



New South Wales

Local Government Amendment Act 2000 No 112

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Local Government Amendment Act 2000 No 112

Act No 112, 2000

An Act to amend the *Local Government Act 1993* in relation to elections, the disclosure of pecuniary interests, tendering, the management of community land and other matters. [Assented to 20 December 2000]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Local Government Amendment Act 2000*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Schedule 1 [1]–[5], [9] and [10] commence on 1 June 2003.
- (3) Schedule 1 [7], [8] and [11] commence on 1 June 2002.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedules 1–3.

4 Amendment of other Acts

Each Act specified in Schedule 4 is amended as set out in that Schedule.

Schedule 1 Amendments to Local Government Act 1993 in relation to elections

(Section 3)

[1] Section 306 Nominations

Insert after section 306 (5):

- (5A) However, if a group that comprises more than 5 candidates:
- (a) proposes the nomination of all members of the group, and pays the deposit for the nomination of all members of the group, at the same time, and
 - (b) has lodged a claim under section 308A (2),
- the amount of the deposit for each candidate included in the group is 5 times the deposit for one candidate divided by the number of candidates in that group.

[2] Sections 308A and 308B

Omit the sections. Insert instead:

308A Grouping of candidates

- (1) This section applies to an election in which there are 2 or more councillors to be elected.
- (2) Two or more candidates duly proposed for nomination for election may, before noon on the nomination day prescribed by the regulations, claim to have their names included in a group on the ballot-papers and in the order specified in the claim. The claim is to be lodged with the returning officer.
- (3) A claim under subsection (2) may also include a request for a group voting square for the group to appear on the ballot-papers to be used in the election concerned, but only if:
 - (a) in the case of an area not divided into wards—the number of candidates in the group on the nomination day prescribed by the regulations is at least half the number of candidates to be elected, or

- (b) in the case of an area divided into wards—there are at least as many candidates in the group on the nomination day prescribed by the regulations as there are candidates to be elected.
- (4) A group voting square is to be printed on the ballot-papers above the names of the candidates in each group that has duly requested a group voting square under subsection (3), but only if more than one group has duly requested a group voting square.
- (5) An application under Part 7 for the name of a political party to be printed adjacent to the name of a candidate on the ballot-papers may include a further request for that name or a composite name to be printed on the ballot-papers adjacent to the candidates' group voting square.

308B Group voting—recording of votes

- (1) This section applies if a ballot-paper has group voting squares.
- (2) Instead of marking the separate voting squares for the candidates, the voter may record a vote:
 - (a) by placing the number “1” in any one of the group voting squares, and
 - (b) (if he or she wishes) by placing consecutive numbers (beginning with the number “2”) in any other of those group voting squares, in the order of his or her preference for the various groups of candidates.
- (3) The number “1” appearing in a group voting square for a group indicates:
 - (a) that the voter's first preference vote is for the first candidate in the group, and
 - (b) that the voter's subsequent preference votes are for the other candidates in the group in the order in which their names appear on the ballot-paper.
- (4) Subsequent numbers appearing in group voting squares for other groups indicate that the voter's preferences (subsequent to those referred to in subsection (3)) are for the candidates in those groups:

- (a) in the order in which those groups are numbered by the voter, and
- (b) within each group, in the order in which the names of the candidates in that group appear on the ballot-paper.

[3] Section 308C Group voting—marking of ballot-papers

Omit “ticket” wherever occurring in section 308C (1)–(3).

[4] Section 308C (4)

Omit the subsection. Insert instead:

- (4) A ballot-paper on which the voter has recorded a vote by placing in one group voting square the number “1” is not informal by reason only that:
 - (a) the same preference (other than the first preference) is recorded on the ballot-paper for more than one group, but in that event the ballot-paper is to be treated as if those and any subsequent preferences had not been recorded, or
 - (b) there is a break in the order of preferences for groups, but in that event the ballot-paper is to be treated as if any preference after the break had not been recorded, or
 - (c) fewer preferences are recorded than there are candidates to be elected.
- (5) The ballot-papers for an election are not informal by reason only that they contain the name of a candidate whom a court has declared to be incapable of being elected at that election, but a preference for such a candidate (whether individually or as a member of a group) is to be disregarded, and (if necessary) subsequent preferences are to be renumbered accordingly.

