

c2017-041B
GRNS--The Greens

LEGISLATIVE COUNCIL

Local Government Amendment (Amalgamation Referendums) Bill 2017

First print

Proposed amendments

No. 1 **Referendum required before any new amalgamation (including those in progress)**

Page 3, Schedule 1. Insert after line 1:

[1] Chapter 9 How are councils established?

Omit Division 2B of Part 1. Insert instead:

Division 2B Procedure (including referendum) required before areas amalgamated

218D Exercise of functions under sec 218A

One or more areas may be amalgamated under section 218A only if a proposal for the amalgamation is dealt with under this Division.

218E Proposal may be initiated by Minister, council or electors

- (1) An amalgamation 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.
- (2) An *appropriate minimum number of electors* is:
 - (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
 - (b) if a proposal applies to part only of one or more areas, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

218F Referral of proposal for examination and report

- (1) On making or receiving an amalgamation proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Departmental Chief Executive.
- (2) Sections 263, 264 and 265 apply to the examination of an amalgamation proposal by the Departmental Chief Executive in the same way as they apply to the examination of a proposal by the Boundaries Commission.

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- (3) If an amalgamation proposal has been referred to the Departmental Chief Executive under this section:
 - (a) the Departmental Chief Executive must furnish the Departmental Chief Executive's report to the Boundaries Commission for review and comment, and
 - (b) the Boundaries Commission must review the report and send its comments to the Minister.

218G Minister may recommend amalgamation to Governor

- (1) The Minister may recommend to the Governor that the amalgamation proposal be implemented:
 - (a) with such modifications as arise out of:
 - (i) the Boundaries Commission's report, or
 - (ii) the Departmental Chief Executive's report (and, if applicable, the Boundaries Commission's comments on that 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.
- (2) The Minister may decline to recommend to the Governor that the proposal be implemented.

218H Minister may not recommend amalgamation unless approved by referendum

- (1) The Minister may not recommend to the Governor that an amalgamation proposal be implemented unless:
 - (a) the Minister initiates a referendum to give effect to the amalgamation and any associated boundary alteration on specified terms (an *amalgamation referendum*), and
 - (b) the amalgamation referendum has approved the amalgamation in those terms.
- (2) Without limiting subsection (1), after the date of assent to the 2017 amending Act, the Minister is not to recommend to the Governor the making of an order to amalgamate the following areas unless an amalgamation referendum under this Division (as substituted by the 2017 amending Act) has approved the amalgamation:
 - (a) Burwood, Canada Bay and Strathfield Municipal,
 - (b) Hornsby Shire and Ku-ring-gai,
 - (c) Hunter's Hill, Lane Cove and City of Ryde,
 - (d) Mosman Municipal, North Sydney and Willoughby City,
 - (e) Randwick City, Waverley and Woollahra Municipal.
- (3) In this section:
2017 amending Act means the *Local Government Amendment (Amalgamation Referendums) Act 2017*.

218I Conduct of amalgamation referendum

- (1) Part 1 and Part 6 (except Divisions 3 and 5) of Chapter 10 apply to an amalgamation referendum, with such modifications as may be necessary, in the same way as they apply to an election.

Note. Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections, and Part 6 governs the conduct of those elections.

Division 3 of Part 6 of that Chapter deals with nominations for election, Division 4 with failure to vote and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.

- (2) The persons entitled to vote at such a referendum are the persons entitled to vote in an election of councillors for an area affected by the amalgamation proposal or any associated boundary alteration proposal.
- (3) An amalgamation referendum may be taken on any Saturday, including the Saturday of an ordinary election.
- (4) The question at an amalgamation referendum is carried if it is supported by a majority of the votes cast.
- (5) The reference to votes in subsection (4) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.
- (6) The decision made at an amalgamation referendum binds the Minister until changed or affected by a subsequent inconsistent decision by a subsequent amalgamation referendum.
- (7) Expenses incurred by the general managers of the councils concerned, or by the Electoral Commissioner (including the remuneration of election officials) in connection with an amalgamation referendum are to be met by the councils concerned, in proportion to the number of electors in each council's area, and are recoverable from the councils in such proportions as a debt owed to the Electoral Commissioner.

Division 2C Procedure before boundaries can be altered

218J Exercise of functions under sec 218B

The boundaries of one or more areas may be altered under section 218B only if a proposal for the amalgamation is dealt with under this Division.

218K Proposal may be initiated by Minister, council or electors

- (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.
- (2) An appropriate minimum number of electors is:
 - (a) if a proposal applies to the whole of an area, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or
 - (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.

