

[Act 2002 No 40]



New South Wales

Local Government Amendment (Miscellaneous) Bill 2002

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*) as follows:

- (a) to provide that council meetings, and meeting of committees of councillors, are not to be closed to the public merely because the meeting is to discuss personnel matters concerning a particular councillor,
- (b) to provide that a council may keep confidential such parts of a draft or adopted plan of management for a parcel of community land as would disclose the nature and location of a place or an item of Aboriginal significance,
- (c) to clarify requirements relating to the holding of public hearings in respect of proposed plans of management for community land,

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

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- (d) to provide that a council may grant a lease, licence or other estate in respect of community land for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider without an express authorisation in the plan of management for that community land,
- (e) to provide for a special process for speedy renewals of approvals to operate sewage management systems (such as septic tanks),
- (f) to provide that a council employee or other person authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises (being work that the council is authorised by the Principal Act or any other Act to carry out),
- (g) to make various amendments relating to council ward boundaries, namely:
 - (i) to provide that the division of a council's area into wards or an alteration to ward boundaries must not result in a variation of more than 10 per cent between the number of electors in each ward in the area, and
 - (ii) to provide that, before dividing a council's area into wards or altering a council's ward boundaries, a council must consult with the Electoral Commissioner and the Australian Statistician, prepare a plan detailing the proposed division or alteration and publicly exhibit that plan, and
 - (iii) to require that a local council keep its ward boundaries under review and alter those ward boundaries in certain circumstances if the number of electors in a ward differs by more than 10 per cent from the number of electors in any other ward in the council's area,
- (h) to provide that a councillor may seek and be granted leave from a council meeting at the meeting concerned and may seek that leave in absentia,
- (i) to provide that, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months,
- (j) to provide for a simpler process for the dismissal of a council during the 12-month period following fresh elections after a previous dismissal of a council, but only if a Departmental representative's report recommends the dismissal and the Minister for Local Government is satisfied that reasonable grounds exist for that action and those grounds are substantially the same, or substantially of the same nature, as the grounds for the previous dismissal of the council,

- (k) to provide that a council may delegate the function of adopting management plans for the council, except for the function of adopting the council's general management plan under section 406 of the Principal Act,
- (l) to provide that regulations made under the Principal Act may:
 - (i) require that a council's draft management plan contain a statement with respect to certain matters not included in the Principal Act that may be, but are not limited to, social, community and cultural matters, and
 - (ii) prescribe further particulars that must be included in the statement of principal activities that forms part of a council's draft management plan,
- (m) to clarify that an auditor for a council may not be appointed or re-appointed unless tenders for that position have been called for,
- (n) to provide that any penalty, fine or forfeiture imposed for a contempt of a court order to remedy or restrain a breach of the Principal Act or any other Act (or any regulation or instrument under those Acts) recovered in proceedings instituted by or under the direction or on behalf or for the benefit of a council is to be paid to the council and allocated to the council's consolidated fund.

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* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Freedom of Information Act 1989* set out in Schedule 2.

Schedule 1 [1] makes an amendment to section 10A (2) (a) of the Principal Act to provide that council meetings, and meetings of committees of councillors, are not to be closed to the public merely because the meeting is to discuss personnel matters concerning a particular councillor. **Schedule 1 [3]** makes a consequential amendment.

Schedule 1 [5] inserts proposed section 36DA into the Principal Act. The proposed section provides that a council may resolve to keep confidential such parts of a draft or adopted plan of management for a parcel of community land as would disclose the nature and location of a place or an item of Aboriginal significance. Councillors and council employees are not to disclose that part of a draft or adopted

plan of management that is the subject of such a resolution of confidentiality, except with the consent of the council. A council proposing to prepare a draft plan of management must (in accordance with the regulations) consult with the appropriate Aboriginal communities regarding public access to, and use of, information concerning any places or items of Aboriginal significance on the land concerned. **Schedule 1 [2]** and **[4]** make consequential amendments. **Schedule 2** makes a consequential amendment to Schedule 1 to the *Freedom of Information Act 1989* to provide that a plan of management, and a draft plan of management, for a parcel of community land is an exempt document for the purposes of that Act if it is the subject of a resolution of confidentiality as referred to in proposed section 36DA (2) of the *Local Government Act 1993*.

Schedule 1 [6] omits and replaces section 40A of the Principal Act. Proposed section 40A continues the existing requirement that a council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4) of the Principal Act. The replacement section makes it clear that a council need not hold a further public hearing in respect of the proposed plan of management if the council decides to amend the proposed plan after the public hearing has been held unless the amendment of the plan would have the effect of altering the categorisation of community land under section 36 (4) from the categorisation of that land in the proposed plan as previously exhibited.

Schedule 1 [7] inserts proposed section 46 (1) (a1) into the Principal Act. The proposed amendment removes a restriction on the operation of councils by enabling a council to grant a lease, licence or other estate in respect of community land for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider without an express authorisation under the plan of management for that community land. **Schedule 1 [8]** and **[9]** make consequential amendments.

Schedule 1 [13] inserts proposed section 107A into the Principal Act. The proposed section provides that a council may send a notice to any person who has been granted an approval to operate a system of sewage management and invite the person to apply to renew the approval. If that person simply pays the required application fee, the person will be taken to have made an application to renew the approval on the same terms as the original approval. **Schedule 1 [11]** and **[12]** make consequential amendments that elevate to the Principal Act the requirement, currently prescribed in the regulations, that a person must generally have an approval to operate a system of sewage management.

