



New South Wales

Local Government Amendment (Miscellaneous) Bill 2006

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* so as:

- (a) to clarify that informal votes are not to be taken into account for the purpose of determining whether a question at a council poll or constitutional referendum has been carried, and
- (b) to provide that if the holder of a civic office to whom leave of absence has been granted attends a council meeting, the leave of absence is taken to have been rescinded as regards any future council meeting, and
- (c) to provide that a by-election need not be held in relation to a vacancy that arises in a civic office in the last 12 months before a scheduled council election, and
- (d) to ensure that a council's power to grant leave of absence to the holder of a civic office is non-delegable, and
- (e) to enable a council to serve notices by way of electronic mail if the person to be served has requested that notices be so served, and
- (f) to make other minor amendments and to enact certain savings and transitional provisions.

This Bill also amends the *Local Government (General) Regulation 2005* in relation to a councillor's responsibilities in relation to leave of absence, and in relation to a general manager's responsibilities with respect to the information to be made available to councillors.

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 amendments to the *Local Government (General) Regulation 2005* 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. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 **Amendment of Local Government Act 1993**

Informal votes at council polls and constitutional referendums

Schedule 1 [1] amends section 20 so as to clarify that informal votes are not to be taken into account for the purpose of determining whether a question at a council poll or constitutional referendum has been carried.

Leave of absence for holders of civic office

Schedule 1 [2] amends section 234 so as to provide that if the holder of a civic office to whom leave of absence has been granted attends a council meeting, the leave of absence is taken to have been rescinded as regards any future council meeting.

Dispensing with by-elections

Schedule 1 [3] amends section 294 so as to provide that a by-election need not be held in relation to a vacancy that arises in a civic office in the last 12 months before a scheduled council election (that is, after 1 October in the year before the year in which the election is due to be held).

Delegation of power to grant leave of absence

Schedule 1 [4] amends section 377 so as to ensure that a council's power to grant leave of absence to the holder of a civic office is non-delegable. **Schedule 1 [5]** then turns each of the dot paragraphs in section 377 (1) into numbered paragraphs.

Service of notices by electronic mail

Schedule 1 [7] amends section 710 (2) so as to enable a council to serve notices by way of electronic mail if the person to be served has requested that notices be so served.

Schedule 1 [8] inserts new subsections (2A), (2B) and (2C) into section 710. The proposed subsections:

- (a) require a council to obtain a person's written request to the use of electronic mail before it is authorised to send notices to the person in that form (proposed subsection (2A)), and
- (b) require a person who wishes to withdraw such a request to do so by notice in writing (proposed subsection (2B)), and
- (c) provide for how a person's email address is to be determined (proposed subsection (2C)).

Schedule 1 [9] amends section 710 (8) so as to provide that affidavit or oral evidence that the transmission of a notice by electronic mail has been initiated (that is, that the notice has been sent) is conclusive evidence that the notice has been served (regardless of whether or not it has been received). This amendment parallels the regime applicable to notices sent by post.

Schedule 1 [6] makes a consequential amendment to section 710 (2).

Savings and transitional provisions

Schedule 1 [10] amends clause 1 of Schedule 8 so as to enable regulations under the *Local Government Act 1993* to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [11] inserts a new Part at the end of Schedule 8 so as to enact particular provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Local Government (General) Regulation 2005

Councillors' responsibilities regarding leave of absence

Schedule 2 [1] inserts a new clause 235A. The proposed clause requires a councillor who applies for leave of absence from council meetings to identify the meetings from which the councillor intends to be absent and to give the council's general manager at least 2 days' notice of any intention to attend a meeting in respect of which he or she has been granted leave of absence.

General managers' responsibilities regarding information to be made available to councillors

Schedule 2 [2] inserts a new Division 11 into Part 13. The new Division contains a single clause, proposed clause 413A, that makes it the duty of a council's general manager to give timely information to councillors of any fine or other penalty, or any costs in relation to legal proceedings, for whose payment the council has become liable.



