



New South Wales

Local Government Amendment (Council and Employee Security) Act 2004 No 25

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Local Government Amendment (Council and Employee Security) Act 2004 No 25

Act No 25, 2004

An Act to amend the *Local Government Act 1993* in relation to the adjustment of council income, the postponement of elections, the protection of employment of council staff, and other matters; and for other purposes. [Assented to 6 May 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Council and Employee Security) Act 2004*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 3 is taken to have commenced on 1 January 2004.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedules 1–4.

Schedule 1 Amendments relating to council income

(Section 3)

[1] Section 218F Referral of proposal for examination and report

Omit “(as defined in section 218G)” from section 218F (6).

[2] Section 508 Orders under secs 506 and 507

Insert after section 508 (5):

- (5A) Subject to section 508A (6), a percentage specified in an order under section 506 or 507 for a year does not apply, and (if relevant) is taken never to have applied, to a council to which a determination under section 508A applies for that year, whether the order specifying the percentage was made before, on or after the day on which the determination was made.

[3] Section 508A

Insert after section 508:

508A Special variation over a period of years

- (1) The Minister may, by instrument in writing given to a council, determine that the council’s general income, or the amount of an annual charge for domestic waste management services provided by the council, or both, for a specified period consisting of two or more years, may be varied by a specified percentage over the whole period.
- (2) The specified period must not exceed 7 years, but this subsection does not prevent a further determination being made that takes effect after that period.
- (3) The determination may be made only on the application of the council made in accordance with any applicable guidelines issued by the Director-General under this Act.
- (4) The determination may include conditions with respect to the variation.

- (5) Without limiting subsection (4), the conditions of the determination may specify the percentage by which the council's general income, or the amount of the annual charge for domestic waste management services provided by the council, may be varied for a specified year to which the determination applies.
- (6) If, for a year to which the determination applies in respect of:
- (a) the council's general income—the percentage specified under section 506 for that year is greater than the percentage specified in the conditions of the determination, the percentage specified under that section in respect of the council's general income is taken to be substituted for that specified in the conditions, or
 - (b) the amount of the annual charge for domestic waste management services provided by the council—the percentage specified under section 507 for that year is greater than the percentage specified in the conditions of the determination, the percentage specified under that section in respect of the annual charge is taken to be substituted for that specified in the conditions.
- (7) Subject to any later variations made to the determination, if the percentage (the *general percentage*) specified under section 506 or 507 is substituted under subsection (6) for a year:
- (a) the percentage specified under this section for the whole period is taken to be increased by the amount necessary to take into account the increase due to the substitution of the general percentage for that year, and
 - (b) the appropriate percentage for the remaining years is to be applied to the amount of the council's general income, or of the annual charge for domestic waste management services provided by the council, taking into account the increase due to that substitution.

- (8) The Minister may, by instrument in writing served on the council:
 - (a) vary the determination, including, for example, by varying or revoking any conditions of the determination or by including new conditions, or
 - (b) revoke the determination.
- (9) The determination may be varied or revoked only:
 - (a) on the application of the council made in accordance with any applicable guidelines issued by the Director-General under this Act, or
 - (b) on the Minister's own initiative if the Minister is satisfied that the council has contravened any conditions of the determination or any applicable guidelines issued by the Director-General under this Act.

[4] Sections 509 (1), 510 (1) and 511 (1)

Omit "or 508 (2)" wherever occurring. Insert instead ", 508 (2) or 508A".

Schedule 2 Amendments relating to postponement of elections

(Section 3)

[1] Chapter 9, Part 1, Division 2C (sections 218G–218K)

Omit the Division.

[2] Chapter 10, Part 6A

Insert after section 318:

Part 6A Postponement of elections

318A Definition

In this Part:

election requirements of this Act means the requirements of Parts 4 and 5 with respect to the holding of an ordinary election referred to in section 287 or a by-election referred to in section 292.

