

Local Government Amendment (Employment Protection) Bill 2003

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*:

- (a) to provide employment protection to non-senior staff members transferred from the employment of one council to another council due to the constitution, amalgamation or alteration of council areas, and
- (b) to provide that a non-senior staff member employed by a council affected by a proposal to constitute, amalgamate or alter council areas may not have the staff member's employment terminated on the grounds of redundancy during the period the proposal is being considered, and
- (c) to provide that a council must not make a payment to the general manager or other senior staff member in relation to the termination of the staff member's employment without first obtaining the Minister's approval to the payment.

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 appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* as set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [3] inserts proposed section 354A into the *Local Government Act 1993*. Proposed section 354A provides that a council must not make a payment to the general manager or other senior staff member in relation to the termination of the staff member's employment without first obtaining the Minister's approval to the payment. The Minister may refuse to approve such a payment if the Minister is not satisfied that the payment is appropriate. A payment made without the Minister's approval is to be repaid to the council and may be recovered by the council or the Minister as a debt due to the council. The regulations may exempt particular kinds of payment from the requirement for Ministerial approval.

Schedule 1 [4] inserts proposed Part 6 (sections 354B–354H) into Chapter 11 of the *Local Government Act 1993* to provide arrangements for staff affected by the constitution, amalgamation or alteration of council areas. Proposed section 354B defines certain terms used in proposed Part 6 and, in particular, includes a definition of **transferred staff member**. A **transferred staff member** means a member of the staff of a council who is transferred to the employment of another council:

- (a) by a proclamation for the purposes of Division 1 of Part 1 of Chapter 9 of the Local Government Act 1993 that constitutes one or more council areas, or
- (b) by a proclamation for the purposes of Division 2A of Part 1 of Chapter 9 of that Act that amalgamates, or alters the boundaries of, one or more council areas. Proposed section 354D preserves the entitlements of transferred staff members. Specifically, it provides that:
 - (a) the terms and conditions of a transferred staff member's employment (other than of a senior staff member) must not, on balance, provide a net detriment to the staff member when compared with the aggregate package of terms and conditions that applied to the staff member before the transfer, and
 - (b) neither the contract of employment nor the period of employment of a transferred staff member is

broken by the transfer, and

- (c) the transfer does not affect any accrued rights a transferred staff member had immediately before the transfer, including in relation to recreation leave, sick leave, long service leave and superannuation, but does not entitle the staff member to claim dual benefits of the same kind for the same period of service.

Proposed section 354E ensures that the Minister can refuse to approve of any unjustifiable increase or decrease in the terms and conditions of staff arising from or in anticipation of a proposal to constitute, amalgamate or alter council areas. If approval is not given, any increased staff entitlements are not binding on the new council and any decreased staff entitlements do not decrease the entitlements of transferred staff members under proposed section 354D (1). Proposed section 354F provides that there can be no forced redundancies of nonsenior transferred staff members (arising from the constitution, amalgamation or alteration of council areas) within 3 years after the transfer of those staff members to the new council. Proposed section 354C makes similar provision for affected council employees during the period that the proposal to constitute, amalgamate or alter council areas is being considered. Proposed section 354G provides for the lateral transfer of certain non-senior staff members. Specifically, it provides that a council that employs one or more transferred staff members and intends to fill a position in the non-senior staff of the council within 12 months after the transfer:

- (a) must not externally advertise the position if a non-senior transferred staff member was, immediately before the transfer, performing substantially the same duties for the staff member's former council as are required to be performed in the position to be filled, and
- (b) must give preference to any applicant who, immediately before the transfer, was performing substantially the same duties for the applicant's former council and, if there is more than one such applicant, the applicant who has the greatest merit. Proposed section 354H provides that external advertising of vacant council staff positions is not required in certain circumstances. Specifically, external advertising is not required if the council employs non-senior transferred staff members who the general manager is satisfied are suitably qualified for the position. This provision applies to a council for 12 months after the transfer of transferred staff members to the council. The provision does not apply if the Minister is satisfied that the number of staff transferred as a result of a boundary change was not significant.

Schedule 1 [1] and [2] make consequential amendments to sections 213 and 218C of the *Local Government Act 1993* respectively. Section 213 of the Act provides that a proclamation of the Governor constituting any part of New South Wales as a council area may include such provisions as are necessary or convenient for giving effect to the proclamation, including provisions for or with respect to, amongst other matters, the transfer of staff.

Schedule 1 [1] inserts a note in section 213 with respect to the provisions of proposed Part 6 of

Chapter 11 (to be inserted by Schedule 1 [4]) in relation to transferred staff members transferred as a result of such a proclamation.

Schedule 1 [2] inserts a similar note in section 218C in respect of proclamations amalgamating, or altering the boundaries of, one or more council areas.

Schedule 1 [5] provides that regulations of a savings and transitional nature may be made consequent on the enactment of the *Local Government Amendment (Employment Protection) Act 2003*.