



New South Wales

# **Local Government Amendment (Council and Employee Security) Bill 2004**

## **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 enable a local council to apply for a ministerial determination of a percentage by which the council's general income, or its charges for domestic waste management services, may be increased over a period of up to 7 years, and
- (b) to extend the circumstances in which local government elections may be postponed, and
- (c) to extend protections given to staff transferred to the employment of another council to non-transferred staff who were employed by the affected councils at the time of the staff transfer, and

Explanatory note

- (d) to provide that staff of a council that is affected by an amalgamation or alteration of boundaries cannot be relocated, within the following 3 years, outside the relevant council boundaries as they existed before the amalgamation or alteration took effect, unless the staff give consent or a relocation would not cause unreasonable hardship because of the distance concerned, and
- (e) to require a council affected by an amalgamation or alteration of boundaries and employing staff at a rural centre to maintain staff numbers (excluding senior staff and certain temporary staff) at the rural centre as far as is reasonably practicable.

## 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, except for Schedule 3, which is taken to have commenced on 1 January 2004.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedules 1–4.

**Schedule 1** makes amendments to the *Local Government Act 1993* for the purpose referred to in paragraph (a) of the Overview. Proposed section 508A sets out the procedure for making a determination for an individual council of the special percentage by which the council's general income, or its charges for domestic waste management services, may be increased over a period of up to 7 years, and provides that, if the general percentage increase for a particular year is larger than the special percentage, the larger percentage applies.

**Schedule 2** makes amendments to the *Local Government Act 1993* for the purpose referred to in paragraph (b) of the Overview. Division 2C of Part 1 of Chapter 9 (sections 218G–218K) is replaced by proposed Part 6A of Chapter 10. The new Part 6A allows for the postponement of a council election when an amalgamation proposal or boundary proposal affecting the council is being formulated, is under consideration for formulation, or has been made by or to the Minister, or when the council is the subject of an investigation or public inquiry, or when a matter affecting the boundaries of the council's area is under consideration by the Boundaries Commission.

**Schedule 3** makes amendments to the *Local Government Act 1993* for the purposes referred to in paragraphs (c) and (d) of the Overview.

Local Government Amendment (Council and Employee Security) Bill 2004

Explanatory note

**Schedule 4 [1]** makes an amendment to the *Local Government Act 1993* for the purpose referred to in paragraph (e) of the Overview.

**Schedule 4 [2] and [3]** make amendments of a savings or transitional nature.

First print



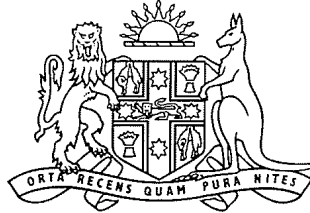
New South Wales

# Local Government Amendment (Council and Employee Security) Bill 2004

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Local Government Act 1993 No 30	2
Schedule 1 Amendments relating to council income	3
Schedule 2 Amendments relating to postponement of elections	6
Schedule 3 Amendments relating to employment protection	10
Schedule 4 Other amendments	16



New South Wales

# **Local Government Amendment (Council and Employee Security) Bill 2004**

No. , 2004

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## **A Bill for**

An Act to amend the *Local Government Act 1993* in relation to the adjustment of council income, the postponement of elections, the protection of employment of council staff, and other matters; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Local Government Amendment (Council and Employee Security) Act 2004</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent, except as provided by subsection (2).	6 7
(2) Schedule 3 is taken to have commenced on 1 January 2004.	8
<b>3 Amendment of Local Government Act 1993 No 30</b>	9
The <i>Local Government Act 1993</i> is amended as set out in Schedules 1–4.	10 11

