

[Act 1995 No 11]



New South Wales

Statute Law Revision (Local Government) Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The principal object of this Bill is to ensure that changes made by the *Local Government Act 1993* are reflected in other New South Wales legislation.

The ancillary object of this Bill is to make amendments, by way of statute law revision, to the *Local Government Act 1919* and to make minor amendments to the *Local Government Act 1993* arising from the operation of that Act.

Outline of provisions

1 Amendments to achieve the principal object of this Bill

The law relating to local government changed significantly on 1 July 1993, with the commencement of the *Local Government Act 1993* and certain legislation relating to roads, the impounding of animals, traffic and electricity. To ensure that changes made by the *Local Government Act 1993* are reflected in other New South Wales legislation, this Bill:

- replaces references to repealed provisions of the *Local Government Act 1919* with the appropriate references to the *Local Government Act 1993*, and
- updates terms relating to local government and civic office, and
- updates references to the corporate names of councils, and
- repeals certain enactments that amended the *Local Government Act 1919* or that relate to local government and are no longer of practical utility.

Replacement of references to the old Act

This Bill amends certain Acts as a consequence of the enactment of the *Local Government Act 1993* (“the new Act”) and the repeal of most of the *Local Government Act 1919* (“the old Act”) and many of the ordinances made under that Act.

Many Acts include references to the repealed provisions of the old Act and ordinances made under it. The Bill updates those references to the old Act by replacing them with the appropriate references to the new Act. (References to the old Act in regulations are affected by clause 4 of Schedule 7 to the new Act. That clause provides that a reference in any instrument to the old Act or a provision of the old Act is to be read as a reference to the new Act, the *Impounding Act 1993*, the *Roads Act 1993*, the *Traffic Act 1909* or the corresponding provision of one of those Acts or a regulation made under one of those Acts.)

Updating terms relating to local government and civic office

This Bill also amends references to terms that were made redundant by the repeal of most of the old Act. The following table indicates some of the changes:

Old term	New term
municipality or shire	area under the <i>Local Government Act 1993</i>
Ironbark Municipality	Ironbark area or area of Ironbark
Shire of Wattle	Wattle area or area of Wattle
alderman	councillor
President of a shire council	mayor of a council
town clerk or shire clerk	general manager of a council
servant of a council	employee of a council
riding of a shire	ward of an area
county district	area of operations of a county council
general rate	ordinary rate

Updating references to corporate names of councils

Section 221 of the new Act provides for the corporate name of a council. For example, Ironbark Municipal Council is now called Ironbark Council or Council of Ironbark. However, the new Act also allows a council that, immediately before 1 July 1993, was the council of a municipality or a shire to resolve (before 31 December 1994) to retain the word “municipal” or “municipality”, or “shire”, respectively, as part of its corporate name.

The Bill updates references to the corporate names of councils in various Acts.

Replacement of ordinances with regulations

The new Act provides for the making of regulations instead of ordinances. Most ordinances were repealed when that Act commenced, but some are continued in force and are taken to be regulations. (The only ordinance that

is still operative as an ordinance is *Ordinance No 55*, which relates to section 510 of the old Act, a provision that is still in force.) For that reason, this Bill removes references to ordinances under local government legislation from certain Acts where appropriate.

The new Act is also amended to include transitional provisions consequent on the repeal of certain Acts relating to the levying of rates and charges listed in Schedule 2.

2 Amendments to achieve the ancillary object of this Bill

Amendment of the old Act

The amendments to the old Act are by way of statute law revision and relate to Part 12 (Subdivision Regulation). The amendments correct incorrect cross-references and are taken to have commenced on the commencement of the provisions of the *Water Board (Corporatisation) Act 1994* that inserted the cross-references.

Amendment of the new Act

Election of Councillors. Section 283 (3) of the new Act is relocated as section 281 (3) to make it clear that, while a person may be a candidate for election as both mayor and a councillor under section 283 (1), a person cannot be a candidate for more than one office of councillor when councillors are elected partly by wards and partly by area under section 281.

Registration of political parties. Section 320 (3) (b) of the new Act is amended to remove an anomaly in the application, to local government elections, of sections 66A, 66B and 66D–66M of the *Parliamentary Electorates and Elections Act 1912* (that deal with registration of parties). Currently, the combined operation of section 66B and the definition of *eligible party* in section 66A of the 1912 Act (as applied by section 320 of the new Act) is that one of the qualifications for registration as a political party is that at least one member of the party is a member of a Parliament whereas the equivalent qualification implied by sections 66D (2) (g) and 66I (2) (b) of the 1912 Act (as applied by section 320) is that at least one member of the party is a member of a council. The omission of the matter “(except in section 66A)” from section 320 (3) (b) removes the anomaly and confirms that the requisite qualification is membership of a council. A savings provision is included that validates existing registrations of political parties under the new Act that have been made on the basis of members of the parties being members of councils.

Appointment of Auditor-General as Auditor for council. Section 422 (Appointment of auditors) of the new Act is amended to make it clear that the Auditor-General may be appointed as the auditor of a council.

Omission of reference to Minister's power to permit variation—general income. Section 509 (Maximum general income for a year) limits a council's rates and charges for a year to the council's notional general income for the previous year as varied by the percentage (if any) specified by the Minister under section 506 (and subject to any catching up of shortfall under section 511). The current provision does not however take into account the Minister's power under section 508 (2) to vary, for a particular council, the general percentage specified under section 506. Section 509 is amended to make provision for variations arising under section 508. A consequential amendment is made to section 511 (Catching up of shortfall in general income).

Omission of reference to Minister's power to permit variation—domestic waste management services. Section 510 (Maximum annual charge for domestic waste management services) of the new Act is amended for similar reasons to those for amendment of section 509 so that the annual charge for domestic waste management services for a parcel of rateable land for the previous year will be allowed to be varied by any percentage specified by the Minister under section 508 (2).

Correction of cross-reference. The amendment to section 512 (Effect of contravening s 509, 510 or 511) of the new Act corrects an incorrect cross-reference.

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.

Clause 3 gives effect to the Schedule of amendments to other Acts.

Clause 4 repeals the Acts and instrument specified in Schedule 2.

Schedule 1 Amendment of Acts

Schedule 1 amends the Acts, listed beneath Schedule 1 in the Contents of the proposed Act, in the manner described above.

Schedule 2 Repeals

Schedule 2 repeals:

- (a) the *City of Sydney (Elections) Regulation 1993* as it is made redundant by item [9] of the amendments to the *City of Sydney Act 1988* contained in Schedule 1, and
- (b) certain Acts that are no longer of practical utility or that contain amendments to repealed provisions of the old Act.