

Passed by both Houses



New South Wales

Local Government Amendment Bill 2021

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2021



New South Wales

Local Government Amendment Bill 2021

Act No _____, 2021

An Act to amend the *Local Government Act 1993* to give effect to certain recommendations made by the Independent Pricing and Regulatory Tribunal and make other amendments concerning the local government rating system; to make further provision about local government elections and certain terms of office and about council area amalgamations; to provide for superannuation contributions for councillors; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Local Government Amendment Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation—
 - (a) Schedule 1.1[2]–[4] and [7]–[11],
 - (b) Schedule 1.1[13]–[15] and [17],
 - (c) Schedule 1.1[19]–[31],
 - (d) Schedule 1.1[33].

Schedule 1 Amendment of Local Government Act 1993 No 30

1.1 Amendments concerning local government rating system

[1] Section 218CC

Insert after section 218CB—

218CC Proposals for de-amalgamations

- (1) The new council may, within 10 years of the constitution of the new area, submit a written business case to the Minister setting out—
 - (a) a proposal for the de-amalgamation of the new area, whether by reconstituting the former areas or constituting different areas, and
 - (b) the reasons in support of the proposal.
- (2) The Minister must, within 28 days after the business case is submitted, refer the de-amalgamation proposal to the Boundaries Commission with a direction that it conduct an inquiry and report on the proposal.
- (3) Without limiting subsection (2) or section 263, the Boundaries Commission may in its report recommend that—
 - (a) the de-amalgamation proposal be supported, or
 - (b) the de-amalgamation proposal be rejected, or
 - (c) a different de-amalgamation proposal be supported.
- (4) The Minister must ensure that the report of the Boundaries Commission is publicly released within 48 hours after it is provided to the Minister.
- (5) The Minister must, within 28 days after the report is provided to the Minister, provide a written response to the new council setting out—
 - (a) whether or not the Minister supports the de-amalgamation proposal or a different de-amalgamation proposal recommended by the Boundaries Commission, and
 - (b) the reasons for the Minister's decision, and
 - (c) if the Minister supports the de-amalgamation proposal or the different de-amalgamation proposal—the anticipated time frame for giving effect to the proposal.
- (6) The Minister is, by making grants under section 620 or using money otherwise appropriated by Parliament for the purpose, to ensure that the cost of any de-amalgamation of the new area resulting from a business case submitted under this section is fully funded.
- (7) This section extends to new areas constituted before the commencement of this section.
- (8) In this section—

new area means the area constituted by the amalgamation of areas (*former areas*) by the relevant proclamation.

new council means the council of a new area constituted by section 219.

relevant proclamation means the proclamation made pursuant to Chapter 9, Part 1 that amalgamates former areas into the new area and constitutes the new council.

[2] Section 493 Categories of ordinary rates and categories of land

Omit “4 categories” wherever occurring in section 493(1). Insert instead “5 categories”.

[3] Section 493(1)

Insert after the first dot point—

- environmental

[4] Section 495 Making and levying of special rates

Insert at the end of section 495 after the note—

- (3) Without limiting subsection (1) or (2), a special rate may be levied for or towards meeting the costs of works, services, facilities or activities (the *intergovernmental project*) provided or undertaken, or proposed to be provided or undertaken, by the council together with one or more government entities (a *project partner*).
- (4) The following provisions apply for a special rate levied for an intergovernmental project—
 - (a) before the rate is levied, the council must include the following information in the draft operational plan for the year in which it is proposed to be levied—
 - (i) the anticipated benefits to the council’s area or local community of the intergovernmental project,
 - (ii) the basis of the council’s opinion, under subsection (2), for the different application of the rate, if any, in relation to different land,
 - (iii) the estimated cost of the intergovernmental project, both for the year and in total,
 - (iv) the estimated contributions to the intergovernmental project, including financial and in-kind contributions, to be made by the council and each project partner, both for the year and in total,
 - (v) the amount of money estimated to be levied by the rate, both for the year and in total,
 - (b) the intergovernmental project does not need to be works, services, facilities or activities within the functions of the council and the rate levied may exceed the value of the part of the project with the council’s functions,
 - (c) if the cost of the intergovernmental project is partly funded by another person or under another arrangement, charge or contribution—the rate levied may be limited to what is needed to fund the proportion of the cost for which the council is responsible,
 - (d) money raised from the rate may be used only for the purpose of funding the intergovernmental project,
 - (e) money raised from the rate is not to be treated as part of the general income of the council,
 - (f) the annual report of the council is to include the following information—
 - (i) the actual cost of the intergovernmental project, and the actual contributions to the intergovernmental project made by the council and each project partner, during the year of the report,