<b>Schedule 1</b>	<b>Amendments relating to council income</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 218F Referral of proposal for examination and report</b>	3
	Omit “(as defined in section 218G)” from section 218F (6).	4
<b>[2]</b>	<b>Section 508 Orders under secs 506 and 507</b>	5
	Insert after section 508 (5):	6
	(5A) Subject to section 508A (6), a percentage specified in an order under section 506 or 507 for a year does not apply, and (if relevant) is taken never to have applied, to a council to which a determination under section 508A applies for that year, whether the order specifying the percentage was made before, on or after the day on which the determination was made.	7 8 9 10 11 12
<b>[3]</b>	<b>Section 508A</b>	13
	Insert after section 508:	14
	<b>508A Special variation over a period of years</b>	15
	(1) The Minister may, by instrument in writing given to a council, determine that the council’s general income, or the amount of an annual charge for domestic waste management services provided by the council, or both, for a specified period consisting of two or more years, may be varied by a specified percentage over the whole period.	16 17 18 19 20 21
	(2) The specified period must not exceed 7 years, but this subsection does not prevent a further determination being made that takes effect after that period.	22 23 24
	(3) The determination may be made only on the application of the council made in accordance with any applicable guidelines issued by the Director-General under this Act.	25 26 27
	(4) The determination may include conditions with respect to the variation.	28 29

Schedule 1 Amendments relating to council income

- (5) Without limiting subsection (4), the conditions of the determination may specify the percentage by which the council's general income, or the amount of the annual charge for domestic waste management services provided by the council, may be varied for a specified year to which the determination applies. 1  
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- (6) If, for a year to which the determination applies in respect of: 7
- (a) the council's general income—the percentage specified under section 506 for that year is greater than the percentage specified in the conditions of the determination, the percentage specified under that section in respect of the council's general income is taken to be substituted for that specified in the conditions, or 8  
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- (b) the amount of the annual charge for domestic waste management services provided by the council—the percentage specified under section 507 for that year is greater than the percentage specified in the conditions of the determination, the percentage specified under that section in respect of the annual charge is taken to be substituted for that specified in the conditions. 15  
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- (7) Subject to any later variations made to the determination, if the percentage (the *general percentage*) specified under section 506 or 507 is substituted under subsection (6) for a year: 22  
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- (a) the percentage specified under this section for the whole period is taken to be increased by the amount necessary to take into account the increase due to the substitution of the general percentage for that year, and 26  
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- (b) the appropriate percentage for the remaining years is to be applied to the amount of the council's general income, or of the annual charge for domestic waste management services provided by the council, taking into account the increase due to that substitution. 30  
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| (8) The Minister may, by instrument in writing served on the council:  | 1  |
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| (a) vary the determination, including, for example, by varying or revoking any conditions of the determination or by including new conditions, or  | 3  |
|  | 4  |
|  | 5  |
| (b) revoke the determination.  | 6  |
| (9) The determination may be varied or revoked only:   | 7  |
| (a) on the application of the council made in accordance with any applicable guidelines issued by the Director-General under this Act, or  | 8  |
|  | 9  |
|  | 10 |
| (b) on the Minister's own initiative if the Minister is satisfied that the council has contravened any conditions of the determination or any applicable guidelines issued by the Director-General under this Act. | 11 |
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| <b>[4] Sections 509 (1), 510 (1) and 511 (1)</b>   | 15 |
| Omit "or 508 (2)" wherever occurring. Insert instead ", 508 (2) or 508A".  | 16 |

<b>Schedule 2</b>	<b>Amendments relating to postponement of elections</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Chapter 9, Part 1, Division 2C (sections 218G–218K)</b>	4
	Omit the Division.	5
<b>[2]</b>	<b>Chapter 10, Part 6A</b>	6
	Insert after section 318:	7
	<b>Part 6A Postponement of elections</b>	8
<b>318A</b>	<b>Definition</b>	9
	In this Part:	10
	<i>election requirements of this Act</i> means the requirements of	11
	Parts 4 and 5 with respect to the holding of an ordinary election	12
	referred to in section 287 or a by-election referred to in	13
	section 292.	14
<b>318B</b>	<b>Postponement of elections</b>	15
	(1) The Minister may, by order published in the Gazette, postpone	16
	the election requirements of this Act in relation to a specified	17
	council if:	18
	(a) an amalgamation proposal or boundary proposal	19
	affecting the council:	20
	(i) is being formulated or is under consideration for	21
	formulation, or	22
	(ii) has been made by or to the Minister, or	23
	(b) the council is the subject of:	24
	(i) an investigation under section 430 or any other	25
	provision of this Act, or	26
	(ii) a public inquiry, or	27
	(iii) an investigation by an authority (as defined in	28
	the Dictionary at the end of this Act) under any	29
	Act, or	30