218L Referral of proposal for examination and report

- (1) On making or receiving a proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Departmental Chief Executive.
- (2) Sections 263, 264 and 265 apply to the examination of a proposal by the Departmental Chief Executive in the same way as they apply to the examination of a proposal by the Boundaries Commission.
- (3) If a proposal that is not supported by one or more of the councils affected by it has been referred to the Departmental Chief Executive under subsection (1):

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- (a) the Departmental Chief Executive must furnish the Departmental Chief Executive's report to the Boundaries Commission for review and comment, and
 - (b) the Boundaries Commission must review the report and send its comments to the Minister.
- (4) The Minister may recommend to the Governor that the proposal be implemented:
- (a) with such modifications as arise out of:
 - (i) the Boundaries Commission's report, or
 - (ii) the Departmental Chief Executive's report (and, if applicable, the Boundaries Commission's comments on that 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.
- (5) The Minister may decline to recommend to the Governor that the proposal be implemented.

[2] Section 354B Definitions

Omit "section 218E" from paragraph (c) of the definition of *proposal* in section 354B (1).

Insert instead "section 218K"

[3] Section 354B (1), definition of "proposal period"

Omit "section 215 or 218E" from subparagraph (b) (i).

Insert instead "section 215, 218G or 218L".

No. 2 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 3, Schedule 1, lines 4 and 5. Omit "council amalgamations and".

No. 3 **Referendum required before any new amalgamation (including those in progress)**

Page 3, Schedule 1, lines 5 and 6. Omit "and proposed council amalgamations".

No. 4 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 3, Schedule 1, lines 7–29. Omit all words on those lines.

No. 5 **De-amalgamation of councils amalgamated in 2016—operates only after electors approve at plebiscite**

Page 3, Schedule 1, lines 17–25. Omit all words on those lines. Insert instead:

- (5) If the majority of the electors of an amalgamated area express the wish that the area be de-amalgamated, Schedule 11 has effect, to the extent that it applies to that amalgamated area and the relevant former areas. For that purpose, the Schedule is taken to have commenced on the day after the Electoral Commissioner declares the result of the plebiscite.

No. 6 **Referendum required before any new amalgamation (including those in progress)**

Page 3, Schedule 1, lines 30–42. Omit all words on those lines.

No. 7 **Referendum required before any new amalgamation (including those in progress) AND de-amalgamation of councils amalgamated in 2016 operates automatically**

Pages 3 and 4, Schedule 1, lines 2–6 on page 3 and lines 1–22 on page 4. Omit all words on those lines.

Note. Amendment No. 7 should be moved only if Amendments Nos. 4 and 6 are both successful. If all three of the amendments (that is, Amendments Nos. 4, 6 and 7) are successful, Amendments Nos. 8–25 should not be moved.

No. 8 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 1. Omit “plebiscite or”.

No. 9 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 1. Omit “or referendum”.

No. 10 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 2. Omit “plebiscites and”.

No. 11 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 2. Omit “and referendums”.

No. 12 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 4. Omit “plebiscite or”.

No. 13 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 4. Omit “or referendum”.

No. 14 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 13. Omit “plebiscites and”.

No. 15 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 13. Omit “and referendums”.

No. 16 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 14. Omit “plebiscites and”.

No. 17 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 14. Omit “and referendums”.

No. 18 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**

Page 4, Schedule 1, line 16. Omit “plebiscite or”.

No. 19 **Referendum required before any new amalgamation (including those in progress)**

Page 4, Schedule 1, line 16. Omit “or referendum”.

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- No. 20 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**
Page 4, Schedule 1, line 17. Omit “plebiscite or”.
- No. 21 **Referendum required before any new amalgamation (including those in progress)**
Page 4, Schedule 1, line 17. Omit “or referendum”.
- No. 22 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**
Page 4, Schedule 1, line 20. Omit “plebiscite or”.
- No. 23 **Referendum required before any new amalgamation (including those in progress)**
Page 4, Schedule 1, line 20. Omit “or referendum”.
- No. 24 **De-amalgamation of councils amalgamated in 2016—operates automatically on assent to proposed Act**
Page 4, Schedule 1, line 21. Omit “clauses 1 (5) and 2 (3)”. Insert instead “clause 1 (3)”.
- No. 25 **Referendum required before any new amalgamation (including those in progress)**
Page 4, Schedule 1, line 21. Omit “clauses 1 (5) and 2 (3)”. Insert instead “clause 1 (5)”.
- No. 26 **Procedure for de-amalgamation of councils (which operates whether or not a plebiscite is required)**
Page 4, Schedule 1. Insert after line 22:

[2] **Schedule 11**

Insert in appropriate order:

Schedule 11 De-amalgamation of certain councils and reversal of certain boundary alterations

Part 1 General

1 Definitions

In this Schedule:

amalgamated area means an area amalgamated by an amalgamation proclamation (specified in Column 1 of the Table to clause 3).

amalgamated council, in relation to a restored council, means a council of an amalgamated area.

amalgamation day, in relation to an amalgamated council, means the time of the day on which the amalgamation proclamation relating to that council commenced (specified in Column 4 of the Table to clause 3).

amalgamation proclamation means each of the following:

- (a) *Local Government (Bayside) Proclamation 2016*,
- (b) *Local Government (City of Parramatta and Cumberland) Proclamation 2016*,
- (c) *Local Government (Council Amalgamations) Proclamation 2016*.

asset means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

constituent area, in relation to an amalgamated area, means each of the areas that were amalgamated on the amalgamation day to form the amalgamated area (specified in Column 2 of the Table to clause 3).

old area, for a restored council, means the constituent area of the council of the same name that was constituted immediately before the amalgamation day.

old council, for a restored council, means the council of the same name that was constituted immediately before the amalgamation day.

de-amalgamation day, for an amalgamated council, means the time of the day on which this Schedule commences.

first election, for a restored council, means the election referred to in clause 13.

initial period means the period commencing on the de-amalgamation day and ending immediately before the first meeting of the restored council held after the first council elections for the council.

liabilities means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

proceedings means criminal proceedings, civil proceedings, civil penalty proceedings or other legal proceedings (including the issue of penalty notices for alleged offences and proceedings arising out of the issue of any such penalty notice).

restored area means an area constituted by clause 3 (specified in Column 3 of the Table to clause 3).

restored council means the council of a restored area (specified in Column 3 of the Table to clause 3) constituted by clause 3.

rights means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

2 Regulations may make further provision

- (1) The regulations may:
 - (a) make further provision for or with respect to any de-amalgamation, or reversal of boundary alterations, effected by clause 3, or
 - (b) contain further provisions of a savings or transitional nature consequent on the enactment of this Schedule.
- (2) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the *Local Government Amendment (Amalgamation Referendums) Act 2017* or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 De-amalgamation of areas and reversal of boundary alterations

3 De-amalgamation of areas and reversal of boundary alterations

- (1) On the de-amalgamation day, the amalgamated areas specified in Column 1 of the Table to this clause are de-amalgamated to constitute the restored areas with the names specified alongside the amalgamated area in Column 3 of the Table.
- (2) The area of a restored area includes all land contained within the area of the areas of the same name, as constituted immediately before the amalgamation day, specified for the area in Column 2 of the Table to this clause.
- (3) On the de-amalgamation day, the councils of the amalgamated areas specified in Column 1 of the Table to this clause are dissolved.

Table

Column 1	Column 2	Column 3	Column 4
Amalgamated areas	Constituent areas that were amalgamated	Restored areas constituted after de-amalgamation	Amalgamation day
Armidale Regional	Armidale Dumaresq Guyra	Armidale Dumaresq Guyra	12.5.2016 at 12.10 pm
Inner West	Ashfield Leichhardt Marrickville	Ashfield Leichhardt Marrickville	12.5.2016 at 12.10 pm
Canterbury-Bankstown	City of Bankstown City of Canterbury	City of Bankstown City of Canterbury	12.5.2016 at 12.10 pm
Snowy Monaro Regional	Bombala Cooma-Monaro Shire Snowy River	Bombala Cooma-Monaro Shire Snowy River	12.5.2016 at 12.10 pm
Hilltops	Boorowa Harden Young	Boorowa Harden Young	12.5.2016 at 12.10 pm
Edward River	Conargo Deniliquin	Conargo Deniliquin	12.5.2016 at 12.10 pm
Gundagai	Cootamundra Gundagai	Cootamundra Gundagai	12.5.2016 at 12.10 pm
Federation	Corowa Shire Urana	Corowa Shire Urana	12.5.2016 at 12.10 pm
Western Plains Regional	City of Dubbo Wellington	City of Dubbo Wellington	12.5.2016 at 12.10 pm
Mid-Coast	Gloucester Great Lakes City of Greater Taree	Gloucester Great Lakes City of Greater Taree	12.5.2016 at 12.10 pm
Central Coast	City of Gosford Wyong	City of Gosford Wyong	12.5.2016 at 12.10 pm
Georges River	City of Hurstville City of Kogarah	City of Hurstville City of Kogarah	12.5.2016 at 12.10 pm

Column 1	Column 2	Column 3	Column 4
Amalgamated areas	Constituent areas that were amalgamated	Restored areas constituted after de-amalgamation	Amalgamation day
Murrumbidgee	Jerilderie Murrumbidgee	Jerilderie Murrumbidgee	12.5.2016 at 12.10 pm
Northern Beaches	Manly Pittwater Warringah	Manly Pittwater Warringah	12.5.2016 at 12.10 pm
Murray River	Murray Wakool	Murray Wakool	12.5.2016 at 12.10 pm
Queanbeyan- Palerang Regional	Palerang City of Queanbeyan	Palerang City of Queanbeyan	12.5.2016 at 12.10 pm
Snowy Valleys	Tumbarumba Tumut Shire	Tumbarumba Tumut Shire	12.5.2016 at 12.10 pm
Bayside	City of Botany Bay City of Rockdale	City of Botany Bay City of Rockdale	9.9.2016 at 2 pm
City of Parramatta	City of Auburn City of Holroyd City of Parramatta The Hills Shire Hornsby Shire	City of Auburn City of Holroyd City of Parramatta The Hills Shire Hornsby Shire	12.5.2016 at 12.10 pm
Cumberland	City of Auburn City of Holroyd City of Parramatta	City of Auburn City of Holroyd City of Parramatta	12.5.2016 at 12.10 pm

Part 3 Responsibility to give effect to de-amalgamations and reversals

4 Obligations of restored councils

A restored council is to use its best endeavours to facilitate the operation of this Schedule, including sharing information, agreeing about required matters and working co-operatively with other councils.

5 Matters or things to be determined by Minister

- (1) For the purposes of giving effect to this Schedule, the Minister may from time to time determine any matter or thing at the Minister's discretion or if a restored council or an Administrator of a restored council refers any matter or thing requiring determination to the Minister for that purpose.
- (2) The Minister may delegate any function of the Minister under this clause to the Departmental Chief Executive.
- (3) The Departmental Chief Executive may sub-delegate to any person any function delegated to the Departmental Chief Executive under this clause.

6 Powers under Act

- (1) Nothing in this Schedule limits the powers under this Act of a restored council or any other person to take any action to change any matter specified by this Schedule at any time after the initial period.

Note. Examples of such changes might include changes to the method of election of mayors, changes to wards and changes to councillor numbers.

- (2) Subclause (1) does not apply in respect of a matter specified in this Schedule relating to rates for the 2017/2018 rating year.
- (3) A public inquiry under Part 8 of Chapter 13 into a matter relating to an amalgamated council or the members or staff of an amalgamated council that was commenced but not completed before the de-amalgamation day may be continued and completed as if the amalgamated council had not ceased to exist.

Part 4 Administrators of restored councils to manage in the interim

7 Revocation of appointment of administrators

- (1) The appointment of any Administrator of an amalgamated council holding office immediately before the de-amalgamation is revoked.
- (2) Any employment agreement of an Administrator of an amalgamated council applies as if the Administrator's appointment had been terminated under that agreement.

8 Appointment of Administrators for restored councils

- (1) The Minister is, by order published in the Gazette, to appoint a person as Administrator of a restored council.
- (2) The Minister may, by order published in the Gazette, appoint an additional person or persons as Administrators of a restored council, if the Minister is of the opinion that it is necessary to do so for the purposes of facilitating the operations of the council.
- (3) A person is not disqualified from appointment as an Administrator of a restored council by virtue only of having been a councillor, including a mayor, of the relevant amalgamated council, or any other council, before the amalgamation date.
- (4) The salary of an Administrator of a restored council is to be determined by the Minister and paid from the funds of the restored council.
- (5) For the purposes of this Act, an Administrator of a restored council does not, in that position, hold an office or a place of profit under the restored council.
- (6) The regulations may make provision about the process for appointment of an Administrator.

9 Functions of Administrators for restored councils

- (1) The Administrator of a restored council has, during the initial period, the functions of the council and the mayor of the council. This subclause is subject to the provisions of this Schedule and to any order appointing another Administrator.
- (2) If an additional Administrator is appointed for a restored council:
 - (a) each Administrator has the functions specified in the instrument of appointment, and
 - (b) the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one Administrator.
- (3) An Administrator who exercises any functions referred to in this Schedule is to be paid a fee for the exercise of those functions that is

determined by the Minister and paid from the funds of the county council.

10 Vacation of office by Administrators

- (1) The Minister may, by instrument in writing published in the Gazette, terminate the appointment of an Administrator of a restored council at any time.
- (2) An Administrator of a restored council ceases to hold office:
 - (a) immediately before the end of the initial period, or
 - (b) if the Administrator's appointment is earlier terminated by the Minister, or
 - (c) if the Administrator dies.

Part 5 Elections for restored councils

11 Wards

- (1) A restored council is not to be divided into wards for the first election under this Part if the corresponding old council was not divided into wards immediately before the amalgamation date for that constituent area.
- (2) However, if the old council for a restored council was divided into wards immediately before the amalgamation date, the restored council is to be divided into the same wards, with the same boundaries, for the first election under this Part.

12 Number of councillors

The number of councillors to be elected to a restored council at its first election for the council is the same as that for its old council.

