

[Act 2000 No 112]



New South Wales

Local Government Amendment Bill 2000

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 align the procedures for the grouping of candidates at local government elections with those applicable to Legislative Council elections, and
- (b) to apply recent changes to the procedure for the registration of parties under Part 4A of the *Parliamentary Electorates and Elections Act 1912* to the registration of parties for local government elections, and
- (c) to require councillors who have a pecuniary interest in a matter to disclose not only the interest but the nature of the interest, and to leave a meeting when the matter is being considered by the council, and
- (d) to clarify the operation of the provisions relating to complaints concerning non-disclosure of interests and the conduct of proceedings before the Local

* Amended in committee—see table at end of volume.

Government Pecuniary Interest Tribunal, and

- (e) to provide for the Director-General of the Department of Local Government to prepare guidelines that must be taken into consideration by councils when exercising their functions, and
- (f) to make further provision regarding the classification and management of community land, and
- (g) to extend the operation of tendering requirements for councils, and
- (h) to require councils to pay expenses to councillors, and provide facilities to councillors, in accordance with a policy that conforms with regulations made under the Act and to require that any substantial amendments to such a policy be publicly notified and adopted in open council meetings, and
- (i) to make other miscellaneous changes to the provisions relating to rates, staffing, conduct on public land and other matters.

The Bill also makes consequential amendments to the *Defamation Act 1974* and the *Occupational Health and Safety Act 2000*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for:

- (a) the commencement on 1 June 2003 of the amendments made by the proposed Act relating to the grouping of candidates at elections, and
- (b) the commencement of the amendments relating to the registration of parties on 1 June 2002, and
- (c) the commencement of the remainder of the proposed Act on a day or days to be appointed by proclamation.

Clauses 3 and 4 are formal provisions giving effect to the amendments to the *Local Government Act 1993* and other Acts set out in Schedules 1–4.

Schedule 1 Amendments to Local Government Act 1993 in relation to elections

Various amendments are made to the provisions of Chapter 10 of the Act (which deals with elections). The system of parties or other groups of candidates submitting a group voting ticket for local government elections will be abolished. Under the

amendments made by Schedule 1, a voter who records a vote for a party or other group “above the line” on the ballot-paper will be recording a vote for the candidates in that party or group in the order shown “below the line” on the ballot-paper. The full list of candidates shown “below the line” will remain as an option for those voters who do not wish to vote for a party or other group but who wish to record their votes for individual candidates in whatever order of preference they wish. In addition, those voters who record a vote “above the line” for a party or other group will now be able to determine for themselves whether they wish to record preferences for other parties or groups and, if so, the order in which they wish to record their preferences (instead of the decision on whether preferences are to be given and the order in which they are given being determined by the party or other group in the group voting ticket submitted to the returning officer).

Schedule 1 makes other minor consequential changes, including with respect to the minimum number of members of a group and the maximum deposit payable by candidates of a group. The amended provisions generally mirror the system recently adopted under the *Parliamentary Electorates and Elections Act 1912* (see *Parliamentary Electorates and Elections Amendment Act 1999*).

Amendments relating to group voting

Schedule 1 [1] provides that the amount of deposit required to be paid by a candidate included in a group of five or more candidates is five times the deposit for one candidate divided by the number of candidates in that group.

Schedule 1 [2] allows a group of candidates to request a voting square “above the line” on the ballot-paper for those voters who wish to record a vote for the group. Groups of candidates will not be able to have a voting square “above the line” unless the number of candidates in the group on the nomination day prescribed by the regulations for the election is at least half the number of candidates to be elected (in the case of an area not divided into wards) or unless there are at least as many candidates in the group on the nomination day for the election as there are candidates to be elected (in the case of an area divided into wards). This change will ensure that voters can, under the revised voting system, continue to record a formal vote “above the line” by giving a first preference vote only for one of the groups of candidates.

Schedule 1 [3]–[5] alter the method of voting for groups of candidates “above the line” on the ballot-paper, as discussed above.

Schedule 1 [8] and **[9]** make consequential amendments.

Amendments relating to registration of parties

Schedule 1 [6] and [7] amend section 320 of the Act, which provides for the registration of political parties for the purposes of the *Local Government Act 1993* in accordance with the procedure applicable under Part 4A of the *Parliamentary Electorates and Elections Act 1912*, subject to specified modifications.

As a result of amendments to those modifications, recent changes to the membership requirements for the qualification of a party for registration under Part 4A of the *Parliamentary Electorates and Elections Act 1912* will apply to the registration of parties for local government elections.

The principal changes made to the registration system are as follows:

- (a) a local government party will be required to have at least 100 members to be eligible for registration and will no longer be eligible to be registered merely because it is represented on a council by one of its members,
- (b) two or more parties will not be able to rely on the same party member to qualify or continue to qualify for registration,
- (c) an application for registration of a party will be required to be accompanied by declarations of party membership signed by 100 party members,
- (d) existing registered parties will be required to submit an annual return and any other information that the Electoral Commissioner requires to confirm their continued eligibility for registration,
- (e) parties will not have to pay a registration fee,
- (f) a party that becomes registered after the commencement of the proposed amendments will not be eligible, until 12 months after that first registration, to have its registered party name or abbreviation placed on ballot-papers (under section 321) or to be treated as a registered party in connection with the nomination of its candidates (under the regulations).

Since one of the amendments provides that two or more parties will no longer be able to rely on the same party member to qualify or continue to qualify for registration, existing registered parties will be given an opportunity to change the members on whom they rely to avoid cancellation of their registration on that ground.

Schedule 1 [10] makes transitional and other arrangements relating to the amendments. Those arrangements provide that existing registered parties will become subject to the new registration requirements on 1 June 2003 and will be required to submit a special application to confirm their continued eligibility for registration in accordance with the new requirements (including submission of the requisite number of party membership forms). The restrictions on a party that has

been registered for less than 12 months having its registered party name or abbreviation placed on ballot-papers or being able to nominate its candidates will not apply to an existing party that remains registered.

The arrangements also make provision for a phasing-in period (from 1 June 2002 until 31 May 2003) during which new parties may apply for registration under either the old registration requirements or the new registration requirements. Parties that register under the old registration requirements during that phasing-in period will become subject to the new registration requirements on 1 June 2003 and will be required to submit special applications to confirm their continued eligibility for registration.

The restrictions on a party that has been registered for less than 12 months having its registered party name or abbreviation placed on ballot-papers or being able to nominate its candidates will not apply until the election proposed to be held on 13 September 2003. A party that wishes to have its registered party name or abbreviation placed on ballot-papers and to be treated as a registered party in connection with the nomination of its candidates for that election must have first been registered under the new registration requirements before 13 August 2002, or must have first been registered under the old registration requirements before 1 June 2002 and met the new requirements by 1 June 2003.

Schedule 2 Amendments to Local Government Act 1993 in relation to disclosure of pecuniary interests

Part 2 of Chapter 14 of the *Local Government Act 1993* requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded. The Part also requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest. At present, section 448 of the Act sets out interests that do not have to be disclosed. Section 452 sets out the questions on which a person may deliberate or vote despite having an interest (that is still required to be disclosed).

Amendments relating to duties of disclosure

Schedule 2 [3] and [10] consolidate sections 448 and 452 so that all of those interests are excluded from the operation of the Part.

Schedule 2 [4], [6] and [7] provide for the form of return disclosing interests of councillors and designated persons to be prescribed by the regulations.

Schedule 2 [34] omits the form of return, and the provisions regarding interests, presently set out in the Act.

Schedule 2 [35] provides for the regulations to make provision for or with respect to the interests that must be disclosed in a written return.

Schedule 2 [5] makes it clear that making a false or misleading disclosure of interests is a contravention of Part 2 of Chapter 14.

Schedule 2 [8] requires councillors or members of a council committee who have a pecuniary interest in any matter with which the council is concerned to disclose the nature of the interest (rather than just existence of the interest) at a meeting of the council or committee at which the matter is being considered.

Schedule 2 [9] prevents a councillor or member of a council committee who has disclosed such an interest from being present at the meeting at any time during which the matter is being considered or discussed by the council or committee.

Schedule 2 [11] removes the power of the council to resolve that a councillor or member of a council committee not attend a meeting of the council or committee while it has under consideration a matter in which the councillor or member has an interest required to be disclosed. **Schedule 2 [1]** makes a consequential amendment.

Schedule 2 [12] requires an adviser of a council or council committee to disclose the nature of any pecuniary interest the person has in the meeting at which the advice is given. (At present the adviser is required only to disclose the existence of the interest.)

Schedule 2 [13] enables the Minister to allow a councillor or member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee.

Schedule 2 [14] requires a designated person to disclose the nature of any pecuniary interest in any council matter with which the person is dealing. (At present the person is required only to disclose the existence of the interest.)

Amendments relating to complaints concerning non-disclosure

Schedule 2 [18] makes it clear that the Director-General may decide not to take action concerning a complaint referred to the Director-General by an authority (such as the Independent Commission Against Corruption).

Schedule 2 [19] makes it clear that such a complaint is taken to be a complaint made by the Director-General.

Schedule 2 [20] makes it clear that a provision that requires the Director-General to notify a complainant at the time of a decision not to investigate a complaint does not apply if notice of that decision has already been given under section 463, which requires the Director-General to notify a complainant at the time of certain decisions.

Schedule 2 [27] provides for the Local Government Pecuniary Interest Tribunal (the *Tribunal*) to decide not to conduct proceedings into a complaint or to conduct proceedings into a complaint without conducting a hearing. The amended provisions require the Tribunal to notify a complainant and the person about whom the complaint has been made of a decision not to conduct proceedings or to conduct proceedings without conducting a hearing.

Schedule 2 [15]–[17] and **[21]–[25]** update flowcharts as a consequence of the amendment made by **Schedule 2 [27]**.

Schedule 2 [28]–[30] clarify the application of provisions relating to the conduct of hearings.

Schedule 2 [31] clarifies the procedure applicable where the Tribunal has accepted one or more additional complaints.

Schedule 2 [32] provides for the Tribunal to counsel or reprimand a council employee against whom a complaint has been proved. (At present, the Tribunal may merely recommend that the council take disciplinary action against the employee or that the council dismiss the employee.) **Schedule 2 [2]** and **[26]** make consequential amendments.

Schedule 2 [33] provides for decisions of the Tribunal to be made public. In addition, the Director-General may, if he or she thinks fit, make any statement of decision provided to the Director-General by the Tribunal publicly available. (Schedule 4.1 amends the *Defamation Act 1974* to extend the defence of absolute privilege to such publications.)

Schedule 3 Miscellaneous amendments to Local Government Act 1993

Director-General's guidelines

Schedule 3 [1] provides for the Director-General of the Department of Local Government to prepare, adopt and vary guidelines that must be taken into consideration by councils when exercising their functions under the *Local Government Act 1993* or any other Act or law.

Amendments relating to classification and reclassification of public land

Schedule 3 [2] provides that any land acquired by a council that is not classified at the end of the period of 3 months is taken to have been classified as community land. The amendment also provides that while the land remains unclassified, the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and the council may not dispose of any interest in the land.

Schedule 3 [3] requires public notice to be given of a resolution to classify land to be acquired by the council made at a meeting that was closed to the public or where the council has resolved not to make public its proposal to acquire the land. (Such resolutions were previously exempt from the requirement to give public notice.)

Schedule 3 [4] provides that a council may adopt an amended plan of management for community land without public exhibition if the council is of the opinion that the amendments are not substantial.

Schedule 3 [6] provides that a public hearing is not required if a proposed plan of management in relation to community land would merely have the effect of recategorising the land under section 36 (5). **Schedule 3 [5]** makes a consequential amendment.

Schedule 3 [7] requires any public notice given by a council with respect to a parcel of community land to describe the land by reference to its common description (such as its address or the name by which it is generally known) whether or not the notice also describes the land by reference to a more formal legal description.

Amendments relating to tendering

Schedule 3 [8] restates the requirement for a council to invite tenders before entering into certain contracts. The additional matters for which the amended provision will require a council to invite tenders are the following:

- (a) work carried out for another body or person under some other contract (that is, when the council is subcontracting work that it is doing for another council or other body or person under a winning tender),
- (b) services performed or facilities provided for another body or person under some other contract (that is, when the council is subcontracting the performance of a service, or the provision of facilities, undertaken for another council or other body or person under a winning tender),
- (c) services (other than banking, borrowing or investment services) provided to the council,
- (d) goods provided to the council by way of an operational or finance leasing arrangement,
- (e) matters prescribed by the regulations.

Schedule 3 [9] makes it clear that a council is not prevented from tendering for any work, service or facility for which it has invited tenders.

Amendments relating to amusement devices

Schedule 3 [10] and **[11]** consolidate provisions regulating the installation and use of amusement devices.

Schedule 3 [34] makes a consequential amendment.

Amendments relating to orders

Schedule 3 [12] allows councils to require certain persons to take action to bring certain structures into compliance with relevant standards or requirements set out or made under the *Local Government Act 1919* (as well as standards or requirements set out or made under the *Local Government Act 1993*).

Amendments relating to payment of expenses and provision of facilities

Section 252 of the Act requires a council to adopt a policy concerning the payment of expenses of the mayor, the deputy mayor and other councillors, and concerning the provision of facilities to those persons in relation to discharging the functions of civic office.

Schedule 3 [13] provides for the amendment of such a policy and prevents a council from paying any expenses or providing any facilities otherwise than in accordance with such a policy. The amendment also requires that such a policy comply with the regulations.

Schedule 3 [14] requires public notice to be given of substantial amendments to such a policy (as well as adoption of the policy itself).

Schedule 3 [15] requires decisions regarding the amendment of such a policy to be adopted in open council meetings (in the same way as decisions about the policy itself are adopted).

Amendment relating to appointment of staff members

Schedule 3 [16] makes it clear that a council may re-appoint a senior staff member on contract without advertisement before the expiry of the contract.

Amendment relating to report on implementation of management plan

Schedule 3 [17] provides that the general manager of a council must report on the implementation of the council's current management plan within 2 months after the end of each quarter (rather than within 6 weeks, as at present).

Amendments relating to rates and charges

Schedule 3 [18] excludes all annual waste charges from the calculation of a council's general notional income.

Schedule 3 [19] provides for the Minister to attach conditions to special variations to the percentage by which the council's general income, or the amount of an annual charge for domestic waste management services, may be varied.

Amendments relating to offences

Schedule 3 [20] extends an existing offence so as to create an offence of removing rocks or soil from a public place. In addition, the maximum penalty for the offence is increased from 5 penalty units to 20 penalty units.

Schedule 3 [21] increases the maximum penalty for breaking glass in a public place or for certain littering in a public place from 5 penalty units to 10 penalty units.

Schedule 3 [22] increases the maximum penalty for damaging, defacing or polluting a public bathing place from 5 penalty units to 10 penalty units.

Schedule 3 [23] increases the maximum penalty for acting contrary to notices erected by councils from 5 penalty units to 10 penalty units.

Schedule 3 [24] provides for the terms of a notice erected by a council in a public place to regulate the taking of a vehicle into a public place or the driving, parking or use of a vehicle in that place.

Schedule 3 [25] and **[28]** make consequential amendments.

Schedule 3 [26] increases the maximum penalty in relation to offences relating to bathing (including nude bathing) and other water-based recreational activities from 5 penalty units to 10 penalty units.

Schedule 3 [27] increases the maximum penalty in relation to the use of skateboards, roller blades, roller skates and other skating equipment in public places from 5 penalty units to 10 penalty units.

Schedule 3 [29] and **[30]** extend the prohibition on disclosure and misuse of certain information obtained in connection with the administration or execution of the Act to include any information that may give a person a financial advantage. (At present, that prohibition applies only to information that materially affects the market value of land.)

Amendment relating to powers of entry

Schedule 3 [31] inserts a note relating to the giving of notice of a proposal to exercise the council's power of entry.

Savings and transitional provisions

Schedule 3 [32] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 3 [33] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of other Acts

Amendment of Defamation Act 1974

At present, section 17T of the *Defamation Act 1974* creates a defence of absolute privilege for a publication to or by the Local Government Pecuniary Interest Tribunal if the publication is made for the purpose of the execution or administration of the *Local Government Act 1993*.

Schedule 4.1 extends that defence to the publication of an official report of a decision of the Tribunal or of the reasons for a decision of the Tribunal (whether by the Tribunal, the Department of Local Government or by the Director-General).

Amendment of Occupational Health and Safety Act 2000

The *Occupational Health and Safety Act 2000* (which is uncommenced) repeals the *Construction Safety Act 1912*, under which amusement devices are regulated. The *Occupational Health and Safety Act 2000* contains amendments to the definition of **amusement device** in the *Local Government Act 1993* which will be out of date when the amendments made to that definition by Schedule 3 [10], [11] and [34] to the proposed Act commence.

Schedule 4.2 repeals the redundant uncommenced amendments to the *Local Government Act 1993* and amends the *Local Government Act 1993* as a consequence of the proposed repeal of the *Construction Safety Act 1912*. (Those amendments will only have effect on the commencement of the relevant provision of the *Occupational Health and Safety Act 2000*.)