



New South Wales

Local Government Amendment Bill 2005

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* (*the principal Act*):

- (a) to enable a council to make an application to the Minister for approval to reduce the number of its councillors (within certain limits), and
- (b) to require a council to adopt each year a policy concerning expenses and facilities, and
- (c) to enable the Director-General of the Department of Local Government to approve standard forms of contract relating to certain conditions of employment of general managers and other senior staff of councils, and
- (d) to enable a contempt in the face of the Pecuniary Interest and Disciplinary Tribunal to be referred to the Supreme Court, and
- (e) to clarify certain provisions relating to pecuniary interests.

The Bill also makes the following amendments:

- (a) amends the *Freedom of Information Act 1989* to exempt from the operation of that Act the Department of Local Government in relation to its complaint handling and investigative functions,
- (b) amends the *Local Government Amendment (Public-Private Partnerships) Act 2004* in relation to the definition of a public-private partnership, the referral of public-private partnerships to the Local Government Project Review Committee and the quorum of that Committee.

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 principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Freedom of Information Act 1989* and the *Local Government Amendment (Public-Private Partnerships) Act 2004* set out in Schedule 2.

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

Reduction in number of councillors

Schedule 1 [1] inserts proposed section 224A into the principal Act to enable the Minister to approve a reduction in the number of councillors of a council if the council applies for a reduction. Public notice must be given of the application and submissions may be made to the council concerning it by interested members of the public. An application for reduction may be made by a council only within the period of 12 months after the commencement of the proposed section.

Schedule 1 [5] inserts proposed section 294A into the principal Act to provide that a council is not to fill a casual vacancy in the office of a councillor if the Minister has approved an application from the council under proposed section 224A to reduce the number of councillors. Proposed section 294A will not authorise a casual vacancy to remain unfilled if it results in the number of councillors being less than the reduced number approved by the Minister.

Policies concerning expenses and facilities of councils

Currently, a council must adopt a policy for the payment of expenses or provision of facilities under section 252 of the principal Act and must give public notice of the proposed adoption or amendment of such a policy under section 253.

Schedule 1 [2] amends section 252 of the principal Act to require councils to adopt such a policy within 5 months after the end of each year. *Year* is defined in the principal Act to mean the period from 1 July to the following 30 June.

Schedule 1 [3] amends section 252 of the principal Act to require a council to ensure that the policy adopted complies with the principal Act, the regulations under it and any relevant guidelines issued by the Director-General of the Department of Local Government under section 23A of the principal Act.

Schedule 1 [4] substitutes section 253 of the principal Act to make it clear that a council is to engage in public consultation before adopting such a policy each year (whether or not the policy is being amended) and whenever it amends the policy. The proposed section also requires a council to forward a copy of its policy, and the public submissions made on it, to the Director-General of the Department of Local Government after its adoption each year.

Employment of senior staff of councils

Schedule 1 [6] amends section 338 of the principal Act to enable the Director-General of the Department of Local Government to approve standard employment contracts for the general managers and other senior staff of councils. The standard contracts so approved are not to contain provisions relating to performance-based requirements, the duration of the contract or the level of remuneration or salary (including employment benefits) of the person employed under the contract. However, a council can add any such provisions (but no others) to the standard contract. A council is to use such standard contracts when employing senior staff. The requirements will not affect existing contracts unless they are renewed.

Pecuniary interest provisions

Schedule 1 [7]–[9] amend sections 442 and 443 of the principal Act to make it clear that a person has a pecuniary interest in a matter for the purposes of the principal Act if the person's spouse, de facto partner, relative, partner or employer has such an interest or if a company or other body has such an interest, being a company or body of which the person, or a nominee, partner or employee of the person, is a member.

Schedule 1 [10] and [11] make consequential amendments.

Schedule 1 [12] amends section 451 of the principal Act to make it clear that a person who is a councillor or member of a council committee is not prevented by that section from attending a meeting on, and voting on, a matter being considered by the council or committee merely because the person holds an interest specified in section 448 of that Act as being exempt from the disclosure requirements and other pecuniary interest requirements of Chapter 14 of that Act.

