



New South Wales

Local Government Amendment (De-amalgamation Plebiscites) Bill 2023

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 *LG Act*) to provide for a process for plebiscites to be held to vote on the de-amalgamation of amalgamated local government areas.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Local Government Act 1993 No 30

Schedule 1[1] provides that a new area constituted after certain de-amalgamations must have boundaries that reflect the former pre-amalgamation areas.

Schedule 1[2] provides that the requirement that the Minister must not recommend the making of proclamation to dissolve an area without a public inquiry does not apply in relation to certain de-amalgamations.

Schedule 1[5] makes an amendment to ensure facilitating provisions for proclamations may be made in relation to de-amalgamations.

Schedule 1[6] and [9] insert proposed sections 218CD and 218CE and Schedules 10 and 11, respectively, into the LG Act to further deal with de-amalgamations.

Proposed section 218CD and proposed Schedule 10 set out a process for initiating and conducting plebiscites for de-amalgamation of amalgamated areas and for related matters. Proposed Schedule 11 contain provisions about giving effect to de-amalgamation plebiscites.

Proposed section 218CE sets out a process for de-amalgamation of an amalgamated area if more than 50% of the electors in a former area have voted for de-amalgamation in a plebiscite conducted under proposed Schedule 10. **Schedule 1[3] and [4]** make consequential amendments.

Schedule 1[7] provides for the postponement of council elections by the Minister of areas the subject of a plebiscite under proposed Schedule 10, to allow sufficient time to conduct the plebiscite and give effect to a de-amalgamation after the plebiscite, if the plebiscite is carried.

Schedule 1[8] contains savings and transitional provisions to provide that the amendments to the LG Act, section 218CC made by the proposed Act extend to a de-amalgamation proposal submitted to the Minister before the commencement of the amendments. In particular, the provisions make clear that the amendments extend to the de-amalgamation proposal relating to Cootamundra-Gundagai Regional local government area.



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New South Wales

Local Government Amendment (De-amalgamation Plebiscites) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Local Government Act 1993* to allow binding plebiscites to be held in relation to the de-amalgamation of local councils; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Local Government Amendment (De-amalgamation Plebiscites) Act 2023*.

3

4

2 Commencement

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This Act commences on the date of assent to this Act.

6

Schedule 1	Amendment of Local Government Act 1993 No 30	1
[1] Section 204 Constitution of areas		2
Insert after section 204(3)—		3
(4) To avoid doubt, if the area to be constituted arises from the dissolution of an area because of a de-amalgamation proposal or plebiscite for de-amalgamation, the boundaries for the area must reflect the former areas the subject of the proposal or plebiscite in accordance with the outcome of the proposal or plebiscite.		4 5 6 7 8
[2] Section 212 Dissolution of areas		9
Insert after section 212(2)—		10
(3) Subsection (2) does not apply in relation to a de-amalgamation under Division 2A or Schedule 11.		11 12
[3] Section 213 Facilitating provisions of proclamations		13
Omit “Division” wherever occurring in section 213(1). Insert instead “part”.		14
[4] Chapter 9, Part 1, Division 2A, heading		15
Insert “, de-amalgamated” after “amalgamated”.		16
[5] Section 218CC Proposals for de-amalgamations		17
Insert after section 218CC(5)—		18
(5A) If the Minister supports the de-amalgamation proposal, the Minister must make recommendations to the Governor for proclamations under Division 1 to give effect to the de-amalgamation proposal.		19 20 21
(5B) Section 210A and Division 2 do not apply to the proclamation.		22
[6] Sections 218CD and 218CE		23
Insert after section 218CC—		24
218CD Process for plebiscites for de-amalgamation		25
Schedule 10 sets out a process for plebiscites for the de-amalgamation of amalgamated areas and related matters.		26 27
218CE De-amalgamations after plebiscite		28
(1) This section applies if more than 50% of electors of a former area voted for de-amalgamation in a plebiscite conducted under Schedule 10.		29 30
(2) Schedule 11 contains provisions about de-amalgamations.		31
(3) In this section and Schedule 11—		32
<i>elector of a former area</i> means an elector enrolled in relation to an address within the boundaries of the former area.		33 34
<i>former area</i> —see section 218CC(8), definition of <i>new area</i> .		35
<i>new area</i> has the same meaning as in section 218CC.		36
[7] Section 318B Postponement of elections		37
Omit section 318B(1)(b). Insert instead—		38
(b) without limiting anything else in this subsection—		39

(i)	a matter affecting the boundaries of the council's area is under consideration by the Boundaries Commission, whether or not involving an inquiry by the Commission, including under section 218CC, or	1 2 3 4
(ii)	the council's area is the subject of a plebiscite under Schedule 10, to ensure sufficient time to conduct the plebiscite and give effect to a de-amalgamation after the plebiscite, if it is carried.	5 6 7
[8]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	8 9
	Insert at the end of the schedule, with appropriate part and clause numbering—	10
Part	Provisions consequent on enactment of Local Government Amendment (De-amalgamation Plebiscites) Act 2023	11 12 13
	De-amalgamation of certain areas	14
(1)	The amendments made by the <i>Local Government Amendment (De-amalgamation Plebiscites) Act 2023</i> to section 218CC extend to a de-amalgamation proposal submitted to the Minister before the commencement of the amendments.	15 16 17 18
(2)	To avoid doubt, section 218CC(5A) and (5B) extend to the de-amalgamation proposal relating to Cootamundra-Gundagai Regional local government area.	19 20
[9]	Schedules 10 and 11	21
	Insert after Schedule 9—	22
Schedule 10	Plebiscites for de-amalgamation	23
	section 218CD	24
1	Definitions	25
	In this schedule—	26
	<i>de-amalgamation case</i> —see clause 4(1)(b).	27
	<i>elector of a former area</i> means an elector enrolled in relation to an address within the boundaries of the former area.	28 29
	<i>former area</i> means an area that constituted an area before it became part of a new area.	30 31
	<i>new area</i> means the area constituted by the amalgamation of former areas by the relevant proclamation.	32 33
	<i>plebiscite</i> means a plebiscite to determine whether the majority of electors of a former area support the re-constitution of the former area.	34 35
	<i>relevant proclamation</i> means a proclamation made under Chapter 9, Part 1, on or after 12 May 2016 that—	36 37
	(a) amalgamated former areas into the new area, and	38
	(b) constituted a new council for the new area under section 219.	39
2	Initiation of plebiscite by Minister	40
(1)	The Minister—	41
	(a) may initiate a plebiscite on the Minister's own motion at any time, and	42

(b)	must initiate a plebiscite after receiving a petition that complies with clause 3.	1 2
(2)	The Minister must initiate a plebiscite under subclause (1)(b) within 28 days after receiving the complying petition.	3 4
3	Petition for plebiscite by electors	5
(1)	A petition of more than 10% of the electors of a former area may be submitted to the Minister calling for a plebiscite to be held.	6 7
(2)	The petition must be submitted within 12 years of the constitution of the new area.	8 9
(3)	The petition must include—	10
(a)	a proposal for the re-constitution of the former area, and	11
(b)	a statement of reasons in support of the proposal.	12
4	Process after plebiscite initiated	13
(1)	The Minister must direct the Secretary of the Department to—	14
(a)	decide a date to hold the plebiscite, and	15
(b)	prepare a case for and against the proposed re-constitution of the former area, in consultation with the electors enrolled in relation to addresses within the boundaries of the new area (<i>a de-amalgamation case</i>).	16 17 18
(2)	If the plebiscite has been initiated under clause 2(1)(b)—the date to hold the plebiscite must be not later than 6 months after the Minister received the complying petition.	19 20 21
(3)	From the date the Minister gives the direction until the date specified in subclause (4), the council for the new area is prohibited from—	22 23
(a)	selling businesses or other assets of the council, and	24
(b)	making or amending a local environmental plan.	25
(4)	The prohibitions in subclause (3) cease to have effect on—	26
(a)	if the plebiscite is not carried—the date the result of the plebiscite is known, or	27 28
(b)	if the plebiscite is carried—the date the de-amalgamation takes effect.	29
(5)	The Secretary must advise the council for the new area and the Electoral Commissioner of the date for the plebiscite.	30 31
(6)	Nothing in this schedule prevents 2 or more plebiscites for former areas in the same new area being held at the same time.	32 33
5	Information to be provided about de-amalgamation	34
	The de-amalgamation case must be—	35
(a)	made available on the website of the Office of Local Government, and	36
(b)	posted to electors of the former area.	37
6	Conduct of plebiscite	38
(1)	The following provisions apply to a plebiscite, with the necessary modifications, in the same way as they apply to an election—	39 40
(a)	Chapter 10, Part 1,	41