Note. The regulations make further provision regarding the formality of ballot-papers.

[5] Section 308D Group voting—regulations

Omit “group voting tickets”. Insert instead “group voting squares”.

[6] Section 310A

Insert after section 310:

310A Counting of postal votes

At any election, any postal vote must be counted if:

- (a) the postal vote is received before 6 pm on the first business day immediately following the close of the poll, and
- (b) the voter has indicated, in accordance with the regulations, that the postal vote was completed before the close of the poll.

[7] Section 320 Registration of political parties

Omit section 320 (2) (f) and (g). Insert instead:

- (f) sections 66C, 66D (3), 66FA (2), 66H (3A), 66JA and 66N of that Act are to be disregarded,
- (g) the reference in section 66FA (1) (a) of that Act to Division 6B of Part 5 of that Act is a reference to section 321 of this Act,
- (g1) the reference in section 66FA (1) (b) of that Act to sections 79 and 81B of that Act is a reference to any regulations under this Act regarding a political party proposing a candidate for nomination,
- (g2) the reference in section 66FA (1) (c) of that Act to section 151G of that Act is a reference to any regulations under this Act regarding registration of electoral material,

[8] Section 320 (3) (a)

Omit “or that has at least one member who is a member of a council”.

[9] Schedule 6 Regulations

Omit “group voting tickets” from the examples listed under clause 14.
Insert instead “group voting squares”.

[10] Dictionary

Insert in alphabetical order:

group voting square means a square printed on a ballot-paper for an election above the names of the candidates included in a group who have duly requested a group voting square for the purposes of the election, as referred to in section 308A.

[11] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert in appropriate order:

Part 17 Phasing-in of party registration requirements adopted by Local Government Amendment Act 2000

Note. Schedule 1 [7] and [8] to the *Local Government Amendment Act 2000* introduced new membership requirements for the registration of local government parties, with effect from 1 June 2002.

This Part sets out how those new registration requirements apply to:

- (a) parties that had applied to be registered before 1 June 2002 and had not had their applications determined, and
- (b) parties that were already registered immediately before 1 June 2002, and
- (c) parties that apply for registration during a phasing-in period (between 1 June 2002 and 1 June 2003) and who choose to be registered under the old registration requirements existing before the amendments.

This Part also provides for the application of the new requirement that a party that becomes registered after the commencement of the proposed amendments will not be eligible, until 12 months after it is first registered under the new requirements, to have its registered party name or abbreviation placed on ballot-papers or to be treated as a registered party in connection with the nomination of its candidates (see clause 61).

57 Definitions

In this Part:

existing registered party, means a party registered for the purposes of the *Local Government Act 1993* immediately before 1 June 2002 (the commencement of the new registration requirements), and includes any party registered under the old registration requirements under clause 58 during the phasing-in period in pursuance of an application for registration made before 1 June 2002.

new registration requirements means the membership requirements for the qualification of a party as an eligible party for the purposes of registration under the *Local Government Act 1993* in accordance with Part 4A of the *Parliamentary Electorates and Elections Act 1912*, as modified by section 320 of the *Local Government Act 1993* as in force on and from 1 June 2002 (that is, after the commencement of the amendments to the way Part 4A is modified made by Schedule 1 [7] and [8] to the *Local Government Amendment Act 2000*).

old registration requirements means the membership requirements for the qualification of a party as an eligible party in accordance with Part 4A of the *Parliamentary Electorates and Elections Act 1912*, as modified by section 320 of the *Local Government Act 1993*, as in force immediately before 1 June 2002.

phasing-in period means the period beginning on 1 June 2002 (the date on which the new registration requirements take effect) and ending at the end of 31 May 2003.