- (c) without limiting anything else in this subsection, a matter affecting the boundaries of the council's area is under consideration by the Boundaries Commission (whether or not involving an inquiry by the Commission). 1  
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- (2) The latest date to which the election requirements of this Act may be postponed by an order under this section is: 6  
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- (a) the date occurring 12 months after the order is made, or 8
- (b) if the postponement is extended by a further order under this section, 31 December in the calendar year following that in which the first such order was made. 9  
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- (3) A further order referred to in subsection (2) (b) may be made, in the case of a proposal that is being formulated but has not been made, only if the Minister is satisfied that substantial progress has been made in the formulation of the proposal. 12  
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- (4) An order may be made under this section even though the election requirements of this Act are in operation with respect to an election for the council. 16  
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- (5) On the making of an order under this section: 19
- (a) the election requirements of this Act are suspended in relation to the council for the period specified in the order, including with respect to an election for which the election requirements of this Act were in operation when the order was made, but not with respect to an election held on or before the day on which the order is published, and 20  
21  
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- (b) the retiring councillors continue in office (subject to this Act) until an election is held, and 27  
28
- (c) anything already done, under or for the purposes of those requirements in relation to the council for an election that would (but for the making of the order) have been held during the suspension period, has no effect or operation, and 29  
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- (d) a person who is taken to have been elected under section 311 at an election that would (but for the making of the order) be held during the suspension period is taken not to have been elected. 34  
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(6)	The suspension ceases to have effect if the order is revoked under section 318C.	1 2
(7)	If the suspension ceases to have effect through the passage of time and not through revocation of the order, the provisions of section 318C (other than subsections (1) (a) and (3) (a)) apply as if the order had been revoked.	3 4 5 6
(8)	If while an order under this section is in force a casual vacancy occurs in the office of mayor elected by the electors, the casual vacancy is to be filled in accordance with the provisions of section 295 as if it were a casual vacancy in the office of mayor elected by the councillors.	7 8 9 10 11
<b>318C</b>	<b>Revocation of postponement</b>	12
(1)	The Minister may, by order published in the Gazette:	13
(a)	revoke a former order that has been made in relation to a council, and	14 15
(b)	if:	16
(i)	the day on which an election would (but for the former order) have been required to be held has passed, or	17 18 19
(ii)	the day on which an election is required to be held will occur within 3 months after the day on which the order is made,	20 21 22
	appoint a day as the day on which the election is to be held.	23 24
(2)	The day appointed by the order as the day on which an election is to be held is to be a Saturday occurring not less than 3 months, and not more than 6 months, after the day on which the order is made.	25 26 27 28
(3)	On the making of an order under this section:	29
(a)	the suspension by the former order of the election requirements of this Act is terminated, and	30 31
(b)	an election is to be held in accordance with the election requirements of this Act:	32 33
(i)	on the day ascertained in accordance with those requirements, or	34 35
(ii)	if the order appoints a different day, on the day so appointed.	36 37

(4) In this section, *former order* means an order under section 318B. 1  
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**[3] Dictionary** 3

