



New South Wales

Local Government Amendment Bill 2011

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:

- (a) to extend the maximum term for which a lease or licence may be granted over community land from 21 years to 30 years and require the consent of the Minister for leases or licences granted for more than 21 years,
- (b) to convert the status of councils and county councils from their existing status as bodies politic of the State to bodies corporate,
- (c) to provide that a councillor who has been suspended from office by the Local Government Pecuniary Interest and Disciplinary Tribunal for misbehaviour does not vacate office because of his or her absence from meetings during the period of suspension,
- (d) to provide that the voting system in a contested election is to be preferential if only one councillor is to be elected, and proportional if two or more councillors are to be elected,

- (e) to reduce the period for which special arrangements exist for non-senior staff of councils affected by the constitution, amalgamation or alteration of council areas,
- (f) to make further provision with respect to disclosures of pecuniary interests and the duties of councillors with respect to matters in which they have a pecuniary interest,
- (g) to enact provisions of a savings or transitional nature.

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 (except for Schedule 1 [14]) on the date of assent to the proposed Act. Schedule 1 [14] commences on a day to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1 [1] extends, from 21 years to 30 years, the maximum period for which a council may grant a lease or licence in respect of community land.

Schedule 1 [2] provides that a council must not grant a lease or licence in respect of community land for a period in excess of 21 years without the consent of the Minister.

Schedule 1 [4] provides that the Minister may consent to such a lease or licence only if satisfied that there are special circumstances that justify the lease or licence exceeding a period of 21 years. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [5] and [11] convert the status of councils and county councils from their existing status as bodies politic of the State to bodies corporate. **Schedule 1 [6] and [12]** make consequential amendments.

Schedule 1 [7] makes it clear that a vacancy in a civic office does not occur due to the holder of the office being absent from 3 consecutive ordinary meetings of the council if the holder of the office was suspended from the office by the Pecuniary Interest and Disciplinary Tribunal for misbehaviour.

Schedule 1 [9] provides that the voting system in a contested election is to be optional preferential if one councillor is to be elected and is to be proportional if 2 or more councillors are to be elected. Presently the voting system is proportional voting if 3 or more councillors are to be elected and optional preferential if one or 2 councillors are to be elected. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [10] reduces, from 3 years to one year, the period for which special arrangements exist for non-senior staff of councils that are affected by the constitution, amalgamation or alteration of council areas. The special arrangements relate to forced redundancies and the appointment of persons to new positions on the staff of a council.

Schedule 1 [13] makes it clear that exemption from the requirement to disclose the pecuniary interests set out in section 448 of the principal Act applies only in respect of a duty of disclosure arising under Part 2 of Chapter 14 of that Act and not in respect of a duty of disclosure under any other provision.

Schedule 1 [14] authorises councillors to be present, take part in a meeting and vote on a matter in which they have a pecuniary interest if the matter relates to the making, amendment or alteration of an environmental planning instrument that applies to the whole or a significant part of the council's area and they have made a special disclosure of the pecuniary interest.

Schedule 1 [15] enables regulations to be made in relation to the exercise of a council's functions during the 3 weeks preceding an election.

Schedule 1 [16] enables regulations to be made containing provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

Schedule 1 [17] inserts provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

First print



New South Wales

Local Government Amendment Bill 2011

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Local Government Act 1993 No 30	3



New South Wales

Local Government Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Local Government Act 1993* with respect to the status of councils and county councils, the voting system for the election of councillors, community land, the pecuniary interests of councillors and staff affected by amalgamations; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment Act 2011</i> .	3
2 Commencement	4
(1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.	5 6
(2) Schedule 1 [14] commences on a day to be appointed by proclamation.	7

Schedule 1	Amendment of Local Government Act 1993 No 30	1
		2
[1]	Section 46 Leases, licences and other estates in respect of community land—generally	3
	Omit section 46 (3). Insert instead:	4
	(3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 30 years.	5
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[2]	Section 47 Leases, licences and other estates in respect of community land—terms greater than 5 years	9
	Omit section 47 (5). Insert instead:	10
	(5) The council must not grant the lease, licence or other estate except with the Minister’s consent, if:	11
	(a) a person makes a submission by way of objection to the proposal, or	12
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	(b) in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.	14
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[3]	Section 47 (6)	20
	Insert after the fifth bullet point:	21
	• if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years	22
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[4]	Section 47 (8AA)	28
	Insert after section 47 (8):	29
	(8AA) The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.	30
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[5] Section 220	1
Omit the section. Insert instead:	2
220 Bodies corporate	3
A council is a body corporate.	4
Note. Part 8 of the <i>Interpretation Act 1987</i> applies to statutory bodies. It contains provisions stating the general attributes of statutory incorporation (for example, perpetual succession, the requirement for a seal, the taking of proceedings, etc), it provides for judicial notice to be taken of a statutory corporation's seal, it creates a presumption of regularity for acts and proceedings of a statutory corporation and contains other provisions.	5 6 7 8 9 10 11
[6] Section 221 What is a council's corporate name?	12
Insert "corporate" after "The" wherever occurring in section 221 (1) and (2).	13
[7] Section 234 When does a vacancy occur in a civic office?	14
Insert "or 482A" after "482" in section 234 (1) (d).	15
[8] Chapter 10, introduction note	16
Omit "(wherever 1 or 2 positions must be filled) and proportional (wherever 3 or more positions must be filled)".	17 18
Insert instead "(wherever 1 position must be filled) and proportional (wherever 2 or more positions must be filled)".	19 20
[9] Section 285	21
Omit the section. Insert instead:	22
285 Voting system for election of councillors	23
The voting system in a contested election of a councillor or councillors is to be:	24 25
(a) optional preferential, if only one councillor is to be elected, or	26 27
(b) proportional, if 2 or more councillors are to be elected.	28
[10] Sections 354F, 354G (1) (a) (ii) and (b) (ii), 354H (1) (a) (ii) and (b) (ii) and 354I (2)	29 30
Omit "3 years" wherever occurring. Insert instead "1 year".	31