58 Applications made before 1 June 2002 but not determined

- (1) The new registration requirements do not apply to the determination of an application for registration of a party under the *Local Government Act 1993* that is made before 1 June 2002 but not determined before that date.
- (2) However, the applicant is to be given an opportunity to make a request that the new registration requirements should apply, and to amend the application, before the application is determined. If such a request is made, the new registration requirements apply to the application.

- (3) The new registration requirements apply to the application if it is not determined (under either the old registration requirements or the new registration requirements) before 1 June 2003, but the applicant is to be given a further opportunity to amend the application before it is determined in accordance with the new registration requirements.

59 Applications made by new parties during phasing-in period may request registration under old registration requirements

- (1) An application for registration of a party under the *Local Government Act 1993* that is made during the phasing-in period may include a request that the application should be dealt with in accordance with the old registration requirements.
- (2) If such a request is made in an application, the Electoral Commissioner must deal with the application in accordance with the old registration requirements (that is, as if the new registration requirements had not been enacted).
- (3) If an application for registration of a party made during the phasing-in period does not include a request that the application be dealt with under the old registration requirements, the application must be dealt with in accordance with the new registration requirements.

60 Transitional and other arrangements for existing local government registered parties and local government parties registered under the old registration requirements during the phasing-in period

- (1) This clause applies to:
 - (a) existing registered parties, and
 - (b) parties registered under the old registration requirements during the phasing-in period that are not existing registered parties.
- (2) The new registration requirements do not, until 7 September 2003, apply to a party to which this clause applies.
- (3) A party to which this clause applies is not entitled to continue to be registered, on and after 7 September 2003, unless:

- (a) the registered officer of the party has made an application for continued registration of the party before 1 June 2003, and
- (b) the Electoral Commissioner is satisfied that the party is an eligible local government party under the new registration requirements and approves the application.

This subclause does not affect the operation of subclauses (6)–(8).

- (4) An application for continued registration of a party to which this clause applies is to be made to the Electoral Commissioner (in the form and manner approved by the Electoral Commissioner) and must set out the particulars, and be accompanied by the documents, that are referred to in section 66D (2) (g) and (g1) of the *Parliamentary Electorates and Elections Act 1912* and any additional particulars and documents that are required by the approved form.
- (5) Sections 66DA, 66E (2), 66HA (2) and (3), 66J (2) and 66K of the *Parliamentary Electorates and Elections Act 1912* apply (subject to the regulations under that Act) to an application for continued registration under this clause in the same way as they apply to an application for registration.
- (6) The Electoral Commissioner is to cancel the registration of a party to which this clause applies that is not entitled to continue to be registered by virtue of this clause. Section 66I (3) of the *Parliamentary Electorates and Elections Act 1912* applies to any such cancellation of registration.
- (7) Before the Electoral Commissioner cancels the registration of any such party, the Electoral Commissioner is required to give the registered officer of the party notice of the proposed cancellation and the date of and reasons for the proposed cancellation. If the party has made an application before 1 June 2003, the Electoral Commissioner may accept a modified application for continued registration from the party and may defer a decision on the proposed cancellation until the modified application is dealt with.
- (8) If a party to which this clause applies made an application for continued registration in accordance with this clause before 1 June 2003 and:

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- (a) the Electoral Commissioner did not give the registered officer of the party a notice under subclause (7) before 1 August 2003, or
- (b) the Electoral Commissioner gave the registered officer of the party a notice under subclause (7) before 1 August 2003, but the application, or any modified application, had not been determined by the Electoral Commissioner on or before 8 August 2003,
- the Electoral Commissioner is not entitled to cancel the registration of the party before 14 September 2003.
- (9) The returning officer must not accept an application from a party to which this clause applies in relation to any election to be held on or after 13 September 2003 proposing the name of a candidate for nomination, proposing that the registered name of the party, or the abbreviation of the name of the party, be printed on ballot papers or proposing the registration of any electoral material if the party:
- (a) had not made an application for continued registration in accordance with this clause before 1 June 2003, or
- (b) had been given notice of proposed cancellation under subclause (7) before 1 August 2003 and had not made a modified application before 8 August 2003, or
- (c) had made a modified application that was rejected by the Electoral Commissioner on or before 8 August 2003.
- (10) In the case of a party to which this clause applies, a return is not required to be furnished under section 66HA (1) if the return would otherwise be required to be furnished in 2003 or 2004.
- (11) If a form is not prescribed for the time being by the regulations under the *Parliamentary Electorates and Elections Act 1912* for the purposes of section 66D (2) (g1) or 66HA (1) of that Act, the relevant form is to be a form approved by the Electoral Commissioner.
- (12) Section 66FA (1) and (3) of the *Parliamentary Electorates and Elections Act 1912* does not apply to an existing registered party while it remains a registered party.

