



New South Wales

Local Government Amendment (Governance and Planning) 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 amend the *Local Government Act 1993* (the **Principal Act**) as follows:

- (a) to extend the purposes of that Act and to set out principles for councils,
- (b) to include expanded descriptions of the roles of councils, mayors and councillors and the functions of general managers,
- (c) to enable councils to apply to reduce councillor numbers or mandated meetings or change wards, before the next council elections after the proposed Act commences,
- (d) to increase the term of office for mayors elected by councillors from 1 year to 2 years,
- (e) to require councillors to take an oath or make an affirmation of office,
- (f) to enable postal voting to be used for elections by all councils and to postpone the use of countbacks instead of by-elections until after a day to be specified by regulations,
- (g) to limit the role of councils in determining the staff organisation of a council to senior positions,
- (h) to enable councils to delegate the function of accepting tenders (other than for services currently provided by council staff members) and granting financial assistance,
- (i) to provide for a model code of conduct for meetings,
- (j) to streamline provisions in the Principal Act relating to the integrated planning and reporting framework and enable regulations to be made about consultation and other procedural matters,

- (k) to provide for the council auditor functions to be exercised by the Auditor-General (or a person appointed by the Auditor-General) and to confer other auditing functions relating to local government on the Auditor-General,
- (l) to require councils to establish Audit, Risk and Improvement Committees,
- (m) to enable the appointment of a financial controller for a council if an improvement order is issued for the council,
- (n) to make it clear that an administrator appointed to a council has the functions of a mayor,
- (o) to provide for misconduct by councillors relating to disclosures of pecuniary interests to be dealt with in the same way as other misconduct, by including disclosure requirements in mandatory code of conduct provisions and applying the same disciplinary provisions that apply to breaches of the code,
- (p) to apply the model code provisions relating to disclosure of pecuniary interests to members of council committees and other advisers,
- (q) to make it clear that wage rise restrictions do not apply to a case where a council is recategorised for the purpose of determining the category of allowances payable to councillors and mayors,
- (r) to extend regulation-making powers for various matters,
- (s) to make other consequential amendments and to enact savings and transitional provisions.

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 proclaimed, except for the amendments relating to mayoral terms, oaths of office, adoption of expenses and facilities policy, election on countbacks and clarifying the application of the State wages policy to re-categorisation decisions.

Schedule 1 Amendment of Local Government Act 1993 No 30

Purposes of Act and principles for councils

Schedule 1 [1] streamlines the statement of the purposes of the Principal Act.

Schedule 1 [2] replaces the statement of a council's charter with sets of principles for the exercise of functions by councils, including provisions setting out principles for financial management and for the development of the integrated planning and reporting framework by councils.

Council governance, wards, councillors and election matters

Schedule 1 [3] extends a provision which enables the abolition of wards, without the consultation and other requirements that would otherwise apply under the Principal Act, to councils that are prescribed by the regulations and requires applications to the Minister for approval to do so to be made not later than 12 months before the next ordinary election of councillors following the commencement of the amendment. **Schedule 1 [90]** extends the time for making an application if an ordinary election of councillors is held earlier than 12 months after that commencement.

Schedule 1 [4] expands the role of the governing body (which comprises the councillors) to include providing effective civic leadership, ensuring compliance with the principles for councils and adopting a rating and revenue policy and operational plans that support the optimal allocation of council resources and other matters.

Schedule 1 [5] extends a provision (that is no longer operating) which enables councils to apply to obtain Ministerial approval to decrease the number of councillors to councils that are prescribed by the regulations and requires applications for that purpose to be made not later than 12 months before the next ordinary election of councillors following the commencement of the amendment.

Schedule 1 [90] extends the time for making an application if an ordinary election for councillors is held earlier than 12 months after that commencement.

Schedule 1 [6] expands the role of the mayor to include being a leader of the council and in the local community, being the principal member and spokesperson of the governing body and to promoting the effective and consistent implementation of strategic plans, programs and policies of the council as well as to include other matters relating to engagement with the local community and key stakeholders.

Schedule 1 [7] extends the term of office of a mayor elected by councillors from 1 year to 2 years.

Schedule 1 [8] revises the role of a councillor to include requirements to represent the collective interests of residents, ratepayers and the local community, to uphold and represent accurately the policies and decisions of the governing body and to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of councillor.

Schedule 1 [9] requires a councillor to take an oath or make an affirmation of office at or before the first council meeting after being elected. A councillor will not be entitled to attend a council meeting if the oath or affirmation is not taken or made and, in any such case, will also be taken to be absent without leave.

Schedule 1 [10] clarifies that a councillor ceases to hold office as a councillor if elected as mayor by the electors.

Schedule 1 [11] clarifies that a mayor who is elected by councillors ceases to hold office as mayor if the person ceases to hold office as a councillor.

