

Passed by both Houses



New South Wales

Local Government Amendment (Rural and Remote Councils) 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 (Rural and Remote Councils) Bill 2024

Act No _____, 2024

An Act to amend the *Local Government Act 1993* to provide that certain rural and remote councils may be comprised of both elected and appointed councillors; 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 (Rural and Remote Councils) 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 7 Purposes of Act

Insert “, or for certain rural and remote councils, part elected and part appointed” after “elected” in section 7(c).

[2] Schedule 11

Insert in appropriate order—

Schedule 11 Rural and remote councils

1 Application of schedule

This schedule applies to a rural and remote council.

2 Definitions

In this schedule—

appointed councillor—see clause 9.

councillor means an appointed councillor and an elected councillor.

elected councillor means a councillor other than an appointed councillor.

rural and remote council—see clause 3.

3 Designation of rural and remote councils

- (1) The regulations may designate a council as a rural and remote council (a *rural and remote council*).
- (2) The Minister may recommend the making of a regulation under subclause (1) only if—
 - (a) the council meets the criteria specified by the regulations, if any, and
 - (b) an administrator has been appointed for the council under Chapter 9, Part 2, Division 6 and remains in office.
- (3) A designation of a council as a rural and remote council has effect for the period—
 - (a) starting on the day after the last day on which the regulation may be disallowed under the *Interpretation Act 1987*, section 41, and
 - (b) ending on the day specified in the regulation, being not later than 10 years after day the regulation commences.
- (4) However, before expiry, a designation may be extended by a further period, not exceeding 10 years, by one or more subsequent regulations.

4 Wards in rural and remote councils

- (1) The following provisions of this Act do not apply to the area of a rural and remote council—
 - (a) section 210(7),
 - (b) section 211.
- (2) If the area of a rural and remote council is not divided into wards immediately before the council’s designation as a rural and remote council, the area remains without wards, subject to subclause (4)(a).

- (3) If the area of a rural and remote council is divided into wards immediately before the council's designation as a rural and remote council, the area remains divided into wards, subject to subclause (4)(b).
- (4) A rural and remote council may only do the following with the concurrence of the Minister—
 - (a) divide its area into wards,
 - (b) abolish all of its wards.

Note— A council must not divide an area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum—see section 210(5).

5 Rural and remote councillors

- (1) If a council is designated as a rural and remote council, the regulations must make provision for the membership of the rural and remote council.
- (2) The regulations must provide that at least—
 - (a) one councillor is an appointed councillor, and
 - (b) for an area of a rural and remote council divided into wards—one elected councillor is elected for each ward, and
 - (c) one half of the councillors must be elected councillors.
- (3) To avoid doubt—
 - (a) the regulations may alter the number of councillors of a rural and remote council, but
 - (b) a rural and remote council must have at least 5 and not more than 15 councillors, one of whom must be the chairperson.
- (4) Regulations under this clause have effect despite section 224.
- (5) To avoid doubt, the number of councillors determined by the regulations continues after the council ceases to be a rural and remote council, unless altered in accordance with this Act.

6 Elections for rural and remote councils

- (1) For an area not divided into wards, at an ordinary election of councillors—
 - (a) the elected councillors must be elected by an electorate comprising all the electors for the area, and
 - (b) the number of elected councillors for the area is to be determined by the regulations under clause 5.
- (2) For an area divided into wards, at an ordinary election of councillors—
 - (a) the elected councillors must be elected by an electorate comprising all the electors for the ward, and
 - (b) one or more elected councillors must be elected for each ward in the area, and
 - (c) the same number of elected councillors must be elected for each ward in the area, and
 - (d) the same person is not to be a candidate for election as an elected councillor by the electors for more than one ward, and
 - (e) the number of elected councillors for each ward is to be determined by the regulations under clause 5.
- (3) The Electoral Commissioner must administer all elections of a rural and remote council.

- (4) Sections 279–284, 296AA, 296(1) and 296A do not apply to a rural and remote council.
- (5) To avoid doubt, Chapter 10 does not apply to appointed councillors.

7 Elected councillors—term of office

Section 233 applies to elected councillors.

8 Casual vacancies for elected councillors

- (1) If a casual vacancy occurs in the office of an elected councillor, the office must be filled in accordance with Chapter 10, Part 5.
- (2) Despite subclause (1), if a casual vacancy in the office of an elected councillor occurs within 18 months before the date specified for the next ordinary election of the councillors for the area, subclause (3) applies.
- (3) The Minister may, on the application of the council—
 - (a) order that the vacancy not be filled, or
 - (b) order a countback election be conducted under section 291A(3)–(6) to fill the vacancy, or
 - (c) appoint a person to fill the vacancy.
- (4) A person appointed under subclause (3)(c)—
 - (a) is taken to be an elected member, and
 - (b) holds the office for the balance of the predecessor’s term.
- (5) Section 295 does not apply to a casual vacancy in the office of an elected councillor.