61 New parties must be registered by 13 August 2002 to be eligible to nominate for elections held on 13 September 2003

Despite section 320 of this Act, section 66FA (1) and (3) of the *Parliamentary Electorates and Elections Act 1912*:

- (a) does not apply to parties registered under this Act during the phasing-in period (whether under the old registration requirements or the new registration requirements) in relation to the nomination of candidates, party endorsement on ballot papers or registration of electoral material in respect of any election on or before 6 September 2003, and
- (b) applies to parties registered under this Act during the phasing-in period (other than existing registered parties) as if the reference to the registration of a party is a reference to the registration of the party (for the first time) under the new registration requirements.

Schedule 2 Amendments to Local Government Act 1993 in relation to disclosure of pecuniary interests

(Section 3)

[1] Section 377 General power of the council to delegate

Omit the 18th dot point in section 377 (1) (that is, the matter relating to the power of the council under section 455 in relation to attendance at meetings).

[2] Table after section 447

Insert at the beginning of the matter relating to penalties for council employees for breach of disclosure requirements:

- Counselling
- Reprimand

[3] Section 448

Omit the section. Insert instead:

448 What interests do not have to be disclosed?

The following interests do not have to be disclosed for the purposes of this Chapter:

- (a) an interest as an elector,
- (b) an interest as a ratepayer or person liable to pay a charge,
- (c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,

- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- (e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not),
- (f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,
- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
 - (i) land in which the person or another person with whom the person is associated as provided in section 443 has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
 - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i),if the person or the other person with whom the person is associated would by reason of the proprietary interest have a pecuniary interest in the proposal,
- (h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,

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- (i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,
 - (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,
 - (ii) security for damage to footpaths or roads,
 - (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
 - (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
 - (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
 - (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
 - (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,

- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

[4] Section 449 Returns disclosing interests of councillors and designated persons

Omit “form in Part 1 of Schedule 3” wherever occurring in section 449 (1) and (3).

Insert instead “form prescribed by the regulations”.

[5] Section 449 (1A)

Insert after section 449 (1):

- (1A) A person must not lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.

[6] Section 449 (6)

Omit “Schedule 3”. Insert instead “the regulations”.

[7] Section 450 Form of returns and interests to be disclosed

Omit the section.

[8] Section 451 Disclosure and presence in meetings

Omit “disclose the interest” from section 451 (1).

Insert instead “disclose the nature of the interest”.

[9] Section 451 (2) and (3)

Omit section 451 (2) and (3). Insert instead:

- (2) The councillor or member must not be present at, or in sight of, the meeting of the council or committee:
 - (a) at any time during which the matter is being considered or discussed by the council or committee, or
 - (b) at any time during which the council or committee is voting on any question in relation to the matter.

[10] Section 452 Participation in meetings despite pecuniary interests

Omit the section.

[11] Section 455 Powers of council in relation to meetings

Omit the section.

[12] Section 456 Disclosure by adviser

Omit “any pecuniary interest” from section 456 (1).

Insert instead “the nature of any pecuniary interest”.

[13] Section 458 Powers of Minister in relation to meetings

Omit “and who is present at a meeting of the council or committee”.

Insert instead “to be present at a meeting of the council or committee,”.

[14] Section 459 Disclosure of pecuniary interests when dealing with council matters

Omit “any pecuniary interest” from section 459 (1).

Insert instead “the nature of any pecuniary interest”.

[15] Chapter 14, Part 3, Division 1

From the flowchart headed “Management of pecuniary interest complaints” omit “(s 470)” wherever occurring.