Insert in alphabetical order: 4

*amalgamation proposal* means a proposal under Chapter 9 for the amalgamation of two or more areas. 5  
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*boundary proposal* means a proposal under Chapter 9 for the alteration of the boundaries of one or more areas. 7  
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<b>Schedule 3</b>	<b>Amendments relating to employment protection</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 354B Definitions</b>	4
	Omit the definitions of <i>new council</i> , <i>transfer day</i> and <i>transferred staff member</i> from section 354B (1).	5 6
<b>[2]</b>	<b>Section 354B (1)</b>	7
	Insert in alphabetical order:	8
	<i>boundary alteration</i> means an alteration of the boundaries of one or more areas by or under a proclamation under Chapter 9.	9 10
	<i>existing staff member</i> of a transferee council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferee council immediately before the transfer day and who has not ceased to be a member of that staff.	11 12 13 14 15
	<b>Note.</b> In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.	16 17 18 19 20
	<i>remaining staff member</i> of a transferor council means, in relation to a staff transfer occurring in connection with a boundary alteration, a person who was a member of the staff of the transferor council immediately before the transfer day and who has not ceased to be a member of that staff.	21 22 23 24 25
	<b>Note.</b> In the case of a staff transfer effected in connection with the amalgamation of areas under Chapter 9, no members of staff continue in the employment of the councils of the areas being amalgamated because all those areas are dissolved. The members of staff would become employees of the newly constituted council.	26 27 28 29 30
	<i>rural centre</i> means a centre of population of 5,000 people or fewer, and includes a geographical area that is prescribed, or is of a kind prescribed, by regulations in force for the purposes of this definition as being a rural centre.	31 32 33 34

<i>staff transfer</i> means a transfer of staff from the employment of one council to the employment of another council by or under a proclamation under Chapter 9.	1 2 3
<i>transfer day</i> , in relation to a staff transfer, means the day on which the staff concerned were transferred from the employment of one council to the employment of another council.	4 5 6 7
<i>transferee council</i> , in relation to a staff transfer, means the council into whose employment the staff concerned were transferred on the transfer day.	8 9 10
<i>transferor council</i> , in relation to a staff transfer, means the council from whose employment the staff concerned were transferred on the transfer day.	11 12 13
<i>transferred staff member</i> means a member of the staff of a council who is transferred to the employment of another council by or under a proclamation under Chapter 9.	14 15 16
<i>work base</i> means the office, depot or other place of work at or from which any staff work.	17 18
<b>[3] Section 354D Preservation of entitlements of staff members</b>	19
Omit section 354D (1). Insert instead:	20
(1) If a staff transfer occurs, the employment of:	21
(a) a transferred staff member, and	22
(b) in the case of a boundary alteration:	23
(i) a remaining staff member of the transferor council, and	24 25
(ii) an existing staff member of the transferee council,	26 27
other than a senior staff member, continues on the same terms and conditions that applied to the staff member immediately before the transfer day, subject to section 354E.	28 29 30
<b>[4] Section 354E Certain increases or decreases in staff entitlements during proposal period not binding on transferee council without approval</b>	31 32
Omit “new council” from section 354E (2) (a) and (3) wherever occurring.	33
Insert instead “transferee council”.	34

