

First print



New South Wales

Local Government Amendment (Amalgamations and Boundary Changes) Bill 1999

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 facilitate the amalgamation of local government areas and the alteration of local government area boundaries, and
- (b) to make provision with respect to minor, consequential and ancillary matters, and
- (c) to enact provisions of a savings or transitional nature.

The Bill also makes minor amendments to the *Environmental Planning and Assessment Act 1979* as a consequence of the re-allocation to the Minister administering that Act of responsibility for the supervision of the work and activities of accredited certifiers under that Act.

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 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.

Amalgamation of local government areas and alteration of local government boundaries

The amalgamation of local government areas and the alteration of local government boundaries are currently dealt with in Divisions 1 and 2 of Part 1 of Chapter 9 of the principal Act. Amalgamations are not dealt with expressly, but are achievable by a two-step process of dissolving existing areas (under section 212) and constituting new areas (under section 204). The first step of the process involves a public inquiry (section 212 (2)). The second step of the process involves the making of a proposal (section 215), public consultation (sections 216 and 217) and examination and report by the Boundaries Commission or the Director-General of the Department of Local Government (section 218). The amendments made by the proposed Act aim to simplify these procedures.

The proposed Act inserts Divisions 2A, 2B and 2C into Part 1 of Chapter 9 of the principal Act (**Schedule 1 [8]**) and makes consequential amendments to Divisions 1 and 2 of that Part (**Schedule 1 [1], [2], [5] and [6]**).

Proposed Division 2A enables the Governor to make a proclamation that amalgamates two or more local government areas (**proposed section 218A**) or that alters the boundaries of one or more local government areas (**proposed section 218B**). Such a proclamation may contain such provisions as are necessary or convenient to give effect to the proclamation (**proposed section 218C**). The effect of an amalgamation proclamation will be to dissolve two or more former areas and to constitute one or more new areas. Unless the proclamation provides otherwise, the councillors of the former areas will cease to hold office and not become councillors of the new area or areas.

Proposed Division 2B sets out the procedures to be followed in relation to the amalgamation of local government areas or the alteration of local government area boundaries. These provisions are mandatory (**proposed section 218D**). A proposal for amalgamation or boundary alteration may be made by the Minister, by one or more councils or by an appropriate minimum number of electors (**proposed section 218E**). The proposal must then be referred to the Boundaries Commission or the Director-General of the Department of Local Government for examination and report before a decision is made as to whether the proposal should be implemented (**proposed section 218F**), a reference to the Boundaries Commission being mandatory (either for initial examination and report or for review and comment of a Director-General's report) in the case of a proposal that is not supported by one or more of the councils affected by it.

Proposed Division 2C permits the Minister to postpone ordinary council elections and by-elections while an amalgamation proposal is being formulated prior to submission to the Minister or while it is being examined after having been submitted. Certain expressions are defined for the purposes of the proposed Division (**proposed section 218G**). Postponement of elections is provided for in relation to councils affected by proposals that they have resolved to formulate (**proposed section 218H**), the latest date to which elections are to be capable of being postponed being the end of the calendar year following that in which the postponement is Gazetted. An order of postponement under proposed section 218H can be revoked, and an election day appointed, in circumstances in which work in connection with the proposal is no longer being carried out or where the proposal is abandoned (**proposed section 218I**). Postponement of elections is provided for in relation to councils affected by proposals that they have submitted to the Minister (**proposed section 218J**), the latest date to which elections are to be capable of being postponed being the end of the calendar year following that in which the postponement (or any prior postponement under proposed section 218H) is Gazetted. An order of postponement under proposed section 218J can be revoked, and an election day appointed, where it is decided that the proposal not be implemented (**proposed section 218K**).

Minor, consequential and ancillary amendments

Schedule 1 [3] and [4] amend section 213 of the principal Act so as to allow a proclamation that constitutes or dissolves a local government area to make provision with respect to any county council whose area of operations coincides with the area being constituted or dissolved.