[11] Section 388	1
Omit the section. Insert instead:	2
388 Bodies corporate	3
A proclamation establishing a county council operates to constitute the county council as a body corporate under this Act.	4 5
[12] Section 389 What is a county council's corporate name?	6
Insert "corporate" after "The".	7
[13] Section 448 What interests do not have to be disclosed?	8
Omit "Chapter". Insert instead "Part".	9
[14] Section 451 Disclosure and presence in meetings	10
Insert after section 451 (3) (before the note to the section):	11
(4) Subsections (1) and (2) do not apply to a councillor who has a pecuniary interest in a matter that is being considered at a meeting, if:	12 13 14
(a) the matter is a proposal relating to:	15
(i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or	16 17 18
(ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and	19 20 21 22
(b) the councillor made a special disclosure under this section in relation to the interest before the commencement of the meeting.	23 24 25
(5) The special disclosure of the pecuniary interest must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and must:	26 27 28
(a) be in the form prescribed by the regulations, and	29
(b) contain the information required by the regulations.	30

[15] Schedule 6 Regulations	1
Insert after item 14:	2
14A The exercise of functions by a council in the 3 weeks preceding an ordinary election.	3
Examples. Limitation on determination of controversial or significant development applications	4
The new or permanent appointment of general managers	5
Entering into significant contracts or undertakings	6
[16] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	7
Insert at the end of clause 1 (1):	8
<i>Local Government Amendment Act 2011</i>	9
[17] Schedule 8	10
Insert at the end of the Schedule with appropriate Part and clause numbering:	11
Part Provisions consequent on enactment of Local Government Amendment Act 2011	12
Definition	13
In this Part:	14
<i>amending Act</i> means the <i>Local Government Amendment Act 2011</i> .	15
Provisions relating to legal status of councils	16
(1) The following provisions apply to a council constituted as a body politic immediately before the date of assent to the amending Act:	17
(a) the council ceases to be a body politic of the State on that date and becomes instead a body corporate as provided by section 220 or 388 (as substituted by the amending Act),	18
(b) the council is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the council as it existed before the date of assent to the amending Act (except that the council is no longer a body politic of the State and is instead a body corporate).	19
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| (2) | The amendment of this Act (and the insertion of this clause in particular) by the amending Act does not: | 1
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| (a) | affect existing property, rights or obligations of a council, or | 3
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| (b) | render defective any legal proceedings by or against a council, or | 5
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| (c) | negate any decision made by a council, or | 7 |
| (d) | place a council in breach of a contract or otherwise make it guilty of a civil wrong, or | 8
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| (e) | make a council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability, or | 10
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| (f) | fulfil a condition allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability, or requiring any amount to be paid before its stated maturity, or | 14
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| (g) | release a surety or other obligee, in whole or in part, from an obligation. | 18
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| (3) | In this clause, <i>council</i> includes county council. | 20 |
| | Provisions relating to council staff affected by the constitution, amalgamation or alteration of council areas | 21
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| (1) | Section 354F, as in force immediately before its amendment by the amending Act, continues to apply in respect of the employment of a staff member referred to in that section if, immediately before the amendment, that section prevented the termination of the employment of the staff member. | 23
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| (2) | Sections 354G and 354H, as in force immediately before the amendment of those sections by the amending Act, continue to apply to a proposed appointment to a position within the organisational structure of a council if, immediately before the amendment, the council was prohibited from externally advertising the position. | 28
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Local Government Amendment Bill 2011

Schedule 1 Amendment of Local Government Act 1993 No 30

- (3) Section 354I, as in force immediately before its amendment by the amending Act, continues to apply to a staff member if, immediately before the amendment, that section restricted changes in the work base of the staff member. 1
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