(b)	Chapter 10, Part 6, other than sections 296AA–296B and Divisions 3 and 5.	1 2
	Note— Chapter 10, Part 1 identifies the people who are entitled to vote in council elections and Chapter 10, Part 6 governs the conduct of elections. Chapter 10, Part 6, Division 3 deals with nominations for election and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and conduct declared void.	3 4 5 6 7
(2)	The persons entitled to vote at a plebiscite are the electors of the former area.	8
(3)	The Electoral Commissioner must administer a plebiscite conducted under this schedule.	9 10
(4)	The question at the plebiscite is—	11
	Should the [<i>former area</i>] be re-constituted as a separate local government area? Yes/No.	12 13
(5)	A plebiscite may be held on a Saturday.	14
7	Carrying of question at plebiscite	15
(1)	The question is carried if it is supported by a majority of the votes cast in the former area.	16 17
(2)	A reference to a vote in this clause does not include a reference to a vote that is found to be informal.	18 19
Schedule 11	Provisions about giving effect to de-amalgamation	20 21
	section 218CE	22
1	Giving effect to de-amalgamation	23
(1)	The Minister must make a recommendation to the Governor that a proclamation be made to give effect to the de-amalgamation to which this schedule applies.	24 25 26
(2)	The recommendation to the Governor must be made within 28 days after the plebiscite concerned.	27 28
(3)	The Governor may, by proclamation, de-amalgamate the new area into—	29
	(a) for a de-amalgamation relating to a new area made up of 2 former areas—2 areas with the same boundaries as the former areas, or	30 31
	(b) for a de-amalgamation relating to a new area made up of 3 former areas—	32 33
	(i) if the majority of electors in 2 or 3 of the former areas have supported the de-amalgamation—3 areas with the same boundaries as the former areas, or	34 35 36
	(ii) if the majority of electors in 1 former area supported the de-amalgamation and the electors in the 2 other former areas did not support the de-amalgamation—1 area with the same boundaries as the former area that supported the de-amalgamation and another area with the boundaries of the remaining part of the new area.	37 38 39 40 41 42
(4)	The proclamation must specify the date on which the new area is to be de-amalgamated, being a date that is not more than 12 months after the date of the plebiscite concerned.	43 44 45

(5)	Chapter 9, Part 1, Division 1 applies to a proclamation under this schedule in the same way as the division applies to an area constituted by a proclamation under section 204.	1 2 3
(6)	On the date specified in the proclamation as the date on which the new area is de-amalgamated—	4 5
(a)	the new area is dissolved to the extent required under subclause (3), and	6
(b)	areas are constituted as specified in the proclamation.	7
	Note— Section 212(3) provides that the requirement under 212(2) to hold a public inquiry before a dissolution of an area does not apply to a de-amalgamation by a proclamation under this schedule.	8 9 10
(7)	To avoid doubt, section 218C extends to a proclamation made under this schedule.	11 12
2	Elections following de-amalgamations	13
(1)	Subject to the Minister’s postponement of election requirements under the Act, section 318B, an election must be called for the newly constituted areas resulting from a de-amalgamation.	14 15 16
(2)	The election must be held as soon as practicable after the de-amalgamation, but no later than 12 months after the de-amalgamation.	17 18
3	Costs of de-amalgamation	19
	Parliament recommends the appropriation of funds by the Minister, making grants under section 620, or using money otherwise appropriated by Parliament, to ensure the direct and immediate costs of a plebiscite and de-amalgamation are met by the State and not met by councils for a former area, new area or newly constituted areas resulting from the de-amalgamation.	20 21 22 23 24
4	Regulations	25
	Regulations may be made to give effect to this schedule, including—	26
(a)	providing for anything required to facilitate the implementation of the de-amalgamation of a new area, and	27 28
(b)	facilitating the making of a proclamation to give effect to the de-amalgamation, and	29 30
(c)	the transfer of assets and liabilities.	31