



New South Wales

Local Government (General) Amendment Regulation (No 2) 2022

under the

Local Government Act 1993

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

WENDY TUCKERMAN, MP
Minister for Local Government

Explanatory note

The object of this Regulation is to amend the *Local Government (General) Regulation 2021* to—

- (a) update the processes for submitting and receiving tenders and notifying acceptance of a successful tender, and
- (b) discontinue transmission by fax as an accepted means of submitting tender documents, and
- (c) make further provision for the counting of votes for the election of members of county councils, and
- (d) make other minor amendments.

This Regulation is made under the *Local Government Act 1993*, including sections 55(2), 390(3) and 748, the general regulation-making power, and Schedule 6.

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Local Government Act 1993

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment Regulation (No 2) 2022*.

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 2021

[1] Section 164 Definitions

Omit “tender submitted” from the definition of *appropriate person*.

Insert instead “tender submission”.

[2] Sections 164, definition of “appropriate person” and 178(1) and (1A)

Omit “tenders submitted”. Insert instead “tender submissions”.

[3] Section 164

Omit the definitions of *formal tender document* and *tender*. Insert in alphabetical order—

formal tender document means a document—

- (a) in the form approved by the council, and
- (b) for completion by tenderers in connection with the submission of a tender to the council.

tender proposal document means a document prepared by a council which sets out the work to be carried out under a tender.

tender submission means documents submitted by a tenderer to a council for consideration in relation to an invitation to tender.

[4] Sections 167(1)(b), 168(1), 169(1) and 178(3)(c) and (d)

Omit “in tendering” wherever occurring. Insert instead “in making a tender submission”.

[5] Sections 167(2)(b) and (3), 168(5)(b) and (6), 169(6)(b) and (7), 170(2) and 172(2)

Omit “tender documents” wherever occurring. Insert instead “tender proposal documents”.

[6] Section 167 Open tendering

Omit “submit a tender to the council by” from section 167(2)(d). Insert instead “tender before”.

[7] Section 167(2)(e)

Insert at the end of section 167(2)(d)—

, and

- (e) state the way a tender submission must be submitted.

[8] Sections 167(2) and 168(2)

Omit “The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.” wherever occurring.

[9] Section 167(2A)

Insert after section 167(2)—

- (2A) The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

[10] Section 168 Selective tendering method by which invitations to tender for proposed contract are made following public advertisement asking for expressions of interest

Insert at the end of section 168(2)(c)—

- , and
(d) state the way an application must be made.
- [11] Section 168(2A)**
Insert after section 168(2)—
(2A) The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.
- [12] Sections 168(5)(a) and 169(6)(a)**
Omit “submit tenders to the council by” wherever occurring. Insert instead “tender before”.
- [13] Section 168(5)(c)**
Insert at the end of section 168(5)(b)—
, and
(c) state the way a tender submission must be submitted.
- [14] Sections 168(5) and 169(6)**
Omit “The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.” wherever occurring.
- [15] Section 168(5A)**
Insert after section 168(5)—
(5A) The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.
- [16] Section 169 Selective tendering method by which recognised contractors listed by council are invited to tender for particular kinds of proposed contracts**
Insert at the end of section 169(2)(c)—
, and
(d) the way an application must be made.
- [17] Section 169(6)(c)**
Insert at the end of section 169(6)(b)—
, and
(c) state the way a tender submission must be submitted.
- [18] Section 169(6A)**
Insert after section 169(6)—
(6A) The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.
- [19] Section 170, heading**
Insert “**proposal**” after “**Tender**”.
- [20] Section 170(1)**
Omit “tender documents relating”. Insert instead “tender proposal documents relating”.

[21] Section 170(1A)(b)

Insert “or the *Fair Work Act 2009* of the Commonwealth” after “*Industrial Relations Act 1996*”.

[22] Part 7, Division 3, heading

Omit the heading. Insert instead—

Division 3 Tender submissions

[23] Sections 173(1) and (3), 176(1), (3), (4) and (5)(a), 178(1)(a) and (1A) and 179

Insert “submission” after “tender” wherever occurring.

[24] Section 173 Submission of tenders

Omit “by facsimile transmission or (subject to subsection (2))” from section 173(1).

Insert instead “including, subject to subsection (2),”.

[25] Section 173(2)

Omit the subsection. Insert instead—

- (2) A tender submission may not be submitted by electronic means unless the submission by electronic means is effected by a secure mechanism, including an encryption-based technology, that ensures the tender submission cannot subsequently be altered.

[26] Section 173(3)

Omit “facsimile transmission or”.

[27] Section 173(4)

Omit the subsection.