- (ii) a statement explaining the difference, if any, between the actual cost and contributions and the estimated cost and contributions in the council's draft operational plan,
 - (iii) the total revenue generated by the rate during the year of the report,
 - (iv) the outcomes of the project, and the benefits to the council's area and the local community of the project, during the year of the report,
 - (g) despite sections 498(3)(b) and 499(4)(b), the Minister does not need to approve the different application of the rate, if any, in relation to different land.
- (5) Subsection (4) applies despite any other provision of this Act to the contrary.
- (6) In this section—
another Australian jurisdiction means the Commonwealth or another State or a Territory.
government entity means each of the following—
- (a) the State or another Australian jurisdiction, including the Crown in right of the State or another Australian jurisdiction,
 - (b) a Minister of the government of the State or another Australian jurisdiction,
 - (c) a government sector agency within the meaning of the *Government Sector Employment Act 2013* or a Department or other agency of another Australian jurisdiction,
 - (d) a public authority of the State or another Australian jurisdiction,
 - (e) a person acting on behalf of the State or another Australian jurisdiction or of the Crown in right of the State or another Australian jurisdiction,
- but does not include a council, county council or joint organisation, or a local authority of another Australian jurisdiction, unless the regulations declare the council, organisation or authority to be a government entity for this section.

[5] Section 505 Application of Part

Insert after section 505(a)(vi)—

- (vii) fire and emergency service levies payable under the *Fire and Emergency Services Levy Act 2017*, and

[6] Section 506 Variation of general income

Insert at the end of the section—

- (2) Without limiting subsection (1), the order may—
 - (a) specify different percentages for different areas of councils, and
 - (b) specify a methodology for calculating a percentage rather than specifying a particular percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances.

[7] Section 514 Categorisation of land for purposes of ordinary rates

Insert after the first dot point in section 514—

- environmental

[8] Section 514, note

Insert “environmental,” after “farmland,”.

[9] Section 515A

Insert after section 515—

515A Categorisation as environmental

- (1) Land is to be categorised as *environmental* if—
 - (a) it is a parcel of rateable land, and
 - (b) its use is constrained because of one or more of the following—
 - (i) development cannot be carried out on the land,
 - (ii) the land has low development potential for business, residential, mining or farming activity, and
 - (c) it is subject to geographical restrictions or regulatory restrictions, and
 - (d) it is used for a purpose that would not be more appropriately categorised as farmland, residential, mining or business.
- (2) In determining whether the matters mentioned in subsection (1)(b) apply, the council must consider—
 - (a) whether the uses permitted on the land are consistent with—
 - (i) the protection, management and restoration of areas of high ecological, scientific, cultural or aesthetic values, and
 - (ii) the prevention of development that could destroy, damage or otherwise have an adverse effect on those values, and
 - (b) matters that may be prescribed by the regulations.
- (3) In this section—

geographical restrictions, in relation to land, include the water areas, mud flats, swamps, marshlands, steep slopes or other terrain resulting in physical limitations preventing the carrying out of all, or almost all, residential or commercial development on the land.

regulatory restrictions mean restrictions imposed by an Act, environmental planning instrument, conservation agreement, or in some other way, specified by the regulations.

[10] Section 518 Categorisation as business

Insert “environmental,” after “farmland,”.

[11] Section 519 How is vacant land to be categorised?

Omit “section 515, 516 or 517”. Insert instead “sections 515–517”.

[12] Section 529 Rate may be the same or different within a category

Omit section 529(2). Insert instead—

- (2) A sub-category may be determined as follows—
 - (a) for the category “farmland”—according to—
 - (i) the location of the land, or
 - (ii) the intensity of land use, or
 - (iii) the irrigability of the land, or
 - (iv) economic factors affecting the land,

- (b) for the category “residential”—according to—
 - (i) whether the land is rural residential land, or
 - (ii) whether the land is in a centre of population, or
 - (iii) whether the land is in a residential area or in part of a residential area,
 - (c) for the category “mining”—according to the kind of mining involved,
 - (d) for the category “business”—according to a centre of activity.
- (2A) A sub-category may be determined for subsection (2)(b)(iii) only if the council is satisfied on reasonable grounds that it is necessary to identify residential areas because of significant differences between the areas in relation to access to or demand for, or the cost of providing, services or infrastructure.
- (2B) A sub-category must be identified by reference to geographical names or another way prescribed by the regulations for the sub-category if—
- (a) the sub-category is identified by reference to the location of the land, or
 - (b) the sub-category is identified by reference to the factor mentioned in subsection (2)(b)(iii).

[13] Section 529(2)(a1)

Insert after section 529(2)(a), as inserted by item [12]—

- (a1) for the category “environmental”—according to 1 or both of the following—
 - (i) the location of the land,
 - (ii) whether the land is subject to regulatory restrictions,

[14] Section 529(2)(d)

Omit the paragraph, as inserted by item [12]. Insert instead—

- (d) for the category “business”—according to 1 or more of the following—
 - (i) whether the land is in a centre of commercial or industrial activity,
 - (ii) whether the land is industrial land,
 - (iii) whether the land is non-industrial land.

[15] Section 529(2AA)

Insert after section 529(2A), as inserted by item [12]—

- (2AA) For subsection (2)(d)(ii) and (iii)—
 - (a) land is industrial land if the activities carried out on the land are predominately industrial activities,
 - (b) land is non-industrial land if the activities carried out on the land are predominately not industrial activities.

[16] Section 529(5) and (6)

Insert after section 529(4)—

- (5) The regulations may make provision for or with respect to the following—
 - (a) the factors that may or may not be taken into account in determining a sub-category for a category of land for which a sub-category may be determined,

(b) public consultation requirements to be followed by councils in determining a sub-category, including by applying, with or without modification, provisions of the Act, the regulations or guidelines concerning the preparation, exhibition and publication of strategic council planning documents.

(6) In this section—

geographical name has the same meaning as in the *Geographical Names Act 1966*.

regulatory restrictions mean restrictions imposed by an Act, environmental planning instrument, conservation agreement, or in some other way, specified by the regulations.

strategic council planning document means a community strategic plan, resourcing strategy, delivery program or operational plan mentioned in Chapter 13, Part 2.

[17] Section 529(5)(c)

Insert after section 529(5)(b), as inserted by item [16]—

(c) the kinds of activities that are, or are not, industrial activities or non-industrial activities for the purposes of this section.

[18] Section 530

Insert after section 529—

530 Special provisions for residential sub-categories

- (1) This section applies in relation to determining a sub-category (a **residential sub-category**) under section 529 for the category “residential” for rateable land in a council’s area.
- (2) The Minister may, from time to time, issue guidelines for the determination of ordinary rates for rateable land in contiguous urban areas.
- (3) Without limiting subsection (2), the guidelines may provide for when an area is, or is not, a contiguous urban area for this section.
- (4) The highest ordinary rate for rateable land in a contiguous urban area must not exceed the average ordinary rate payable for other rateable land in the area by the factor, if any, prescribed by the regulations.
- (5) Despite subsection (4), the Minister may, by written instrument given to a council on its application—
 - (a) determine a factor for the council that is greater than the factor mentioned in subsection (4), and
 - (b) impose conditions in relation to the use of the determined factor.
- (6) The Minister may, by a further written instrument given to a council, vary or revoke a determination, or a condition of a determination, made or imposed for the council under subsection (5).
- (7) If a council decides to make different ordinary rates for residential sub-categories, the council must—
 - (a) publish the reasons for doing so on its website as soon as practicable after making the rates, and
 - (b) set out the reasons in the council’s statement of revenue policy in its operational plan for the year concerned.

- (8) The Minister may, from time to time, issue written directions to councils concerning—
- (a) the factors or circumstances that may, or may not, be used by councils in determining a residential sub-category or the ordinary rate for a residential sub-category, and
 - (b) matters to be included in reasons published for subsection (7)(a).
- (9) A council must comply with the guidelines and directions given by the Minister under this section.

[19] Section 555, heading

Insert “, other than water supply special rates and sewerage special rates” after “rates”.

[20] Section 555(1)

Insert “, other than water supply special rates and sewerage special rates” after “all rates”.

[21] Section 555(1)(b) and (b1)

Omit the paragraphs. Insert instead—

- (b) land reserved or acquired under the *National Parks and Wildlife Act 1974*,
- (b1) subject to subsection (3), land that is the subject of a conservation agreement unless it is a kind of conservation agreement excluded by the regulations,

[22] Section 555(1A)

Insert after section 555(1)—

- (1A) Without limiting subsection (1), the following land is also exempt from all rates, other than water supply special rates and sewerage special rates—
- (a) land that is a public place,
 - (b) land used for a public reserve and vested in the Crown, a public body or trustees,
 - (c) land used for a common and vested in the Crown, a public body or trustees,
 - (d) land used for a public cemetery and vested in the Crown, a public body or trustees,
 - (e) land used solely for a free public library and vested in the Crown, a public body or trustees,
 - (f) land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes,
 - (g) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Part 9, Division 4 of the *Mining Act 1992* and that the council has declared is not rateable,
 - (h) land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity,
 - (i) land that belongs to a public hospital,
 - (j) land that is vested in the Minister for Health and Medical Research, the Health Administration Corporation or the New South Wales Health Foundation,

- (k) land that is vested in a local health district constituted under the *Health Services Act 1997*,
- (l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes,
- (m) land that is vested in the Crown or Venues NSW and is described in Schedule 4A, Part 1, 2 or 3 of the *Sporting Venues Authorities Act 2008* and is used or occupied for the purposes of or in accordance with that Act,
- (n) land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes,
- (o) land that—
 - (i) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and
 - (ii) is used for the purposes of a mine rescue station controlled by that company,
- (p) land that is managed by the Teacher Housing Authority and on which a house is erected,
- (q) land that is leased to the Crown for the purpose of cattle dipping,
- (r) land that is specified or described in the regulations as being exempt from all rates, other than water supply special rates and sewerage special rates,
- (s) land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the *National Parks and Wildlife Act 1974*.

[23] Section 555(3)

Omit “within the meaning of the *National Parks and Wildlife Act 1974*”.

[24] Section 555(4)

Insert “or (1A)(h)–(o)” after “subsection (1)(e), (f), (g) and (g1)”.

[25] Section 555(5)

Omit the subsection. Insert instead—

- (5) A parcel of rateable land is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable rates to be levied on a part of the parcel that is not exempt from rates under this section if it is—
 - (a) a parcel belonging to a religious body partly occupied and used in a way described in subsection (1)(e) and partly in a way that would result in part of the parcel not being exempt from rates under this section, or
 - (b) a parcel belonging to a public benevolent institution or public charity partly used or occupied by the institution or charity for its own purposes and partly for a purpose that would result in part of the parcel not being exempt from rates under this section.

[26] Section 556

Omit sections 556 and 557. Insert instead—

556 What land is exempt from water supply special rates and sewerage special rates?

- (1) Water supply special rates may not be levied on land to which the council has resolved not to supply water.

- (2) Sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.
- (3) Subject to subsection (4), water supply special rates and sewerage special rates may be levied on land that is the subject of a conservation agreement unless it is a kind of conservation agreement excluded by the regulations.
- (4) If part of a single parcel of land is the subject of a conservation agreement, any rate levied on that whole parcel is to be reduced by the following percentage—

$$P = \frac{CA}{WA}$$

where—

P is the percentage, and

CA is the area of that part of the parcel that is the subject of the conservation agreement, and

WA is the area of the whole parcel.

Example. If a parcel of land would normally be subject to a rate of \$1,000, but 40% of the area of the land is subject to a conservation agreement, that rate is to be reduced by 40% to \$600.

[27] Section 558, heading

Omit “water supply special rates and sewerage special”.

[28] Section 558(1)

Omit “water supply special rates and sewerage special”.

[29] Chapter 15, Part 8, Division 2

Omit the note at the beginning of the Division. Insert instead—

Note—

This Division enables a ratepayer to apply for a postponement in certain cases of hardship.

This Division also entitles particular public bodies to a 25% rebate for ordinary rates payable for certain land.

Other rating concessions may be provided under other Acts. For example, section 127 of the *Heritage Act 1977* provides for rates to be levied on heritage valuations determined in accordance with that Act instead of on other valuations.

[30] Section 591

Omit the section. Insert instead—

591 Postponement of rates

- (1) A council must, in accordance with this section, postpone the payment of rates for land in a rating year where a change in the zoning or other designation of the land under an environmental planning instrument mentioned in section 585 happens if—
 - (a) the change happened within the period of 20 years before the application for postponement is made, and
 - (b) a determination or redetermination made by the Valuer-General of the attributable part of the land value having regard to the change is in force, and
 - (c) the rateable person making the application—
 - (i) occupies the land when the application is made, and

- (ii) owned the land when the change happened, but did not initiate or request the change, and
 - (d) the council is satisfied on reasonable grounds that the case falls within a category of hardship for which the council has determined payment should be postponed.
- (2) The amount of the rate postponed is to be the increase in the amount of the rate resulting from the zoning or other designation of the land compared with the rate the would have been payable if the zoning or other designation had not happened.

[31] Section 595

Omit the section. Insert instead—

595 Postponed rates may be written off after 5 years

- (1) This section applies if 5 years have elapsed since the commencement of a rating year for which part of the rates levied on land have been postponed under this Division.
- (2) The council may write off the part postponed and any interest accrued on that part.
- (3) This section does not affect the right of the council to recover rates and interest, even though they have been written off under this section, if it subsequently appears to the council that they should not have been written off.

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

Insert after Part 40—

Part 41 Provisions consequent on enactment of Local Government Amendment Act 2021

Division 1 Interpretation

126 Definitions

In this Part—

amending Act means the *Local Government Amendment Act 2021*.

equalisation process—see clause 128.

gradual harmonisation—see clause 127.

harmonisation period—see clause 127.

harmonisation resolution—see clause 127.

immediate harmonisation—see clause 127.

rating category means a category mentioned in section 514, including as amended by the amending Act.

rating sub-category for a rating category means a sub-category for the rating category of a kind permitted under Chapter 15, Part 3, including as amended by the amending Act.

relevant council means a council to which a determination of the Minister under section 218CB applied immediately before the day on which Division 2 of this Part commences.

sub-categorisation process—see clause 128.