Schedule 1 [7] amends section 218 of the principal Act so as to clarify the meaning of subsection (2).

Schedule 1 [9] amends section 263 of the principal Act so as to allow the Minister administering that Act to direct the holding of an inquiry under that section and, where the inquiry relates to an amalgamation proposal that is not supported by one or more of the councils affected by it, to require such a direction to be given.

Schedule 1 [10] amends section 387 of the principal Act so as to require the name of each council whose area lies within a proposed county council's area of operations to be specified in the proclamation by which the county council is constituted.

Schedule 1 [11] amends section 397 of the principal Act so as to allow a proclamation under section 387 of the principal Act to be amended to vary the number of persons to be elected to a county council's governing body.

Schedule 1 [12] amends section 400 of the principal Act as a consequence of the amendments proposed by Schedule 1 [8].

Schedule 1 [13] and [14] amend section 429 of the principal Act so as to enable councils to be required to furnish information relevant to any inquiry being held into a proposed amalgamation of local government areas or alteration in local government boundaries.

Schedule 1 [15] and [16] amend sections 498 and 499 of the principal Act so as to allow the Minister to approve differential ad valorem amounts and base amounts (the components of an ordinary rate) where different parcels of land have land values determined by reference to different base dates. The desirability of differential amounts can arise as a result of an amalgamation of local government areas or alteration in local government boundaries.

Savings and transitional provisions

Schedule 1 [17] amends clause 1 of Schedule 8 to the principal Act so as to allow savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [18] inserts proposed Part 14 into Schedule 8 to the principal Act. The new Part (which comprises proposed clause 49) allows action that has been commenced under Division 2 of Part 1 of Chapter 9 of the principal Act to be continued and completed as if the proposed Act had not been enacted, and allows a proclamation to be made under proposed section 218B as a consequence of any such action as if it had been taken under proposed Division 2B of that Part.

Amendment of Environmental Planning and Assessment Act 1979

Schedule 2 [1] amends section 109T of the principal Act by way of statute law revision.

Schedule 2 [2] and [3] amend section 109U of the principal Act as a consequence of the reallocation to the Minister administering that Act of responsibility for the supervision of the work and activities of accredited certifiers under that Act.

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New South Wales

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New South Wales

Local Government Amendment (Amalgamations and Boundary Changes) Bill 1999

No , 1999

A Bill for

An Act to amend the *Local Government Act 1993* with respect to the amalgamation of local government areas and the variation of boundaries between local government areas; to amend the *Environmental Planning and Assessment Act 1979* as a consequence of certain administrative changes; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Amalgamations and Boundary Changes) Act 1999*.

2 Commencement

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

3 Amendment of Local Government Act 1993 No 30

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

4 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Local Government Act 1993

(Section 3)

[1] Chapter 9, Part 1, Division 1, heading

Omit “, altered”.

[2] Section 209 Alteration of boundaries of areas

Omit the section.

[3] Section 213 Facilitating provisions of proclamations

Insert at the end of section 213 (1):

- the inclusion or exclusion, as a constituent council of any related county council, of the council of any area constituted or dissolved by the proclamation.

[4] Section 213 (3)

Insert after section 213 (2):

- (3) In this section, *related county council*, in relation to an area constituted or dissolved by a proclamation of the Governor for the purposes of this Division, means a county council that has an area of operations that includes the whole or any part of the area so constituted or dissolved.

[5] Chapter 9, Part 1, Division 2, heading

Omit “or altered”.

[6] Section 214 Exercise of functions under sec 204

Omit “or 209”.

[7] Section 218 Referral of proposal for examination and report

Omit section 218 (2). Insert instead:

(2) The Minister may recommend to the Governor that the proposal be implemented:

(a) with such modifications as arise out of the Boundary Commission's or Director-General's report, and

(b) with such other modifications as the Minister determines,

but may not do so if of the opinion that the modifications constitute a new proposal.

