Minister, the Director-General and councils

Insert at the end of section 673:

- (2) Subsection (1) does not apply in relation to an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests). 5

Note. Section 489 (1) confers exclusive jurisdiction on the Pecuniary Interest Tribunal to deal with such a matter at first instance. Section 485 provides for appeals to the Supreme Court against any decision of the Tribunal. 10

[22] Section 674 Remedy or restraint of breaches of this Act—other persons

Insert after section 674 (3):

- (4) Subsection (1) does not apply in relation to an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests). 15

Note. Section 489 (1) confers exclusive jurisdiction on the Pecuniary Interest Tribunal to deal with such a matter at first instance. Section 485 provides for appeals to the Supreme Court against any decision of the Tribunal. 20

Explanatory note (items [21] and [22])

The proposed amendments are consequential on the amendment proposed to be made by item [19].

[23] Section 713 Sale of land for unpaid rates and charges

Omit section 713 (2). Insert instead: 25

- (2) A council may, in accordance with this Division:
- (a) sell any land (including vacant land) on which any rate or charge has remained unpaid for more than 5 years from the date on which it became payable, and 30

- (b) sell any vacant land on which any rate or charge has remained unpaid for more than one year but not more than 5 years from the date on which it became payable, but only if:
 - (i) the council obtains a valuation of the land from the Valuer-General, and 5
 - (ii) the total amount of unpaid rates or charges on the land exceeds the valuation, and
 - (iii) the council sells the land within 6 months after the date when the council received the valuation. 10

[24] Sections 717 and 718

Omit “overdue” wherever occurring in sections 717 (3) (b) and 718. Insert instead “unpaid”.

Explanatory note (items [23] and [24]) 15

At present, the effect of section 713 is that a council may, in accordance with Division 5 of Chapter 17:

- sell any land (other than vacant land) on which any rate or charge has remained unpaid for more than 5 years from the date on which it became payable, and 20
- sell any vacant land on which any rate or charge has remained unpaid for more than 1 year from the date on which it became payable, but only if the council obtains a valuation of the land from the Valuer-General, the amount of unpaid rates or charges on the land exceeds the valuation, and the council sells the land within 6 months after the date when the council received the valuation. 25

The effect of proposed item [23] is that the limitation on the power to sell vacant land on which there is any unpaid rate or charge does not apply if the rate or charge concerned has remained unpaid for more than 5 years from the date on which it became payable. 30

Section 713 (2) currently refers to selling land in respect of which rates or charges are *overdue*. The new subsection uses the term *unpaid*. Proposed item [24] is consequential on that change.

[25] Dictionary

Insert in alphabetical order:

principles of cultural diversity means the principles set out in section 3 (1) of the *Ethnic Affairs Commission Act 1979*. 5

Note. Section 3 (1) of the *Ethnic Affairs Commission Act 1979* sets out the following principles of cultural diversity:

- (a) **Principle 1**
All individuals in New South Wales should have the greatest possible opportunity to contribute to, and participate in, all aspects of public life. 10
- (b) **Principle 2**
All individuals and public institutions should respect and accommodate the culture, language and religion of others within an Australian legal and institutional framework where English is the primary language. 15
- (c) **Principle 3**
All individuals should have the greatest possible opportunity to make use of and participate in relevant activities and programs provided or administered by the Government of New South Wales. 20
- (d) **Principle 4**
All public institutions of New South Wales should recognise the linguistic and cultural assets in the population of New South Wales as a valuable resource and promote this resource to maximise the development of the State. 25

Explanatory note

The proposed amendment inserts a definition (by way of reference to the *Ethnic Affairs Commission Act 1979*) of *principles of cultural diversity* in the Dictionary of the *Local Government Act 1993*. By amendments proposed to be made by items [1] and [14], respectively, the defined term is proposed to be used in sections 8 (1) and 428 (2) (j) of that Act. Section 8 sets out a council's charter and section 428 specifies the matters that must be included in a council's annual report. 30

[26] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts 35

Insert at the end of clause 1 (1) of Schedule 8:

Local Government Amendment Act 1998

[27] Schedule 8, Part 7

Insert after clause 26:

**Part 7 Provisions consequent on enactment of
Local Government Amendment Act 1998**

27 Meaning of “amending Act” 5

In this Part, *amending Act* means the *Local Government Amendment Act 1998*.

28 Preparation and auditing of financial reports

Sections 413–416, as in force immediately before the amendments made to those sections by Schedule 1 [4]–[9] to the amending Act, apply in respect of a financial year that ended before the commencement of those amendments (or, if those amendments are commenced on different days, before the commencement of the last of those amendments to be commenced). 10
15

29 Persons having pecuniary interests

Section 443 (3), as amended by the amending Act, is taken to have commenced on 1 July 1993.

30 Disclosure of pecuniary interests when dealing with council matters 20

Section 459 (1A), as inserted by the amending Act, is taken to have commenced on 1 July 1993.

31 Decision of Pecuniary Interest Tribunal

The provisions of section 482 (1), (3) and (4), as in force immediately before the commencement of Schedule 1 [17] to the amending Act, apply in relation to a contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that occurred before the commencement of the amendments made by Schedule 1 [17]. 25
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32 Remedy or restraint of breaches of this Act—the Minister, the Director-General and councils

Section 673 (2), as inserted by the amending Act, does not apply in relation to any proceedings concerning an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that were commenced before the commencement of Schedule 1 [21] to the amending Act. 5

33 Remedy or restraint of breaches of this Act—other persons 10

Section 674 (4), as inserted by the amending Act, does not apply in relation to any proceedings concerning an alleged contravention of Part 2 (Duties of disclosure) of Chapter 14 (Honesty and disclosure of interests) that were commenced before the commencement of Schedule 1 [22] to the amending Act. 15

34 Sale of land for unpaid rates and charges

Section 713, as amended by the amending Act, is taken to have commenced on 18 July 1997.

Explanatory note (items [26] and [27]) 20

Item [26] of the proposed amendments amends the Schedule of savings and transitional provisions so as to enable regulations of a savings and transitional nature to be made in consequence of the enactment of the proposed Act.

Item [27] inserts in that Schedule specific savings and transitional provisions relating to certain amendments made by the proposed Act. 25