318B Postponement of elections

- (1) The Minister may, by order published in the Gazette, postpone the election requirements of this Act in relation to a specified council if:
 - (a) the council is the subject of:
 - (i) an investigation under section 430 or any other provision of this Act, or
 - (ii) a public inquiry, or
 - (iii) an investigation by an authority (as defined in the Dictionary at the end of this Act) under any Act, or
 - (b) without limiting anything else in this subsection, a matter affecting the boundaries of the council's area is under consideration by the Boundaries Commission (whether or not involving an inquiry by the Commission).

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- (2) The latest date to which the election requirements of this Act may be postponed by an order under this section is:
- (a) the date occurring 12 months after the order is made, or
 - (b) if the postponement is extended by a further order under this section, 31 December in the calendar year following that in which the first such order was made.
- (3) An order may be made under this section even though the election requirements of this Act are in operation with respect to an election for the council.
- (4) On the making of an order under this section:
- (a) the election requirements of this Act are suspended in relation to the council for the period specified in the order, including with respect to an election for which the election requirements of this Act were in operation when the order was made, but not with respect to an election held on or before the day on which the order is published, and
 - (b) the retiring councillors continue in office (subject to this Act) until an election is held, and
 - (c) anything already done, under or for the purposes of those requirements in relation to the council for an election that would (but for the making of the order) have been held during the suspension period, has no effect or operation, and
 - (d) a person who is taken to have been elected under section 311 at an election that would (but for the making of the order) be held during the suspension period is taken not to have been elected.
- (5) The suspension ceases to have effect if the order is revoked under section 318C.
- (6) If the suspension ceases to have effect through the passage of time and not through revocation of the order, the provisions of section 318C (other than subsections (1) (a) and (3) (a)) apply as if the order had been revoked.

- (7) If while an order under this section is in force a casual vacancy occurs in the office of mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of mayor elected by the councillors.

318C Revocation of postponement

- (1) The Minister may, by order published in the Gazette:
- (a) revoke a former order that has been made in relation to a council, and
 - (b) if:
 - (i) the day on which an election would (but for the former order) have been required to be held has passed, or
 - (ii) the day on which an election is required to be held will occur within 3 months after the day on which the order is made,appoint a day as the day on which the election is to be held.
- (2) The day appointed by the order as the day on which an election is to be held is to be a Saturday occurring not less than 3 months, and not more than 6 months, after the day on which the order is made.
- (3) On the making of an order under this section:
- (a) the suspension by the former order of the election requirements of this Act is terminated, and
 - (b) an election is to be held in accordance with the election requirements of this Act:
 - (i) on the day ascertained in accordance with those requirements, or
 - (ii) if the order appoints a different day, on the day so appointed.
- (4) In this section, *former order* means an order under section 318B.

Schedule 3 Amendments relating to employment protection

(Section 3)

[1] Section 354B Definitions

Omit the definitions of *new council*, *transfer day* and *transferred staff member* from section 354B (1).

[2] Section 354B (1)

Insert in alphabetical order:

boundary alteration means an alteration of the boundaries of one or more areas by or under a proclamation under Chapter 9.

existing staff member of a transferee council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferee council immediately before the transfer day and who has not ceased to be a member of that staff.

Note. In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.

remaining staff member of a transferor council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferor council immediately before the transfer day and who has not ceased to be a member of that staff.

Note. In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.

rural centre means a centre of population of 5,000 people or fewer, and includes a geographical area that is prescribed, or is of a kind prescribed, by regulations in force for the purposes of this definition as being a rural centre.

staff transfer means a transfer of staff from the employment of one council to the employment of another council by or under a proclamation under Chapter 9.

transfer day, in relation to a staff transfer, means the day on which the staff concerned were transferred from the employment of one council to the employment of another council.

transferee council, in relation to a staff transfer, means the council into whose employment the staff concerned were transferred on the transfer day.

transferor council, in relation to a staff transfer, means the council from whose employment the staff concerned were transferred on the transfer day.

transferred staff member means a member of the staff of a council who is transferred to the employment of another council by or under a proclamation under Chapter 9.

work base means the office, depot or other place of work at or from which any staff work.

[3] Section 354D Preservation of entitlements of staff members

Omit section 354D (1). Insert instead:

- (1) If a staff transfer occurs, the employment of:
 - (a) a transferred staff member, and
 - (b) in the case of a boundary alteration:
 - (i) a remaining staff member of the transferor council, and
 - (ii) an existing staff member of the transferee council,

other than a senior staff member, continues on the same terms and conditions that applied to the staff member immediately before the transfer day, subject to section 354E.

[4] Section 354E Certain increases or decreases in staff entitlements during proposal period not binding on transferee council without approval

Omit “new council” from section 354E (2) (a) and (3) wherever occurring. Insert instead “transferee council”.

[5] Section 354F

Omit the section. Insert instead:

354F No forced redundancy of non-senior staff members for 3 years after transfer

If a staff transfer occurs, the employment of:

- (a) a transferred staff member, and
- (b) in the case of a boundary alteration:
 - (i) a remaining staff member of the transferor council, and
 - (ii) an existing staff member of the transferee council,

other than a senior staff member, must not be terminated, without the staff member's agreement, within 3 years after the transfer day on the ground of redundancy arising from the staff transfer.

[6] Section 354G Lateral transfer of non-senior staff members

Omit section 354G (1). Insert instead:

- (1) This section applies if either:
 - (a) the following subparagraphs apply:
 - (i) a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and
 - (ii) within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council (*the council*), other than a senior staff position, and
 - (iii) a transferred staff member (other than a senior staff member) was, immediately before the transfer day, performing substantially the same duties for the staff member's former council as are required to be performed in the position to be filled, or

- (b) the following subparagraphs apply:
 - (i) a staff transfer occurs in connection with a boundary alteration, and
 - (ii) within 3 years after the transfer day, the general manager of a council (*the council*) affected by the boundary alteration proposes to make an appointment to a position within the organisational structure of the council, other than a senior staff position, and
 - (iii) a staff member (other than a senior staff member) of the council was, immediately before the transfer day, performing substantially the same duties for either or any of the affected councils as are required to be performed in the position to be filled.

[7] Section 354G (3) (c)

Omit “subsection (1) (c)”.

Insert instead “subsection (1) (a) (iii) or (b) (iii), as the case requires”.

[8] Section 354H External advertising not required in certain circumstances

Omit section 354H (1). Insert instead:

- (1) This section applies if either:
 - (a) the following subparagraphs apply:
 - (i) a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and
 - (ii) within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council (*the council*), other than a senior staff position, and
 - (iii) the general manager is satisfied that one or more of the transferred staff members (other than a senior staff member) are suitably qualified for the position, and

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- (iv) section 354G does not apply with respect to the position, or
 - (b) the following subparagraphs apply:
 - (i) a staff transfer occurs in connection with a boundary alteration, and
 - (ii) within 3 years after the transfer day, the general manager of a council (*the council*) affected by the boundary alteration proposes to make an appointment to a position within the organisational structure of the council, other than a senior staff position, and
 - (iii) the general manager is satisfied that one or more of the staff members (other than a senior staff member) of the council who were, immediately before the transfer day, members of the staff of either or any of the affected councils are suitably qualified for the position, and
 - (iv) section 354G does not apply with respect to the position.

[9] Section 354I

Insert after section 354H:

354I Limitations on transfer of work base of non-senior staff

- (1) This section applies, where a staff transfer occurs, to:
 - (a) a transferred staff member, and
 - (b) in the case of a boundary alteration:
 - (i) a remaining staff member of the transferor council, and
 - (ii) an existing staff member of the transferee council,other than a senior staff member.
- (2) The staff member must not be required by the council employing the staff member to be based within 3 years after the transfer day at a work base located:

Schedule 3 Amendments relating to employment protection

- (a) in a case where the staff member is a transferred staff member—outside the boundaries of the area of his or her former council as they existed immediately before the transfer day, or
- (b) in a case where the staff member is a remaining staff member of the transferor council—outside the boundaries of the area of the transferor council as they existed immediately before the transfer day, or
- (c) in a case where the staff member is an existing staff member of the transferee council—outside the boundaries of the area of the transferee council as they existed immediately before the transfer day,

unless the staff member gives his or her written consent to the change of work base or such a requirement would not cause the staff member to suffer unreasonable hardship because of the distance required to travel to the proposed work base.

