

Passed by both Houses



New South Wales

Local Government Amendment (De-amalgamations) Bill 2024

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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,*

, 2024



New South Wales

Local Government Amendment (De-amalgamations) Bill 2024

Act No _____, 2024

An Act to amend the *Local Government Act 1993* to make further provision for the de-amalgamation of amalgamated local government areas; and for related purposes.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Local Government Amendment (De-amalgamations) Act 2024*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

[1] Section 212 Dissolution of areas

Insert after section 212(2)—

- (3) Subsection (2) does not apply in relation to a de-amalgamation under Division 2A.

[2] Section 213 Facilitating provisions of proclamations

Omit “Division” wherever occurring in section 213(1). Insert instead “part”.

[3] Chapter 9, Part 1, Division 2A, heading

Insert “, de-amalgamated” after “amalgamated”.

[4] Section 218CC, heading

Omit the heading. Insert instead—

218CC Costs of de-amalgamations

[5] Section 218CC(1)–(5)

Omit the subsections.

[6] Section 218CC(6)

Omit “this section is fully funded”. Insert instead “section 218CD is funded”.

[7] Section 218CC(6A)

Insert after section 218CC(6)—

- (6A) For the purposes of subsection (6), the Minister may make either or both of the following—
- (a) a grant, not exceeding \$5 million, to the new council to offset the financial impacts of the de-amalgamation,
 - (b) a loan to the new council, at interest rates determined by the New South Wales Treasury Corporation, to defray de-amalgamation costs.

[8] Section 218CD

Insert before Chapter 9, Part 1, Division 2B—

218CD De-amalgamation of amalgamated areas

- (1) An amalgamated council may, in accordance with this section and Schedule 10, give the Minister—
- (a) a written business case (the *business case*) setting out—
 - (i) a proposal for the de-amalgamation of the amalgamated area by reconstituting the former areas, and
 - (ii) the reasons in support of the proposal, and
 - (iii) other information specified in Schedule 10, clause 3, and
 - (b) a request that the Minister approve the holding of a de-amalgamation constitutional referendum about the proposal.
- (2) The Minister must refer the business case for examination and report to the Boundaries Commission.

Note— Under section 263(2), the Boundaries Commission may, for the purpose of exercising its functions, hold an inquiry if the Minister approves, and must hold an inquiry if the Minister directs, but may not otherwise hold an inquiry.

- (3) Without limiting subsection (2) or section 263, the Boundaries Commission may recommend in its report that—
 - (a) the de-amalgamation proposal be supported, or
 - (b) the de-amalgamation proposal be rejected, or
 - (c) a different de-amalgamation proposal be supported.
- (4) The Minister must ensure that the Boundaries Commission's report is publicly released within 48 hours after it is provided to the Minister.
- (5) The Minister must, after the Boundaries Commission's report is given to the Minister, give a written response to the amalgamated council setting out whether or not the Minister approves the holding of a referendum about—
 - (a) the de-amalgamation proposal, or
 - (b) a different de-amalgamation proposal recommended by the Boundaries Commission.
- (6) The Minister must consult with the following—
 - (a) the Electoral Commissioner, before approving the holding of a referendum,
 - (b) the amalgamated council, before making a decision about the holding of a referendum if the Boundaries Commission in its report has recommended that a different de-amalgamation proposal be supported.
- (7) An amalgamated council must not hold a referendum of any kind about a de-amalgamation proposal unless the Minister has approved the holding of a referendum under subsection (5).
- (8) If a de-amalgamation proposal—
 - (a) is supported in a referendum by the votes of a majority of the total number of enrolled electors of the amalgamated area as at the closing date (the *required majority*), the Minister may, at the Minister's discretion, make recommendations to the Governor for proclamations under Division 1 to give effect to the de-amalgamation proposal, or
Note— See Chapter 10, Part 1 and Chapter 10, Part 6, Division 2 about enrolment of electors for elections, council polls and constitutional referendums.
 - (b) is not supported in a referendum by the required majority, no further action on the business case given to the Minister may be undertaken.
- (9) Nothing in subsection (8) prevents a person who is entitled to be enrolled as an elector under section 266 from voting in accordance with the Act and regulations.
- (10) Schedule 10 has effect.
- (11) In this section—

amalgamated area means an area constituted by the amalgamation of areas (*former areas*) by a proclamation under Chapter 9, Part 1.

amalgamated council means the council of an amalgamated area constituted by section 219 after a proclamation under Chapter 9, Part 1.

closing date means the date prescribed by the regulations for the closing of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees for a referendum.

de-amalgamation constitutional referendum or *referendum* means a referendum held for the purposes of this section to determine whether the majority of the enrolled electors of an amalgamated area support a de-amalgamation proposal.

