



New South Wales

# Local Government Amendment (Employment Protection) Bill 2003

## 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*:

- (a) to provide employment protection to non-senior staff members transferred from the employment of one council to another council due to the constitution, amalgamation or alteration of council areas, and
- (b) to provide that a non-senior staff member employed by a council affected by a proposal to constitute, amalgamate or alter council areas may not have the staff member's employment terminated on the grounds of redundancy during the period the proposal is being considered, and
- (c) to provide that a council must not make a payment to the general manager or other senior staff member in relation to the termination of the staff member's employment without first obtaining the Minister's approval to the payment.

## 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 giving effect to the amendments to the *Local Government Act 1993* as set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [3]** inserts proposed section 354A into the *Local Government Act 1993*. Proposed section 354A provides that a council must not make a payment to the general manager or other senior staff member in relation to the termination of the staff member's employment without first obtaining the Minister's approval to the payment. The Minister may refuse to approve such a payment if the Minister is not satisfied that the payment is appropriate. A payment made without the Minister's approval is to be repaid to the council and may be recovered by the council or the Minister as a debt due to the council. The regulations may exempt particular kinds of payment from the requirement for Ministerial approval.

**Schedule 1 [4]** inserts proposed Part 6 (sections 354B–354H) into Chapter 11 of the *Local Government Act 1993* to provide arrangements for staff affected by the constitution, amalgamation or alteration of council areas.

Proposed section 354B defines certain terms used in proposed Part 6 and, in particular, includes a definition of **transferred staff member**. A **transferred staff member** means a member of the staff of a council who is transferred to the employment of another council:

- (a) by a proclamation for the purposes of Division 1 of Part 1 of Chapter 9 of the *Local Government Act 1993* that constitutes one or more council areas, or
- (b) by a proclamation for the purposes of Division 2A of Part 1 of Chapter 9 of that Act that amalgamates, or alters the boundaries of, one or more council areas.

Proposed section 354D preserves the entitlements of transferred staff members. Specifically, it provides that:

- (a) the terms and conditions of a transferred staff member's employment (other than of a senior staff member) must not, on balance, provide a net detriment to the staff member when compared with the aggregate package of terms and conditions that applied to the staff member before the transfer, and

- (b) neither the contract of employment nor the period of employment of a transferred staff member is broken by the transfer, and
- (c) the transfer does not affect any accrued rights a transferred staff member had immediately before the transfer, including in relation to recreation leave, sick leave, long service leave and superannuation, but does not entitle the staff member to claim dual benefits of the same kind for the same period of service.

Proposed section 354E ensures that the Minister can refuse to approve of any unjustifiable increase or decrease in the terms and conditions of staff arising from or in anticipation of a proposal to constitute, amalgamate or alter council areas. If approval is not given, any increased staff entitlements are not binding on the new council and any decreased staff entitlements do not decrease the entitlements of transferred staff members under proposed section 354D (1).

Proposed section 354F provides that there can be no forced redundancies of non-senior transferred staff members (arising from the constitution, amalgamation or alteration of council areas) within 3 years after the transfer of those staff members to the new council. Proposed section 354C makes similar provision for affected council employees during the period that the proposal to constitute, amalgamate or alter council areas is being considered.

Proposed section 354G provides for the lateral transfer of certain non-senior staff members. Specifically, it provides that a council that employs one or more transferred staff members and intends to fill a position in the non-senior staff of the council within 12 months after the transfer:

- (a) must not externally advertise the position if a non-senior transferred staff member was, immediately before the transfer, performing substantially the same duties for the staff member's former council as are required to be performed in the position to be filled, and
- (b) must give preference to any applicant who, immediately before the transfer, was performing substantially the same duties for the applicant's former council and, if there is more than one such applicant, the applicant who has the greatest merit.

Proposed section 354H provides that external advertising of vacant council staff positions is not required in certain circumstances. Specifically, external advertising is not required if the council employs non-senior transferred staff members who the general manager is satisfied are suitably qualified for the position. This provision applies to a council for 12 months after the transfer of transferred staff members to the council. The provision does not apply if the Minister is satisfied that the number of staff transferred as a result of a boundary change was not significant.

**Schedule 1 [1] and [2]** make consequential amendments to sections 213 and 218C of the *Local Government Act 1993* respectively. Section 213 of the Act provides that a proclamation of the Governor constituting any part of New South Wales as a council area may include such provisions as are necessary or convenient for giving effect to the proclamation, including provisions for or with respect to, amongst other matters, the transfer of staff. **Schedule 1 [1]** inserts a note in section 213 with respect to the provisions of proposed Part 6 of Chapter 11 (to be inserted by Schedule 1 [4]) in relation to transferred staff members transferred as a result of such a proclamation. **Schedule 1 [2]** inserts a similar note in section 218C in respect of proclamations amalgamating, or altering the boundaries of, one or more council areas.