Division 2 Rate harmonisation

127 Rate harmonisation for ordinary rates

- (1) A relevant council must harmonise the ordinary rates for each of its rating categories in accordance with this Part.
- (2) A relevant council may decide to harmonise ordinary rates by passing a resolution (a *harmonisation resolution*)—
 - (a) for the harmonisation to happen from the next rating year occurring after the day on which this Division commences (an *immediate harmonisation*), or
 - (b) for the harmonisation to happen over a period, not exceeding 8 years, specified by the resolution (the *harmonisation period*) after the day on which this Division commences (a *gradual harmonisation*).
- (3) A council is taken to have passed a harmonisation resolution for the purposes of this Part even if the resolution is passed before the day on which this Division commences.

128 Ways in which ordinary rates may be harmonised

- (1) Ordinary rates may be harmonised by a relevant council for a rating category by using—
 - (a) an equalisation process, or
 - (b) a sub-categorisation process.
- (2) An *equalisation process* involves revising the council's existing ordinary rating structure so that it applies consistently within each rating category used by the council.
Example. Creating the same rating structure for all land categorised as residential.
- (3) A *sub-categorisation process* involves revising the council's existing ordinary rating structure by adopting rating sub-categories for rating categories used by the council.

129 Process for gradual harmonisation

- (1) A relevant council must not pass a harmonisation resolution for gradual harmonisation unless—
 - (a) the council has undertaken the consultation process specified by this clause, and
 - (b) the resolution specifies each of the following—
 - (i) the length of the harmonisation period,
Note. Clause 127(2)(b) provides that the period cannot exceed 4 years.
 - (ii) the rating structure for each rating category or rating sub-category that will come into effect when the harmonisation period ends,
 - (iii) the percentage of the increase in rates for each rating category or sub-rating category that will occur in each rating year over the harmonisation period.
- (2) Subject to the regulations, the consultation process to be followed for a gradual harmonisation proposal is to be the consultation process for the adoption of an operational plan under Chapter 15, Part 4.
- (3) The consultation process mentioned in subclause (2) may be followed in combination with the adoption of an operational plan or separately.

- (4) The relevant council must ensure that each annual variation in the amount of an ordinary rate for a rating category or rating sub-category during the harmonisation period for a gradual harmonisation does not exceed 50% of the difference between—
- (a) the ordinary rate structure at the beginning of the harmonisation period, and
 - (b) the ordinary rate structure at the end of the harmonisation period.
- (5) A gradual harmonisation may not be altered by a further resolution of the council—
- (a) to increase the harmonisation period beyond 8 years, or
 - (b) to make changes to the harmonisation process in contravention of subclause (4).
- (6) In this clause—
- ordinary rate structure** means the amount of the rate comprised by the total of the amounts referred to in section 497.

130 Relationship of Division with other provisions

This Division applies despite anything to the contrary in other provisions of this Act, particularly section 218CB and Chapter 15, Part 3 as amended by the amending Act.

Division 3 Conservation agreements

131 Existing exemptions for conservation agreements

- (1) Section 555(1)(b1), as in force immediately before the day of its substitution by the amending Act, continues to apply to—
- (a) a conservation agreement in force immediately before the day, and
 - (b) a conservation agreement entered into on or after the day if entering the agreement was a condition of—
 - (i) a development consent granted under the *Environmental Planning and Assessment Act 1979* before the day, or
 - (ii) an approval granted under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth before the day.
- (2) In this clause—
- conservation agreement** has the same meaning as in the *National Parks and Wildlife Act 1974*.

Division 4 Postponed rates and unpaid rates or charges

132 Application of amendment concerning postponements

- (1) Chapter 15, Part 8, Division 2, as in force immediately before the day section 591 is substituted by the amending Act, continues to apply—
- (a) to applications for postponement of rates made, but not finally determined, before the day, and
 - (b) to postponements of rates granted before the day that have not lapsed, and
 - (c) to postponements of rates granted before the day that have lapsed, whether before, on or after the day.

- (2) Subclause (1), in its application to subclause (1)(c), applies for the period of 20 years.