Contempt of Pecuniary Interest and Disciplinary Tribunal

Schedule 1 [13] enables the Pecuniary Interest and Disciplinary Tribunal to report certain behaviour that amounts to a contempt in the face of the Tribunal to the Supreme Court for punishment.

Savings and transitional provisions

Schedule 1 [14] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Freedom of Information Act 1989* to exempt from the operation of that Act the Department of Local Government (including the Director-General of the Department and Departmental representatives) but only in relation to complaint handling and investigative functions conferred by or under any Act on that Department.

Schedule 2.2 amends the *Local Government Amendment (Public-Private Partnerships) Act 2004*.

Schedule 2.2 [3] amends that Act to replace the definition of a *public-private partnership*. Currently, the term is defined to mean an entity (such as a partnership, trust or corporation) that is formed under an arrangement between a council and a private person for the purposes of providing public infrastructure or facilities (in respect of which the council retains a beneficial interest) or delivering services. The new definition of that term will provide that a public-private partnership is an arrangement (whether or not involving the formation of an entity) between a council and a private person for the purposes of providing public infrastructure or facilities (in respect of which the council has an interest, liability or responsibility) or delivering services. The regulations may exclude types of arrangements from the definition. **Schedule 2.2 [1], [2], [4]–[8], [10] and [12]–[14]** contain consequential amendments.

Schedule 2.2 [9] and [11] amend that Act to provide that the Minister can only direct that a public-private partnership (*PPP*) is to be referred to the Local Government Project Review Committee if the Minister is of the opinion that the council concerned in the PPP has not complied with the PPP guidelines issued by the Director-General of the Department of Local Government. Currently, the Minister may make such a referral on any grounds the Minister thinks fit.

Schedule 2.2 [15] amends the quorum provisions in that Act relating to the Local Government Project Review Committee to provide that a quorum will be achieved if a majority of the permanent members on the Committee are present. Currently, the provisions require a majority of members for the time being to be present which would include members appointed from time to time by the Director-General of the Department of Local Government to assist the Committee in the exercise of its functions.

First print



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No. , 2005

A Bill for

An Act to amend the *Local Government Act 1993* in relation to the reduction in the required number of councillors and to pecuniary interests; to amend the *Freedom of Information Act 1989* to exempt certain 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 2005</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Local Government Act 1993 No 30	6
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	7
4 Amendment of other Acts	8
Each Act specified in Schedule 2 is amended as set out in that Schedule.	9

Schedule 1	Amendment of Local Government Act 1993	1
		2
	(Section 3)	3
[1] Section 224A		4
	Insert after section 224:	5
224A Approval to reduce number of councillors		6
(1)	A council may resolve to make an application to the Minister to approve a decrease in the number of councillors within the limits referred to in section 224 (1).	7 8 9
(2)	The council must give not less than 21 days' public notice of its proposed resolution.	10 11
(3)	After passing the resolution, the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.	12 13 14
(4)	The Minister may approve the application without amendment or may decline to approve the application.	15 16
(5)	If the Minister approves the application, the number of councillors of the council is reduced to the number specified in the application with effect on and from the day appointed for the next ordinary election of councillors after the application is approved.	17 18 19 20 21
(6)	Section 16 does not apply to a resolution of a council to make an application to the Minister under this section.	22 23
(7)	An application may be made under this section only within the period of 12 months from the commencement of this section.	24 25
(8)	Nothing in this section prevents a council from making more than one application under this section or from taking action under section 224 to change the number of its councillors.	26 27 28
[2] Section 252 Payment of expenses and provision of facilities		29
	Omit "A council" from section 252 (1).	30
	Insert instead "Within 5 months after the end of each year, a council".	31

[3] Section 252 (5)	1
Omit “regulations”.	2
Insert instead “provisions of this Act, the regulations and any relevant guidelines issued under section 23A”.	3 4
[4] Section 253	5
Omit the section. Insert instead:	6
253 Requirements before policy concerning expenses and facilities can be adopted or amended	7 8
(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.	9 10 11 12
(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.	13 14 15 16
(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.	17 18 19 20
(4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:	21 22 23
(a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and	24 25 26
(b) a statement setting out, for each submission, the council’s response to the submission and the reasons for the council’s response, and	27 28 29
(c) a copy of the notice given under subsection (1).	30
(5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.	31 32 33 34

