



New South Wales

# Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018

under the

Local Government Act 1993

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

GABRIELLE UPTON, MP  
Minister for Local Government

## Explanatory note

The object of this Regulation is to amend the *Local Government (General) Regulation 2005* as follows:

- (a) to apply certain provisions of the Regulation to joint organisations and to modify the application of other provisions of the Regulation to joint organisations,
- (b) to require a joint organisation to include certain matters in its charter and to make the charter publicly available within 30 days of adoption of the charter,
- (c) to provide for matters relating to meetings of joint organisations,
- (d) to provide for the election of chairpersons of joint organisations,
- (e) to provide for the appointment of alternates for voting representatives on the boards of joint organisations and for the conduct of meetings other than in person,
- (f) to require a joint organisation to prepare a statement of strategic regional priorities, an annual revenue statement, an annual statement reporting on the implementation of its strategies and plans for delivery of those priorities and a policy concerning the payment of expenses,
- (g) to specify functions that may not be delegated by a joint organisation,
- (h) to provide for annual financial contributions and other contributions by member councils to joint organisations,
- (i) to provide for matters relating to the staff of joint organisations, including the appointment of first executive officers and staff entitlements on transfers between joint organisations or councils and joint organisations,
- (j) to exclude provisions conferring land acquisition powers and provisions relating to the determination of certain charges from applying to joint organisations,
- (k) to provide for other transitional and consequential matters.

This Regulation is made under the *Local Government Act 1993*, including sections 400U (5), 400W, 400ZE (1), 400ZF and 400ZH and clause 17B of Schedule 6.

## **Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018**

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Local Government Act 1993

### **1 Name of Regulation**

This Regulation is the *Local Government (General) Amendment (Regional Joint Organisations) Regulation 2018*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Local Government (General) Regulation 2005

### [1] Clause 4 Application of Regulation

Insert at the end of the clause:

**Note.** The application of this Regulation to joint organisations is dealt with in clause 397A.

### [2] Clause 231 Definitions

Insert “or a voting representative on, or a non-voting chairperson of, the board of a joint organisation” after “county council” in the definition of *councillor*.

### [3] Clause 356E Display of posters

Omit “or county council” from clause 356E (2) (a) (ii).

Insert instead “, county council or joint organisation”.

### [4] Clause 356F Writing, drawing or depicting of electoral matter

Omit “or county council” from clause 356F (4) (b).

Insert instead “, county council or joint organisation”.

### [5] Part 11A

Insert after Part 11:

## Part 11A Joint organisations

### 397A Application of this Regulation to joint organisations

- (1) Except as provided by this Regulation, this Regulation applies:
  - (a) to a joint organisation in the same way as it applies to a council, and
  - (b) to the representatives on the board of a joint organisation in the same way as it applies to the councillors of councils, and
  - (c) to the executive officer of a joint organisation in the same way as it applies to the general manager of a council.
- (2) In the application of a provision of this Regulation to a joint organisation and to a representative on the board of a joint organisation:
  - (a) a reference to the mayor of a council includes a reference to the chairperson of a joint organisation, and
  - (b) a reference to mayoral office includes a reference to the office of the chairperson of a joint organisation, and
  - (c) a reference to a councillor includes a reference to a voting representative on or a non-voting chairperson of the board of a joint organisation, and
  - (d) a reference to the holding of civic office includes a reference to holding office as a voting representative on or a non-voting chairperson of the board of a joint organisation, and
  - (e) a reference to the general manager of a council includes a reference to the executive officer of a joint organisation, and
  - (f) a reference to the area of a council includes a reference to the joint organisation area of a joint organisation.

- (3) Clause 235 does not apply to a meeting of a joint organisation.
- (4) Division 11 of Part 13 applies to a joint organisation.
- (5) Unless otherwise expressly provided by this Regulation, nothing in this clause applies a provision of this Regulation to a joint organisation if the provision is made under or for the purposes of a provision of the Act that does not apply to a joint organisation.

**Note.** The following provisions of this Regulation apply to a joint organisation:

Part 1 (other than clause 4), Parts 6–8, 9 (other than clause 201 and Divisions 7 and 8), 10 (other than clause 235), 12 and 13 (other than Divisions 2, 3, 4 (other than clause 403), 6 and 13) and Schedules 3, 3A and 12.

