



New South Wales

Local Government Amendment (Legal Status) Act 2008 No 92

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New South Wales

Local Government Amendment (Legal Status) Act 2008 No 92

Act No 92, 2008

An Act to amend the *Local Government Act 1993* to make further provision for the legal capacity and status of local and county councils, and temporary employment.
[Assented to 20 November 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Legal Status) Act 2008*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Local Government Act 1993 No 30

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

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 220

Omit the section. Insert instead:

220 Legal status of a council

- (1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
- (2) A council is not a body corporate (including a corporation).
- (3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).
- (4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

[2] Section 221 What is a council's name?

Omit "corporate" wherever occurring.

[3] Section 351 Temporary appointments

Omit section 351 (2). Insert instead:

- (2) A person who is appointed to a position temporarily may not continue in that position:
 - (a) if the holder of the position is on parental leave—for a period of more than 24 months, or
 - (b) in any other case—for a period of more than 12 months.

[4] Section 358 Restrictions on formation of corporations and other entities

Insert after section 358 (3):

- (3A) The regulations may make provision for or with respect to the matters to be taken into account by the Minister in deciding whether to grant consent under this section and the conditions that may or must be specified by the Minister under this section.

[5] Section 388

Omit the section. Insert instead:

388 Legal status of county councils

- (1) A proclamation establishing a county council operates to constitute the county council as a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
- (2) A county council is not a body corporate (including a corporation).
- (3) A county council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).
- (4) A law of the State applies to and in respect of a county council in the same way as it applies to and in respect of a body corporate (including a corporation).

[6] Section 389 What is a county council's name?

Omit "corporate".

[7] 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 (Legal Status) Act 2008

[8] Schedule 8, Part 30

Insert after Part 29:

**Part 30 Provisions consequent on enactment of
Local Government Amendment (Legal
Status) Act 2008**

92 New legal status of existing councils

- (1) The following provisions apply to a council constituted as a body corporate immediately before the commencement of the 2008 Act:
 - (a) the council ceases to be a body corporate on that commencement and becomes instead a body politic of the State as provided by section 220 or 388 (as substituted by the 2008 Act),

- (b) the council is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the council as it existed before the commencement of the 2008 Act (except that the council is no longer a body corporate and is instead a body politic of the State).
- (2) The 2008 Act (this clause in particular) does not:
- (a) affect existing property, rights or obligations of a council, or
 - (b) render defective any legal proceedings by or against a council, or
 - (c) negate any decision made by a council, or
 - (d) place a council in breach of contract or otherwise make it guilty of a civil wrong, or
 - (e) make a council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability, or
 - (f) fulfil a condition allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability, or requiring any amount to be paid before its stated maturity, or
 - (g) release a surety or other obligee, in whole or part, from an obligation.
- (3) In this clause:
- council*** includes county council.
 - 2008 Act*** means the *Local Government Amendment (Legal Status) Act 2008*.

93 Existing appointments

Section 351 (2), as substituted by the *Local Government Amendment (Legal Status) Act 2008*, extends to a person holding a position to which the person was appointed temporarily before that substitution.

[Agreement in principle speech made in Legislative Assembly on 22 October 2008
Second reading speech made in Legislative Council on 11 November 2008]

BY AUTHORITY