Schedule 1 [14] inserts proposed section 191A into the Principal Act. The proposed section provides that a council employee or other person authorised by a council may enter any premises to carry out water supply work, sewerage work or stormwater drainage work on or under the premises (being work that the council is authorised by this or any other Act to carry out). The proposed section does not apply to National Parks and Wildlife reserves. **Schedule 1 [10]** makes a related amendment to clarify that a council is the owner of all water supply, sewerage and stormwater infrastructure installed in or on land by the council (whether or not the land is owned by the council). Accordingly, the owner of the land will be prevented from interfering with that infrastructure by section 635 of the Principal Act (Damage to council property). **Schedule 1 [35]–[37]** make amendments to the definitions of *sewerage work*, *stormwater drainage work* and *water supply work* in the Dictionary to the Principal Act to ensure consistency between the definitions.

Schedule 1 [15] inserts proposed section 210 (7) into the Principal Act. The proposed subsection provides that a council must not divide the council's area into wards, or change the boundaries of a ward, if it results in a variation of more than 10 per cent between the number of electors in each ward in the council's area.

Schedule 1 [16] inserts proposed section 210A into the Principal Act. The proposed section provides that before dividing a council's area into wards or altering a council's ward boundaries, the local council concerned must consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of appropriate Parliamentary subdivisions and census districts and comply with proposed section 210 (7). The local council must also prepare and publicly exhibit a plan detailing the proposed division or alteration (the *ward boundary plan*). The council must consider submissions regarding the ward boundary plan.

Schedule 1 [17] replaces section 211 of the Principal Act. The proposed section provides that a council of an area divided into wards must keep those ward boundaries under review. If, during a council's term of office, the council becomes aware that the number of electors in one ward in its area differs by more than 10 per cent from the number of electors in any other ward in its area, and that difference remains at the end of the first year of the following term of office of the council, the council must alter the ward boundaries in a manner that will result in each ward containing a number of electors that does not differ by more than 10 per cent from the number of electors in each other ward in the area.

Schedule 1 [21] amends section 234 (d) of the Principal Act. That section currently provides that a person vacates civic office if the person is absent from 3 consecutive ordinary meetings of the council concerned without prior leave of the council. The amendment allows such leave to be granted by the council prior to or

at any of the meetings concerned. **Schedule 1 [22]** inserts proposed section 234 (2) into the Principal Act to provide that a councillor applying for a leave of absence from a meeting of a council does not need to make the application in person and the council may grant such leave in the absence of the councillor.

Schedule 1 [24] inserts section 254A (2) into the Principal Act to provide that if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, a council must not pay any annual fee, or part of an annual fee, to the councillor that relates to the period of absence that is in excess of 3 months. **Schedule 1 [23]** makes a consequential amendment.

Schedule 1 [25] inserts section 257A into the Principal Act to provide that the Governor, during a 12-month period following the holding of fresh council elections for a local government area after a dismissal of a council, may on the recommendation of the Minister by declaration dismiss the mayor and councillors of the council. A public inquiry is not required to be held before such a declaration is made. However, the Minister may only make a recommendation to the Governor for such a course of action if a Departmental representative's investigation report recommends the dismissal and the Minister is satisfied that reasonable grounds exist for making the declaration and those grounds are substantially the same, or substantially of the same nature, as the grounds for the previous dismissal of the council.

Schedule 1 [26] amends section 377 (1) of the Principal Act to provide that a council may delegate to the general manager or any other person or body (other than other employees of the council) the function of adopting management plans for the council, except for the function of adopting the council's general management plan under section 406 of the Principal Act. Other management plans that may be adopted by a council include equal opportunity management plans, environmental management plans and bush fire management plans.

Schedule 1 [27] and **[28]** amend section 403 of the Principal Act:

- (a) to clarify that the regulations made under that Act may require a council's draft management plan to contain a statement with respect to matters not included in the Principal Act including, but not limited to, social, community and cultural matters, and
- (b) to provide that the regulations may prescribe further particulars that must be included in the statement of principal activities that forms part of a council's draft management plan.

Schedule 1 [29] and [30] amend section 422 (5) of the Principal Act to clarify that an auditor for a council may not be appointed or re-appointed unless tenders for that position have been called for.

Section 694 (1) of the Principal Act provides that any penalty, fine or forfeiture under any Act recovered in proceedings instituted by or under the direction or on behalf or for the benefit of a council is to be paid to the council and allocated to the council's consolidated fund. **Schedule 1 [31]** amends section 694 of the Principal Act to provide that any penalty, fine or forfeiture imposed for a contempt of a court order to remedy or restrain a breach of the Principal Act or any other Act (or any regulation or instrument under those Acts) recovered in proceedings instituted by or under the direction or on behalf or for the benefit of a council is similarly to be paid to the council and allocated to the council's consolidated fund. **Schedule 1 [32]** inserts section 694 (1A) into the Principal Act to provide definitions for the terms *breach of this Act or any other Act* and *this Act or any other Act* as used in section 694 (1).

Schedule 1 [18]–[20] make statute law revision amendments to various provisions in Part 1 of Chapter 9. These amendments are consequential on the insertion of Divisions 2A–2C into Part 1 of Chapter 9 by the *Local Government Amendment (Amalgamations and Boundary Changes) Act 1999*.

Schedule 1 [33] and [34] make amendments to Schedule 8 to the Act of a savings or transitional nature.