



New South Wales

Local Government (General) Amendment (Tendering) Regulation (No 2) 2023

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*.

RON HOENIG, MP
Minister for Local Government

Explanatory note

The object of this regulation is to provide for the conditions of employment for employees who provide domestic or other waste management services which have been subject to a tender process.

This regulation is made under the *Local Government Act 1993*, including section 748, the general regulation-making power, and Schedule 6, clauses 5 and 6.

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1 Name of regulation

This regulation is the *Local Government (General) Amendment (Tendering) Regulation (No 2) 2023*.

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

Insert in alphabetical order—

domestic or other waste management services means the storage, treatment, processing, collecting, removal, disposal, destruction, sorting or recycling of domestic waste and other waste.

[2] Section 170 Tender proposal documents

Omit section 170(1)(e) and (1A)–(4). Insert instead—

- (e) if the proposed contract is for the performance of domestic or other waste management services, specify—
 - (i) details of the individual employees who currently provide the service, and
 - (ii) the terms on which the individuals are employed.
- (2) The information under subsection (1)(e) must be included in a way that protects the privacy of the individuals by—
 - (a) removing identifying information, or
 - (b) aggregating data from multiple individuals.
- (3) The information under subsection (1)(e) is not required to be included if the council cannot reasonably obtain access to the information.
- (4) If a council amends tender proposal documents after they have been issued to persons, it must take all reasonably practicable steps to inform the persons of the amendments.

[3] Section 173 Submission of tenders

Insert after section 173(3)—

- (4) A tender submission for the performance of domestic or other waste management services must be accompanied by an undertaking made by the tenderer if the tender proposal document contains the information required by section 170(1)(e).
- (5) In the undertaking, the tenderer must undertake to ensure—
 - (a) the individuals will be offered employment to continue to provide the service, and
 - (b) for an individual who accepts the offer of employment—
 - (i) the employment will be on at least the same terms as the individual's current employment, and
 - (ii) the employment will be taken to be a continuation of the individual's current employment with no loss of entitlements, and
 - (iii) the tenderer will pay the annual increase in the individual's base rate pay in accordance with—
 - (A) the applicable industrial instrument, or
 - (B) if there is no applicable instrument—the Local Government (State) Award.

- (6) An individual, to which an undertaking relates, may take action to enforce the undertaking as if the undertaking were a contract between the tenderer and the individual.
- (7) Subsection (6) does not prevent or limit the action the council may take to enforce the undertaking.

[4] Section 177 Consideration of tender submissions

Insert at the end of section 177(2)(b)—

, and

- (c) that otherwise complies with this part.

[5] Section 178 Acceptance of tender submissions

Omit section 178(1A). Insert instead—

- (1A) A council must not accept a tender submission for a proposed contract if the tender submission is accompanied by an undertaking referred to in section 173, unless—
 - (a) the council has consulted with each relevant registered organisation, and
 - (b) each registered organisation is satisfied that appropriate industrial arrangements will be in place to ensure compliance with the undertaking during the life of the contract.

[6] Section 178(5)

Insert after section 178(4)—

- (5) In this section—

registered organisation means—

 - (a) an organisation within the meaning of the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
 - (b) an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*.