

Passed by both Houses



New South Wales

Rural Lands Protection Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Rural Lands Protection Amendment Bill 2006

Act No , 2006

An Act to amend the *Rural Lands Protection Act 1998* to make further provision in relation to the accounting, auditing and financial obligations of the State Council of Rural Lands Protection Boards and the rural lands protection boards; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rural Lands Protection Amendment Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Rural Lands Protection Act 1998 No 143

The *Rural Lands Protection Act 1998* is amended as set out in Schedule 1.

4 Amendment of other legislation

The *Public Authorities (Financial Arrangements) Regulation 2005* and the *Public Finance and Audit Act 1983* are amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Rural Lands Protection Act 1998

(Section 3)

[1] Section 25 Guidelines

Omit section 25 (1). Insert instead:

- (1) The State Council may issue guidelines that are not inconsistent with this Act or any other law with respect to:
 - (a) the exercise of any function of a board, and
 - (b) financial reports of boards and the auditing of those reports.
- (1A) Any such guidelines may adopt a standard or other document as in force from time to time.

[2] Section 36 Annual reports

Omit section 36 (1) and (2).

[3] Section 36 (3)

Omit “this section”. Insert instead “section 57A”.

[4] Section 36 (4)

Insert after section 36 (3):

- (4) Despite sections 8 and 10 of the *Annual Reports (Statutory Bodies) Act 1984*, the State Council is to prepare the report of its operations for each financial year, and is to submit its annual report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.

Note. Sections 8 and 10 of the *Annual Reports (Statutory Bodies) Act 1984* provide that statutory bodies (within the meaning of that Act) are to prepare reports of their operations for each financial year, and are to submit annual reports to the appropriate Minister (and, if required, the Treasurer), within the period of 4 months after the end of the financial year. This provision extends that period to 8 months in relation to the State Council.

[5] Section 36A

Insert after section 36:

36A State Council report relating to auditing of boards

The State Council is to prepare a report as to whether the auditing of boards' financial reports for each financial year has been satisfactorily carried out, and is to submit the report to the Minister and the Treasurer, within the period of 8 months after the end of the financial year.

[6] Section 52 Investment

Omit section 52 (b). Insert instead:

- (b) if that Act does not confer power on the board to invest the money—in any manner approved by the Minister with the concurrence of the Treasurer.

[7] Section 53 Financial year of board

Omit the note to the section.

[8] Section 53 (2)

Insert at the end of section 53:

- (2) Despite subsection (1), the Minister, on the recommendation of the State Council, may, by order published in the Gazette, determine a different financial year for all boards.

[9] Section 54 Audit of financial statements

Omit the section.

[10] Part 6, Divisions 4A and 4B

Insert after Division 4:

Division 4A Accounting records, financial reports and auditing

55A Accounting records

- (1) A board must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.
- (2) In particular, a board must keep its accounting records in a manner and form that facilitate:

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- (a) the preparation of financial reports that present fairly its financial position and the results of its operations, and
 - (b) the convenient and proper auditing of those reports.

55B Preparation of financial reports

- (1) A board must prepare a financial report for each financial year, and must refer the report for audit as soon as practicable (having regard to the requirements of section 55D (1)) after the end of that financial year.

Note. Under section 55D (1), a board's financial report for a year must be prepared and submitted to its auditor within the period of 3 months after the end of that financial year.

- (2) A board's financial report must include:
 - (a) a general purpose financial report, which is to include the following:
 - (i) a balance sheet as at the end of the year,
 - (ii) an income statement for the year,
 - (iii) a cash flow statement for the year,
 - (iv) a statement on changes in equity for the year,
 - (v) such notes as are proper and necessary to explain the statements or other documents referred to in subparagraphs (i)–(iv), and
 - (b) any other matter prescribed by the regulations, and
 - (c) any other matter required to be included in the report by the guidelines issued by the State Council.
- (3) The general purpose financial report must be prepared in accordance with this Act and the regulations and the requirements of:
 - (a) the *Australian Accounting Standards* issued by the Australian Accounting Standards Board, as in force for the time being, subject to the regulations, and
 - (b) such other standards as may be prescribed by the regulations or adopted by the guidelines.

55C Auditing of financial reports

- (1) A board's auditor must audit the board's financial report as soon as practicable (having regard to the requirements of section 55D (2)) after the report is referred for audit.

- (2) A board's financial report must be audited in accordance with the requirements of:
 - (a) the *AUASB Standards and Pronouncements* issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations, and
 - (b) such other standards as may be prescribed by the regulations or adopted by the guidelines.
- (3) The regulations may prescribe, and the guidelines may set out, matters that an auditor must consider and provide comment on in auditing a board's financial report.