[28] Sections 174 and 175

Omit the sections. Insert instead—

174 Custody of tender submissions after receipt

- (1) For tender submissions received other than by electronic means, a council must—
 - (a) provide a secure tender submission box, and
 - (b) ensure that tender submissions are kept securely in the tender submission box until they are formally received under section 175.
- (2) The council must ensure that, when the council’s office is open for business, the council’s tender submission box is kept in a place that allows tenderers to deposit tender submissions in the box in person.
- (3) A tender submission received by electronic means as referred to in section 173(2) must be stored on an information system, within the meaning of the *Electronic Transactions Act 2000*, in a way, whether by means of password protection or otherwise, that the tender submission is accessible only to an appropriate person.
- (4) The council must ensure that a submitted tender submission is not read, opened or reviewed before the tender submission is formally received under section 175.

175 Formal receipt and opening of tender submissions

- (1) The council must specify a time after the deadline for submitting tender submissions to formally receive the submitted tender submissions.
- (2) The tender submissions must be formally received by 2 persons nominated by the general manager by reading the tender submissions to the extent necessary to identify—
 - (a) the name of the tenderer, and
 - (b) the amount that appears to be tendered.
- (3) One of the persons nominated must record the names of tenderers and the amounts that appear to be tendered.
- (4) The other person nominated must verify the information being recorded.
- (5) As soon as practicable after the conclusion of verification of the record under subsection (4), the council must publish the following information on the council's website—
 - (a) the names of tenderers,
 - (b) the amounts that appear to be tendered.
- (6) The council may publish additional information that the nominated persons consider appropriate on the council's website in conjunction with the information published under subsection (5).

[29] Section 176, heading

Omit “**Tenders**”. Insert instead “**Tender submissions**”.

[30] Sections 176(1) and (3), 177, heading and (1), 178, heading and (1), (1A), (3) and (4)(a) and 179

Omit “tenders” wherever occurring. Insert instead “tender submissions”.

[31] Section 177(1)

Omit “opened”. Insert instead “formally received under section 175”.

[32] Section 177(2)–(4)

Omit section 177(2)–(5). Insert instead—

- (2) The council may only consider a tender submission—
 - (a) submitted to the council before the deadline specified in the invitation to tender, and
 - (b) submitted in the way specified in the tender proposal document.
- (3) If the council receives a tender submission before the deadline specified in the invitation to tender in a way that is not specified in the tender proposal document, the council must take reasonable steps to inform the tenderer of the way in which a tender submission must be submitted.
- (4) The council must consider a tender submission submitted within a period after the deadline specified in the invitation to tender that the council decides to be reasonable in the circumstances if the tenderer satisfies the council that—
 - (a) the tender submission was posted, lodged or otherwise sent, in a way specified in the tender proposal document, before the deadline, and

- (b) in the ordinary course of business, posting, lodging or sending in that way would ensure the submission would have been received by the council before the deadline.

[33] Section 178(2)

Omit “a tender”. Insert instead “a tender submission”.

[34] Section 178(2)

Omit “successful tender”. Insert instead “successful tender submission”.

[35] Section 178(3)

Omit “, by resolution,” from section 178(3).

[36] Section 178(3)(e)

Insert “by resolution of the council,” before “enter into”.

[37] Section 179(a)

Omit “was”. Insert instead “were”.

[38] Section 179(b)

Omit “display in a conspicuous place that is accessible to members of the public”.
Insert instead “publish on a publicly accessible website maintained by the council”.

[39] Section 179(b)

Omit “tenders was”. Insert instead “tender submissions were”.

[40] Schedule 4 Counting of votes under optional preferential system

Insert at the end of section 6—

- (2) In this section—

approved method means—

- (a) for an election for councillors—a method approved by the election manager for the election, and
- (b) for an election for a county council—a method approved by the returning officer for the election.

[41] Schedule 9 Election of members of county councils

Omit Schedule 9, section 8. Insert instead—

8 Count

- (1) For the election of 1 member, the votes are to be counted in accordance with Schedule 4.
- (2) For the election of 2 or more members, the votes are to be counted and the result of the election ascertained in accordance with the following procedures—
 - (a) one of the candidates is elected in accordance with subsection (1),
 - (b) all the unrejected ballot-papers are rearranged under the names of the respective candidates in accordance with the first preferences marked on the ballot-papers, except that each ballot-paper on which a first

- preference for the elected candidate is indicated is placed in the parcel of the candidate next in the order of the voter's preference,
- (c) the number of ballot-papers in the parcel of each candidate is counted and the total number of votes counted for each candidate is ascertained,
 - (d) if a candidate then has an absolute majority of votes, the candidate is elected,
 - (e) if a candidate does not have an absolute majority of votes, the count proceeds according to Schedule 4, section 3(d), (e) and (f), until 1 candidate has received an absolute majority of votes,
 - (f) Schedule 4, section 3(d) and (e) are to be read for this section as if a reference in those paragraphs to first preference votes were a reference to all the votes counted to a candidate under this subsection,
 - (g) the candidate who has received an absolute majority of votes is elected.
- (3) If more than 2 candidates are to be elected, the votes are to be counted in accordance with the procedures under subsection (2) until the result of the election of additional candidates is ascertained.
- (4) In the process of counting under subsection (1) or (2), exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate.