



New South Wales

Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to make special provisions concerning the winding up and dissolution of Cudgegong (Abattoir) County Council (which trades under the name of Mudgee Regional Abattoir). This is done by applying the *Corporations Act 2001* of the Commonwealth to the winding up. As a result:

- (a) certain entitlements of former employees of the abattoir are given protection from claims by other unsecured creditors, and
- (b) any money provided to former employees by the Commonwealth under its General Employee Entitlements and Redundancy Scheme may later be repaid to the Commonwealth in the winding up.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [4] inserts a new Schedule 9 into the *Local Government Act 1993* containing special provisions relating to Cudgegong (Abattoir) County Council. They are as follows:

Winding up

Clause 1 (1) of Schedule 9 provides that Cudgegong (Abattoir) County Council may be wound up voluntarily or by a liquidator appointed by the Minister.

Clause 1 (2) of Schedule 9 provides for Parts 5.5–5.9 of the *Corporations Act 2001* of the Commonwealth to apply to the winding up of Cudgegong (Abattoir) County Council. (The mechanism for doing this is explained in the note to clause 1 (2) of Schedule 9.)

Clause 2 of Schedule 9 validates certain acts and omissions of the person appointed as administrator for Cudgegong (Abattoir) County Council on 3 September 2003.

Transfer of liabilities of Cudgegong (Abattoir) County Council after winding up

Clause 3 of Schedule 9 provides for any liabilities of Cudgegong (Abattoir) County Council that are proved in the winding up of the county council, but are not fully met in that winding up, to be transferred to Mudgee Shire Council or Rylstone Shire Council, or both, by the proclamation that dissolves Cudgegong (Abattoir) County Council. This includes any liability to repay the Commonwealth Government any payment made by it under its General Employee Entitlements and Redundancy Scheme in respect of wages or of superannuation contributions, or in respect of leave of absence or termination of employment, under an industrial instrument.

Clause 4 of Schedule 9 provides for the enforcement of certain directions given in relation to such liabilities.

Other provisions

Clauses 5 and 6 of Schedule 9 revoke the appointment of an administrator and receiver and manager for Cudgegong (Abattoir) County Council and make provision regarding those revocations.

Schedule 1 [1] gives effect to proposed Schedule 9.

Schedule 1 [2] deletes a redundant provision concerning Cudgegong (Abattoir) County Council.

Schedule 1 [3] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

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No. , 2003

A Bill for

An Act to amend the *Local Government Act 1993* to make special provisions regarding the winding up and dissolution of Cudgegong (Abattoir) County Council.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Local Government Act 1993 No 30	7
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	8 9

Schedule 1 Amendments

(Section 3)

[1] Section 400AA

Insert after section 400:

400AA Special provisions relating to Cudgegong (Abattoir) County Council

Schedule 9 has effect.

[2] Section 400A Cudgegong (Abattoir) County Council—mortgage of land

Omit the section.

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

Insert at the end of clause 1 (1):

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County Council Dissolution) Act 2003*

[4] Schedule 9

Insert after Schedule 8:

Schedule 9 Special provisions relating to Cudgegong (Abattoir) County Council

(Section 400AA)

Part 1 Winding up of Cudgegong (Abattoir) County Council

1 Winding up

- (1) Cudgegong (Abattoir) County Council may be wound up voluntarily or by a liquidator appointed by the Minister.
- (2) Subject to subclause (1), the winding up of Cudgegong (Abattoir) County Council is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation

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- to the provisions of Parts 5.5–5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
- (a) those provisions apply to Cudgegong (Abattoir) County Council as if it were a company,
 - (b) if the Minister decides that Cudgegong (Abattoir) County Council is to be wound up by a liquidator appointed by the Minister, those provisions apply as if the County Council had resolved by special resolution to be wound up and had appointed the liquidator appointed by the Minister as the liquidator for the purposes of those provisions,
 - (c) if Cudgegong (Abattoir) County Council is being wound up voluntarily and a vacancy occurs in the office of liquidator that, in the opinion of the Minister, is unlikely to be filled in the manner provided by the *Corporations Act 2001* of the Commonwealth, the functions of winding up Cudgegong (Abattoir) County Council's affairs may be exercised by a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) appointed by the Minister to be a liquidator in relation to the winding up of Cudgegong (Abattoir) County Council,
 - (d) references in those provisions to a corporation or company are, subject to the regulations, to be read as references to Cudgegong (Abattoir) County Council,
 - (e) references in those provisions to an officer or a director of a company are to be read as including references to a member of Cudgegong (Abattoir) County Council or to any other person prescribed by the regulations,
 - (f) the provisions of section 589 are to be read as if:
 - (i) section 589 (1) (d) and (2) were omitted, and
 - (ii) paragraph (c) were omitted from the definition of ***appropriate officer*** in section 589 (5), and
 - (iii) paragraph (c) were omitted from the definition of ***relevant day*** in section 589 (5),

(g) such other modifications (within the meaning of Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i>) as may be prescribed by the regulations.	1 2 3
Note. Part 3 of the <i>Corporations (Ancillary Provisions) Act 2001</i> provides for the application of provisions of the <i>Corporations Act 2001</i> of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the <i>Corporations (Ancillary Provisions) Act 2001</i> ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State to the extent that that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.	4 5 6 7 8 9 10 11 12 13 14 15 16
2 Validation of certain acts of liquidator	17
(1) This clause applies if the person appointed by the Minister as the liquidator of Cudgegong (Abattoir) County Council under clause 1 (1) is the same person who was appointed administrator of Cudgegong (Abattoir) County Council on 3 September 2003.	18 19 20 21 22
(2) Any act done or omitted to be done by that person between 3 September 2003 and the date of assent to the <i>Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003</i> is validated but only if it could have been validly done or omitted by that person if, at the time that it was done or omitted, the person had been appointed as liquidator of Cudgegong (Abattoir) County Council under clause 1 (1).	23 24 25 26 27 28 29 30
Part 2 Transfer of liabilities of Cudgegong (Abattoir) County Council after winding up	31 32 33
3 Special provision concerning proclamation dissolving Cudgegong (Abattoir) County Council	34 35
(1) This clause applies to a proclamation under section 397 for the purpose of dissolving Cudgegong (Abattoir) County Council.	36 37 38

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Schedule 1 Amendments

- (2) Any such proclamation may include provisions: 1
- (a) transferring the liabilities of Cudgegong (Abattoir) County Council to Mudgee Shire Council or Rylstone Shire Council (or to both) to the extent, or in the proportions, specified in or determined in accordance with the proclamation, and 2
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 - (b) appointing a person to direct Mudgee Shire Council or Rylstone Shire Council (or both) as to how to deal with any such transferred liabilities. 7
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- (3) When any liabilities are transferred by such a proclamation, the following provisions have effect: 10
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- (a) the transfer is subject to the terms and conditions of the proclamation, 12
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 - (b) the liabilities of Cudgegong (Abattoir) County Council become, by virtue of the proclamation, the liabilities of the transferee, 14
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 - (c) all proceedings relating to the liabilities commenced before the transfer by or against Cudgegong (Abattoir) County Council and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 17
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 - (d) any act, matter or thing done or omitted to be done in relation to the liabilities before the transfer by, to or in respect of Cudgegong (Abattoir) County Council is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee, 22
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 - (e) a reference in any instrument made under any Act or in any document of any kind to Cudgegong (Abattoir) County Council is (to the extent to which it relates to those liabilities) taken to include a reference to the transferee, 28
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 - (f) no compensation is payable to Mudgee Shire Council or Rylstone Shire Council in connection with a transfer effected by the proclamation, except to the extent (if any) to which the proclamation so provides, 33
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 - (g) the operation of the proclamation is not to be regarded: 37
 - (i) as a breach of contract or confidence or otherwise 38
as a civil wrong, or 39

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- (ii) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of liabilities, or 1
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- (iii) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any liability, or 4
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- (iv) as an event of default under any contract or other instrument. 9
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- (4) This clause does not limit the matters for which a proclamation to which this clause applies may make provision (namely, matters of the same kind as are referred to in section 213). 11
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- (5) Neither the enactment of this Part nor the provisions of this Part are to be construed as affecting the power of the Governor to make a proclamation under section 397 or to make any other proclamation under this Act for the purpose of amending the constitution of, or of dissolving, a county council other than Cudgegong (Abattoir) County Council. 15
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- (6) In this clause: 22
- liabilities of Cudgegong (Abattoir) County Council*** means: 23
- (a) any liability that is proved in the winding up of Cudgegong (Abattoir) County Council, and 24
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- (b) any liability to repay the Commonwealth Government any payment made by it under its General Employee Entitlements and Redundancy Scheme in respect of wages or of superannuation contributions, or in respect of leave of absence or termination of employment, under an industrial instrument, 26
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- being a liability that was not met in full in the winding up of Cudgegong (Abattoir) County Council. 32
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- transferee*** means a council to which any liabilities are transferred by a proclamation referred to in subclause (2). 34
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- 4 Enforcement of certain directions** 1
- (1) This clause applies if a proclamation under section 397 2
appoints any person to direct Mudgee Shire Council or 3
Rylstone Shire Council, or both, as to how to deal with any 4
liability transferred by the proclamation. 5
- (2) Mudgee Shire Council and Rylstone Shire Council must 6
comply with directions given to them by the person appointed 7
by the proclamation. 8
- (3) The person appointed by the proclamation may enforce any 9
such direction as if the relevant liability were owed to the 10
person. 11

**Part 3 Revocation of appointment of 12
administrator and receiver and manager 13**

- 5 Revocation of appointment of administrator and receiver and 14
manager 15**
- The following appointments are revoked on the day that 16
winding up commences in accordance with the provisions 17
referred to in clause 1: 18
- (a) the appointment of an administrator of Cudgegong 19
(Abattoir) County Council on 3 September 2003, 20
- (b) the appointment by the Supreme Court of a person as 21
receiver and manager of Cudgegong (Abattoir) County 22
Council on 11 September 2003. 23

- 6 Transfer of records 24**
- The administrator or receiver and manager whose 25
appointment is revoked by this Part must transfer all 26
documents relating to the administration, receivership or 27
management of Cudgegong (Abattoir) County Council to the 28
Minister. 29