55D Time for preparation and auditing of financial reports

- (1) A board must prepare its financial report for a financial year and (subject to this section) submit the report to its auditor within the period of 3 months after the end of that financial year.
- (2) An auditor for a board must (subject to this section) audit the board's financial report for a financial year within the period of 6 weeks after the report has been submitted to the auditor.
- (3) A board may, at any time within the period of 3 months after the end of the financial year, apply to the State Council for an extension of the period referred to in subsection (1).
- (4) An auditor may, at any time within the period of 6 weeks after a board's financial report has been submitted to the auditor, apply to the State Council for an extension of the period referred to in subsection (2) in relation to that report.
- (5) An application under subsection (3) or (4) must include detailed reasons and other relevant information in support of the application.
- (6) Before deciding whether or not to grant an extension, the State Council may require the board or auditor to give reasons, additional to those set out in the application, as to why the extension should be granted.
- (7) The State Council may grant an extension of such period as, in the opinion of the State Council, is necessary in the particular circumstances of the case.
- (8) A board must notify its auditor of any application for an extension made under this section and of the outcome of the application.

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- (9) An auditor must notify the relevant board of any application for an extension made under this section and of the outcome of the application.
 - (10) The State Council must notify both the board and auditor concerned of any extension granted under this section.
 - (11) If the State Council extends a period referred to in subsection (1) or (2), the board or auditor must comply with the subsection within the extended period.

55E Auditor's reports

- (1) A board's auditor must prepare the following reports:
 - (a) a report on the general purpose financial report prepared in accordance with the *AUASB Standards and Pronouncements* issued by the Auditing and Assurance Standards Board, as in force for the time being, subject to the regulations,
 - (b) a report on the conduct of the audit.
- (2) The report on the board's financial report must include:
 - (a) a statement as to whether, in the opinion of the auditor, the board's accounting records have been kept in accordance with the requirements imposed by or under this Act, and
 - (b) a statement as to whether, in the opinion of the auditor, the board's financial report:
 - (i) has been prepared in accordance with the requirements imposed by or under this Act, and
 - (ii) is consistent with the board's accounting records, and
 - (iii) presents fairly the board's financial position and the results of its operations, and
 - (c) a statement setting out particulars of any material deficiency in the accounting records or financial reports that has come to light in the course of the audit.
- (3) The report on the conduct of the audit:
 - (a) must contain a statement as to whether, in the opinion of the auditor, any information relevant to the conduct of the audit has been unobtainable by the auditor, and
 - (b) may contain such statements, comments and recommendations as to the conduct of the audit of the board's financial report as the auditor considers appropriate to include in the report.

- (4) As soon as practicable after completing the audit, the auditor must send a copy of the auditor's reports to the State Council and to the board.
- (5) The board must, within the period of 2 weeks after receiving the auditor's reports, send a copy of the auditor's reports, together with a copy of the board's audited financial report, to the State Council.

55F Interim reports

- (1) A board's auditor may, at any time during the audit of a board's financial report, report to the State Council on any matter relating to that report or to the conduct of the audit.
- (2) The auditor must give the board a copy of any report made to the State Council under this section.

Division 4B Auditors

55G Appointment of auditors

- (1) A board must appoint a person as its auditor.
- (2) A board's auditor may be:
 - (a) an individual who is a registered company auditor, or
 - (b) a partnership whose members or employees include a registered company auditor, or
 - (c) a corporation whose employees include a registered company auditor.
- (3) If the board's auditor is a partnership, any member or employee of the partnership may act as the board's auditor as long as he or she is a registered company auditor.
- (4) If the board's auditor is a corporation, any employee of the corporation may act as the board's auditor as long as he or she is a registered company auditor.
- (5) An appointment or reappointment of an auditor is to be made in accordance with any restrictions or procedures set out in the guidelines.
- (6) An auditor may not be appointed or reappointed unless the appointment or reappointment has been approved by the State Council.
- (7) In this section, *registered company auditor* has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth and includes the Auditor-General.

55H Disqualified persons

- (1) A person may not be appointed as a board's auditor:
 - (a) in the case of an individual, if he or she is a disqualified person, or
 - (b) in the case of a partnership, if any member or employee of the partnership is a disqualified person, or
 - (c) in the case of a corporation, if the corporation or any employee of the corporation is a disqualified person.
- (2) In this section, *disqualified person* means a person:
 - (a) who is a director of the board, or
 - (b) who is a member of staff of the Rural Lands Protection Boards Division of the Government Service, or
 - (c) who is in debt to the board otherwise than for rates or charges owed by the person as a ratepayer, or
 - (d) who has a contractual arrangement with the board that (if the person were the board's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement.

