



New South Wales

Local Government Amendment (Parliamentary Inquiry Recommendations) Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to give effect to some of the recommendations contained in the report of the Legislative Council General Purpose Standing Committee No 6 entitled *Local Government in New South Wales (the 2015 Report)*. Those recommendations relate to amalgamations and other boundary changes, joint service delivery and co-operation between councils, mayoral elections, political donations, election expenditure and the financing of councils.

The *Local Government Act 1993* is amended:

- (a) to modify the functions and procedure of the Boundaries Commission:
 - (i) by providing that a proposal for amalgamations, boundary changes or to constitute an area can be initiated by a public authority (as well as by the Minister, a council or a specified minimum number of enrolled electors), and
 - (ii) by changing the procedure for the Commission's examination and report on amalgamations and boundary change proposals, including by requiring the holding of inquiries in all cases and requiring opinion surveys or polls to be carried out amongst the residents and ratepayers of the relevant areas, and
 - (iii) by providing that an amalgamation of council areas cannot occur when the affected councils do not consent to the amalgamation unless there is evidence that those councils are severely financially unsustainable, and
 - (iv) by requiring a period of transition between any decision to amalgamate council areas and the creation of a new merged council, to allow sufficient time to ensure effective, planning, consultation, implementation and ongoing service delivery to the local communities, and

- (v) by requiring the Commission to undertake regular reviews of local government boundaries across the State by conducting an inquiry, and
 - (vi) by empowering the Commission to initiate proposals for boundary changes when of the opinion that change is required, and
 - (vii) by changing the process for the Boundaries Commission's examination and report, and
 - (viii) by extending the list of factors to which the Commission must have regard in exercising its functions, and
- (b) to increase the independence of the Boundaries Commission:
- (i) by changing the membership of the Boundaries Commission, so that it is to consist of 3 commissioners appointed by the Governor one of whom is nominated by the Minister to be the independent Chairperson of the Commission with the other 2 being nominated jointly by the Minister and the President of Local Government NSW, and
 - (ii) by making serving public officials, current or former members of a council, county council or regional joint authority, or current or former members of the Legislative Assembly or of the Legislative Council, ineligible for membership of the Commission, and
 - (iii) by requiring the Minister to ensure that the Commission is assisted in the performance of its functions by a secretariat consisting of the number of staff determined by the Minister, having regard to the recommendations of the Boundaries Commission and Local Government NSW, and
- (c) to extend the capacity for councils to co-operate in the exercise of their functions by providing for councils to co-operate in collaboration, planning and service delivery, through regional joint authorities, which may have service delivery functions and will replace county councils, and
- (d) to modify the financing of councils:
- (i) by ensuring that those water utilities that are currently operated by a local council remain under the exclusive control of that council, unless the council resolves otherwise after community consultation, and
 - (ii) by ensuring consistency in the treatment of assets in the financial reports of councils, and
 - (iii) by creating an exemption from rate pegging, and allowing councils to determine their own rates, conditional on the delivery of a local works plan outlining the expenditure associated with any proposed rate increases and demonstrated community support, and
- (e) to modify the procedure for the election of mayors:
- (i) by requiring a constitutional referendum to be held about whether the mayor of a council should be elected by the electors (for those councils where the mayor is currently elected by councillors), and
 - (ii) by extending the term of office of mayors who are elected by councillors from 1 year to 2 years.

The *Election Funding, Expenditure and Disclosures Act 1981* is also amended to introduce donation and spending caps for local government elections.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Local Government Act 1993 No 30

Procedure of Boundaries Commission, including for amalgamations and boundary changes

Schedule 1 [4], [5] and [9] give effect to Recommendation 9 of the 2015 Report, that the government “implement the Independent Local Government Review Panel’s recommendations to.....ensure a robust and consultative process is in place to consider council amalgamation proposals before any further steps are taken by the government in relation to council amalgamations”.

Schedule 1 [4] changes the procedure for proposals to constitute an area by providing that the Minister, a council, a public authority or a group of electors (250 or 10%, whichever is the lesser, across the affected areas) can submit a specific proposal to the Boundaries Commission relating to the constitution of an area.