Schedule 1 [18] provides that the provision which allows a council vacancy to be filled by a countback election does not apply to a vacancy that occurs before a day to be prescribed by the regulations.

Schedule 1 [19] removes a limitation on the councils that are able to decide to use postal voting in council elections.

Schedule 1 [21] provides that the general manager (rather than the council) is to determine the organisation structure of the council but the council retains power to determine senior staff positions and reporting lines. **Schedule 1 [23] and [24]** make consequential amendments.

Schedule 1 [25] expands the role of the general manager to include the implementation of lawful council decisions, preparation of strategies, programs and plans required for the integrated planning and reporting framework and giving advice and administrative professional support to the mayor and other councillors necessary for them to effectively discharge their functions.

Schedule 1 [26] removes the requirement for the general manager to report annually to the council on the contractual conditions of senior staff.

Schedule 1 [27] enables regulations to be made prescribing a model code of meeting practice for councils and council committees and making some provisions mandatory. A council must adopt a code of meeting practice not later than 12 months after an ordinary election of councillors.

Schedule 1 [28] and [31] make consequential amendments.

Schedule 1 [29] enables a council to apply to the Minister to have the number of required council meetings reduced from 10 meetings a year. An application will only be able to be made by a council prescribed by the regulations and any application must be made not later than 12 months before the next ordinary election after the amendment commences. **Schedule 1 [90]** extends the time for making an application if an ordinary election for councillors is held earlier than 12 months after that commencement.

Schedule 1 [33] enables the Audit, Risk and Improvement Committee of the council to exclude the general manager from a meeting if it thinks it appropriate to do so.

Schedule 1 [34] removes the prohibition on delegation by a council of the acceptance of any tender that the Principal Act requires to be invited by the council and instead prohibits delegation of the function of accepting tenders to provide services currently provided by council staff.

Schedule 1 [35] enables a council to delegate functions relating to the granting of financial assistance as part of a specified program and subject to other conditions.

Schedule 1 [36] and [37] remove procedural requirements relating to the community strategic plan, community engagement strategy, resourcing strategy, delivery program and operational plan. **Schedule 1 [87]** enables regulations to be made about these procedural matters and also other procedural matters relating to community engagement strategies, resourcing strategies, delivery programs and operational plans. **Schedule 1 [77] and [79]** make consequential amendments.

Schedule 1 [37] also provides for the integrated planning and reporting guidelines for councils to be prescribed by regulations.

Schedule 1 [41] makes it clear that material, as well as information, may be included in a council's annual report.

Schedule 1 [42] removes the requirement for councils to make a state of the environment report in the annual report in the year in which an ordinary council election is held.

Schedule 1 [43] requires a council to establish an Audit, Risk and Improvement Committee to review compliance, risk management, fraud control, financial management, governance, implementation of the strategic plan, delivery program and strategies and other aspects of council operations. One or more councils may jointly appoint a committee for that purpose. **Schedule 1 [88]** enables regulations to be made relating to Audit, Risk and Improvement Committees.

Finances and auditing

Schedule 1 [13] requires a council to adopt a policy for payment of expenses and provision of facilities within the first 12 months of each council term instead of requiring the policy to be renewed each year. **Schedule 1 [15]** makes a consequential amendment.

Schedule 1 [14] removes the requirement for the council to show the Chief Executive of the Office of Local Government any new expenses policy or any change to a policy.

Schedule 1 [38] requires a council's auditor to also audit the financial reports of any entity that the council has formed or participated in forming or in which it has a controlling interest.

Schedule 1 [39] replaces the requirement for a council auditor to attend the meeting at which the council's financial reports are presented with an obligation for a council auditor who is appointed by the Auditor-General to attend that meeting if given 7 days notice in writing of the requirement to attend.

Schedule 1 [40] substitutes provisions relating to the appointment of auditors with provisions making the Auditor-General the auditor for a council, subject to a power to appoint another person to be an auditor. The provisions inserted confer inspection and other powers on the Auditor-General for the purposes of carrying out audit and other related functions as well as the power to carry out performance audits and audit-related powers. The Auditor-General is also to communicate with the Minister for Local Government (the *Minister*) on matters that are sufficiently significant to be brought to the Minister's attention and is to report to Parliament annually on sector-wide issues arising from the exercise of the Auditor-General's functions.

Disciplinary matters and disclosure of pecuniary interests

Schedule 1 [16] makes it clear that an administrator appointed for a council after a public inquiry has been held into the council has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [17] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council.

Schedule 1 [30] relocates a provision relating to the disclosure of pecuniary interests at council meetings.

Schedule 1 [44] requires notice of an intention to appoint a financial controller to be given when notice of a proposed performance improvement order for a council is given.

Schedule 1 [45] enables regulations to be made to establish criteria which must be considered by the Minister when deciding whether or not to appoint a temporary adviser to a council for which

a performance improvement order is made. **Schedule 1 [46]** requires the Minister to consider the criteria.