**Schedule 1 [5]** provides that regulations of a savings and transitional nature may be made consequent on the enactment of the *Local Government Amendment (Employment Protection) Act 2003*.

First print



New South Wales

# Local Government Amendment (Employment Protection) Bill 2003

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New South Wales

## **Local Government Amendment (Employment Protection) Bill 2003**

No. , 2003

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### **A Bill for**

An Act to amend the *Local Government Act 1993* to provide employment protection for certain staff members transferred from the employment of one council to another council due to the constitution, amalgamation or alteration of council areas; 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 (Employment Protection) Act 2003</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Local Government Act 1993 No 30</b>	8
This Act amends the <i>Local Government Act 1993</i> as set out in Schedule 1.	9 10



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**Schedule 1 Amendments**

(Section 3)

**[1] Section 213 Facilitating provisions of proclamations**

Insert after section 213 (1):

**Note.** If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.

**[2] Section 218C Facilitating provisions of proclamations**

Insert after section 218C (2):

**Note.** If a proclamation for the purposes of this Division transfers staff members (other than senior staff) from the employment of one council to another council, the provisions of Part 6 of Chapter 11 apply in relation to the transferred staff members.

**[3] Section 354A**

Insert after section 354:

**354A Ministerial approval for certain termination payments to senior staff**

- (1) A council must not make a payment to the general manager or other senior staff member of the council in relation to his or her termination of employment (including termination on the ground of redundancy) without first obtaining the Minister's approval to the payment.
- (2) The Minister may refuse to approve a payment under subsection (1) if the Minister is not satisfied the payment is appropriate.
- (3) A payment referred to in subsection (1) that is made without the Minister's approval:
  - (a) is to be repaid to the council, and
  - (b) is a debt due to the council recoverable by the council or the Minister in any court of competent jurisdiction.
- (4) Subsection (1) does not apply to payments of a kind exempted from this section by the regulations.
- (5) To remove doubt, this section extends to:
  - (a) a termination payment made under a contract and to an ex gratia termination payment, and

- (b) to a termination payment made under a contract entered into before the commencement of this section.

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**[4] Chapter 11, Part 6**

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Insert after Part 5 of Chapter 11:

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**Part 6 Arrangements for council staff affected by the constitution, amalgamation or alteration of council areas**

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**354B Definitions**

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- (1) In this Part:

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*former council*, in relation to a transferred staff member, means the council that employed the staff member immediately before the transfer day.

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*new council*, in relation to a transferred staff member, means the council into whose employment the staff member was transferred on the transfer day.

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*proposal* means:

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- (a) a proposal made under section 215 to constitute one or more areas, or  
(b) a proposal made under section 218E to amalgamate one or more areas, or  
(c) a proposal made under section 218E to alter the boundaries of one of more areas.

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*proposal period* means (subject to subsection (2)) the period:

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- (a) starting on the day the proposal is made, and  
(b) ending on the following day:  
(i) if the Minister decides not to proceed with the proposal—the day that decision is made under section 215 or 218E,  
(ii) if the Minister refers the proposal to the Boundaries Commission or the Director-General but decides to decline to recommend to the Governor that the proposal be implemented—the day that decision is made,

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- (iii) if the Minister recommends to the Governor that the proposal be implemented—immediately before the date specified in the proclamation implementing the proposal.

*transfer day*, in relation to a transferred staff member, means the day on which the staff member was transferred, by a proclamation made for the purposes of Division 1 or 2A of Part 1 of Chapter 9, from the employment of one council to another council.

*transferred staff member* means a member of the staff of a council who is transferred to the employment of another council:

- (a) by a proclamation for the purposes of Division 1 of Part 1 of Chapter 9 that constitutes one or more areas, or
- (b) by a proclamation for the purposes of Division 2A of Part 1 of Chapter 9 that:
- (i) amalgamates one or more areas, or
- (ii) alters the boundaries of one or more areas.
- (2) The Minister may, by notice in writing to a council, extend the proposal period in relation to that council by determining an earlier date for the start of the period than the date the proposal is made under section 215 or 218E.

**354C No forced redundancy of affected staff members during proposal period**

The employment of a member of staff of a council that is affected by a proposal (other than of a senior staff member) must not be terminated, without the staff member's agreement, during the proposal period on the ground of redundancy.