Insert instead “(s 469 (2))”.

[16] Chapter 14, Part 3, Division 1

From the flowchart headed “Management of pecuniary interest complaints” omit “Conduct hearing into complaint (s 469)”.

Insert instead:

Decide to conduct proceedings into complaint (s 469 (1)), with or without a hearing (s 470)

[17] Chapter 14, Part 3, Division 1

From the flowchart headed “Management of pecuniary interest complaints” omit “Report to complainant”.

Insert instead “Report to complainant, person against whom complaint was made”.

[18] Section 463 Decision not to investigate a complaint

Insert “(including a complaint referred to in section 464 (2))” after “a complaint” wherever occurring in section 463 (1) and (2).

[19] Section 464 Referral and investigation of complaints by other authorities

Insert “made by the Director-General” after “complaint” in section 464 (2).

[20] Section 466 Persons to be notified of complaint

Insert at the end of section 466 (2):

However, at the time the notice is given to the person against whom the complaint is made, the Director-General is not obliged to notify the complainant of the decision not to investigate a complaint if notice of that decision has already been given under section 463 (2).

[21] Chapter 14, Part 3, Division 2

From the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” omit “Decision not to conduct hearing”.

Insert instead:

Decision not to conduct proceedings into complaint

[22] Chapter 14, Part 3, Division 2

From the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” omit “(s 470)” wherever occurring.

Insert instead “(s 469 (2))”.

[23] Chapter 14, Part 3, Division 2

From the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” omit “Decision to conduct hearing (s 469)”.

Insert instead:

Decision to conduct proceedings into complaint (s 469 (1)),
with or without a hearing (s 470)

[24] Chapter 14, Part 3, Division 2

From the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” omit “complainant (and Director-General)”.

Insert instead “complainant, person against whom complaint was made and Director-General”.

[25] Chapter 14, Part 3, Division 2

From the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” omit “Conduct hearing (ss 471–481)”.

Insert instead:

Conduct proceedings, with or without a hearing (ss 471–481)

[26] Chapter 14, Part 3, Division 2

In the flowchart headed “Proceedings before the Pecuniary Interest Tribunal” insert after “Council employee:”:

Reprimand
Counsel

[27] Sections 469 and 470

Omit the sections. Insert instead:

469 Pecuniary Interest Tribunal to decide whether or not to conduct proceedings into a complaint

- (1) After considering a report presented to it in relation to a complaint, the Pecuniary Interest Tribunal may decide to conduct proceedings into the complaint.
- (2) If the Pecuniary Interest Tribunal decides not to conduct proceedings into a complaint, it must provide a written statement of its decision, and the reasons for its decision:
 - (a) to the person against whom the complaint was made, and
 - (b) to the person who made the complaint, and
 - (c) to the Director-General.
- (3) To avoid doubt, a decision by the Pecuniary Interest Tribunal not to conduct proceedings into a complaint is not a decision to which section 484 (Pecuniary Interest Tribunal to provide details of its decisions) or 485 (Appeals to Supreme Court) applies.

470 Circumstances in which Pecuniary Interest Tribunal may dispense with hearing

- (1) After considering the report of the Director-General and any other document or other material lodged with or provided to the Tribunal, the Pecuniary Interest Tribunal may determine the proceedings without a hearing if:
 - (a) the person who made the complaint and the person against whom the complaint is made have agreed that the proceedings may be determined without a hearing, and
 - (b) there are no material facts in dispute between the person who made the complaint and the person against whom the complaint is made, and
 - (c) in the opinion of the Tribunal, public interest considerations do not require a hearing.

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- (2) To avoid doubt, a decision by the Pecuniary Interest Tribunal to determine proceedings into a complaint without a hearing is a decision to which sections 484 (Pecuniary Interest Tribunal to provide details of its decisions) and 485 (Appeals to Supreme Court) apply.

Note. Section 484 requires the Pecuniary Interest Tribunal to inform certain parties of decisions in proceedings before it.

[28] Section 473 Representation at hearings

Omit “In proceedings”. Insert instead “At a hearing”.

