

Passed by both Houses



New South Wales

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

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Local Government Act 1993 No 30	2
Schedule 1 Amendments	3

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

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

Act No , 2003

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

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

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):

Local Government Amendment (Cudgegong (Abattoir) 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

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),

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- (g) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note. Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* 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 *Corporations (Ancillary Provisions) Act 2001* 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.

2 Validation of certain acts of liquidator

- (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.
- (2) Any act done or omitted to be done by that person between 3 September 2003 and the date of assent to the *Local Government Amendment (Cudgegong (Abattoir) County Council Dissolution) Act 2003* 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).

Part 2 Transfer of liabilities of Cudgegong (Abattoir) County Council after winding up

3 Special provision concerning proclamation dissolving Cudgegong (Abattoir) County Council

- (1) This clause applies to a proclamation under section 397 for the purpose of dissolving Cudgegong (Abattoir) County Council.

- (2) Any such proclamation may include provisions:
- (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
 - (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.
- (3) When any liabilities are transferred by such a proclamation, the following provisions have effect:
- (a) the transfer is subject to the terms and conditions of the proclamation,
 - (b) the liabilities of Cudgegong (Abattoir) County Council become, by virtue of the proclamation, the liabilities of the transferee,
 - (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,
 - (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,
 - (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,
 - (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,
 - (g) the operation of the proclamation is not to be regarded:
 - (i) as a breach of contract or confidence or otherwise as a civil wrong, or

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- (ii) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of liabilities, or
 - (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
 - (iv) as an event of default under any contract or other instrument.
- (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).
- (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.
- (6) In this clause:
- liabilities of Cudgegong (Abattoir) County Council*** means:
- (a) any liability that is proved in the winding up of Cudgegong (Abattoir) County Council, and
 - (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,
- being a liability that was not met in full in the winding up of Cudgegong (Abattoir) County Council.
- transferee*** means a council to which any liabilities are transferred by a proclamation referred to in subclause (2).

4 Enforcement of certain directions

- (1) This clause applies if a proclamation under section 397 appoints any person to direct Mudgee Shire Council or Rylstone Shire Council, or both, as to how to deal with any liability transferred by the proclamation.
- (2) Mudgee Shire Council and Rylstone Shire Council must comply with directions given to them by the person appointed by the proclamation.
- (3) The person appointed by the proclamation may enforce any such direction as if the relevant liability were owed to the person.

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

**5 Revocation of appointment of administrator and receiver and
manager**

The following appointments are revoked on the day that winding up commences in accordance with the provisions referred to in clause 1:

- (a) the appointment of an administrator of Cudgegong (Abattoir) County Council on 3 September 2003,
- (b) the appointment by the Supreme Court of a person as receiver and manager of Cudgegong (Abattoir) County Council on 11 September 2003.

6 Transfer of records

The administrator or receiver and manager whose appointment is revoked by this Part must transfer all documents relating to the administration, receivership or management of Cudgegong (Abattoir) County Council to the Minister.