

New South Wales

Local Government Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Local Government Act 1993* (*the Principal Act*):

- (a) to clarify the relationship between public-private partnerships and the tendering requirements under the Principal Act, and
- (b) to clarify that certain annual charges (such as for domestic waste management and stormwater management services) may be levied on individual lots in a strata scheme and on company title properties.

This Bill also makes consequential amendments to other Acts and a regulation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the consequential amendments to other legislation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Amendments relating to public-private partnerships and tendering requirements

Section 55 currently provides that a council must invite tenders before entering into certain contracts. Part 6 of Chapter 12 currently sets out the requirements in relation to the participation by councils in public-private partnerships. The proposed amendments make it clear that a council may choose to either go to tender or to use the public-private partnership model for certain projects.

Schedule 1 [1] amends section 55 to provide that contracts to enter into public-private partnerships and contracts entered into by a council for the purposes of carrying out a project under a public-private partnership are contracts for which a council is not required to invite tenders.

Schedule 1 [2] and [3] repeal section 55 (5)–(7) and insert a new section 55A to clarify the manner in which the tendering requirements under section 55 extends to entities formed by a council.

Schedule 1 [4] clarifies the nature and operation of public-private partnerships and, in particular, makes it clear that the types of services that relate to such partnerships are services that are delivered during the carrying out of any project under the partnership. **Schedule 2.1** makes a consequential amendment to clause 408 of the *Local Government (General) Regulation 2005* in relation to the types of arrangements that are excluded from the definition of **public-private partnership**.

Amendments relating to annual charges

Part 1 of Chapter 15 of the Principal Act includes provision relating to the making and levying of annual charges for certain services provided by a council, including services such as water supply, sewerage, domestic waste management and stormwater management services.

Schedule 1 [5] inserts proposed section 495A to make it clear that such annual charges may be levied on individual lots in a strata scheme or on a company title dwelling or a portion of a company title building.

Schedule 2.2 and 2.3 contain consequential amendments to the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*, respectively, to make it clear that annual charges in relation to stormwater management services cannot be payable by the body corporate in relation to the relevant strata scheme.

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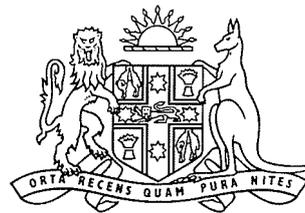
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Other amendments

Schedule 1 [6] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [7] inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

First print



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New South Wales

Local Government Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Local Government Act 1993* to make further provision with respect to entering into public-private partnerships and the levying of annual charges; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Local Government Act 1993 No 30	6
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	7
4 Consequential amendment of other legislation	8
The Acts and regulation specified in Schedule 2 are amended as set out in that Schedule.	9 10
5 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendment of Local Government Act 1993 No 30	1 2
	(Section 3)	3
[1] Section 55	What are the requirements for tendering?	4
	Insert before the last dot point in section 55 (3):	5
	<ul style="list-style-type: none"> • a contract to enter into a public-private partnership • if a council has entered into a public-private partnership— a contract entered into by the council for the purposes of carrying out a project under the public-private partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12) 	6 7 8 9 10 11 12
[2] Section 55 (5)–(7)	Omit the subsections.	13 14
[3] Section 55A	Insert after section 55:	15 16
55A	Extended operation of section 55 to council-related entities	17
	(1) A council must comply with the requirements of section 55 (including any regulations made under that section) even though the contract to which that section applies involves something being done to or by an entity that the council has formed or participated in forming.	18 19 20 21 22
	(2) However, if the entity concerned is formed under a public-private partnership, subsection (1) has effect only to the extent that the contract is not part of a project that has been assessed or reviewed in accordance with Part 6 of Chapter 12.	23 24 25 26
	(3) In this section: <i>entity</i> means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.	27 28 29 30 31
[4] Section 400B	Definitions	32
	Omit section 400B (1). Insert instead:	33
	(1) For the purposes of this Act, a <i>public-private partnership</i> means an arrangement:	34 35

(a)	between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and	1 2 3 4
(b)	in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control,	5 6 7
	but does not include any such arrangement if it is of a class that has been excluded from the operation of this Part by the regulations.	8 9 10
(1A)	For the purposes of subsection (1), the provision of public infrastructure or facilities includes the delivery of services during the carrying out of any project under the public-private partnership.	11 12 13 14
[5]	Section 495A	15
	Insert after section 495:	16
495A	Strata lots and company titles taken to be separate parcels of land for annual charges	17 18
	For the purposes of making or levying an annual charge under section 496, 496A or 501:	19 20
(a)	each lot in a strata plan that is registered under the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i> , and	21 22 23
(b)	each dwelling or portion of the kind referred to in section 547 (1),	24 25
	is taken to be a separate parcel of rateable land.	26
[6]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	27 28
	Insert at the end of clause 1 (1):	29
	<i>Local Government Amendment Act 2007</i>	30

[7] Schedule 8, Part 28	1
Insert after Part 27:	2
Part 28 Provisions consequent on enactment of Local Government Amendment Act 2007	3 4
88 Definition	5
In this Part:	6
<i>amending Act</i> means the <i>Local Government Amendment Act 2007</i> .	7 8
89 Validation provision	9
Anything done or omitted to be done by a council that would have been validly done or omitted to be done had section 495A, as inserted by the amending Act, been in force when the thing was done or omitted to be done is validated.	10 11 12 13
90 Existing public-private partnerships	14
The substitution of the definition of <i>public-private partnership</i> in section 400B (1) by the amending Act does not affect the operation of a public-private partnership entered into before the commencement of that substitution.	15 16 17 18

Schedule 2	Consequential amendment of other legislation	1
		2
	(Section 4)	3
2.1	Local Government (General) Regulation 2005	4
	Clause 408 Arrangements excluded from provisions relating to public-private partnerships	5
		6
	Omit clause 408 (1). Insert instead:	7
	(1) For the purposes of section 400B (1) of the Act, the following arrangements are excluded from the operation of Part 6 of Chapter 12 of the Act:	8
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	(a) any contract between a council and a private person that would, but for a resolution by the council to enter into a public-private partnership, be subject to the tendering requirements under section 55 of the Act,	11
		12
		13
		14
	(b) any arrangement arising out of the operation of Division 6 of Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> ,	15
		16
		17
	(c) any arrangement arising out of the imposition by a council of a requirement under section 306 of the <i>Water Management Act 2000</i> (as applying to the council by virtue of section 64 of the Act).	18
		19
		20
		21
2.2	Strata Schemes (Freehold Development) Act 1973 No 68	22
	Section 93 Charges for services	23
	Insert “(other than stormwater management services within the meaning of the <i>Local Government Act 1993</i>)” after “effluent services”.	24
		25

2.3 Strata Schemes (Leasehold Development) Act 1986 No 219	1
Section 125 Charges for services	2
Insert “(other than stormwater management services within the meaning of the <i>Local Government Act 1993</i>)” after “effluent services”.	3
	4