13 First election

- (1) The date of the first election of the councillors of a restored council is the first Saturday that occurs after the day that is 3 calendar months after the date of assent to the *Local Government Amendment (Amalgamation Referendums) Act 2017*.
- (2) The election is taken to be an ordinary election of councillors for the purposes of this Act or the regulations (other than for the purposes of the application of provisions relating to the administration and holding of first elections for councils and first mayors for councils).
- (3) Any contract, agreement or other arrangement entered into by an amalgamated council for the administration of an election for an amalgamated council is terminated by operation of this clause.
- (4) Clause 24 (2) applies to the termination of a contract, agreement or other arrangement by operation of this clause.

14 Election of mayor following first election

For the purposes only of the first election, and until a constitutional referendum determines otherwise:

- (a) In the case where the mayor or president of the old council was, immediately before the amalgamation date, elected by the electors, the mayor is to be elected by the electors.

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- (b) In the case where the mayor or president of the old council was, immediately before amalgamation date, elected by the councillors, the mayor is to be elected by councillors.

Part 6 Senior staff

15 Revocation of appointment of certain persons

- (1) The appointment of any person holding any of the following immediately before the de-amalgamation day is revoked:
 - (a) the position of interim general manager of an amalgamated council,
 - (b) the position of general manager of an amalgamated council,
 - (c) the position of deputy general manager of an amalgamated council,
 - (d) any other position identified in an amalgamated council's organisation structure as a senior staff position.
- (2) The operation of this clause is not to be regarded as a breach of contract between an amalgamated council or the restored council and an interim general manager, general manager, deputy general manager or senior staff member, as the case may be.
- (3) Part 6 of Chapter 11 does not apply to any person whose appointment is revoked by the operation of this clause. Any employment agreement of an Administrator of an amalgamated council applies as if the Administrator's appointment had been terminated under that agreement.

16 Interim general manager of restored councils

- (1) The Administrator of a restored council is to appoint a person as the interim general manager of the council as soon as practicable after the de-amalgamation date.
- (2) The regulations may make provision for or with respect to the selection and appointment of an interim general manager.
- (3) If a person appointed as an interim general manager under this clause was, immediately before the de-amalgamation day, the interim general manager, general manager or deputy general manager of an amalgamated council, the person has the same rights and entitlements as if the person were a senior staff member who was transferred to the restored council under this Schedule.

Note. Under clause 406C of the *Local Government (General) Regulation 2005*, a transferred staff member is transferred under the same contract of employment (including the term of appointment) and retains accrued leave entitlements.

- (4) Despite subclause (3), the Administrator may vary (but not reduce) the remuneration that would otherwise be payable to the interim general manager.
- (5) The operation of subclauses (1)–(4) is not to be regarded as a breach of contract between an amalgamated council or the restored council and a senior staff member (including a general manager).
- (6) The Administrator of a restored council or the restored council may, at any time, terminate the appointment of an interim general manager appointed under this clause.
- (7) Any such termination is to be consistent with the terms of any applicable contract of employment for the interim general manager.

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- (8) Section 336 (2) and (3) apply to a person appointed as an interim general manager under this clause.
 - (9) Nothing in this clause prevents the extension of the term of appointment of an interim general manager.

Part 7 Preservation of employment of non-senior staff

17 Organisation structure

The initial organisation structure of a restored council is, as far as practicable, to be the same as the organisation structure of the amalgamated council.

18 Preservation of employment of non-senior staff

- (1) A member of staff (other than senior staff) of an amalgamated council immediately before the de-amalgamation day who was, before the amalgamation day a member of staff of one of the corresponding old councils is transferred to the relevant restored council.
- (2) Any other member of staff (other than senior staff) of an amalgamated council immediately before the de-amalgamation day is transferred to the relevant restored council agreed upon by the member of staff and each of the relevant restored councils.
- (3) Part 6 of Chapter 11 applies to staff transferred by the operation of this clause as if they were transferred pursuant to an amalgamation or boundary alteration.

19 Resolution of disputes about employment of non-senior staff

- (1) If a question, dispute or difficulty arises between a member of staff (other than senior staff) and one or more restored councils about the operation of this Part in relation to that member of staff, any party may request that the Departmental Chief Executive determine the matter by conciliation.
- (2) The Departmental Chief Executive may conduct the dispute resolution process, if any, in the manner that the Departmental Chief Executive considers appropriate.
- (3) The decision of the Departmental Chief Executive in the resolution of the matter is binding, but does not affect any right to apply to the Industrial Relations Commission or any court or tribunal.
- (4) If a question, dispute or difficulty arises between a member of staff (other than senior staff) and one or more restored councils about the operation of this Part in relation to that member of staff, the member of staff, or an industrial organisation acting on behalf of a member of staff, may apply to the Industrial Relations Commission to have the matter determined by conciliation and, if necessary, arbitration.
- (5) The Industrial Relations Commission may conduct the dispute resolution process in the manner that the Commission considers appropriate.
- (6) The Industrial Relations Commission may make such orders in relation to such a question, dispute or difficulty as the Commission considers fair and reasonable in the circumstances.
- (7) A person who fails to comply with an order of the Industrial Relations Commission under this clause is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