[9] Section 318B Postponement of elections

Omit section 318B(1)(b). Insert instead—

- (b) without limiting anything else in this subsection—
 - (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 218CD, or
 - (ii) the council's area is the subject of a de-amalgamation constitutional referendum under section 218CD, to ensure there is sufficient time to conduct the referendum and give effect to a de-amalgamation after the referendum, if the de-amalgamation proposal is supported.

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

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Local Government Amendment (De-amalgamations) Act 2024

De-amalgamation of certain areas

- (1) The amendments made by the *Local Government Amendment (De-amalgamations) Act 2024* (the **amending Act**) extend to an amalgamated area constituted before the commencement of section 218CD.
- (2) Section 218CD extends to a de-amalgamation proposal submitted to the Minister under section 218CC before the commencement of the section.
- (3) Despite subclauses (1) and (2)—
 - (a) sections 212(3) and 218CD do not apply to a de-amalgamation proposal if the Minister had, before the commencement of the provisions, given the amalgamated council the written response referred to in section 218CC(5), and
 - (b) the regulations may make further provision of a savings or transitional nature dealing with de-amalgamation proposals submitted to the Minister under section 218CC before the commencement of the amending Act, including provisions inconsistent with this Act.

[11] Schedule 10

Insert after Schedule 9—

Schedule 10 Further provisions about de-amalgamation proposals, de-amalgamation constitutional referendums and de-amalgamations

section 218CD

Part 1 Preliminary

1 Definitions

- (1) In this schedule—
de-amalgamation proclamation means a proclamation under Chapter 9, Part 1 to give effect to a de-amalgamation.
- (2) In this schedule, the following terms have the same meanings as in section 218CD—
 - (a) *amalgamated area*,
 - (b) *amalgamated council*,
 - (c) *business case*,
 - (d) *closing date*,
 - (e) *de-amalgamation constitutional referendum*,
 - (f) *former area*,
 - (g) *referendum*.

Part 2 De-amalgamation proposals

2 Council to consult on business case before submission

- (1) An amalgamated council must, before giving a business case to the Minister—
 - (a) consult the community in the way specified in subclause (2), and
 - (b) after considering any submissions made during the consultation—
resolve to support the de-amalgamation proposal.
- (2) The amalgamated council must consult the community by—
 - (a) publicly exhibiting a copy of the business case on its website, and
 - (b) giving public notice of the following—
 - (i) the period for which the business case will be exhibited, being a period of not less than 28 days,
 - (ii) the period during which submissions about the business case may be made to the council, being a period of not less than 42 days after the date on which the business case is placed on public exhibition, and
 - (c) considering submissions made in accordance with this subclause.

3 Written business case

A business case under section 218CD(1)(a) must include the following—

- (a) a statement that the amalgamated council—
 - (i) has consulted the community about the business case, and
 - (ii) by resolution, supports the de-amalgamation proposal,
- (b) details of the following—
 - (i) the estimated financial impacts of the de-amalgamation,
 - (ii) how the amalgamated council will finance the de-amalgamation,
 - (iii) whether the business case assumes a grant will be made by the Minister to the new council to offset the financial impacts of the de-amalgamation and, if so, the amount of the assumed grant,

- (iv) whether the business case assumes the amalgamated council will receive a loan from the Minister to defray de-amalgamation costs and, if so, the assumed amount and terms of the loan,
- (c) an estimate of the rates and charges that the councils for the de-amalgamated areas may make and levy after de-amalgamation,
- (d) details of the future sustainability, long-term strategic plans and service delivery capacity of the proposed councils to be constituted as a result of the proposed de-amalgamation,
- (e) other matters prescribed by the regulations, if any.

