



New South Wales

Local Government Amendment Bill 2019

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* and other legislation as follows:

- (a) to increase to \$250,000 the value of a contract at or above which a council is required to invite tenders and to provide for other exceptions from the tendering requirement,
- (b) to extend by a further 12 months the period for which the Minister for Local Government may maintain the existing rate path for amalgamated councils,
- (c) to extend the cut-off dates for councils to decide to enter into arrangements with the Electoral Commissioner to administer the 2020 ordinary council elections, and to enter into the arrangements, to 1 October 2019 and 1 January 2020, respectively,
- (d) to enable the delegation of regulatory functions of councils to other councils, their committees and employees, and to committees of boards of joint organisations,
- (e) to enable regulations to be made to exempt councils from requirements relating to public notice of fees or determination of fees according to pricing methodologies where the fees relate to specified commercial activities,
- (f) to enable regulations to be made to establish a scheme for mutual recognition by councils of approvals and for appeals from decisions about the approvals.

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 the date of assent to the proposed Act, other than amendments relating to mutual recognition of council approvals,

delegation of council functions and regulatory requirements for fees. Those amendments will commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1 [1] removes the requirement for a rate for the purchase of goods, materials and services to be specified for certain contracts to be exempted from the requirement that a council invite tenders before entering a contract.

Schedule 1 [2] increases to \$250,000 the threshold for the value of the estimated expenditure or receipt of an amount under a contract below which a council will be able to enter a contract without inviting tenders.

Schedule 1 [3] exempts councils from the requirement to invite tenders before entering into a contract if the contract is with a disability employment organisation approved for the particular goods and services concerned under the *Public Works and Procurement Act 1912* or the contract is with a person or body prequalified as a supplier under the National Prequalification System for Civil (Road and Bridge) Construction Contracts.

Schedule 1 [4] enables regulations to be made for the purposes of conferring jurisdiction on the Land and Environment Court to deal with appeals relating to council decisions about the recognition of approvals under a scheme prescribed under powers to be inserted by **Schedule 1 [13]**. The regulations will also be able to enable the Court to award compensation for expenses incurred as a consequence of a refusal or delay in recognising an approval in circumstances where the council has been influenced by vexatious or unmeritorious submissions by members of the public or has acted vexatiously.

Schedule 1 [5] extends from 3 rating years to 4 rating years the period for which the rate path last applicable to land affected by a council amalgamation will continue to apply in a case where the Minister makes a determination that the last rate path will continue to apply. **Schedule 1 [14]** applies the amendment to existing determinations that are in force when the amendment commences.

Schedule 1 [6] allows a council that is intending to enter into an arrangement with the Electoral Commissioner to administer all elections, commencing with the 2020 ordinary council election, to meet the requirement to resolve to do so on or before 1 October 2019. Currently, the resolution would have been required to have been made by March 2019.

Schedule 1 [7] allows a council to enter into an arrangement with the Electoral Commissioner to administer the election of ordinary councillors in 2020, or all elections including that election, if the council resolves to do so on or before 1 October 2019 and enters into the arrangement on or before 1 January 2020. This reflects the changes made to requirements relating to resolutions by **Schedule 1 [6]**. Currently, an arrangement would have been required to have been entered into by June 2019.

Schedule 1 [8] enables a council to delegate its regulatory functions (relating to water supply, sewerage and drainage work, waste management, community land and other matters) to another council.

Schedule 1 [9] requires the approval of a council to be given before another council may delegate regulatory powers to that council and makes it clear that a council that delegates a regulatory function to a joint organisation need not be a member council of the joint organisation. The amendment also enables regulations to be made prescribing regulatory functions that must not be, or circumstances in which they may not be, delegated by a council to another council.

Schedule 1 [10] enables a joint organisation to which a regulatory function is delegated by a council to delegate the function to a committee of the board of the joint organisation.

Schedule 1 [11] enables a council to which a regulatory function is delegated by another council to delegate the function to a committee, or to the general manager of the other council who may in turn delegate the function to an employee of the other council.

Schedule 1 [12] inserts a power to make regulations for or with respect to the exemption of fees from requirements for councils to publicly notify fees for non-business activities or to determine fees in accordance with a pricing methodology adopted in the council's operational plan, if the fees are charged for a commercial activity by a council. The regulations may also validate a fee charged before an exemption comes into force if the fee would have been valid if charged after the exemption comes into force.