<b>[5] Section 354F</b>	1
Omit the section. Insert instead:	2
<b>354F No forced redundancy of non-senior staff members for 3 years after transfer</b>	3
	4
If a staff transfer occurs, the employment of:	5
(a) a transferred staff member, and	6
(b) in the case of a boundary alteration:	7
(i) a remaining staff member of the transferor council, and	8
(ii) an existing staff member of the transferee council,	10
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other than a senior staff member, must not be terminated, without the staff member's agreement, within 3 years after the transfer day on the ground of redundancy arising from the staff transfer.	12
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<b>[6] Section 354G Lateral transfer of non-senior staff members</b>	16
Omit section 354G (1). Insert instead:	17
(1) This section applies if either:	18
(a) the following subparagraphs apply:	19
(i) a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and	20
(ii) within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council ( <i>the council</i> ), other than a senior staff position, and	21
(iii) a transferred staff member (other than a senior staff member) was, immediately before the transfer day, performing substantially the same duties for the staff member's former council as are required to be performed in the position to be filled, or	22
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(b)	the following subparagraphs apply:	1
(i)	a staff transfer occurs in connection with a boundary alteration, and	2
(ii)	within 3 years after the transfer day, the general manager of a council ( <i>the council</i> ) affected by the boundary alteration proposes to make an appointment to a position within the organisational structure of the council, other than a senior staff position, and	3
(iii)	a staff member (other than a senior staff member) of the council was, immediately before the transfer day, performing substantially the same duties for either or any of the affected councils as are required to be performed in the position to be filled.	4
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<b>[7]</b>	<b>Section 354G (3) (c)</b>	16
	Omit “subsection (1) (c)”.	17
	Insert instead “subsection (1) (a) (iii) or (b) (iii), as the case requires”.	18
<b>[8]</b>	<b>Section 354H External advertising not required in certain circumstances</b>	19
	Omit section 354H (1). Insert instead:	20
(1)	This section applies if either:	21
(a)	the following subparagraphs apply:	22
(i)	a staff transfer occurs in connection with the constitution of a new area, whether as a result of the amalgamation of two or more areas or otherwise, and	23
(ii)	within 3 years after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council ( <i>the council</i> ), other than a senior staff position, and	24
(iii)	the general manager is satisfied that one or more of the transferred staff members (other than a senior staff member) are suitably qualified for the position, and	25
(iv)	section 354G does not apply with respect to the position, or	26
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- (b) the following subparagraphs apply: 1
  - (i) a staff transfer occurs in connection with a 2
    - boundary alteration, and 3
  - (ii) within 3 years after the transfer day, the general 4
    - manager of a council (*the council*) affected by 5
    - the boundary alteration proposes to make an 6
    - appointment to a position within the 7
    - organisational structure of the council, other than 8
    - a senior staff position, and 9
  - (iii) the general manager is satisfied that one or more 10
    - of the staff members (other than a senior staff 11
    - member) of the council who were, immediately 12
    - before the transfer day, members of the staff of 13
    - either or any of the affected councils are suitably 14
    - qualified for the position, and 15
  - (iv) section 354G does not apply with respect to the 16
    - position. 17

**[9] Section 354I** 18

Insert after section 354H: 19

**354I Limitations on transfer of work base of non-senior staff** 20

- (1) This section applies, where a staff transfer occurs, to: 21
  - (a) a transferred staff member, and 22
  - (b) in the case of a boundary alteration: 23
    - (i) a remaining staff member of the transferor 24
      - council, and 25
    - (ii) an existing staff member of the transferee 26
      - council, 27

other than a senior staff member. 28

- (2) The staff member must not be required by the council 29
  - employing the staff member to be based within 3 years after the 30
  - transfer day at a work base located: 31
    - (a) in a case where the staff member is a transferred staff 32
      - member—outside the boundaries of the area of his or 33
      - her former council as they existed immediately before 34
      - the transfer day, or 35

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|-----|--|---------------------|
| (b) | in a case where the staff member is a remaining staff member of the transferor council—outside the boundaries of the area of the transferor council as they existed immediately before the transfer day, or                                      | 1<br>2<br>3<br>4    |
| (c) | in a case where the staff member is an existing staff member of the transferee council—outside the boundaries of the area of the transferee council as they existed immediately before the transfer day,   | 5<br>6<br>7<br>8    |
|     | unless the staff member gives his or her written consent to the change of work base or such a requirement would not cause the staff member to suffer unreasonable hardship because of the distance required to travel to the proposed work base. | 9<br>10<br>11<br>12 |

<b>Schedule 4 Other amendments</b>	1
(Section 3)	2
<b>[1] Section 218CA</b>	3
Insert after section 218C:	4
<b>218CA Maintenance of staff numbers in rural centres</b>	5
(1) This section applies to a council (the <i>transferee council</i> ):	6
(a) that is constituted as a result of the amalgamation of two or more areas, where the council of one of those areas (the <i>previous council</i> ) employed regular staff at a rural centre in the area of the transferee council immediately before the amalgamation took effect, or	7 8 9 10 11
(b) whose geographical area is increased as a result of the alteration of the boundaries of two or more areas, where a council (the <i>previous council</i> ) whose geographical area is reduced as a result of the alteration employed regular staff at a rural centre in the area of the transferee council immediately before the alteration took effect.	12 13 14 15 16 17
(2) The transferee council must ensure that the number of regular staff of the council employed at the rural centre is, as far as is reasonably practicable, maintained at not less than the same level of regular staff as were employed by the previous council at the centre immediately before the amalgamation or alteration of boundaries took effect.	18 19 20 21 22 23
(3) Subsection (2) does not have effect, or ceases to have effect, in such circumstances (if any) as are prescribed by the regulations.	24 25
(4) In this section:	26
<i>regular staff</i> of a council means:	27
(a) staff appointed to a position within the organisational structure of the council, otherwise than on a temporary basis, and	28 29 30
(b) casual staff who are engaged by the council on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months and	31 32 33