[29] Section 474 Presentation of cases at hearings

Insert “conducted by hearing” after “Tribunal” where firstly occurring.

[30] Section 475 Power to summon witnesses and take evidence at hearings

Insert before section 475 (1):

- (1A) This section applies only to proceedings conducted by hearing.

[31] Section 478 Additional complaints

Insert after section 478 (3):

- (4) If another complaint is taken to have been referred to the Pecuniary Interest Tribunal under subsection (2), the Tribunal may do either or both of the following:
- (a) reconsider any decision under section 470 to determine proceedings on the original complaint without a hearing and, if appropriate, recommence proceedings in relation to that complaint, or that complaint and any additional complaint, by way of hearing,
 - (b) decide, in accordance with section 470, to determine proceedings, in relation to the original complaint, any additional complaint or all complaints, without a hearing.

[32] Section 482 Decision of Pecuniary Interest Tribunal

Omit section 482 (2). Insert instead:

- (2) If it finds a complaint against an employee of the council is proved, the Pecuniary Interest Tribunal may:
 - (a) counsel the employee, or
 - (b) reprimand the employee, or
 - (c) recommend that the council take specified disciplinary action against the employee (including counselling or reprimanding the employee), or
 - (d) recommend dismissal of the employee.

[33] Section 484 Pecuniary Interest Tribunal to provide details of its decisions

Omit section 484 (3). Insert instead:

- (3) The Pecuniary Interest Tribunal may also:
 - (a) provide the statement of a decision to any other persons that the Pecuniary Interest Tribunal thinks fit, and
 - (b) if it thinks fit, and subject to section 480, make the statement of a decision publicly available.
- (4) The Director-General may, if he or she thinks fit, and subject to any direction made by the Pecuniary Interest Tribunal under section 480, make any statement of decision provided to the Director-General by the Pecuniary Interest Tribunal publicly available.

[34] Schedule 3 Disclosure of interests

Omit the Schedule.

[35] Schedule 6 Regulations

Insert after item 19:

- 19A** The disclosure of pecuniary interests.

Schedule 3 Miscellaneous amendments to Local Government Act 1993

(Section 3)

[1] Section 23A

Insert after section 23:

23A Director-General's guidelines

- (1) For the purposes of this Act, the Director-General may from time to time prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions.
- (2) The Director-General may only prepare, adopt or vary guidelines relating to the exercise by a council of functions conferred or imposed on the council by or under any Act or law that is not administered by or the responsibility of the Department of Local Government if the Director-General has first obtained the concurrence of the Minister administering or responsible for the administration of the other Act or law.
- (3) A council must take any relevant guidelines issued under this section into consideration before exercising any of its functions.
- (4) The guidelines for the time being in force are to be made available to councils on request and, on payment of such fee (if any) as the Director-General may determine, to any interested person.

[2] Section 31 Classification of land acquired after 1 July 1993

Omit section 31 (2). Insert instead:

- (2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.

- (2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land.
- (2B) While the land remains unclassified:
 - (a) the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and
 - (b) the council may not dispose of any interest in the land.

[3] Section 34 Public notice to be given of classification or reclassification by council resolution

Omit section 34 (4).

[4] Section 40 Adoption of plans of management

Omit section 40 (2). Insert instead:

- (2) If the council decides to amend the draft plan it must either:
 - (a) publicly exhibit the amended draft plan in accordance with the provisions of this Division relating to the public exhibition of draft plans, or
 - (b) if it is of the opinion that the amendments are not substantial, adopt the amended draft plan without public exhibition as the plan of management for the community land concerned.
- (2A) If a council adopts an amended plan without public exhibition of the amended draft plan, it must give public notice of that adoption, and of the terms of the amended plan of management, as soon as practicable after the adoption.

[5] Section 40 (3)

Omit “a public hearing”.

Insert instead “any public hearing required under section 40A”.

[6] Section 40A Public hearing in relation to proposed plans of management

Insert at the end of the section:

- (2) However, a public hearing is not required if the proposed plan would merely have the effect of recategorising the land under section 36 (5).