Schedule 1 [47] enables the Minister to appoint a financial controller for a council if a performance improvement order is issued for the council. The appointment may be made in the order or a subsequent order and on the recommendation of the council or on the Minister's initiative. The Minister is to consider any criteria prescribed by the regulations in determining whether or not to appoint a financial controller. A council may not make a payment from any funds of the council unless payment is authorised by the financial controller. A financial controller is to review any report on compliance with the improvement order and may comment on the report to the Minister.

Schedule 1 [48] makes it clear that an administrator appointed for a council after the council has been suspended has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [49] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council when the council is suspended.

Schedule 1 [50] makes it clear that an administrator appointed for a council after the council has been suspended while a public inquiry is being held has the functions of all of the councillors and the mayor, as well as the functions of the council.

Schedule 1 [51] requires one administrator to be designated to exercise the functions of the mayor if more than one administrator is appointed to a council when the council is suspended while a public inquiry is being held.

Schedule 1 [53] relocates interpretation provisions and inserts definitions of *pecuniary interest*, *pecuniary interests duty*, *model code* and *code of conduct*. **Schedule 1 [58]–[60]** make consequential amendments.

Schedule 1 [55] extends the operation of provisions of the model code of conduct relating to the disclosure of pecuniary interests to members of council committees and council advisers.

Schedule 1 [57] relocates provisions relating to the content of the model code of conduct for councils and includes matters relating to the disclosure of pecuniary interests as matters that may be included in a code. The amendment also re-enacts a provision requiring the general manager of a council to keep a register of returns of the interests of councillors and of designated persons (council staff, committee members and council delegates). **Schedule 1 [32], [52], [72]–[76], [78], [80], [81], [89] and [92]** make consequential amendments.

Schedule 1 [61] removes the provision which provided that a breach of disclosure provisions was not misconduct. The effect of this amendment and the amendment made by **Schedule 1 [57]** is to apply the general disciplinary provisions that apply to councillors for misconduct that does not relate to disclosures of pecuniary interests to breaches of the code of conduct relating to the disclosure of pecuniary interests (the *pecuniary interests duties*).

Schedule 1 [61] also relocates a provision excluding a person from being liable for misconduct for a failure to disclose a pecuniary interest if the person did not know, and could not reasonably have known, that the person had a pecuniary interest in a matter being considered at a meeting.

Schedule 1 [62] omits the provisions containing requirements for disclosure of pecuniary interests, as these matters are to be dealt with by using the model code of conduct. **Schedule 1 [90]** continues in force most of the repealed provisions until the model code of conduct provisions are in force. **Schedule 1 [63]** makes a consequential amendment.

Schedule 1 [64] applies the complaints procedure about breaches of disclosure of pecuniary interests duties, that currently applies to councillors and other persons, to persons other than councillors who breach the pecuniary interests duties. **Schedule 1 [67]–[69]** make consequential amendments.

Schedule 1 [65] omits the requirement to verify a complaint about a breach of disclosure requirements by statutory declaration. **Schedule 1 [66]** makes a consequential amendment.

Schedule 1 [70] confers on the Civil and Administrative Tribunal exclusive jurisdiction relating to contraventions of pecuniary interests duties by persons other than councillors. **Schedule 1 [20]** makes a consequential amendment.

Schedule 1 [71] sets out the sanctions that may be imposed on a delegate of a council who contravenes a pecuniary interests duty.

Miscellaneous

Schedule 1 [12] provides that the requirement for determinations of the Local Government Remuneration Tribunal to give effect to government policy on remuneration for public sector staff does not apply to a determination by the Tribunal that changes the category of a council or mayoral office (whether or not the effect is to increase the range of amounts payable to the councillors or mayor of a council).

Schedule 1 [22] updates references to government sector legislation.

Schedule 1 [82] provides that certain provisions of the Principal Act (setting out functions of councillors, mayors, principles for councils and relating to codes of conduct) do not give rise to, and cannot be taken into account in, any civil cause of action and do not affect any rights or liabilities arising apart from the relevant provisions. **Schedule 1 [54] and [56]** make consequential amendments.

Schedule 1 [83] enables regulations to be made about financial management and auditing.

Schedule 1 [84] enables regulations to be made about induction courses and professional development for mayors and councillors.

Schedule 1 [85] adds procedures for elections of mayors by councillors to the examples of matters about which regulations may be made.

Schedule 1 [86] adds community engagement strategies to the examples of matters about which regulations may be made.

Schedule 1 [90] inserts savings and transitional provisions that are consequential on the amendments made by the proposed Act.

Schedule 1 [91] makes a statute law revision amendment to make it clear that a reference in the Principal Act to an area includes areas constituted by amalgamation of areas.

Schedule 1 [93] inserts a definition of *integrated planning and reporting framework* for the purposes of the Principal Act.