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New South Wales

Local Government Amendment (Miscellaneous) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Local Government Act 1993* with respect to constitutional referenda, council meetings, by-elections and service of notices; 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 (Miscellaneous) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Local Government Act 1993 No 30	7
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	8
4 Amendment of Local Government (General) Regulation 2005	9
The <i>Local Government (General) Regulation 2005</i> is amended as set out in Schedule 2.	10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	13 14
(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.	15 16

Schedule 1	Amendment of Local Government Act 1993	1
		2
	(Section 3)	3
[1]	Section 20 When is a question at a council poll or constitutional referendum carried?	4
	Insert at the end of the section:	5
	(2) The reference to votes in subsection (1) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.	6
[2]	Section 234 When does a vacancy occur in a civic office?	7
	Insert after section 234 (2):	8
	(3) If the holder of a civic office attends a council meeting (whether or not an ordinary meeting) despite having been granted leave of absence, the leave of absence is taken to have been rescinded as regards any future council meeting.	9
	(4) Subsection (3) does not prevent the council from granting further leave of absence in respect of any future council meeting.	10
[3]	Section 294 Dispensing with by-elections	11
	Omit “1 April” from section 294 (1). Insert instead “1 October”.	12
[4]	Section 377 General power of the council to delegate	13
	Insert before the third last dot point in section 377 (1):	14
	• a decision under section 234 to grant leave of absence to the holder of a civic office	15
[5]	Section 377 (1)	16
	Renumber the dot point paragraphs (including the paragraph inserted by item [4]) as paragraphs (a)–(u), and insert commas at the end of each paragraph, other than the last.	17
[6]	Section 710 Service of notices on persons	18
	Insert “transmitting the notice by” before “facsimile transmission” in section 710 (2) (d).	19
		20

[7] Section 710 (2) (d1)	1
Insert after section 710 (2) (d):	2
(d1) by transmitting the notice by electronic mail to an email address specified by the person (on correspondence or otherwise) as an address to which electronic mail to that person may be transmitted, or	3 4 5 6
[8] Section 710 (2A)–(2C)	7
Insert after section 710 (2):	8
(2A) Subsection (2) (d1) does not authorise a notice to be transmitted to a person by electronic mail unless the person has requested the council, in writing, that notices of that kind be transmitted to the person by electronic mail, and has not subsequently withdrawn the request.	9 10 11 12 13
(2B) A person’s request under subsection (2A) is taken to have been withdrawn in relation to a particular kind of notice only if the person has informed the council, in writing, that notices of that kind are no longer to be transmitted to the person by electronic mail.	14 15 16 17 18
(2C) While a person’s request under subsection (2A) has effect in relation to a particular kind of notice, the address to which notices of that kind are to be transmitted is:	19 20 21
(a) the email address indicated in the request, or	22
(b) if the person subsequently directs the council, in writing, to transmit notices of that kind to a different email address, that different address.	23 24 25
[9] Section 710 (8)	26
Insert “, or its transmission by electronic mail has been initiated,” after “posted”.	27 28
[10] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	29 30
Insert at the end of clause 1 (1):	31
<i>Local Government Amendment (Miscellaneous) Act 2006</i>	32

[11] Schedule 8	1
Insert at the end of the Schedule, with appropriate numbering:	2
Part Provisions consequent on enactment of Local Government Amendment (Miscellaneous) Act 2006	3 4 5
Definition	6
In this Part:	7
<i>the 2006 amending Act</i> means the <i>Local Government Amendment (Miscellaneous) Act 2006</i> .	8 9
Council polls and constitutional referendums	10
Section 20, as amended by the 2006 amending Act, extends to any council poll or constitutional referendum initiated before that section was so amended.	11 12 13
Leave of absence	14
Section 234, as amended by the 2006 amending Act, extends to any leave of absence granted before that section was so amended.	15 16

Schedule 2	Amendment of Local Government	1
	(General) Regulation 2005	2
	(Section 4)	3
[1] Clause 235A		4
Insert after clause 235:		5
235A Leave of absence		6
(1) A councillor's application for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent.		7 8 9
(2) A councillor who intends to attend a council meeting despite having been granted leave of absence should, if practicable, give the general manager at least 2 days' notice of his or her intention to attend.		10 11 12 13
[2] Part 13, Division 11		14
Insert after Division 10 of Part 13:		15
Division 11 Functions of general manager		16
413A Functions of general manager (section 335)		17
If a court or tribunal orders a council to pay any fine or other penalty, or to pay costs in relation to any legal proceedings, it is the duty of the council's general manager to ensure that the following information is made available to each councillor as soon as practicable after the order is made:		18 19 20 21 22
(a) the date on which the order was made,		23
(b) the amount of the fine, penalty or costs,		24
(c) the act or omission giving rise to the fine or penalty, or the nature of the legal proceedings giving rise to the costs, as the case may be.		25 26 27