Schedule 1 [5] changes the procedure for amalgamations and boundary changes by inserting the following provisions:

- (a) **Proposed section 218D** provides that the Boundaries Commission its to exercise its functions in considering proposals for the amalgamation of 2 or more areas into 1 or more new areas, or for the alteration of the boundaries of 1 or more areas,
- (b) **Proposed section 218E** provides that the Minister, a council, a public authority or a group of electors (250 or 10%, whichever is the lesser, across the affected areas) can submit a specific proposal to the Boundaries Commission relating to an amalgamations proposal or proposal for a boundary change,
- (c) **Proposed section 218F** provides that a proposal for the amalgamation of 2 or more areas into 1 or more new areas, or for the alteration of the boundaries of 1 or more areas, must be referred for examination and report to the Boundaries Commission,
- (d) **Proposed section 218FA** provides that certain provisions (also being amended) apply to the examination of amalgamation and boundary change proposals,
- (e) **Proposed section 218FB** provides that, in the case of any amalgamation or boundary change proposal, the Commission must conduct (in such manner as it thinks appropriate) an opinion survey or poll of the residents and ratepayers of those areas except where the councils of the areas have proposed a voluntary amalgamation and the Boundaries Commission is satisfied that the councils have already undertaken adequate community consultation with respect to the amalgamation proposal,
- (f) **Proposed section 218FC** provides that the Boundaries Commission is to determine whether or not a proposal for an amalgamation or a boundary change has sufficient merit to proceed, and is required to publish the reasons for its decision,
- (g) **Proposed section 218FD** provides that the Minister may request the Boundaries Commission to reconsider any of the recommendation made by the Commission in any report submitted to the Minister about an amalgamation or boundary change proposal and that, if the Minister proposes to make any amendment to any recommendations of the Boundaries Commission, the Minister must give public notice of those proposed amendments and the reasons for them,
- (h) **Proposed section 218FE** provides that the Minister, in any recommendation made to the Governor about an amalgamation or boundary change, must implement the final recommendations of the Boundaries Commission in full unless the Minister reasonably forms the opinion that the process followed by the Boundaries Commission in considering the proposal has been flawed or that to proceed would be contrary to the wider public interest,
- (i) **Proposed section 218FF** prevents the forced amalgamations of local councils, except in circumstances where it can be established, on the advice of the Auditor-General, that a council is severely financially unsustainable to the point of bankruptcy or unable to

maintain an acceptable level of service provision. (This gives effect to Recommendation 11 of the 2015 Report),

- (j) **Proposed section 218FG** requires there to be a period of transition between a decision to merge councils and the creation of the new council, to ensure effective planning, consultation, implementation and ongoing service delivery to communities. (This gives effect to Recommendation 12 of the 2015 Report).

Schedule 1 [9] includes the following new provisions about the procedures of the Boundaries Commission (including the procedures relating to amalgamations and boundary changes):

- (a) **Proposed section 263A (a)** provides that the Commission must undertake regular reviews of local government boundaries across the State in accordance with a schedule determined by the Minister,
- (b) **Proposed section 263A (b)** provides that the Commission may initiate proposals for changes to the boundaries of areas when there is, in the opinion of the Boundaries Commission, evidence that any change is reasonably required,
- (c) **Proposed section 263B (1) (b)** provides that the Commission must hold inquiries for the purpose of exercising its functions in relation to an amalgamation proposal that has been referred to it, as part of any regular review of local government boundaries undertaken at the instance of the Minister (and not only act on approval of the Minister),
- (d) **Proposed section 263C** provides that the Commission must, in considering any matter referred to it that relates to the boundaries of areas or the areas of operations of councils or regional joint authorities, have regard to a modified list of factors,
- (e) **Proposed section 263E** provides that the Commission must, at the end of its investigations, report to the Minister on whether or not the proposal should proceed and, if so, precisely what form it should take and what steps and resources are required for its effective implementation,
- (f) **Proposed section 263F** provides that the Minister may request that the Boundaries Commission reconsider any of the recommendation made by the Boundaries Commission in any report submitted to the Minister and that, in the event that the Minister proposes to make any amendment to any recommendations of the Boundaries Commission, the Minister must give public notice of those proposed amendments and the reasons for them.

