



New South Wales

Local Government Amendment (Amalgamation Referendums) Bill 2017

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Local Government Act 1993 No 30	3

This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments.



New South Wales

Local Government Amendment (Amalgamation Referendums) Bill 2017

Act No , 2017

A Bill for

An Act to amend the *Local Government Act 1993* to require referendums to be held in relation to the amalgamation or proposed amalgamation of local councils.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Amalgamation Referendums) Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Local Government Act 1993 No 30

[1] Chapter 9 How are councils established?

Omit Division 2B of Part 1. Insert instead:

Division 2B Procedure (including referendum) required before areas amalgamated

Note. This Division sets out the procedure required to be followed before one or more areas can be amalgamated.

218D Exercise of functions under sec 218A

One or more areas may be amalgamated under section 218A only if a proposal for the amalgamation is dealt with under this Division.

218E Proposal may be initiated by Minister, council or electors

- (1) An amalgamation proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.
- (2) An *appropriate minimum number of electors* is:
 - (a) if a proposal applies to the whole of one or more areas, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or
 - (b) if a proposal applies to part only of one or more areas, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

218F Referral of proposal for examination and report

- (1) On making or receiving an amalgamation proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Departmental Chief Executive.
- (2) Sections 263, 264 and 265 apply to the examination of an amalgamation proposal by the Departmental Chief Executive in the same way as they apply to the examination of a proposal by the Boundaries Commission.
- (3) If an amalgamation proposal has been referred to the Departmental Chief Executive under this section:
 - (a) the Departmental Chief Executive must furnish the Departmental Chief Executive's report to the Boundaries Commission for review and comment, and
 - (b) the Boundaries Commission must review the report and send its comments to the Minister.

218G Minister may recommend amalgamation to Governor

- (1) The Minister may recommend to the Governor that the amalgamation proposal be implemented:
 - (a) with such modifications as arise out of:
 - (i) the Boundaries Commission's report, or
 - (ii) the Departmental Chief Executive's report (and, if applicable, the Boundaries Commission's comments on that report), and
 - (b) with such other modifications as the Minister determines,

but may not do so if of the opinion that the modifications constitute a new proposal.

- (2) The Minister may decline to recommend to the Governor that the proposal be implemented.

218H Minister may not recommend amalgamation unless approved by referendum

- (1) The Minister may not recommend to the Governor that an amalgamation proposal be implemented unless:
 - (a) the Minister initiates a referendum to give effect to the amalgamation and any associated boundary alteration on specified terms (*an amalgamation referendum*), and
 - (b) the amalgamation referendum has approved the amalgamation in those terms.
- (2) Nothing in this section affects the operation of Schedule 10.

218I Conduct of amalgamation referendum

- (1) Part 1 and Part 6 (except Divisions 3 and 5) of Chapter 10 apply to an amalgamation referendum, with such modifications as may be necessary, in the same way as they apply to an election.

Note. Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections, and Part 6 governs the conduct of those elections.

Division 3 of Part 6 of that Chapter deals with nominations for election, Division 4 with failure to vote and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.
- (2) The persons entitled to vote at such a referendum are the persons entitled to vote in an election of councillors for an area affected by the amalgamation proposal or any associated boundary alteration proposal.
- (3) An amalgamation referendum may be taken on any Saturday, including the Saturday of an ordinary election.
- (4) The question at an amalgamation referendum is carried if it is supported by a majority of the votes cast.
- (5) The reference to votes in subsection (4) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.
- (6) The decision made at an amalgamation referendum binds the Minister until changed or affected by a subsequent inconsistent decision by a subsequent amalgamation referendum.
- (7) Expenses incurred by the general managers of the councils concerned, or by the Electoral Commissioner (including the remuneration of election officials) in connection with an amalgamation referendum are to be met by the councils concerned, in proportion to the number of electors in each council's area, and are recoverable from the councils in such proportions as a debt owed to the Electoral Commissioner.

Division 2C Procedure before boundaries can be altered

Note. This Division sets out the procedure required to be followed before the boundaries of one or more areas can be altered. This Division reflects the procedure that applied to the alteration of boundaries before the commencement of the *Local Government Amendment (Amalgamation Referendums) Act 2017*.

218J Exercise of functions under sec 218B

The boundaries of one or more areas may be altered under section 218B only if a proposal for the alteration is dealt with under this Division.