Schedule 1 [13] enables regulations to be made to prescribe a scheme for the mutual recognition of council approvals for regulatory activities. Elements about which regulations may be made include council policies for mutual recognition, model policies for mutual recognition, arrangements between councils relating to mutual recognition, approval of arrangements, modification of arrangements for recognition, effect of recognition of approvals, modification and revocation of recognised approvals and compensation for decisions by councils about recognised approvals.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* to make an amendment consequential on the amendment made by **Schedule 2.4**.

Schedule 2.2 amends the *Land and Environment Court Act 1979* to require appeals relating to recognised approvals to be dealt with by the Land and Environment Court within its class 2 jurisdiction, in line with local government approval appeals.

Schedule 2.3 amends the *Local Government (General) Regulation 2005* to remove a provision which raises the upper limit for contracts required to undergo tendering processes and has been superseded by the amendment made by **Schedule 1 [2]**.

Schedule 2.4 amends the *Public Interest Disclosures Act 1994* to enable councils to report on their obligations under that Act in annual reports under the *Local Government Act 1993* and provides for the amendment to operate from the 1 July following the amendment commencing.



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New South Wales

Local Government Amendment Bill 2019

No , 2019

A Bill for

An Act to amend the *Local Government Act 1993* with respect to rates, tendering requirements, election planning, mutual recognition of approvals and other regulatory matters; 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 2019</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1 [4], [8]–[13] and Schedule 2.2 commence on a day or days to be appointed by proclamation.	7 8

Schedule 1	Amendment of Local Government Act 1993 No 30	1
[1] Section 55 Requirements for tendering		2
	Omit “at a rate not exceeding the rate so specified” from section 55 (3) (a) and (g) wherever occurring.	3 4
	Insert instead “, if a rate is so specified, at a rate not exceeding the rate so specified”.	5
[2] Section 55 (3) (n)		6
	Omit “\$100,000”. Insert instead “\$250,000”.	7
[3] Section 55 (3) (q) and (r)		8
	Insert after section 55 (3) (p):	9
	(q) a contract made with a person or body approved as a disability employment organisation under the <i>Public Works and Procurement Act 1912</i> for the purchase of goods or services in relation to which the person or body is so approved,	10 11 12 13
	(r) a contract made with a person or body prequalified as a supplier under the National Prequalification System for Civil (Road and Bridge) Construction Contracts as administered in this State by Transport for NSW.	14 15 16 17
[4] Section 178A		18
	Insert after section 178:	19
178A Appeals relating to mutual recognition of approvals		20
	(1) The regulations may make provision for or with respect to appeals to the Land and Environment Court by applicants or approval holders who are dissatisfied with a determination of a council under a scheme prescribed by the regulations for the mutual recognition of approvals.	21 22 23 24
	(2) The regulations may also confer on the Land and Environment Court a discretion to award compensation, that is payable by a council, in circumstances of a kind referred to in section 179.	25 26 27
[5] Section 218CB Transitional provision for maintenance of pre-amalgamation rate paths		28 29
	Omit “3 rating years” from section 218CB (2). Insert instead “4 rating years”.	30
[6] Section 296AA Councils to plan for administration of elections		31
	Insert after section 296AA (4):	32
	(5) Despite the other provisions of this section, a council may make a resolution under subsection (1) on or before 1 October 2019 for the purposes of an arrangement that includes the ordinary election of councillors in 2020.	33 34 35
[7] Section 296 How elections are to be administered		36
	Insert after section 296 (5):	37
	(5A) Without limiting subsection (5), an election arrangement for the Electoral Commissioner to administer all elections of a council that is to include the ordinary election of councillors in 2020, or to administer that particular election, may be entered into if:	38 39 40 41