[8] Chapter 9, Part 1, Divisions 2A, 2B and 2C

Insert after section 218:

Division 2A How are areas amalgamated or their boundaries altered?

218A Amalgamation of areas

(1) The Governor may, by proclamation, amalgamate two or more areas into one or more new areas.

(2) On the date specified in the proclamation as the date on which the areas are to be amalgamated:

(a) the areas are dissolved, and

(b) the new area or new areas are constituted, and

(c) subject to section 218C, the councillors of the former areas cease to hold office.

(3) Divisions 1 and 2 apply to a new area constituted by a proclamation under this section in the same way as they apply to an area constituted by a proclamation under section 204.

(4) Section 212 (2) does not apply to the dissolution of a former area by a proclamation under this section.

218B Alteration of boundaries of areas

The Governor may, by proclamation, alter the boundaries of one or more areas.

218C	Facilitating provisions of proclamations	1
(1)	A proclamation of the Governor for the purposes of this Division may include provisions of the same kind as are referred to in section 213.	2
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(2)	Such a proclamation may also include provisions for or with respect to:	5
		6
(a)	the appointment of administrators for any area constituted by the proclamation, and	7
		8
(b)	the continuation in office, as councillors of any area constituted by the proclamation, of any or all of the councillors of any area dissolved by the proclamation.	9
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(3)	Section 224 (1) does not apply to any councillors who continue in office by virtue of such a proclamation.	12
		13
Division 2B	What must be done before areas can be amalgamated or their boundaries altered?	14
		15
218D	Exercise of functions under secs 218A and 218B	16
	A function under section 218A or 218B may be exercised only after a proposal for the exercise of the function is dealt with under this Division.	17
		18
		19
218E	Who may initiate a proposal?	20
(1)	A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.	21
		22
		23
(2)	An appropriate minimum number of electors is:	24
(a)	if a proposal applies to the whole of one or more areas, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or	25
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		27
(b)	if a proposal applies to part only of an area, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.	28
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		30

218F Referral of proposal for examination and report	1
(1) On making or receiving a proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Director-General.	2 3 4
(2) Sections 263, 264 and 265 apply to the examination of a proposal by the Director-General in the same way as they apply to the examination of a proposal by the Boundaries Commission.	5 6 7 8
(3) If a proposal that is not supported by one or more of the councils affected by it has been referred to the Director-General under subsection (1):	9 10 11
(a) the Director-General must furnish the Director-General's report to the Boundaries Commission for review and comment, and	12 13 14
(b) the Boundaries Commission must review the report and send its comments to the Minister.	15 16
(4) The Minister may recommend to the Governor that the proposal be implemented:	17 18
(a) with such modifications as arise out of:	19
(i) the Boundary Commission's report, or	20
(ii) the Director-General's report (and, if applicable, the Boundary Commission's comments on that report), and	21 22 23
(b) with such other modifications as the Minister determines,	24 25
and may do so even if of the opinion that the modifications constitute a new proposal.	26 27
(5) The Minister may decline to recommend to the Governor that the proposal be implemented.	28 29

**Division 2C How do proposals for the amalgamation of
 areas affect elections?**

218G Definitions

In this Division:

amalgamation proposal means a proposal referred to in
section 218E for the amalgamation of two or more areas under
section 218A.

election requirements of this Act means the requirements of
Parts 4 and 5 of Chapter 10 with respect to the holding of an
ordinary election referred to in section 287 or a by-election
referred to in section 292.