Division 5 Statutory review

133 Minister to review amendments

- (1) This Minister is to review the amendments made by the amending Act to determine whether—
- (a) the policy objectives of the amendments remain valid, and
 - (b) the terms of the provisions inserted, substituted or amended by the amending Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the end of the period of 2 years following the commencement of this clause.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the review is completed.

[33] Dictionary

Insert in alphabetical order—

conservation agreement means—

- (a) a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
- (b) another agreement relating to the conservation of the land of a kind prescribed by the regulations.

1.2 Amendments concerning elections and terms of office

[1] Section 291A Countback to be held instead of by-election in certain circumstances

Omit section 291A(4)(a)–(c). Insert instead—

- (a) if the election at which the person whose departure created the casual vacancy was elected was administered by the Electoral Commissioner—by a returning officer appointed by the Electoral Commissioner, or
- (b) if the election at which the person whose departure created the casual vacancy was elected was administered by a returning officer appointed by an electoral services provider engaged by the council—by a returning officer appointed by the electoral services provider.

[2] Section 291A(5A)

Insert after section 291A(5)—

- (5A) If an electoral services provider engaged by the council is unable to appoint a returning officer for the purposes of subsection (4)(b), a by-election in accordance with this Part must be held to fill the casual vacancy.

[3] Section 310A Postal votes

Omit section 310A(a). Insert instead—

- (a) the postal vote is received by the returning officer before the time and day following the close of the poll prescribed by the regulations, and

[4] Section 391 The chairperson

Omit section 391(2) and (3). Insert instead—

- (2) The chairperson holds office for 2 years, subject to this Act.
- (3) The office of chairperson—
 - (a) commences on the day the person elected to the office is declared to be elected, and
 - (b) becomes vacant on the earliest of the following—
 - (i) when the person's successor is declared to be elected to the office,
 - (ii) on the occurrence of a casual vacancy in the office,
 - (iii) the polling day of the ordinary election of councillors of which the person is a councillor.

[5] Section 400V Chairperson

Omit section 400V(4). Insert instead—

- (4) The office of chairperson—
 - (a) commences on the day the person elected to the office is declared to be elected, and
 - (b) becomes vacant on the earliest of the following—
 - (i) when the person's successor is declared to be elected to the office,
 - (ii) on the occurrence of a casual vacancy in the office,
 - (iii) the polling day of the ordinary election of councillors of which the person is a councillor.

1.3 Amendments concerning superannuation payments for councillors

Section 254B

Insert after section 254A—

254B Payment for superannuation contributions for councillors

- (1) A council may make a payment (a *superannuation contribution payment*) as a contribution to a superannuation account nominated by a councillor, starting from the financial year commencing 1 July 2022.
- (2) The amount of a superannuation contribution payment is the amount the council would have been required to contribute under the Commonwealth superannuation legislation as superannuation if the councillor were an employee of the council.
- (3) A superannuation contribution payment is payable with, and at the same intervals as, the annual fee is payable to the councillor.
- (4) A council is not permitted to make a superannuation contribution payment—
 - (a) unless the council has previously passed a resolution at an open meeting to make superannuation contribution payments to its councillors, or
 - (b) if the councillor does not nominate a superannuation account for the payment before the end of the month to which the payment relates, or
 - (c) to the extent the councillor has agreed in writing to forgo or reduce the payment.

- (5) The Remuneration Tribunal may not take superannuation contribution payments into account in determining annual fees or other remuneration payable to a mayor or other councillor.
- (6) A person is not, for the purposes of any Act, taken to be an employee of a council and is not disqualified from holding civic office merely because the person is paid a superannuation contribution payment.
- (7) A superannuation contribution payment does not constitute salary for the purposes of any Act.
- (8) Sections 248A and 254A apply in relation to a superannuation contribution payment in the same way as they apply in relation to an annual fee.
- (9) In this section—
Commonwealth superannuation legislation means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.
superannuation account means an account for superannuation or retirement benefits from a scheme or fund to which the Commonwealth superannuation legislation applies.