**Note.** Section 400ZH (3) of the Act sets out the provisions of the Act that do not apply to joint organisations, subject to any regulations made under that section. However, a provision of the Act and a provision of this Regulation may apply to a joint organisation if the joint organisation is exercising a function of a council conferred on it by or under the Act (see section 400ZH (4) (a)).

### **397B Charters of joint organisations**

- (1) For the purposes of section 400U (5) (a) of the Act, the charter of a joint organisation is to contain the methodology for determining annual financial contributions to the joint organisation by member councils.
- (2) For the purposes of section 400U (5) (b) of the Act, the charter of a joint organisation is to be made publicly available on a website administered by the joint organisation within 30 days of its adoption by the joint organisation.
- (3) A joint organisation must consult with the member councils about the content of a proposed charter of the joint organisation.

### **397C Meetings of joint organisations**

- (1) Section 9 of the Act, and clause 232, do not apply in respect of the first meeting of a joint organisation.
- (2) For the purposes of the application of clause 234 to a joint organisation, the Departmental Chief Executive is to exercise the functions of the Minister under that clause.
- (3) For the purposes of section 400ZH (3) (n) of the Act, section 361 (2)–(5) of the Act does not apply to or in respect of a joint organisation.
- (4) A joint organisation must consult with the member councils about the content of a proposed code of meeting practice of the joint organisation.

### **397D Election of chairperson**

Schedule 7A contains provisions for the election of the chairperson of a joint organisation.

### **397E Tied votes**

A motion at a meeting of the board of a joint organisation is taken to be defeated in the event of an equality of votes.

### **397F Alternates for voting representatives on board**

- (1) A member council may appoint councillors of the council to be the alternate of any of the mayor, deputy mayor or any other councillor who is a voting representative on the board of the joint organisation.

- (2) A councillor appointed as an alternate may act as the alternate for 2 years, unless another term is specified by the member council or the appointment is revoked by the member council.
- (3) In the absence of a voting representative on the board of a joint organisation, the representative's alternate may, if available, act in the place of the representative.
- (4) While acting in the place of a voting representative on the board, a person has all the functions of a representative and is taken to be a voting representative.

**397G Transaction of business by telephone etc**

- (1) The board of a joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any representative who speaks on a matter before the meeting can be heard by the other representatives.
- (2) For the purposes of a meeting held in accordance with this clause, the chairperson and each other representative on the board have the same voting rights as they have at an ordinary meeting of the board.

**397H Statement of strategic regional priorities**

- (1) A joint organisation must have a statement of strategic regional priorities.
- (2) The statement must set out the strategic regional priorities for the joint organisation area and the strategies and plans for delivering those strategic regional priorities.
- (3) The statement is to be prepared not later than:
  - (a) the later of 31 December 2018 or 6 months after the establishment of the joint organisation, and
  - (b) 12 months after each subsequent ordinary election of councillors for all the member councils.
- (4) A joint organisation must consult with the member councils about the content of a proposed statement of strategic regional priorities.
- (5) The statement of strategic regional priorities is to be published by the joint organisation on a website maintained by the organisation.
- (6) For the purposes of section 400ZH (4) (b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in that section to a community strategic plan were a reference to a statement of strategic regional priorities required to be prepared by the organisation under this clause.

**397I Annual statement of revenue policy**

- (1) A joint organisation must have a statement of the joint organisation's revenue policy for a year.
- (2) The statement of the revenue policy must include the following statements:
  - (a) a statement containing a detailed estimate of the joint organisation's income and expenditure,
  - (b) a statement of the types of fees proposed to be charged by the joint organisation,
  - (c) the amount of any proposed fees to which Division 3 of Part 10 of Chapter 15 of the Act applies,

- (d) a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured.
- (3) The statement of fees need not include information that could confer a commercial advantage on a competitor of the joint organisation.
- (4) For the purposes of section 400ZH (4) (b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in those subsections to an operational plan were a reference to the joint organisation's revenue policy statement.
- (5) A joint organisation must adopt its revenue policy statement for a year on or before 30 June in the preceding year. If the joint organisation is established on or after 1 March in the preceding year, the date for the adoption of the statement is extended to 31 August in the next year.
- (6) A joint organisation is not required to prepare an annual revenue statement for the first year in which it is established.
- (7) For the purposes of the application of section 610F of the Act to a joint organisation, a reference to an operational plan of a council is taken to be a reference to an annual revenue statement of a joint organisation.