218K Proposal may be initiated by Minister, council or electors

- (1) A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.
- (2) An appropriate minimum number of electors is:
 - (a) if a proposal applies to the whole of an area, 250 of the enrolled electors for each area or 10 per cent of them, whichever is the greater, or
 - (b) if a proposal applies to part only of an area, 250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

218L Referral of proposal for examination and report

- (1) On making or receiving a proposal, the Minister must refer it for examination and report to the Boundaries Commission or to the Departmental Chief Executive.
- (2) Sections 263, 264 and 265 apply to the examination of a proposal by the Departmental Chief Executive in the same way as they apply to the examination of a proposal by the Boundaries Commission.
- (3) If a proposal that is not supported by one or more of the councils affected by it has been referred to the Departmental Chief Executive under subsection (1):
 - (a) the Departmental Chief Executive must furnish the Departmental Chief Executive's report to the Boundaries Commission for review and comment, and
 - (b) the Boundaries Commission must review the report and send its comments to the Minister.
- (4) The Minister may recommend to the Governor that the proposal be implemented:
 - (a) with such modifications as arise out of:
 - (i) the Boundaries Commission's report, or
 - (ii) the Departmental Chief Executive's report (and, if applicable, the Boundaries Commission's comments on that report), and
 - (b) with such other modifications as the Minister determines, but may not do so if of the opinion that the modifications constitute a new proposal.
- (5) The Minister may decline to recommend to the Governor that the proposal be implemented.

[2] Section 354B Definitions

Omit "section 218E" from paragraph (c) of the definition of *proposal* in section 354B (1).
Insert instead "section 218K".

[3] Section 354B (1), definition of “proposal period”

Omit “section 215 or 218E” from subparagraph (b) (i).

Insert instead “section 215, 218G or 218L”.

[4] Schedule 10

Insert after Schedule 9:

Schedule 10 Special provisions relating to certain council amalgamations and proposed council amalgamations

1 Plebiscite to be undertaken regarding council amalgamations that occurred in 2016

- (1) This clause applies to an amalgamation of areas by a proclamation made under Division 2A of Part 1 of Chapter 9 in 2016.
- (2) A plebiscite is to be conducted to ascertain whether the electors of the amalgamated area wish the amalgamation to be reversed.
- (3) The plebiscite is to be conducted within 1 month of the commencement of this Schedule.
- (4) The results of the plebiscite are to be given in a form that shows the votes cast by the electors of each former area within the amalgamated area.
- (5) It is the duty of the Minister to use his or her best endeavours to give effect to the wishes of the majority of the electors of each former area as expressed by the votes cast at a plebiscite conducted under this clause.

Note. For example, if, in the plebiscite for the newly amalgamated Northern Beaches area, the majority of the electors of the former Pittwater area vote for the amalgamation to be reversed, it is the duty of the Minister for Local Government to use his or her best endeavours to give effect to that vote. This is the case even if the majority of the electors of the Northern Beaches area as a whole did not vote for the amalgamation to be reversed.

- (6) In this clause:
elector of a former area means an elector enrolled in respect of an address within the boundaries of the former area.
former area means an area that has been amalgamated.

2 Referendum required before certain proposed council amalgamations

- (1) This clause applies to the proposed amalgamations of the following areas:
 - (a) Burwood, Canada Bay and Strathfield,
 - (b) Hornsby and Ku-ring-gai,
 - (c) Hunter’s Hill, Lane Cove and City of Ryde,
 - (d) Mosman, North Sydney and City of Willoughby,
 - (e) City of Randwick, Waverley and Woollahra.
- (2) A proclamation under Division 2A of Part 1 of Chapter 9 to give effect to a proposed amalgamation of areas to which this clause applies must not be made unless approval to do so has been given by the electors of each of the areas concerned at a referendum conducted under this Schedule.
- (3) The question at a referendum is carried if it is supported by a majority of the votes cast by the electors of the area.

3 Provisions relating to the conduct of a plebiscite or referendum

(1) Application of certain provisions to plebiscites and referendums

Part 1 and Part 6 (except sections 296AA–296B and Divisions 3 and 5) of Chapter 10 apply to a plebiscite or referendum conducted under this Schedule, with such modifications as may be necessary, in the same way as they apply to an election.

Note. Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections and Part 6 governs the conduct of those elections.

Sections 296AA–296B relate to the administration of council elections.

Division 3 of Part 6 of that Chapter deals with nominations for election and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.

(2) Administration of plebiscites and referendums

The Electoral Commissioner is to administer plebiscites and referendums conducted under this Schedule.

(3) Day for taking plebiscite or referendum

A plebiscite or referendum may be taken on any Saturday, including the Saturday of an ordinary election.

(4) Informal votes not be counted to determine majority

For the purposes of determining the result of a plebiscite or referendum, a reference to a vote in clauses 1 (5) and 2 (3) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.