



New South Wales

Local Government Amendment (National Competition Policy Review) Act 2003 No 8

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New South Wales

Local Government Amendment (National Competition Policy Review) Act 2003 No 8

Act No 8, 2003

An Act to make miscellaneous amendments to the *Local Government Act 1993* in connection with national competition policy reform; and for other purposes.
[Assented to 2 June 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (National Competition Policy Review) Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

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

Insert before the first bullet point paragraph of section 55 (3):

- subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and at a rate not exceeding the rate so specified

[2] Section 67 Private works

Omit section 67 (2). Insert instead:

- (2) A council must not carry out work under this section unless:
 - (a) it proposes to charge an approved fee for carrying out the work as determined by the council in accordance with Division 2 of Part 10 of Chapter 15, or
 - (b) if it proposes to charge an amount less than the approved fee, the decision to carry out the work is made, and the proposed fee to be charged is determined, by resolution of the council at an open meeting before the work is carried out.

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

Omit Items 8 and 9 of Part F of the Table to section 68.

[4] Section 404 Contents of draft management plan with respect to council's revenue policy

Omit the fourth, fifth and sixth bullet point paragraphs of section 404 (1).

Insert instead:

- a statement of the types of fees proposed to be charged by the council and, if the fee concerned is a fee to which Division 3 of Part 10 of Chapter 15 applies, the amount of each such fee
- a statement of the council's proposed pricing methodology for determining the prices of goods and the approved fees under Division 2 of Part 10 of Chapter 15 for services provided by it, being an

avoidable costs pricing methodology determined by the council in accordance with guidelines issued by the Director-General

[5] Section 409 The consolidated fund

Omit “purpose, and” from section 409 (3) (c). Insert instead “purpose.”.

[6] Section 409 (3) (d)

Omit the paragraph.

[7] Section 409 (5)–(8)

Insert after section 409 (4):

- (5) Despite subsections (3) and (4), a council may:
 - (a) deduct, from the money required by subsection (3) to be used only for the specific purpose of water supply or sewerage services, an amount in the nature of a return on capital invested payment (dividend), and
 - (b) apply that amount towards any purpose allowed for the expenditure of money by councils by this Act or any other Act.
- (6) The Minister for Energy and Utilities, with the concurrence of the Minister administering this Act:
 - (a) is to cause guidelines to be prepared and published in the Gazette relating to the management of the provision of water supply and sewerage services by councils, and
 - (b) may, if of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines before making any further deduction under subsection (5).
- (7) Before making a deduction under subsection (5), a council must:
 - (a) comply with the guidelines published under subsection (6) and any direction given under that subsection, and
 - (b) indicate in an open meeting of the council that the guidelines and any such direction have been complied with in relation to the making of the deduction.

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- (8) Subsections (5)–(7) extend to a council that is a water supply authority within the meaning of the *Water Management Act 2000*.

[8] Chapter 15, Part 10, Division 1

Insert after the heading to Part 10 of Chapter 15:

Division 1 Council fees—general

607A Interpretation

In Division 2 of this Part, a reference to a fee is a reference to a fee to which Division 2 applies and, in Division 3 of this Part, a reference to a fee is a reference to a fee to which Division 3 applies.

[9] Sections 609 and 610A

Omit the sections.

[10] Chapter 15, Part 10, Divisions 2 and 3

Insert after section 610:

Division 2 Council fees for business activities

610A Application of Division

- (1) This Division applies to a fee charged by a council for any service relating to the following activities:
- (a) the operation of an abattoir,
 - (b) the operation of a gas production or reticulation service,
 - (c) the carrying out of a water supply or sewerage service (other than a service provided, or proposed to be provided, on an annual basis for which the council is authorised or required to make an annual charge under section 501),
 - (d) the carrying out of work under section 67,
 - (e) the carrying out of graffiti removal work under section 67A,
 - (f) any other activity prescribed by the regulations for the purposes of this subsection.

- (2) This Division does not apply to a fee charged by a council for a service relating to the following activities:
 - (a) the issuing of a certificate under Part 4A of the *Environmental Planning and Assessment Act 1979*,
 - (b) an activity prescribed by the regulations for the purposes of this subsection.

610B Fees to be determined in accordance with pricing methodologies

- (1) A council may determine a fee to which this Division applies only in accordance with a pricing methodology adopted by the council in its management plan prepared under Part 2 of Chapter 13.
- (2) However, a council may at any time determine a fee otherwise than in accordance with a pricing methodology adopted by the council in its management plan, but only if the determination is made by a resolution at an open meeting of the council.

Division 3 Council fees for non-business activities

610C Application of Division

This Division applies to a fee for a service other than a fee to which Division 2 applies.

610D How does a council determine the amount of a fee for a service?

- (1) A council, if it determines the amount of a fee for a service, must take into consideration the following factors:
 - (a) the cost to the council of providing the service,
 - (b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,
 - (c) the importance of the service to the community,
 - (d) any factors specified in the regulations.
- (2) The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.

- (3) A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.

610E Council may waive or reduce fees

- (1) A council may waive payment of, or reduce, a fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.
- (2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed fee under section 610F (2) or (3).

[11] Chapter 15, Part 10, Division 4, heading

Insert before section 611:

Division 4 Certain annual charges

[12] Section 612 Public notice of fees

Omit “an approved” wherever occurring in section 612 (1) and (4).

Insert instead “a”.

[13] Section 612

Renumber as section 610F and transfer to Division 3 of Part 10 of Chapter 15 (as inserted by this Act).

[14] Schedule 6 Regulations

Insert after clause 5:

5A Contracts referred to in the first bullet point paragraph of section 55 (3) (relating to exemptions from tendering requirements).

Examples.

General obligations of prescribed persons

Reporting requirements of prescribed persons

Probity requirements relating to prescribed persons

Provision of information by prescribed persons to the Department

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

Insert at the end of clause 1 (1):

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[16] Dictionary

Omit the definition of *approved fee*. Insert instead:

approved fee means:

- (a) in relation to a fee to which Division 2 of Part 10 of Chapter 15 applies, a fee determined by the council in accordance with that Division, or
- (b) in relation to a fee to which Division 3 of Part 10 of Chapter 15 applies:
 - (i) the fee prescribed by the regulations for the purposes of the provision in relation to which the expression is used or determined by the council in accordance with any such regulations, or
 - (ii) if no such regulations are in force, the fee (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used, or
 - (iii) if no such regulations are in force and no fee is determined by the Director-General, the fee (if any) determined by the council for the purposes of the provision in relation to which the expression is used.

[17] Dictionary

Omit the definition of *domestic waste*. Insert instead:

domestic waste means waste on domestic premises of a kind and quantity ordinarily generated on domestic premises and includes waste that may be recycled, but does not include sewage.

[Second reading speech made in—
Legislative Council on 6 May 2003
Legislative Assembly on 28 May 2003]

BY AUTHORITY