[5] Section 294A	1
Insert after section 294:	2
294A Casual vacancy not to be filled where councillor numbers reduced	3
(1) A casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if the Minister has approved an application under section 224A to reduce the number of councillors but the reduction has not yet taken effect.	4 5 6 7
(2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the Minister under section 224A.	8 9 10 11
(3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the approval of the relevant application under section 224A.	12 13 14
[6] Section 338 Nature of contracts for senior staff	15
Insert after section 338 (3):	16
(4) The Director-General may, by order in writing, approve one or more standard forms of contract for the employment of the general manager or other senior staff of a council.	17 18 19
(5) A standard form of contract approved by the Director-General is not to include provisions relating to the level of remuneration or salary (including employment benefits) of the general manager or other senior staff of a council, performance-based requirements or the duration of the contract.	20 21 22 23 24
(6) A council is not to employ a person to a position to which one or more standard forms of contract approved for the time being under this section applies or apply except under such a standard form of contract.	25 26 27 28
(7) The council may include in an employment contract for the general manager or another member of the senior staff additional provisions to those contained in the standard form of contract but only if those provisions relate to any of the following:	29 30 31 32
(a) the level of remuneration or salary (including employment benefits) of the person employed under the contract,	33 34
(b) subject to subsections (1) and (2), performance-based requirements or the duration of the contract.	35 36

(8)	Despite subsection (6), the approval, amendment or substitution of a standard form of contract under this section does not affect any employment contract between a council and the general manager of the council or another member of the senior staff of the council if the employment contract was entered into before the approval, amendment or substitution of the standard form of contract.	1 2 3 4 5 6 7
(9)	However, subsection (6) does apply to the renewal of any such employment contract occurring after the standard form of contract is approved, amended or substituted and to all new contracts entered into after the standard form of contract is approved, amended or substituted.	8 9 10 11 12
[7]	Section 442 What is a “pecuniary interest”?	13
	Omit “or another person with whom the person is associated as provided in section 443” from section 442 (1).	14 15
[8]	Section 443 Who has a pecuniary interest?	16
	Omit section 443 (1) and (2). Insert instead:	17
	(1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:	18 19
	(a) the person, or	20
	(b) the person’s spouse or de facto partner or a relative of the person, or a partner or employer of the person, or	21 22
	(c) a company or other body of which the person, or a nominee, partner or employer of the person, is a member.	23 24
[9]	Section 443 (3)	25
	Omit “subsection (2)”. Insert instead “subsection (1) (b) or (c)”.	26
[10]	Section 448 What interests do not have to be disclosed?	27
	Omit “another person with whom the person is associated as provided in section 443” from section 448 (g) (i).	28 29
	Insert instead “a person, company or body referred to in section 443 (1) (b) or (c)”.	30 31
[11]	Section 448 (g)	32
	Omit “other person with whom the person is associated”.	33
	Insert instead “person, company or body referred to in section 443 (1) (b) or (c)”.	34 35

[12] Section 451 Disclosure and presence in meetings	1
Insert after section 451 (2):	2
(3) For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.	3 4 5 6 7 8
Note. The code of conduct adopted by a council for the purposes of section 440 may also impose obligations on councillors, members of staff of councils and delegates of councils.	9 10 11
[13] Section 486A	12
Insert after section 486:	13
486A Contempt of Pecuniary Interest and Disciplinary Tribunal	14
(1) The Pecuniary Interest and Disciplinary Tribunal may report the following matters to the Supreme Court:	15 16
(a) if a person refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question that is put to the person by the Tribunal after being called or examined as a witness before the Tribunal,	17 18 19 20
(b) if, in proceedings before the Tribunal, a person wilfully threatens or insults:	21 22
(i) a member or officer of the Tribunal, or	23
(ii) any witness or person summoned to attend before the Tribunal, or	24 25
(iii) a practising legal practitioner or other person authorised to appear before the Tribunal,	26 27
(c) if a person misbehaves himself or herself in proceedings before the Tribunal,	28 29
(d) if a person interrupts proceedings before the Tribunal.	30
(2) If the Pecuniary Interest and Disciplinary Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court. However, a person is not liable to be punished for contempt under this subsection if the person establishes that there was a reasonable excuse for the act or omission concerned.	31 32 33 34 35 36