Part 8 Transfer of assets, rights and liabilities

20 Definitions

In this Part:

transferee means the person or body in whom any assets, rights or liabilities are transferred by this Schedule or vested by a vesting order.

transferor means the person or body from whom any assets, rights or liabilities are transferred by this Schedule or divested by a vesting order.

vesting order means an order made by the Minister in writing for the purposes of this Part.

21 Minister may determine status of assets, rights or liabilities

For the purposes of this Part, including for the purpose of the making of a vesting order, the Minister may determine whether or not particular assets, rights or liabilities of an amalgamated council were, immediately before the amalgamation date, assets, rights or liabilities (as the case may be) of a specified council for an area, and that determination is conclusive as to the matters determined.

22 Transfer of old assets, rights and liabilities

The assets, rights and liabilities of an amalgamated council that were, immediately before the amalgamation date, assets, rights or liabilities (as the case may be) of an old council for an area are transferred to the corresponding restored council for that area.

23 Making of vesting order relating to post-amalgamation rights, assets and liabilities

- (1) The Minister may make vesting orders for the purposes of this Schedule vesting assets, rights and liabilities of an amalgamated council (other than those transferred by clause 22), to a restored council or another person.
- (2) A vesting order may not be made unless:
 - (a) all of the restored councils for an amalgamated council have requested the making of the vesting order in the terms agreed by all of the councils, or
 - (b) there is a dispute between the restored councils for areas of an amalgamated council as to the assets, rights or liabilities the subject of the order and the Departmental Chief Executive has requested the making of the vesting order in the terms determined by the Departmental Chief Executive.
- (3) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (4) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (5) This clause does not limit any other provision of this Schedule.
- (6) A vesting order may be made on such terms and conditions as are specified in the order.
- (7) A vesting order may vary the terms and conditions of any instrument or contract that relates to assets, rights or liabilities to the extent that is necessary or convenient for the purposes of an authorised transaction.

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- (8) A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

24 Provisions relating to transfers of assets, rights and liabilities

- (1) When any assets, rights or liabilities are transferred pursuant to this Schedule from an amalgamated council to a restored council, the following provisions have effect:
- (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities of the transferor become, by virtue of this clause, the rights or liabilities of the transferee,
 - (c) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (d) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of the transfer.

Note. Clause 39 provides for the regulations to translate references in any instrument to amalgamated councils or areas and their predecessors.

- (2) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.
- (3) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities. The notice is conclusive evidence of that transfer.
- (4) No attornment to the transferee by a lessee from the transferor is required.

25 Continuation or institution of proceedings by or against restored councils

- (1) Proceedings that were instituted by or against an amalgamated council before its dissolution, or that could have been instituted by or against an amalgamated council but for its dissolution, may be continued or instituted by or against one or more restored councils for that council.
- (2) For that purpose:
- (a) proceedings instituted by or against the amalgamated council are taken to be proceedings instituted by or against the restored council, and

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- (b) anything done by or in relation to the amalgamated council is taken to have been done by or in relation to the restored council.

26 Confirmation of transfer or vesting

- (1) The Minister may by order in writing confirm a transfer or vesting of assets, rights or liabilities, or a variation of the terms and conditions of an instrument or contract, by operation of this Schedule, including a vesting order.
- (2) Such an order is evidence of that vesting or variation.

Part 9 Council activities

27 Activities of amalgamated councils

- (1) Anything done or omitted to be done by an amalgamated council and having any force or effect immediately before the de-amalgamation day continues to have effect as if it had been done or omitted to be done by:
 - (a) in the case of anything done or omitted to be done in relation to any assets, rights or liabilities of an amalgamated area—the council for the restored area in which the assets, rights or liabilities are located, and
 - (b) in the case of anything done or omitted to be done in relation to a member of staff of an amalgamated area—the restored council to which the member of staff is transferred.
- (2) Without limiting subclause (1):
 - (a) any approval, order or notice given or made by an amalgamated council, and that had effect immediately before the de-amalgamation day, continues to have effect as if it had been given or made by the relevant restored council, and
 - (b) anything commenced but not completed by an amalgamated council may be completed or discontinued by the relevant restored council.
- (3) This clause does not:
 - (a) limit any other provision of this Schedule, or
 - (b) apply to the extent to which it is inconsistent with any other provision of this Schedule.