55I Auditor's term of office

- (1) A board's auditor holds office for 4 years and, if otherwise qualified, is eligible for reappointment subject to this section.
- (2) The office of auditor becomes vacant if the auditor:
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) ceases to be qualified to hold office as an auditor or becomes a disqualified person within the meaning of section 55H, or
 - (d) resigns office by notice in writing addressed to the board, or
 - (e) becomes a mentally incapacitated person, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is removed by the board in accordance with this section.
- (3) The board may remove an auditor from office only with the consent of the State Council.
 - (4) Without limiting subsection (3), the board, with the consent of the State Council, may remove an auditor from office for a failure by the auditor to comply with a requirement placed on the auditor by Division 4A.
 - (5) If the office of auditor becomes vacant, the board must, in accordance with sections 55G and 55H, appoint a qualified person to fill the vacancy.

55J Auditor may exercise general power of inspecting accounting records

- (1) A board's auditor, for the purpose of forming an opinion as to whether the requirements of this Act and the regulations are being complied with:
 - (a) may inspect the board's accounting records and other records necessary in order to carry out the auditor's functions at any time, and
 - (b) must inspect those records at such periods as may be prescribed by the regulations or set out in the guidelines.
- (2) The auditor may report to the board or to the State Council on the results of the inspection.
- (3) Such a report may deal with such matters concerning the board's accounting and other records as, in the auditor's opinion, should be dealt with by the report.
- (4) The auditor must give the board a copy of any report made under this section to the State Council.

55K Powers of auditor

- (1) When exercising the functions conferred on a board's auditor by this Part, a board's auditor is entitled at all reasonable times to full and free access to the board's accounting records and other records necessary in order to carry out the auditor's functions and may direct a director of the board or a member of staff of the

Rural Lands Protection Boards Division of the Government Service:

- (a) to produce to the auditor any document relating to those records that is in that person's custody or under that person's control, or
 - (b) to grant to the auditor such authorities as may be necessary to enable the auditor to gain access to any document relating to those records that is in the custody or control of any authorised deposit-taking institution, or
 - (c) to answer any question,
being a document or question that, in the opinion of the auditor, is relevant to the carrying out of the auditor's functions.
- (2) An auditor may make copies of or take extracts from any document to which the auditor gains access under this section.

55L Role of Auditor-General

- (1) The Auditor-General is authorised to audit a board's financial report for a financial year:
 - (a) if the board fails to appoint an auditor, or
 - (b) during any other vacancy in the office of auditor.
- (2) The Auditor-General:
 - (a) may, at any time, and
 - (b) must, if requested to do so by the Minister on the recommendation of the State Council,
conduct a special inspection and audit of a board's financial reports and accounting records.
- (3) The costs certified by the Auditor-General as having been incurred by the Auditor-General in auditing a board's financial report, or conducting a special inspection and audit of a board's financial reports and accounting records, in accordance with this section must be paid by the board.

[11] Section 56 What information is publicly available?

Omit paragraphs (a) and (b) of the definition of *publicly available document* in section 56 (1).

Insert instead:

- (a) any annual report prepared by the board under section 57A,

- (b) any financial report of a board and any accompanying auditor's reports as referred to in Division 4A,

[12] Section 57A

Insert after section 57:

57A Annual reports

A board must prepare a report in accordance with the guidelines in each financial year concerning its activities during the previous year and submit it to the State Council.

[13] Schedule 7 Savings and transitional provisions

Insert at the end of clause 1 (1):

Rural Lands Protection Amendment Act 2006

[14] Schedule 7, Part 5

Insert after Part 4 of Schedule 7:

Part 5 Provisions consequent on enactment of Rural Lands Protection Amendment Act 2006

37 Financial reports

This Act, as amended by the *Rural Lands Protection Amendment Act 2006*, applies to the preparation of boards' financial reports, and the auditing of those reports, for the 2006 financial year and each financial year after that.

Schedule 2 Amendment of other legislation

(Section 4)

2.1 Public Authorities (Financial Arrangements) Regulation 2005

[1] Schedule 1 Definitions of “authority” and “controlled entity”

Insert in appropriate order in Part 1 of Schedule 1:

Rural lands protection boards constituted under the *Rural Lands Protection Act 1998*, but not for the purposes of Part 2C of the Act.

[2] Schedule 1, Part 2

Omit:

Rural lands protection board constituted under the *Rural Lands Protection Act 1998*, but:

- (a) only for the purposes of Part 2C of the Act, and
- (b) in relation to Forbes Rural Lands Protection Board, only on and from 1 May 2006.

2.2 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “A rural lands protection board constituted under the *Rural Lands Protection Act 1998*”.