who have a reasonable expectation of continuing employment with the council,	1
but does not include senior staff.	2
<i>rural centre</i> has the meaning given by section 354B.	3
<b>[2] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts</b>	4
Insert at the end of clause 1 (1):	5
<i>Local Government Amendment (Council and Employee Security) Act 2004</i>	6
<b>[3] Schedule 8</b>	7
Insert at the end of the Schedule with appropriate Part and clause numbers:	8
<b>Part Provisions consequent on enactment of Local Government Amendment (Council and Employee Security) Act 2004</b>	9
<b>Meaning of “amending Act”</b>	10
In this Part, <i>amending Act</i> means the <i>Local Government Amendment (Council and Employee Security) Act 2004</i> .	11
<b>Postponement of elections</b>	12
(1) Without affecting the generality of Part 6A of Chapter 10 as inserted by Schedule 2 to the amending Act:	13
(a) an order may be published under section 318B in relation to a specified council while the election requirements of this Act are in operation with respect to an election for the council, and	14
(b) the order is effective to postpone those requirements with respect to the election,	15
even though that Schedule commenced while those requirements were in operation with respect to the election.	16

- (2) Subject to subclause (1): 1
- (a) nothing in Schedule 2 to the amending Act affects anything done or omitted to be done under Division 2C of Part 1 of Chapter 9 before the commencement of that Schedule, and 2  
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  - (b) any order in force under Division 2C of Part 1 of Chapter 9 immediately before the commencement of that Schedule continues in force and may be dealt with in accordance with that Division as if that Schedule had not been enacted, and 6  
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10
  - (c) any election to be held in accordance with Division 2C of Part 1 of Chapter 9 as in force immediately before the commencement of that Schedule is to be held as if that Schedule had not been enacted. 11  
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- (3) In this clause, *election requirements of this Act* has the meaning given by section 318A. 15  
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- Employment protection** 17
- (1) Part 6 of Chapter 11 as amended by Schedule 3 to the amending Act extends: 18  
19
- (a) in relation to an area change that occurred before the date of assent to the amending Act but on or after 1 January 2004, and 20  
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22
  - (b) without limiting paragraph (a), to the staff of councils affected by such an area change. 23  
24
- (2) However, the enactment of Schedule 3 to the amending Act does not invalidate or otherwise affect an appointment to a position within the organisational structure of the council that was made on or after 1 January 2004 and before the date of assent to that Act. 25  
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- (3) Sections 354G and 354H as in force immediately before the commencement of Schedule 3 to the amending Act continue to apply in relation to an area change that occurred before 1 January 2004 as if that Schedule had not been enacted. 30  
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- (4) In this clause, *area change* means: 34
- (a) the constitution of one or more areas, or 35
  - (b) an amalgamation of areas, or 36

- (c) an alteration of the boundaries of one or more areas, 1
- by or under a proclamation under Chapter 9. 2

**Maintenance of staff numbers in rural centres** 3

Section 218CA as inserted by Schedule 4 [1] to the amending Act extends: 4  
5

- (a) in relation to an amalgamation of areas or an alteration 6
- of the boundaries of areas that occurred before the date 7
- of assent to the amending Act but on or after 1 January 8
- 2004, and 9
- (b) without limiting paragraph (a), to staff of councils 10
- affected by such an amalgamation or alteration. 11