28 Delegations

- (1) A delegation by an amalgamated council that was in force immediately before the de-amalgamation day is taken to be a delegation by a restored council and may be revoked or amended accordingly.
- (2) A delegation by an amalgamated council to the general manager of that council that was in force immediately before the de-amalgamation day is taken to be a delegation by a restored council to the interim general manager and may be revoked or amended accordingly.

29 Codes, plans, strategies and policies

- (1) The codes, plans, strategies and policies of the restored council are to be, as far as practicable, the codes, plans, strategies and policies of the relevant amalgamated council.
- (2) This clause ceases to have effect in relation to a code, plan, strategy or policy when the restored council adopts a code, plan, strategy or policy that replaces that code, plan, strategy or policy.

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- (3) This clause does not apply to the extent to which it is inconsistent with any other provision of this Schedule.

30 Code of conduct and meeting code

- (1) The code of conduct for a restored council is to be, as far as practicable, the code of conduct of the relevant amalgamated council until a code of conduct is adopted by the restored council in accordance with this Act.
- (2) The procedure for dealing with alleged contraventions of the code of conduct is to be the model procedure (within the meaning of section 440AA) until a procedure is adopted by the restored council in accordance with this Act.
- (3) Any provision of a code of meeting practice applied to a restored council by this Schedule that restricts the holding of meetings to places in an amalgamated area applies so that the restriction relates to places in the restored area.

31 Development control plans and contributions plans

- (1) A development control plan or contributions plan that applied to an amalgamated area immediately before the de-amalgamation day continues to apply to that part of a restored area that consists of the whole or part of the amalgamated area to which the plan applied.
- (2) This clause ceases to have effect when the development control plan or contributions plan is repealed.
- (3) To avoid doubt, nothing in this clause prevents the restored council from amending a development control plan or contributions plan.
- (4) In this Schedule:
contributions plan has the same meaning as in Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.
development control plan has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

32 Strategic planning

- (1) The day by which a restored council must have an operational plan is 1 August 2017.
- (2) The day by which a restored council must review its community strategic plan, following the first election for the council, is 30 June 2018.
- (3) The day by which a restored council must establish a new delivery program, following the first election for the council, is 30 June 2018.
- (4) The delivery program is to be for the period commencing on 1 July 2019 and ending on 30 June 2021.

33 Payment of outstanding rates, charges and fees

- (1) Any rates, annual charges or other fees payable to an amalgamated council in respect of any land in the area of a restored council, that were not paid before the de-amalgamation day or for which payment is due after that day, are payable to the restored council.
- (2) Section 218CB continues to apply to the maintenance of pre-amalgamation rate paths after the de-amalgamation date.

34 Authorisation of expenditure pending operational plan

A restored council may hold a meeting for the purposes of approving expenditure and voting money for the period from 1 July 2017 until the adoption by the council of the first operational plan for the council.

35 Rating structure and categorisation of land for rating purposes

- (1) This clause applies to the levying of rates for the 2017/2018 rating year.
- (2) The structure for rates applied by an amalgamated council to rates levied for a parcel of land in a old area or amalgamated area, as the case may be, for the 2016/2017 rating year is to be applied by the restored council to that parcel.
- (3) The category or sub-category applied to a parcel of land in a old area or amalgamated area, as the case may be, for rating purposes for the 2016/2017 rating year is to be applied by the restored council to that parcel.
- (4) It does not matter that different rating structures apply to different parcels because of subclause (2).
- (5) This clause does not prevent a person from applying for a review of a category under section 525 or from making an appeal under section 526.
- (6) The rating structure is to be reviewed within the first term of the restored council following the first election of the council.

36 Calculation of notional general income for rating purposes

- (1) A restored council's notional general income for 2017/2018 is to be determined by adding together the amount of general income for any part of the old areas in the area of the restored council, determined as if the de-amalgamation effected by this Schedule had not taken place.
- (2) Any variation of an amalgamated council's notional general income under Part 2 of Chapter 15 that would have been applicable, had the de-amalgamation effected by this Schedule not taken place, to the determination of the amount of rates and charges for land within the area of a restored council during a particular period continues to apply to the determination of rates and charges in respect of that land.

37 Reports and reviews

- (1) A restored council is to prepare audited financial reports for the amalgamated councils, in respect of the period from 1 July 2017 to the end of the amalgamation day, within 6 months of the de-amalgamation day.
- (2) The first annual report (including the audited financial reports) of a restored council is to relate to the period commencing at the beginning of the day after the de-amalgamation day and ending on 30 June 2017.
- (3) Financial reports and audits of financial reports may be prepared for the periods specified in this clause despite any requirements of this Act relating to them.
- (4) For the purposes of the preparation of the first annual report (including the audited financial reports) of a restored council, this Act and the regulations apply as if a reference to a year were a reference to the period referred to in subclause (2).
- (5) Any report or review that is required to be carried out by a restored council, and that relates to a period before the de-amalgamation day, may be carried out by reference to the old areas, as the case requires.