Schedule 4 Other amendments

(Section 3)

[1] Section 218CA

Insert after section 218C:

218CA Maintenance of staff numbers in rural centres

- (1) This section applies to a council (the *transferee council*):
 - (a) that is constituted as a result of the amalgamation of two or more areas, where the council of one of those areas (the *previous council*) employed regular staff at a rural centre in the area of the transferee council immediately before the amalgamation took effect, or
 - (b) whose geographical area is increased as a result of the alteration of the boundaries of two or more areas, where a council (the *previous council*) whose geographical area is reduced as a result of the alteration employed regular staff at a rural centre in the area of the transferee council immediately before the alteration took effect.
- (2) The transferee council must ensure that the number of regular staff of the council employed at the rural centre is, as far as is reasonably practicable, maintained at not less than the same level of regular staff as were employed by the previous council at the centre immediately before the amalgamation or alteration of boundaries took effect.
- (3) Subsection (2) does not have effect, or ceases to have effect, in such circumstances (if any) as are prescribed by the regulations.
- (4) In this section:

regular staff of a council means:

 - (a) staff appointed to a position within the organisational structure of the council, otherwise than on a temporary basis, and
 - (b) casual staff who are engaged by the council on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months and

who have a reasonable expectation of continuing employment with the council,

but does not include senior staff.

rural centre has the meaning given by section 354B.

[2] 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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[3] Schedule 8

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Local Government Amendment (Council and Employee Security) Act 2004

Meaning of “amending Act”

In this Part, *amending Act* means the *Local Government Amendment (Council and Employee Security) Act 2004*.

Postponement of elections

- (1) Without affecting the generality of Part 6A of Chapter 10 as inserted by Schedule 2 to the amending Act:
 - (a) an order may be published under section 318B in relation to a specified council while the election requirements of this Act are in operation with respect to an election for the council, and
 - (b) the order is effective to postpone those requirements with respect to the election,even though that Schedule commenced while those requirements were in operation with respect to the election.

- (2) Subject to subclause (1):
- (a) nothing in Schedule 2 to the amending Act affects anything done or omitted to be done under Division 2C of Part 1 of Chapter 9 before the commencement of that Schedule, and
 - (b) any order in force under Division 2C of Part 1 of Chapter 9 immediately before the commencement of that Schedule continues in force and may be dealt with in accordance with that Division as if that Schedule had not been enacted, and
 - (c) any election to be held in accordance with Division 2C of Part 1 of Chapter 9 as in force immediately before the commencement of that Schedule is to be held as if that Schedule had not been enacted.
- (3) In this clause, *election requirements of this Act* has the meaning given by section 318A.

Employment protection

- (1) Part 6 of Chapter 11 as amended by Schedule 3 to the amending Act extends:
- (a) in relation to an area change that occurred before the date of assent to the amending Act but on or after 1 January 2004, and
 - (b) without limiting paragraph (a), to the staff of councils affected by such an area change.
- (2) However, the enactment of Schedule 3 to the amending Act does not invalidate or otherwise affect an appointment to a position within the organisational structure of the council that was made on or after 1 January 2004 and before the date of assent to that Act.
- (3) Sections 354G and 354H as in force immediately before the commencement of Schedule 3 to the amending Act continue to apply in relation to an area change that occurred before 1 January 2004 as if that Schedule had not been enacted.
- (4) In this clause, *area change* means:
- (a) the constitution of one or more areas, or

Schedule 4 Other amendments

- (b) an amalgamation of areas, or
- (c) an alteration of the boundaries of one or more areas,
by or under a proclamation under Chapter 9.

Maintenance of staff numbers in rural centres

Section 218CA as inserted by Schedule 4 [1] to the amending Act extends:

- (a) in relation to an amalgamation of areas or an alteration of the boundaries of areas that occurred before the date of assent to the amending Act but on or after 1 January 2004, and
- (b) without limiting paragraph (a), to staff of councils affected by such an amalgamation or alteration.

[Second reading speech made in—
Legislative Council on 18 March 2004
Legislative Assembly on 2 April 2004]