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Schedule 1 Amendment of Local Government Act 1993

[14] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	1 2
Insert at the end of clause 1 (1):	3
<i>Local Government Amendment Act 2005</i>	4

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Freedom of Information Act 1989 No 5	3
	Schedule 2 Exempt bodies and offices	4
	Insert at the end of the Schedule:	5
	The Department of Local Government (including the	6
	Director-General and other Departmental representatives)—	7
	complaint handling and investigative functions conferred by or	8
	under any Act on that Department.	9
2.2	Local Government Amendment (Public-Private	10
	Partnerships) Act 2004 No 113	11
[1]	Schedule 1 Amendments	12
	Omit Schedule 1 [1].	13
[2]	Schedule 1 [2]	14
	Insert “formed under” before “a public-private partnership” in proposed	15
	section 55 (6).	16
[3]	Schedule 1 [5]	17
	Omit proposed section 400B (1). Insert instead:	18
	(1) In this Act, a reference to a <i>public-private partnership</i> is a	19
	reference to an arrangement between a council and a private	20
	person for the purposes of:	21
	(a) providing public infrastructure or facilities (being	22
	infrastructure or facilities in respect of which the council	23
	has an interest, liability or responsibility under the	24
	arrangement), or	25
	(b) delivering services in accordance with the arrangement,	26
	or both, but does not include a reference to any such arrangement	27
	if it is of a class that has been excluded from the operation of this	28
	Part by the regulations.	29
[4]	Schedule 1 [5]	30
	Insert “(whether or not involving the formation of an entity)” after	31
	“understanding” in the definition of <i>arrangement</i> in proposed section	32
	400B (2).	33

[5] Schedule 1 [5]	1
Omit “formed, or is proposing to form” from the definition of <i>relevant council</i> in proposed section 400B (2).	2
Insert instead “entered into, or is proposing to enter into”.	3
	4
[6] Schedule 1 [5]	5
Omit “the formation of, and the carrying out of projects under” from proposed section 400C (1).	6
Insert instead “entering into, and carrying out projects under”.	7
	8
[7] Schedule 1 [5]	9
Omit “form” wherever occurring in proposed sections 400E (1) (a), 400F (1) and 400I (1).	10
Insert instead “enter into”.	11
	12
[8] Schedule 1 [5]	13
Omit “proceed with the formation of” from proposed section 400F (4) (a).	14
Insert instead “enter into”.	15
	16
[9] Schedule 1 [5]	17
Omit “, on such grounds as the Minister thinks fit,” from proposed section 400G (1).	18
	19
[10] Schedule 1 [5]	20
Omit “forming” wherever occurring in proposed sections 400G (2) (a) and 400K (2).	21
Insert instead “entering into”.	22
	23
[11] Schedule 1 [5]	24
Insert after proposed section 400G (2):	25
(3) A direction may be given under this section only if the Minister is of the opinion that the council concerned has not complied with the PPP guidelines in relation to entering into the public-private partnership or carrying out the project.	26
	27
	28
[12] Schedule 1 [5]	29
Omit proposed section 400I (3) (a). Insert instead:	30
(a) to enter into the public-private partnership (if it has not already entered into it), or	31
	32

[13] Schedule 1 [5]	1
Omit proposed section 400L. Insert instead:	2
400L Decision by council to enter into public-private partnership	3
Any decision by a council in relation to entering into a public-private partnership may only be made by resolution of the council.	4 5 6
[14] Schedule 1 [5]	7
Omit proposed section 400N. Insert instead:	8
400N Application of Part	9
(1) This Part does not apply to any public-private partnership that a council resolved, before 28 June 2004, to enter into.	10 11
(2) However, if a council resolved, on or after 28 June 2004 but before the commencement of this Part, to enter into a public-private partnership, this Part applies to and in respect of the partnership.	12 13 14 15
[15] Schedule 1 [8]	16
Omit “its members for the time being” from clause 10 of proposed Schedule 3.	17
Insert instead “the members referred to in section 400J (2) (a)–(e)”.	18