38 Auditor of council

- (1) The auditor of a restored council is to be determined by the council and is to be a person who provided auditing services to the amalgamated council immediately before the de-amalgamation day.
- (2) Any contract, agreement or other arrangement made by an amalgamated council with any other person to provide auditing services is terminated by operation of this clause.

Part 10 Miscellaneous

39 References to old areas and amalgamated councils

The regulations may make provision about the construction of references to councils or areas affected by this Schedule in any Act or instrument, that is consequential on the enactment of this Schedule. Any such provision has effect despite anything to the contrary in this Schedule.

40 County councils

- (1) To avoid doubt, the constitution and operation of a county council, as existing immediately before the de-amalgamation day, is not affected by any changes to councils or council areas effected by this Schedule.
- (2) The following provisions apply for the purposes of the continuance of the operation of a county council under this clause:
 - (a) each restored council is taken to be a constituent council of a county council instead of the relevant amalgamated council if the amalgamated council was a constituent council of the county council immediately before the de-amalgamation day,
 - (b) the number of members to be elected by each restored council to the county council's governing body is to be the same as the total number of members of the amalgamated council on the governing body,
 - (c) until the first election of members of the county council's governing body following the de-amalgamation day, the Administrators of each of the relevant restored councils may exercise the functions (including the voting rights) that would be able to be exercised by persons elected to the governing body by the restored council,
 - (d) until the first election of members of the county council's governing body following the de-amalgamation day, the Administrator of one of the relevant restored council (agreed to between those councils) is to be the chairperson of the county council if the chairperson immediately before the de-amalgamation day was a councillor of an amalgamated council,
 - (e) elections for the chairperson of the county council and for members of the county council are to be held within 2 months after the first ordinary election of councillors for each of the restored councils.
- (3) This clause does not prevent a change being made to the constitution or operation of a county council or the dissolution of a county council in accordance with this Act at any time during or after the initial period.

41 Planning panels

- (1) A person nominated as a member of a joint regional planning panel by an amalgamated council may continue to exercise and complete any function being exercised by that person as a member immediately before the de-amalgamation day.
- (2) A function exercised under subclause (1) is taken to be exercised by the member as a nominee of the relevant restored council.
- (3) A person nominated as a member of a joint regional planning panel by an amalgamated council ceases to be a nominee of any relevant restored council and a member of the panel on the de-amalgamation day, except for the purpose of exercising a function under subclause (1).
- (4) In this clause:
joint regional planning panel has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

42 Membership of Sydney planning panels

- (1) A person nominated as a District Commissioner member of a Sydney planning panel by an amalgamated council may continue to exercise and complete any function being exercised by that person as a member immediately before the de-amalgamation day.
- (2) A function exercised under subclause (1) is taken to be exercised by the member as a nominee of the applicable restored council.
- (3) A person nominated as a member of a Sydney planning panel by an amalgamated council ceases to be a nominee of any relevant restored council and a member of the panel on the de-amalgamation day, except for the purpose of exercising a function under subclause (1).
- (4) In this clause:
Sydney planning panel has the same meaning as in the *Greater Sydney Commission Act 2015*.

Part 11 Special provisions relating to reversal of boundary alterations

43 Application of Schedule to reversal of boundary alterations

- (1) Parts 3–10 of this Schedule apply to the reversal of boundary alterations effected by clause 3 as if:
 - (a) a reference to an amalgamated council or amalgamated area were a reference to an altered council or altered area, and
 - (b) a reference to the amalgamation day were a reference to the alteration day, and
 - (c) a reference to the de-amalgamation day were a reference to the reversal day.
- (2) However, clause 18 (1) does not apply to a member of staff of an altered council. The transfer of employment of staff (other than senior staff) of an altered council is to be achieved in accordance with clauses 18 (2) and (3) and 19.
- (3) In this clause:
altered area means an area the boundaries of which were altered by the alteration proclamation.
alteration day means 12.10 pm on 12 May 2016 (that is, time and day on which the alteration proclamation commenced).

alteration proclamation means the *Local Government (City of Parramatta and Cumberland) Proclamation 2016*.

altered council means the council of an altered area.

reversal day, in relation to an amalgamated council, means the time of the day on which this Schedule commences.

No. 27 **Procedure for de-amalgamation of councils (which operates whether or not a plebiscite is required)**

Long title. Insert “and to provide for the de-amalgamation of certain amalgamated councils” after “councils”.