#### **397J Annual performance statements**

- (1) Within 5 months from the end of each year, a joint organisation must prepare a report (its *annual performance statement*) for that year reporting as to its progress in implementing its strategies and plans for delivering its strategic regional priorities.
- (2) The annual performance statement is to be published by the joint organisation on a website maintained by the organisation within 28 days after it is made.
- (3) Clause 217 (other than clause 217 (1) (a4), (e), (e1) and (f)) applies to an annual performance statement of a joint organisation in the same way as it applies to an annual report of a council.
- (4) A joint organisation is not required to, but may, prepare an annual performance statement for the first year in which it is established.
- (5) For the purposes of section 400ZH (4) (b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in that section to an annual report were a reference to an annual performance statement required to be prepared by the organisation under this clause.

#### **397K Delegation of functions**

- (1) For the purposes of section 400ZE (1) of the Act, the following functions must not be delegated by a joint organisation:
  - (a) the appointment of an executive officer,
  - (b) the fixing of a fee,
  - (c) the borrowing of money,
  - (d) the voting of money for expenditure on its works, services or operations,
  - (e) the purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
  - (f) the acceptance of tenders to provide services currently provided by members of staff of the joint organisation,

- (g) the fixing of an amount for the carrying out by the joint organisation of work on private land,
  - (h) the power of the joint organisation to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194 of the Act,
  - (i) a decision under section 356 of the Act to contribute money or otherwise grant financial assistance to persons,
  - (j) the making of an application, or the giving of a notice, to the Governor or Minister,
  - (k) any function under this or any other Act that is expressly required to be exercised by resolution of the joint organisation,
  - (l) the power of delegation conferred by section 400ZE (1) of the Act,
  - (m) any function under clause 397H, 397I or 397J.
- (2) Despite subclause (1), a joint organisation may delegate its functions relating to the granting of financial assistance if:
- (a) the financial assistance is part of a specified program, and
  - (b) the program applies uniformly to all persons within the joint organisation area or to a significant proportion of all the persons within that area.

**397L Financial contributions by member councils**

- (1) For the purposes of section 400ZF of the Act, each member council of the joint organisation is to make an annual financial contribution to the joint organisation.
- (2) The joint organisation is to determine the amount of the annual contribution in accordance with the methodology adopted by the board in the charter.
- (3) The joint organisation may from time to time determine that additional financial contributions are to be made by any or all of the member councils.
- (4) A financial contribution of a member council under this clause may be in the form of a monetary payment or in any other form agreed by the joint organisation with the member council.
- (5) A joint organisation must consult with the member councils about proposed financial contributions.

**397M Payment of expenses and provision of facilities**

- (1) For the purposes of section 400ZH (4) (b) of the Act, section 252 of the Act (other than section 252 (2)) is not an excluded provision of the Act in relation to all joint organisations.
- (2) A joint organisation must consult with the member councils about the content of a proposed policy concerning the payment of expenses.

**397N First financial reports and other financial matters**

- (1) This clause applies to a joint organisation if it is established after 1 July in a year.
- (2) The first financial reports required to be prepared under Part 3 of Chapter 13 of the Act for a joint organisation are to be prepared for the period commencing on the constitution of the joint organisation and ending on the last day of the year after the year in which the joint organisation is established.

- (3) For the purposes of section 400ZH (5) (a) of the Act, section 413 (1) of the Act applies to a joint organisation with the modifications set out in subclause (2).
- (4) For the purposes of section 400ZH (5) (b) of the Act, the following provisions of the Act do not apply to or in respect of a joint organisation:
  - (a) Division 2 of Part 10 of Chapter 15,
  - (b) Division 5 of Part 2 of Chapter 17.

**397O Application of merit appointment provisions**

- (1) Sections 348 (1) and (2) and 349 of the Act do not apply to the appointment of a person as the first executive officer of a joint organisation, if the term of appointment is for a period of not more than 12 months.
- (2) However, a joint organisation may comply with any of those provisions if it thinks fit.

**397P Transfer of staff**

- (1) Clause 406A applies to the following changes of employment:
  - (a) a change of employment from a joint organisation to another joint organisation,
  - (b) a change of employment from a joint organisation to a council,
  - (c) a change of employment from a council to a joint organisation.