[7] Section 54A

Insert after section 54:

54A Community land to be described in common terms

Any public notice given by a council with respect to a parcel of community land must describe the land by reference to its common description (such as its address, or the name by which it is generally known) whether or not the notice also describes the land by reference to a more formal legal description.

[8] Section 55 What are the requirements for tendering?

Omit section 55 (1). Insert instead:

- (1) A council must invite tenders before entering into any of the following contracts:
- (a) a contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
 - (b) a contract to carry out work that, under some other contract, the council has undertaken to carry out for some other person or body,
 - (c) a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,
 - (d) a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,
 - (e) a contract for the provision of goods or materials to the council (whether by sale, lease or otherwise),

- (f) a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),
- (g) a contract for the disposal of property of the council,
- (h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,
- (i) any other contract, or any contract of a class, prescribed by the regulations.

[9] Section 55 (2A)

Insert after section 55 (2):

- (2A) Nothing in this section prevents a council from tendering for any work, service or facility for which it has invited tenders.

[10] Section 68 What activities, generally, require the approval of the council?

Omit “(within the meaning of the *Construction Safety Act 1912*)” from item 5 of Part F of the Table to section 68.

[11] Section 68, Table

Omit item 6 of Part F.

[12] Section 124 Orders

Insert “or under the *Local Government Act 1919*” after “this Act” wherever occurring in Columns 1 and 2 of the matter relating to order No 5 in the Table to section 124.

[13] Section 252 Payment of expenses and provision of facilities

Insert after section 252 (2):

- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.

(4) A council may from time to time amend a policy under this section.

(5) A policy under this section must comply with the regulations.

[14] Section 253

Omit the section. Insert instead:

253 Public notice of proposed policy or amendments concerning expenses and facilities

(1) Before adopting or amending a policy for the payment of expenses or provision of facilities, the council must give at least 28 days' public notice of the proposal.

(2) However, if the council is of the opinion that any amendments to a policy are not substantial, it may adopt the amended policy without giving public notice.

[15] Section 254 Decision to be made in open meeting

Insert "or amended," after "adopted".

[16] Section 348 Advertising of staff positions

Omit "whose contract has expired" from section 348 (3) (a).

[17] Section 407 General manager to report periodically on implementation of management plan

Omit "6 weeks" from section 407 (1). Insert instead "2 months".

[18] Section 505 Application of Part

Insert "annual charges for waste management services, including" before "annual" in section 505 (a) (iii).

[19] Section 508 Orders under secs 506 and 507

Omit section 508 (2). Insert instead:

- (2) The Minister may, by instrument in writing given to a council:
- (a) specify the percentage by which the council's general income or the amount of an annual charge for domestic

waste management services, or both, for a specified year (being the year in which the instrument is given or a later year) may be varied, and

- (b) impose conditions with respect to the variation of that percentage.

[20] Section 629

Omit the section. Insert instead:

629 Injuring or removing plants, animals, rocks and soil in or from public place

- (1) A person who, without lawful excuse, wilfully or negligently injures, damages or unnecessarily disturbs any plant, animal, rock or soil in a public place is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person who, without lawful excuse, removes any plant, animal, rock or soil from a public place is guilty of an offence.

Maximum penalty: 20 penalty units.

[21] Section 630 Breaking glass and other matter

Omit “5 penalty units” wherever occurring. Insert instead “10 penalty units”.

[22] Section 631 Damaging, defacing or polluting public bathing place

Omit “5 penalty units”. Insert instead “10 penalty units”.

[23] Section 632 Acting contrary to notices erected by councils

Omit “5 penalty units” from section 632 (1).

Insert instead “10 penalty units”.

[24] Section 632 (2) (b) and (b1)

Omit section 632 (2) (b). Insert instead:

- (b) the taking of a vehicle into the place,
(b1) the driving, parking or use of a vehicle in the place,

[25] Section 632 (2A)

Omit the subsection. Insert instead:

(2A) However, a notice:

- (a) must not prohibit the drinking of alcohol in any public place that is a public road (or part of a public road) or car park, and
- (b) must not prohibit or regulate the taking of a vehicle into, or the driving, parking or use of any vehicle in, any public place that is a road or road related area within the meaning of the *Road Transport (General) Act 1999*.