Part 3 Referendums

4 Process after holding of referendum approved

- (1) The amalgamated council must, as soon as practicable after the Minister approves the holding of the referendum, consult with the Electoral Commissioner about the holding of the referendum.
- (2) The amalgamated council must, before holding the referendum, consult the community by—
 - (a) publicly exhibiting on its website a copy of the business case, including details of and reasons for any changes to the business case since it was given to the Minister, and
 - (b) giving public notice of the following—
 - (i) the period for which the business case will be exhibited, being a period of not less than 28 days,
 - (ii) the period during which submissions about the de-amalgamation proposal or the business case may be made to the council, being a period of not less than 42 days after the date on which the business case is placed on public exhibition, and
 - (c) considering submissions made in accordance with this subclause.
- (3) The Minister may, after approving the holding of a referendum, prohibit the council for the amalgamated area, or a person prescribed by the regulations, from doing the following—
 - (a) selling businesses or other assets of the council,
 - (b) making or amending a local environmental plan.
- (4) The prohibitions in subclause (3) cease to have effect on—
 - (a) if the referendum is not carried—the date the result of the referendum is known, or
 - (b) if the referendum is carried—the date the proclamation giving effect to the de-amalgamation takes effect.
- (5) After the Minister approves the holding of a referendum—
 - (a) the referendum must be held within 12 months, or a longer period allowed by the Minister, and
 - (b) if the referendum is not held within the 12-month period or the longer allowed period—no further action on the business case given to the Minister may be undertaken.

5 Conduct of referendum

- (1) The following provisions apply to a referendum, with the necessary modifications, in the same way as they apply to an election—
 - (a) Chapter 10, Part 1,
 - (b) Chapter 10, Part 6, other than sections 296AA–296A and Divisions 3 and 5.

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.

- (2) Electors on the residential roll must vote at the referendum unless the person—
 - (a) is exempt from voting under this Act, or
 - (b) has a sufficient reason not to vote.

Note— Chapter 10, Part 6, Division 4, as modified by subclause (1), provides that it is an offence for a person whose name is on the residential roll to fail to vote unless the person has a sufficient reason not to vote.

- (3) Electors on the non-residential roll or the roll of occupiers and ratepaying lessees may vote, but are not required to vote.
- (4) The Electoral Commissioner must administer a referendum conducted under this schedule.
- (5) The question at the referendum is—

Should the [*name of the amalgamated area*] be de-amalgamated and the [*names of the former areas*] be re-constituted as separate local government areas? Yes/No.
- (6) During the holding of the referendum, the amalgamated council must ensure that a copy of the business case, including details of and reasons for any changes to the business case since it was given to the Minister, is publicly available on its website.
- (7) After the result of the referendum is ascertained, the Electoral Commissioner must, as soon as is practicable, give the Minister written notice of the result.

6 Carrying of question at referendum

- (1) The question is carried if it is supported at the referendum by the votes of a majority of the total number of the enrolled electors of the amalgamated area as at the closing date.
- (2) A reference to a vote in this clause does not include a reference to a vote that is found to be informal.

Part 4 Miscellaneous

7 De-amalgamation proclamations

- (1) Section 210A and Chapter 9, Part 1, Division 2 do not apply to a de-amalgamation proclamation.
- (2) Without limiting section 213, a de-amalgamation proclamation may include provisions about the following—
 - (a) the division of an area constituted by the proclamation (a *newly constituted area*) into wards,

- (b) providing that a newly constituted area is not divided into wards,
- (c) specifying whether the means of election for a mayor for a newly constituted area is—
 - (i) election by the councillors for the area from among the councillors' number, or
 - (ii) election by the area's electors.
- (3) The means of election specified under subclause (2)(c) continues in force until changed by a decision at a constitutional referendum in accordance with sections 227–229, with necessary modifications.

8 Elections following de-amalgamations

- (1) An election must be called for the newly constituted areas resulting from a de-amalgamation.
- (2) The election must be held as soon as practicable after the de-amalgamation, but not later than 12 months after the de-amalgamation.
- (3) Subclause (2) has effect subject to the following—
 - (a) a Minister's postponement of election requirements under the Act, section 318B,
 - (b) the terms of the de-amalgamation proclamation.

9 Regulations

Regulations may be made about the following—

- (a) de-amalgamation constitutional referendums,
- (b) providing for anything required to facilitate the implementation of the de-amalgamation of an amalgamated area,
- (c) facilitating the making of a proclamation to give effect to the de-amalgamation,
- (d) the transfer of staff, assets and liabilities,
- (e) dealing with savings and transitional issues consequent on a de-amalgamation,
- (f) other matters necessary to give effect to a de-amalgamation.

10 Saving of predecessor council's instruments and decisions

Subject to the regulations and the terms of the de-amalgamation proclamation, the instruments and decisions of an amalgamated council dissolved by operation of a de-amalgamation proclamation continue in force until amended or revoked by a council constituted as a consequence of the proclamation.

11 Council staff affected by de-amalgamations

Chapter 11, Part 6 extends to de-amalgamation under section 218CD and this schedule as if it were a proposal made to the Minister by the amalgamated council under section 215.

Note— Chapter 11, Part 6 contains provisions about council staff affected by a constitution, amalgamation or alteration of a council area.