



New South Wales

Local Government Amendment (Legal Status) Bill 2008

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 Act*):

- (a) to convert the status of local and county councils from their existing status as bodies corporate to the status of bodies politic of the State with the legal capacity and powers of an individual, and
- (b) to provide that a person who is appointed to an employment position at a council on a temporary basis while the holder of the position is on parental leave may continue in that position for a period of up to 24 months (instead of the existing upper limit of 12 months applicable to other temporary appointments), and
- (c) to include a regulation-making power to specify the matters to be taken into account by the Minister in granting consent to a council forming or acquiring a controlling interest in a corporation or other entity, and the conditions of such a consent.

The Bill also enacts transitional provisions that convert existing local and county councils from being bodies corporate to being bodies politic of the State. The

transitional provisions make it clear that the conversion of status does not affect the continuity of status of a council and does not constitute a new legal entity.

As a result of their conversion of status, local and county councils will not be constitutional corporations for the purposes of laws of the Commonwealth (including workplace relations laws).

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.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] provides that a local council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual. The amendment also provides that a council is not a body corporate (including a corporation). **Schedule 1 [5]** makes the same amendment for county councils.

Schedule 1 [2] and [6] make consequential amendments to provisions that state the names of local and county councils.

Schedule 1 [3] makes the amendment referred to in paragraph (b) of the Overview above.

Schedule 1 [4] provides for the making of regulations with respect to the matters to be taken into account by the Minister in deciding whether to grant consent to a council forming or acquiring a controlling interest in a corporation or other entity. The amendment extends to county councils because of section 400 of the Act.

Schedule 1 [7] inserts a savings and transitional regulation-making power.

Schedule 1 [8] provides the following transitional arrangements for the amendments:

- (a) existing local and county councils will have their status converted from that of a body corporate to that of a body politic of the State but the conversion of status will not affect the continuity of an existing local or county council and will not create a new legal entity,
- (b) the amendment concerning the maximum period of appointment for temporary employees will extend to existing appointments.

First print



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New South Wales

Local Government Amendment (Legal Status) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Local Government Act 1993* to make further provision for the legal capacity and status of local and county councils, and temporary employment.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Legal Status) Act 2008</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Local Government Act 1993 No 30	6
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 220	3
	Omit the section. Insert instead:	4
	220 Legal status of a council	5
	(1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.	6 7 8
	(2) A council is not a body corporate (including a corporation).	9
	(3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).	10 11
	(4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).	12 13 14
[2]	Section 221 What is a council's name?	15
	Omit "corporate" wherever occurring.	16
[3]	Section 351 Temporary appointments	17
	Omit section 351 (2). Insert instead:	18
	(2) A person who is appointed to a position temporarily may not continue in that position:	19 20
	(a) if the holder of the position is on parental leave—for a period of more than 24 months, or	21 22
	(b) in any other case—for a period of more than 12 months.	23
[4]	Section 358 Restrictions on formation of corporations and other entities	24
	Insert after section 358 (3):	25
	(3A) The regulations may make provision for or with respect to the matters to be taken into account by the Minister in deciding whether to grant consent under this section and the conditions that may or must be specified by the Minister under this section.	26 27 28 29

[5] Section 388	1
Omit the section. Insert instead:	2
388 Legal status of county councils	3
(1) A proclamation establishing a county council operates to constitute the county council as a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.	4 5 6 7
(2) A county council is not a body corporate (including a corporation).	8 9
(3) A county council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).	10 11 12
(4) A law of the State applies to and in respect of a county council in the same way as it applies to and in respect of a body corporate (including a corporation).	13 14 15
[6] Section 389 What is a county council's name?	16
Omit "corporate".	17
[7] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	18 19
Insert at the end of clause 1 (1):	20
<i>Local Government Amendment (Legal Status) Act 2008</i>	21
[8] Schedule 8, Part 30	22
Insert after Part 29:	23
Part 30 Provisions consequent on enactment of Local Government Amendment (Legal Status) Act 2008	24 25 26
92 New legal status of existing councils	27
(1) The following provisions apply to a council constituted as a body corporate immediately before the commencement of the 2008 Act:	28 29 30
(a) the council ceases to be a body corporate on that commencement and becomes instead a body politic of the State as provided by section 220 or 388 (as substituted by the 2008 Act),	31 32 33 34

(b)	the council is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the council as it existed before the commencement of the 2008 Act (except that the council is no longer a body corporate and is instead a body politic of the State).	1 2 3 4 5 6
(2)	The 2008 Act (this clause in particular) does not:	7
(a)	affect existing property, rights or obligations of a council, or	8 9
(b)	render defective any legal proceedings by or against a council, or	10 11
(c)	negate any decision made by a council, or	12
(d)	place a council in breach of contract or otherwise make it guilty of a civil wrong, or	13 14
(e)	make a council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability, or	15 16 17 18
(f)	fulfil a condition allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability, or requiring any amount to be paid before its stated maturity, or	19 20 21 22
(g)	release a surety or other obligee, in whole or part, from an obligation.	23 24
(3)	In this clause:	25
	<i>council</i> includes county council.	26
	<i>2008 Act</i> means the <i>Local Government Amendment (Legal Status) Act 2008</i> .	27 28

93 Existing appointments

Section 351 (2), as substituted by the *Local Government Amendment (Legal Status) Act 2008*, extends to a person holding a position to which the person was appointed temporarily before that substitution.

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