(a)	the council resolves on or before 1 October 2019 that an arrangement is to be entered into, and	1 2
(b)	the arrangement is entered into on or before 1 January 2020.	3
[8]	Section 379 Delegation of regulatory functions	4
	Insert at the end of section 379 (1) (d):	5
	, or	6
	(e) another council.	7
[9]	Section 379 (2B)–(2D)	8
	Insert after section 379 (2A):	9
(2B)	A council may delegate a regulatory function to another council only with the approval, by resolution, of the other council.	10 11
(2C)	The regulations may prescribe regulatory functions that must not be delegated by a council to another council under this section or limit the circumstances in which a regulatory function may be delegated by a council to another council under this section.	12 13 14 15
(2D)	A council may delegate a regulatory function to a joint organisation under a provision of this section whether or not the council is a member council of the joint organisation.	16 17 18
[10]	Section 379 (3) (c)	19
	Insert “a committee of the board of the joint organisation or” before “the executive officer” where firstly occurring.	20 21
[11]	Section 379 (3) (d)	22
	Insert at the end of section 379 (3) (c):	23
	, or	24
	(d) a regulatory function is delegated to another council, the function may be delegated to:	25 26
	(i) a committee of the other council of which all the members are councillors or of which all the members are either councillors or employees of the other council, or	27 28 29
	(ii) the general manager of the other council and by the general manager to an employee of the other council.	30 31
[12]	Chapter 15, Part 10, Division 5	32
	Insert after Division 4 of Part 10 of Chapter 15:	33
	Division 5 Exemption from regulatory requirements for fees	34
612	Regulations may exempt certain fees from regulatory requirements	35
(1)	Regulations may be made for or with respect to exempting fees that are charged by a council in connection with a commercial activity specified by the regulations from all or any of the requirements of this Act relating to public notification of council fees or the determination of fees in accordance with a pricing methodology.	36 37 38 39 40
(2)	An exemption made by or under the regulations for the purposes of this section may be unconditional or subject to conditions.	41 42

(3)	A regulation made under this section may validate a fee that was charged by a council before the making of the regulation if the fee would, if charged after the regulation commenced, have been validly imposed.	1 2 3
[13]	Schedule 6 Regulations	4
	Insert after item 8:	5
8AA	A scheme for mutual recognition by councils of approvals under Part 1 of Chapter 7	6 7
	Examples. Model policies for councils relating to mutual recognition	8
	Policies of councils relating to mutual recognition	9
	Arrangements between councils for mutual recognition	10
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	Effect of recognition of approvals	12
	Modification and revocation of recognised approvals and conditions of approvals	13
	Compensation by councils for modification or revocation of recognised approvals	14
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	Records of recognised approvals	17
	Exchange of information relating to recognised approvals	18
	Notice to other councils of recognised approvals	19
	Enforcement of recognised approvals by councils	20
[14]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	21 22
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	23
Part	Provision consequent on enactment of Local Government Amendment Act 2019	24 25
	Rate freeze for previously amalgamated councils	26
	Section 218CB (2), as amended by the <i>Local Government Amendment Act 2019</i> , extends to a determination made by the Minister before the commencement of that amendment and in force on that commencement.	27 28 29

Schedule 2	Amendment of other legislation	1
2.1	Government Sector Finance Legislation (Repeal and Amendment) Act 2018 No 70	2
	Schedule 4.89, item [3], proposed section 31 (2)	3
	Insert “or for a local authority under the <i>Local Government Act 1993</i> ” after “ <i>Government Sector Finance Act 2018</i> ”.	4
2.2	Land and Environment Court Act 1979 No 204	5
	Section 18 Class 2—local government and miscellaneous appeals and applications	6
	Insert “, and regulations made under section 178A of,” after “611 of” in section 18 (a).	7
2.3	Local Government (General) Regulation 2005	8
	Clause 163 Application of Part	9
	Omit clause 163 (2).	10
2.4	Public Interest Disclosures Act 1994 No 92	11
[1]	Section 31 Reports to Parliament by public authorities	12
	Omit section 31 (2). Insert instead:	13
	(2) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of:	14
	(a) the <i>Annual Reports (Departments) Act 1985</i> , or	15
	(b) the <i>Annual Reports (Statutory Bodies) Act 1984</i> , or	16
	(c) the <i>Local Government Act 1993</i> .	17
[2]	Schedule 2 Savings, transitional and other provisions	18
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	19
Part	Provision consequent on enactment of Local Government Amendment Act 2019	20
	Application of amendment to local authorities	21
	Section 31 (2) (c), as inserted by the <i>Local Government Amendment Act 2019</i> , applies to and in respect of a local authority on and from 1 July next following the substitution of the provision.	22
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