**Note.** Because of clause 4, this clause, and Division 5 of Part 13 of this Regulation, apply to a county council in the same way as they apply to a council.
- (2) Clauses 406C and 406D apply to staff members of a joint organisation, with the following modifications:
  - (a) a staff transfer is taken to include a transfer of staff under a proclamation under Chapter 12 of the Act,
  - (b) a reference to a proclamation under Chapter 9 of the Act is taken to include a reference to a proclamation under Chapter 12 of the Act.
- (3) For the purposes of section 400ZH (5) (a) of the Act:
  - (a) section 354D of the Act applies to staff transfers in connection with the transfer of functions to or from a joint organisation and a council or a county council in the same way as it applies to a staff transfer within the meaning of Part 6 of Chapter 11 of the Act, and
  - (b) section 354G of the Act applies to staff transfers in connection with the transfer of functions to or from a joint organisation and a council or a county council in the same way as it applies to transfers in connection with the constitution of a new area.

**397Q Acquisition of land excluded**

For the purposes of section 400ZH (5) (b) of the Act, Part 1 of Chapter 8 of the Act does not apply to or in respect of a joint organisation.



**[6] Schedule 7A**

Insert after Schedule 7:

**Schedule 7A Election of chairpersons of joint organisations**

(Clause 397D)

**Part 1 Preliminary**

**1 When election to be held**

An election for chairperson of a joint organisation is to be held:

- (a) at the first meeting of the board after the joint organisation is established, and
- (b) at the first meeting of the board after the term of the chairperson expires, and
- (c) if the office of chairperson becomes vacant for any other reason.

**2 Returning officer**

The returning officer is to be:

- (a) the executive officer of the joint organisation, or
- (b) if there is no executive officer, the Departmental Chief Executive or a person appointed by the Departmental Chief Executive.

**3 Notification of vacancy**

- (1) The returning officer must give notice of the occurrence of a vacancy in the office of chairperson of the joint organisation to the Departmental Chief Executive (unless the returning officer is the Departmental Chief Executive) and to the general managers of the member councils of the joint organisation.
- (2) The returning officer is to do that within 7 days of the occurrence of the vacancy.
- (3) The notice is to set out the manner in which a person may be nominated as a candidate for election as chairperson.

**4 Nomination**

- (1) A voting representative who is the mayor of a member council may be nominated without notice for election as chairperson of the joint organisation.
- (2) The nomination is to be made in writing by 2 or more mayors of member councils of the joint organisation (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The returning officer is to announce the names of the nominees at the board meeting at which the election is to be held.

**5 Election**

- (1) If only one eligible voting representative of the joint organisation is nominated, that representative is elected.

- (2) If more than one eligible voting representative is nominated, the board is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the board meeting at which the joint organisation resolves on the method of voting.
- (4) In this clause:  
*ballot* has its normal meaning of secret ballot.  
*open voting* means voting by a show of hands or similar means.

## **Part 2 Ordinary ballot or open voting**

### **6 Application of Part**

This Part applies if the election proceeds by ordinary ballot or by open voting.

### **7 Marking of ballot-papers**

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

### **8 Count—2 candidates**

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

### **9 Count—3 or more candidates**

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 8 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

## **Part 3 Preferential ballot**

### **10 Application of Part**

This Part applies if the election proceeds by preferential ballot.

## **11 Ballot-papers and voting**

- (1) The ballot-papers are to contain the names of all the candidates. The voting representatives on the board are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

## **12 Count**

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. That candidate is elected.
- (4) In this clause, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

## **13 Tied candidates**

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

## **Part 4 General**

### **14 Choosing by lot**

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

### **15 Result**

The result of the election (including the name of the candidate elected as chairperson of the joint organisation) is:

- (a) to be declared to the representatives on the board at the board meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Departmental Chief Executive.

**16 By-elections**

- (1) Subject to subclause (2), a by-election to fill a vacancy in the office of chairperson of a joint organisation is to be held at the next meeting of the board of the joint organisation occurring after the vacancy occurs.
- (2) No such by-election is to be held if the vacancy occurs after an ordinary election of councillors under Chapter 10 of the Act and before an election of chairperson of the joint organisation in accordance with clause 1 (a) of this Schedule.