218H Postponement of elections while proposals being formulated

- (1) The Minister may, by order published in the Gazette, postpone
the election requirements of this Act in relation to two or more
councils affected by an amalgamation proposal that two or
more councils have resolved to formulate for the purposes of
Division 2B.
- (2) The latest date to which the election requirements of this Act
may be postponed by an order under this section is:
 - (a) the date occurring 12 months after the order is made, or
 - (b) if the postponement is extended by a further order under
this section, 31 December in the calendar year
following that in which the first such order was made.
- (3) A further order referred to in subsection (2) (b) may be made
only if the Minister is satisfied that substantial progress has
been made in the formulation of the proposal to which the
earlier order relates.
- (4) On the making of an order under this section:
 - (a) the election requirements of this Act are suspended for
the period specified in the order, and
 - (b) the retiring councillors continue in office (subject to this
Act) until an election is held.
- (5) The suspension ceases to have effect if the order is revoked
under section 218I.

- (6) If while an order under this section is in force a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of a mayor elected by the councillors. 1
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218I Revocation of postponement granted under sec 218H 6

- (1) The Minister may, by order published in the Gazette: 7
- (a) revoke a former order that has been made in connection with an amalgamation proposal, and 8
9
- (b) if: 10
- (i) the day on which an election would (but for the former order) have been required to be held has passed, or 11
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- (ii) the day on which an election is required to be held will occur within 3 months after the day on which the order is made, 14
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- appoint a day as the day on which the election is to be held. 17
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- (2) Such an order may be made if the Minister is satisfied: 19
- (a) that work in connection with the formulation of the proposal is no longer being carried out, or 20
21
- (b) that the proposal has been abandoned. 22
- (3) The day appointed by the order as the day on which an election is to be held is to be a Saturday occurring not less than 3 months, and not more than 4 months, after the day on which the order is made. 23
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- (4) On the making of an order under this section: 27
- (a) the suspension by the former order of the election requirements of this Act is terminated, and 28
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- (b) an election is to be held in accordance with those requirements: 30
31
- (i) on the day ascertained in accordance with those requirements, or 32
33
- (ii) if the order appoints a different day, on the day so appointed. 34
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(5) In this section, <i>former order</i> means an order under section 218H.	1 2
218J Postponement of elections after proposals made	3
(1) The Minister may, by order published in the Gazette, postpone the election requirements of this Act in relation to two or more councils affected by an amalgamation proposal that two or more councils have made to the Minister for the purposes of Division 2B.	4 5 6 7 8
(2) The latest date to which the election requirements of this Act may be postponed by an order under this section is:	9 10
(a) 31 December in the calendar year following that in which the order is made, or	11 12
(b) if the proposal has been the subject of an order under section 218H, 31 December in the calendar year following that in which the first such order was made.	13 14 15
(3) On the making of an order under this section:	16
(a) the election requirements of this Act are suspended, and	17
(b) the retiring councillors continue in office (subject to this Act) until an election is held.	18 19
(4) The suspension ceases to have effect if the order is revoked under section 218K.	20 21
(5) If while an order under this section is in force a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of a mayor elected by the councillors.	22 23 24 25 26
218K Revocation of postponement granted under sec 218J	27
(1) The Minister may, by order published in the Gazette:	28
(a) revoke a former order that has been made in connection with an amalgamation proposal, and	29 30
(b) if:	31
(i) the day on which an election would (but for the former order) have been required to be held has passed, or	32 33 34

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Schedule 1 Amendment of Local Government Act 1993

- (ii) the day on which an election is required to be held will occur within 3 months after the day on which the order is made,
appoint a day as the day on which the election is to be held.
 - (2) Such an order may be made if the Minister has declined to recommend to the Governor that the proposal be implemented.
 - (3) The day appointed by the order as the day on which an election is to be held is to be a Saturday occurring not less than 3 months, and not more than 4 months, after the day on which the order is made.
 - (4) On the making of an order under this section:
 - (a) the suspension by the former order of the election requirements of this Act is terminated, and
 - (b) an election is to be held in accordance with those requirements:
 - (i) on the day ascertained in accordance with those requirements, or
 - (ii) if the order appoints a different day, on the day so appointed.
 - (5) In this section, *former order* means an order under section 218J.
- [9] Section 263 Functions of the Boundaries Commission**
- Omit section 263 (2). Insert instead:
- (2) For the purpose of exercising its functions, the Boundaries Commission:
 - (a) may hold an inquiry if the Minister so approves, and
 - (b) must hold an inquiry if the Minister so directs,but may not hold an inquiry otherwise than as referred to in paragraph (a) or (b).

