



New South Wales

Local Government Amendment Bill 2019

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* and other legislation as follows:

- (a) to increase to \$250,000 the value of a contract at or above which a council is required to invite tenders and to provide for other exceptions from the tendering requirement,
- (b) to extend by a further 12 months the period for which the Minister for Local Government may maintain the existing rate path for amalgamated councils,
- (c) to extend the cut-off dates for councils to decide to enter into arrangements with the Electoral Commissioner to administer the 2020 ordinary council elections, and to enter into the arrangements, to 1 October 2019 and 1 January 2020, respectively,
- (d) to enable the delegation of regulatory functions of councils to other councils, their committees and employees, and to committees of boards of joint organisations,
- (e) to enable regulations to be made to exempt councils from requirements relating to public notice of fees or determination of fees according to pricing methodologies where the fees relate to specified commercial activities,
- (f) to enable regulations to be made to establish a scheme for mutual recognition by councils of approvals and for appeals from decisions about the approvals.

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, other than amendments relating to mutual recognition of council approvals,

delegation of council functions and regulatory requirements for fees. Those amendments will commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1 [1] removes the requirement for a rate for the purchase of goods, materials and services to be specified for certain contracts to be exempted from the requirement that a council invite tenders before entering a contract.

Schedule 1 [2] increases to \$250,000 the threshold for the value of the estimated expenditure or receipt of an amount under a contract below which a council will be able to enter a contract without inviting tenders.

Schedule 1 [3] exempts councils from the requirement to invite tenders before entering into a contract if the contract is with a disability employment organisation approved for the particular goods and services concerned under the *Public Works and Procurement Act 1912* or the contract is with a person or body prequalified as a supplier under the National Prequalification System for Civil (Road and Bridge) Construction Contracts.

Schedule 1 [4] enables regulations to be made for the purposes of conferring jurisdiction on the Land and Environment Court to deal with appeals relating to council decisions about the recognition of approvals under a scheme prescribed under powers to be inserted by **Schedule 1 [13]**. The regulations will also be able to enable the Court to award compensation for expenses incurred as a consequence of a refusal or delay in recognising an approval in circumstances where the council has been influenced by vexatious or unmeritorious submissions by members of the public or has acted vexatiously.

Schedule 1 [5] extends from 3 rating years to 4 rating years the period for which the rate path last applicable to land affected by a council amalgamation will continue to apply in a case where the Minister makes a determination that the last rate path will continue to apply. **Schedule 1 [14]** applies the amendment to existing determinations that are in force when the amendment commences.

Schedule 1 [6] allows a council that is intending to enter into an arrangement with the Electoral Commissioner to administer all elections, commencing with the 2020 ordinary council election, to meet the requirement to resolve to do so on or before 1 October 2019. Currently, the resolution would have been required to have been made by March 2019.

Schedule 1 [7] allows a council to enter into an arrangement with the Electoral Commissioner to administer the election of ordinary councillors in 2020, or all elections including that election, if the council resolves to do so on or before 1 October 2019 and enters into the arrangement on or before 1 January 2020. This reflects the changes made to requirements relating to resolutions by **Schedule 1 [6]**. Currently, an arrangement would have been required to have been entered into by June 2019.

Schedule 1 [8] enables a council to delegate its regulatory functions (relating to water supply, sewerage and drainage work, waste management, community land and other matters) to another council.

Schedule 1 [9] requires the approval of a council to be given before another council may delegate regulatory powers to that council and makes it clear that a council that delegates a regulatory function to a joint organisation need not be a member council of the joint organisation. The amendment also enables regulations to be made prescribing regulatory functions that must not be, or circumstances in which they may not be, delegated by a council to another council.

Schedule 1 [10] enables a joint organisation to which a regulatory function is delegated by a council to delegate the function to a committee of the board of the joint organisation.

Schedule 1 [11] enables a council to which a regulatory function is delegated by another council to delegate the function to a committee, or to the general manager of the other council who may in turn delegate the function to an employee of the other council.

Schedule 1 [12] inserts a power to make regulations for or with respect to the exemption of fees from requirements for councils to publicly notify fees for non-business activities or to determine fees in accordance with a pricing methodology adopted in the council's operational plan, if the fees are charged for a commercial activity by a council. The regulations may also validate a fee charged before an exemption comes into force if the fee would have been valid if charged after the exemption comes into force.

Schedule 1 [13] enables regulations to be made to prescribe a scheme for the mutual recognition of council approvals for regulatory activities. Elements about which regulations may be made include council policies for mutual recognition, model policies for mutual recognition, arrangements between councils relating to mutual recognition, approval of arrangements, modification of arrangements for recognition, effect of recognition of approvals, modification and revocation of recognised approvals and compensation for decisions by councils about recognised approvals.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* to make an amendment consequential on the amendment made by **Schedule 2.4**.

Schedule 2.2 amends the *Land and Environment Court Act 1979* to require appeals relating to recognised approvals to be dealt with by the Land and Environment Court within its class 2 jurisdiction, in line with local government approval appeals.

Schedule 2.3 amends the *Local Government (General) Regulation 2005* to remove a provision which raises the upper limit for contracts required to undergo tendering processes and has been superseded by the amendment made by **Schedule 1 [2]**.

Schedule 2.4 amends the *Public Interest Disclosures Act 1994* to enable councils to report on their obligations under that Act in annual reports under the *Local Government Act 1993* and provides for the amendment to operate from the 1 July following the amendment commencing.