Schedule 1 [24] (to the extent that it inserts clause 112 in Schedule 8) provides that the amendments to the functions and procedure of the Boundaries Commission do not apply to a proposal or inquiry underway immediately before the commencement of the amendments.

Membership and independence of Boundaries Commission

Schedule 1 [9], [20] and [21] give effect to Recommendation 9 of the 2015 report, which reflected the Independent Local Government Review Panel's recommendation "to strengthen the independence of the Boundaries Commission".

Schedule 1 [9] replaces the existing Part about the Boundaries Commission, which includes the following new provisions about the membership and independence of the Commission:

- (a) **Proposed section 261 (1) and (2)** change the membership of the Boundaries Commission, so that it is to consist of 3 commissioners appointed by the Governor, 1 of whom is nominated by the Minister to be the independent Chairperson of the Commission with the other 2 being nominated jointly by the Minister and the President of Local Government NSW,
- (b) **Proposed section 261 (3)** makes serving public officials, current or former members of a council, county council or regional joint authority, or current or former members of the Legislative Assembly or of the Legislative Council, ineligible for membership of the Commission,
- (c) **Proposed section 262** provides that Local Government NSW, rather than the Local Government and Shires Association of New South Wales, has a role in the appointment of

commissioners, by nominating the panel that recommends that appointment of commissioners,

- (d) **Proposed section 262A** requires the Minister to ensure that the Commission is assisted in the performance of its functions by a secretariat,
- (e) **Proposed section 262B** provides that the Boundaries Commission may, with the approval of the Minister, arrange for the use of the services or facilities (including staff) of a Public Service agency or a public or local authority as determined by the Minister having regard to the recommendations of the Boundaries Commission and Local Government NSW.

Schedule 1 [20] changes the term of office of commissioners of the Boundaries Commission from a maximum of 5 years to at least 5 years.

Schedule 1 [21] provides that a commissioner ceases to hold office if he or she is appointed as a public official or elected as a member of a council or a regional joint authority or of the Legislative Assembly or the Legislative Council.

Schedule 1 [24] (to the extent that it inserts clause 114 in Schedule 8) provides that the amendments relating to the membership of the Boundaries Commission do not apply to a proposal or inquiry underway immediately before the commencement of the amendments or to serving commissioners involved in that proposal or inquiry.

Establishment of regional joint authorities to replace county councils

Schedule 1 [3], [8], [10], [19] and [23] make amendments that are consequential on the proposed abolition of county councils and their replacement by regional joint authorities.

Schedule 1 [11] and [12] give effect to Recommendation 17 of the 2015 report to work on “a statutory model for joint organisations based on the Hunters Hill, Ryde and Lane Cove Council model as a cooperative and consensus model for local council reform” and to the Independent Local Government Review Panel’s recommendations on a framework for establishing new regional joint authorities.

Schedule 1 [11] provides that a function of a council may be exercised jointly by the council and another council or councils by means of a regional joint authority of which the councils concerned are members or by a delegate of the council, which may be a regional joint authority of which the council is a member.

Schedule 1 [10] inserts a reference to regional joint authorities in a note.

Schedule 1 [12] omits existing provisions about county councils.

Schedule 1 [13] inserts provisions relating to:

- (a) the formation, membership and functions of regional joint authorities, and
- (b) the creation of subsidiaries of regional joint authorities (which may be existing county councils), and
- (c) the Minister seeking the advice of the Ministerial Advisory Group in relation to regional joint authorities.

Schedule 1 [22] empowers the Governor to make regulations about regional joint authorities.

Schedule 1 [25] makes provision for the membership and procedure of the governing body of a regional joint authority.

Schedule 1 [26] inserts definitions of *constituent council* in relation to a regional joint authority and *regional joint authority* in the Dictionary to the Act.

Establishment of Ministerial Advisory Group

Schedule 1 [14] also gives effect to Recommendation 16 of the 2015 Report by establishing a Ministerial Advisory Group, the functions of which are to advise the Minister on proposals concerning regional joint authorities.

Schedule 1 [25] makes provision for the membership and procedure of the Ministerial Advisory Group.

Schedule 1 [26] inserts a definition of *Ministerial Advisory Group* in the Dictionary to the Act.