(2A) A direction referred to in subsection (2) (b) must be given if a proposal for the amalgamation of two or more areas has been referred to the Boundaries Commission in accordance with section 218F and the proposal is one that is not supported by one or more of the councils affected by it.	1 2 3 4 5
[10] Section 387 Formation of county councils	6
Insert after section 387 (2) (b):	7 8
(b1) the name of each council (referred to in this Part as a <i>constituent council</i>) whose area lies wholly or partly within the county council's area of operations,	9 10 11
[11] Section 397 Amendment and dissolution of county councils	12
Insert after section 397 (2) (c):	13 14
(c1) may vary the number of persons to be elected by each constituent council to the county council's governing body, or	15 16 17
[12] Section 400 Application of Act to county councils	18
Omit "Divisions 1 and 2" from section 400 (1).	19 20
Insert instead "Divisions 1-2C".	21
[13] Section 429 Minister or Director-General may require councils to provide information	22 23
Omit "(including information concerning any auditor's report or any report provided to the council with respect to the council or its work and activities)" from section 429 (1).	24 25 26 27

[14] Section 429 (3)

Insert after section 429 (2):

- (3) The information that a council may be required to provide under this section includes:
 - (a) information concerning any auditor's report, and
 - (b) information concerning any other report provided to the council with respect to the council or its work and activities, and
 - (c) information as to any factors (of the kind referred to in section 263 (3)) that are relevant to a proposal referred to in Division 2 or 2B of Part 1 of Chapter 9.

[15] Section 498 The ad valorem amount

Insert after section 498 (2):

- (3) An ad valorem amount specified for a parcel of land may not differ from an ad valorem amount specified for any other parcel of land within the same category or subcategory unless:
 - (a) the land values of the parcels were last determined by reference to different base dates, and
 - (b) the Minister approves the different ad valorem amounts.

[16] Section 499 The base amount

Insert after section 499 (3):

- (4) A base amount specified for a parcel of land may not differ from a base amount specified for any other parcel of land within the same category or subcategory unless:
 - (a) the land values of the parcels were last determined by reference to different base dates, and
 - (b) the Minister approves the different base amounts.

[17] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	1
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Insert at the end of clause 1 (1):	4
<i>Local Government Amendment (Amalgamations and Boundary Changes) Act 1999</i>	5
	6
[18] Schedule 8, Part 14	7
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Insert after Part 13:	9
Part 14 Provisions consequent on enactment of Local Government Amendment (Amalgamations and Boundary Changes) Act 1999	10
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49 Proposals for boundary changes	13
(1) Any action that has been commenced before the commencement of this clause under Division 2 of Part 1 of Chapter 9, being action in relation to the alteration of the boundaries of one or more areas, may be continued and completed under that Division as if the amending Act had not been enacted.	14
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(2) A proclamation may be made under section 218B as a consequence of action referred to in subclause (1), whether taken before or after the commencement of this clause, as if that action had been taken under Division 2B of Part 1 of Chapter 9.	20
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(3) In this clause, <i>amending Act</i> means the <i>Local Government Amendment (Amalgamations and Boundary Changes) Act 1999</i> .	25
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**Schedule 2 Amendment of Environmental Planning
and Assessment Act 1979**

(Section 4)

[1] Section 109T Accreditation of accredited certifiers

Omit "Director-General" wherever occurring in section 109T (5).
Insert instead "Director".

[2] Section 109U Auditing of accredited certifiers

Omit "The Director-General of the Department of Local Government
(referred to in this section as the *Director-General*)" from section 109U (1).
Insert instead "The Director".

[3] Section 109U (3) and (4)

Omit "Director-General" wherever occurring.
Insert instead "Director".