**354D Preservation of entitlements of transferred staff members**

- (1) The terms and conditions of a transferred staff member's employment (other than of a senior staff member) must not, on balance, provide a net detriment to the staff member when compared with the aggregate package of terms and conditions that applied to the staff member immediately before the transfer day, subject to section 354E.

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- (2) Subsection (1) applies until other provision is duly made under any Act or law. 1  
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- (3) Neither the contract of employment nor the period of employment of a transferred staff member is taken to have been broken by the transfer for the purposes of any law, award or agreement relating to the employment of that staff member. 3  
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- (4) A transferred staff member is not entitled to receive any payment or other benefit merely because the staff member ceases to be a staff member of the former council. 7  
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- (5) The transfer of a transferred staff member does not affect any accrued rights the staff member had immediately before the transfer, including in relation to recreation leave, sick leave, long service leave and superannuation, but does not entitle the staff member to claim dual benefits of the same kind for the same period of service. 10  
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- 354E Certain increases or decreases in staff entitlements during proposal period not binding on new council without approval** 16  
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- (1) This section applies to a determination of the terms and conditions of employment of staff members of a council that is made during the proposal period, and extends to any such determination made in an industrial agreement with or on behalf of the staff members, in an employment contract with a staff member or in an employment policy of the council. 18  
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- (2) After the transfer day: 24
- (a) the new council is not bound by any such determination, and 25  
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- (b) any such determination is to be disregarded for the purposes of calculating the aggregate package of terms and conditions applying to a transferred staff member immediately before the transfer day for the purposes of section 354D (1), 27  
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- unless the determination has been approved by the Minister under this section or the approval of the Minister is not required under this section. 32  
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- (3) If an application is made to the Minister for approval of a determination to which this section applies, the Minister may refuse to approve the determination only if the Minister is satisfied that the determination arises from or is in 35  
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anticipation of the proposal and would result in an unjustifiable increase or decrease in the obligations of the new council in relation to transferred staff members.	1 2 3
(4) A determination to which this section applies is not required to be approved by the Minister if:	4 5
(a) it complies with the requirements of regulations made for the purposes of this section, or	6 7
(b) the Minister determines in writing that approval is not required.	8 9
<b>354F No forced redundancy of transferred non-senior staff members for 3 years after transfer</b>	10 11
A transferred staff member's employment with the new council (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 transfer of the staff member's employment.	12 13 14 15 16
<b>354G Lateral transfer of non-senior staff members</b>	17
(1) This section applies if:	18
(a) a council employs transferred staff members, and	19
(b) within 12 months after the transfer day, the general manager proposes to make an appointment to a position within the organisational structure of the council, and	20 21 22
(c) 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.	23 24 25 26 27
(2) The council:	28
(a) must notify its staff members of the position and give its staff members a reasonable opportunity to apply for the position, and	29 30 31
(b) must not externally advertise the position.	32
(3) A person who:	33
(a) applies for appointment to a position referred to in this section, and	34 35

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- (b) is employed by the council at the time of making the application, and 1  
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- (c) is a person referred to in subsection (1) (c), 3  
must be considered for appointment to the position in 4  
preference to any other applicant for the position who is not 5  
such a person. 6
- (4) If there is more than one person referred to in subsection (3) 7  
who is eligible for appointment to a position, the applicant 8  
who has the greatest merit, determined in accordance with 9  
section 349 (2) and (3), is to be selected. 10
- (5) Subject to subsection (4), sections 348 and 349 do not apply 11  
to an appointment to a position referred to in this section and 12  
nor may the Council decide, under section 350 (b), that those 13  
sections do apply to the appointment. 14
- 354H External advertising not required in certain circumstances** 15
- (1) This section applies if: 16
- (a) a council employs transferred staff members, and 17
- (b) within 12 months after the transfer day, the general 18  
manager proposes to make an appointment to a position 19  
within the organisational structure of the council, other 20  
than a position of a senior staff member, and 21
- (c) the general manager is satisfied that one or more of the 22  
transferred staff members are suitably qualified for the 23  
position, 24
- but does not apply if the Minister is satisfied that the transfer 25  
of staff resulted from an alteration of the boundaries of the 26  
council's area and did not result in the transfer to the council 27  
of a significant number of staff. 28
- (2) The council: 29
- (a) must notify its staff members of the position and give its 30  
staff members a reasonable opportunity to apply for the 31  
position, and 32
- (b) must not externally advertise the position. 33
- (3) Section 348 does not apply to an appointment to a position 34  
referred to in this section. 35

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**[5] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

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Insert at the end of clause 1 (1):

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*Local Government Amendment (Employment Protection)  
Act 2003*

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