Election of mayors and their term of office

Schedule 1 [6] requires a constitutional referendum to be held about whether the mayor of a council should be elected by the electors within 2 years after a new council is established or within 2 years after the commencement of the proposed Act, in relation to councils where the mayor is not currently elected by electors and no referendum has been held that failed. (This gives legislative effect to Recommendation 13 of the 2015 Report, that “the Minister for Local Government encourage local councils with council-elected mayors to initiate a referendum on whether the mayor should be popularly elected or elected by councillors”.)

Schedule 1 [7] extends the period for which mayors who are elected by councillors hold office from 1 year to 2 years. (This gives effect to Recommendation 14 of the 2015 Report.)

Schedule 1 [24] (to the extent that it inserts clause 113 in Schedule 8) provides that this extension of term does not apply to existing mayors elected by councillors.

Process for transfer of control of council water utilities

Schedule 1 [2] ensures that water supply utilities that are currently operated by a council remain under the exclusive control of that council unless the council resolves otherwise after community consultation. (This gives effect to Recommendation 7 of the 2015 Report.)

Schedule 1 [1] is a consequential amendment that provides that the proposed amendment about council water utilities applies to land within the area of operations of a water supply authority under the *Water Management Act 2000*.

Consistency in financial reporting

Schedule 1 [15] requires the Office of Local Government, in consultation with the Audit Office of New South Wales and local government representatives, to develop accounting requirements to ensure greater consistency across councils in the treatment of assets. (This gives effect to Recommendation 8 of the 2015 Report.)

Schedule 1 [16] requires final reports of councils to comply with those requirements.

Schedule 1 [24] (to the extent that it inserts clause 116 in Schedule 8) provides that the amendments about financial reports do not apply to reports prepared no later than 3 months after the proposed accounting requirements are published.

Exemptions from rate pegging based on local works plans

Schedule 1 [17] and [18] give effect to Recommendation 3 of the 2015 report, that the government “evaluate the option of the removal of rate pegging and allow councils to determine their own rates conditional on the delivery of a local works plan outlining the expenditure associated with any proposed rate increases and demonstrated community support”.

Schedule 1 [17] provides for a council to apply for a special variation specifying a higher cap for rates that would otherwise be pegged, for 1 or more specified financial years (up to a maximum of 4 years). The requirements for making such an application include submitting to the Minister a local works plan outlining the expenditure associated with any proposed rate increases and demonstrating community support for the exemption from rate pegging.

Schedule 1 [18] provides for a determination to be made for a variation over a period of years of the pegged rate.

Savings and transitional provisions

Schedule 1 [24] makes savings and transitional provisions consequent on the making of certain amendments to the *Local Government Act 1993*, which are explained above.

Schedule 2 Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78

Schedule 2 provides that the donation and spending caps set out in the *Election Funding, Expenditure and Disclosures Act 1981* apply to local government election campaigns, with appropriate modifications. (This gives effect to Recommendation 15 of the 2015 Report.)

Schedule 2 [1], [6] and [10] omit provisions that currently limit the donation and spending caps only to State election campaigns.

Schedule 2 [2] and [4] omit notes about the current operation of caps.

Schedule 2 [3] and [8] remove existing exclusions for local government from provisions that are proposed to extend to local government election campaigns.

Schedule 2 [5], [7] and [9] update headings, to reflect that caps will apply to local government elections.

Schedule 2 [11] and [12] update provisions about applicable caps on electoral communication expenditure for elections and the aggregation of donation and expenditure caps to make it clear that the apply only to State elections.

Schedule 2 [13] inserts provisions about:

- (a) the applicable caps on electoral communication expenditure on local government election campaigns, and
- (b) the aggregation of applicable caps for local government election campaigns.

Schedule 2 [14] specifies the capped expenditure period for local government election campaigns.

Schedule 2 [15]–[17] extend existing provisions about the prohibition on incurring electoral communication expenditure exceeding the applicable cap, and the requirements of parties, to local government election campaigns.

Schedule 2 [18] provides that the proposed donation and spending caps do not apply to local government by-elections that are underway when the proposed Act commences.

Schedule 3 Amendment of other legislation

Schedule 3 amends certain legislation as a consequence of the abolition of county councils.