[26] Section 633 Bathing (including nude bathing) and other water-based recreational activities

Omit “5 penalty units” wherever occurring. Insert instead “10 penalty units”.

[27] Section 633A Use of skateboards, roller blades and roller skates

Omit “5 penalty units”. Insert instead “10 penalty units”.

[28] Section 651 Liability of vehicle owner for certain offences

Omit “section 650 (1) or (4)” from section 651 (1).

Insert instead “section 632 (1) or 650 (1) or (4)”.

[29] Section 664 Disclosure and misuse of information

Omit “but if generally known might reasonably be expected to affect materially the market value or price of any land” from section 664 (2).

[30] Section 664 (2)

Omit “an advantage”. Insert instead “a financial advantage”.

[31] Section 678 Failure to comply with order—carrying out of work by the council

Insert at the end of the section:

Note. Section 193 requires the council to give the owner or occupier of premises written notice before a person authorised to enter premises under Part 2 of Chapter 8 of the Act does so.

[32] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

Local Government Amendment Act 2000

[33] Schedule 8, Part 16

Insert after clause 50:

Part 16 General provisions consequent on enactment of Local Government Amendment Act 2000

51 Definition

In this Division:

amending Act means the *Local Government Amendment Act 2000*.

52 Elections

An amendment made to Part 6 of Chapter 10 by the amending Act does not apply to any election which has a closing date before the commencement of the amendment.

53 Returns disclosing interests of councillors and designated persons

Any return required to be lodged under section 449 within 3 months after the date of commencement of the amendments made to that section by the amending Act may be made:

- (a) in the form set out in Part 1 of Schedule 3, as in force immediately before its repeal, or
- (b) in the form prescribed by the regulations, as in force on the day the return is lodged.

54 Decision not to conduct proceedings

Section 469, as substituted by the amending Act, does not apply to proceedings that commenced before the commencement of the section.

55 Proceedings conducted without hearings

Section 470, as substituted by the amending Act, does not apply to proceedings that commenced before the commencement of the section.

56 Consequences of breach of disclosure provisions by employees

Section 482 (2), as substituted by the amending Act, applies to findings made after the substitution of the subsection, whether those findings relate to proceedings commenced before or after the substitution of the subsection.

[34] Dictionary

Omit the definition of *amusement device*. Insert instead:

amusement device means an amusement device within the meaning of the *Construction Safety Act 1912*, and includes any other device that is declared by the regulations to be an amusement device for the purposes of this Act.

Schedule 4 Amendment of other Acts

(Section 4)

4.1 Defamation Act 1974 No 18

[1] Section 17T Matters relating to the Local Government Pecuniary Interest Tribunal

Insert “or if the publication is a publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons of that Tribunal for a decision” after “that Act”.

[2] Section 17T (2)

Insert at the end of section 17T:

- (2) There is a defence of absolute privilege for a publication to or by the Department of Local Government or the Director-General of that Department if the publication is:
- (a) an official report of a decision of the Local Government Pecuniary Interest Tribunal, or
 - (b) a statement of a decision of that Tribunal or of the reasons of that Tribunal for a decision,
- provided or made public by the Tribunal under section 484 (3) of the *Local Government Act 1993*.

4.2 Occupational Health and Safety Act 2000 No 40

Schedule 2 Amendment of other Acts

Omit Schedule 2.7. Insert instead:

2.7 Local Government Act 1993 No 30

[1] Dictionary

Omit “within the meaning of the *Construction Safety Act 1912*” from the definition of *amusement device*.

Insert instead “that are plant affecting public safety within the meaning of section 135 of the *Occupational Health and Safety Act 2000*”.

[2] Dictionary, definition of “amusement device”

Omit the note to the definition.

[Minister's second reading speech made in—
Legislative Assembly on 31 October 2000
Legislative Council on 30 November 2000]