9 Appointed councillors

- (1) The Minister may appoint a person as an appointed councillor by order published in the Gazette.
- (2) In making appointments, the Minister must, as far as is reasonably practicable, ensure the rural and remote council has councillors who collectively have the following attributes—
 - (a) experience in local government administration, financial management and governance,
 - (b) the ability to represent the interests of the Aboriginal population of the area,
 - (c) experience in emergency management,
 - (d) experience in conservation, environmental sustainability and climate change adaptation.
- (3) The office of an appointed councillor—
 - (a) commences on the day the person is appointed, and
 - (b) becomes vacant on the day appointed for the next ordinary election of councillors, or on the occurrence of a casual vacancy in the office.
- (4) A person appointed to fill a casual vacancy in the office of appointed councillor holds the office for the balance of the predecessor’s term.
- (5) To avoid doubt, Chapter 10, Part 5 does not apply to a casual vacancy in the office of appointed councillor.

- (6) Subject to this schedule, a reference in this Act, other than this schedule, or another Act, or an instrument under this Act or another Act, to the following, in relation to the rural and remote council—
 - (a) a councillor—is taken to include a reference to an appointed councillor,
 - (b) the commencement of the term of office of a councillor, whether by reference to election or otherwise—is taken to include a reference to the appointment of an appointed councillor.

10 Chairperson of council

- (1) The Minister, by order published in the Gazette, must appoint an appointed councillor as chairperson of the council.
- (2) The appointment may be made in the same order that appoints a person as an appointed councillor.
- (3) Sections 225, 227–230, 234(1)(g1), 289, 290 and 295 do not apply to a rural and remote council.
- (4) The office of chairperson—
 - (a) commences on the day the person is appointed to the office, and
 - (b) becomes vacant on the day appointed for the next ordinary election of councillors, or on the occurrence of a casual vacancy in the office.
- (5) A person appointed to fill a casual vacancy in the office of chairperson holds the office for the balance of the predecessor’s term.
- (6) A reference in this Act, other than this schedule, or another Act, or an instrument under this Act or another Act, to the mayor of a council is taken, in relation to a rural and remote council, to be a reference to the chairperson of the council.

11 Deputy chairperson

- (1) The councillors of a rural and remote council may elect a person from among their number to be the deputy chairperson of the council.
- (2) The person may be elected for the chairperson’s term or a shorter term.
- (3) The deputy chairperson may exercise any function of the chairperson at the request of the chairperson or if the chairperson is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of chairperson.
- (4) The councillors may elect a person from among their number to act as deputy chairperson if the deputy chairperson is prevented by illness, absence or otherwise from exercising a function under this clause, or if no deputy chairperson has been elected.
- (5) Section 231 does not apply to a rural and remote council.
- (6) A reference in this Act, other than this schedule, or another Act, or an instrument under this Act or another Act, to the deputy mayor of a council is taken, in relation to a rural and remote council, to be a reference to the deputy chairperson of the council.

12 Fees, expenses and facilities may be paid or provided to councillors

- (1) Chapter 9, Part 2, Division 5 applies to elected councillors.
- (2) Chapter 9, Part 2, Division 5 extends to appointed councillors, subject to the following—

- (a) a determination of the Remuneration Tribunal under section 241 does not apply to an appointed councillor,
- (b) as soon as practicable after a council is designated as a rural and remote council, the Remuneration Tribunal must determine for the council the maximum and minimum amounts of fees to be paid to—
 - (i) the appointed councillors, other than the chairperson, and
 - (ii) the chairperson,
- (c) the Remuneration Tribunal may, at any time, amend a determination made under paragraph (b),
- (d) an appointed councillor who is employed in the Public Service is only entitled to be paid travelling and subsistence allowances.

13 Meetings of council

- (1) A rural and remote council must meet at least 4 times each year, each time in a different quarter.
- (2) If a council is designated a rural and remote part of the way through a year, the Minister may specify the minimum number of meetings required for the remainder of the year.
- (3) If the chairperson receives a request in writing signed by at least 2 councillors, one of which must be an appointed councillor and one which must be an elected councillor, the chairperson must call an extraordinary meeting of the council to be held as soon as practicable, but in any event within 14 days after receipt of the request.
- (4) Sections 365 and 366 do not apply to a rural and remote council.

14 Disciplinary action for misconduct

- (1) Section 440I applies to appointed councillors as if the references to the Departmental Chief Executive were references to the Minister.
- (2) Nothing in this clause prevents a Minister removing or suspending an appointed councillor under the *Interpretation Act 1987*, section 47(1)(b).

15 Expiry of designation of rural and remote councils

- (1) On the expiry of a designation of a rural and remote council, the following provisions have effect—
 - (a) an election for councillors must be held on the day appointed for the next ordinary election of councillors, unless the regulations appoint an earlier day for the election,
 - (b) unless the regulations otherwise provide, the basis on which the mayor attains office, that is, by election by the councillors or by election by the electors, that applied immediately before the designation of the council applies for the election,
 - (c) unless the regulations otherwise provide, the council continues to have the same number of councillors that it had immediately before the expiry of the designation,
 - (d) until the election has been held, the council must continue to be comprised of the elected and appointed councillors and this schedule continues to apply as if the council were a rural and remote council.
- (2) To avoid doubt, the matters provided for under subclause (1)(b) and (c) continue until changed in accordance with section 16.

- (3) The regulations may make provision about the following—
 - (a) matters dealing with the council ceasing to be a rural and remote council,
 - (b) savings and transitional matters consequent on the council ceasing to be a rural and remote council.

16 Regulations

- (1) The regulations may deal with rural and remote councils.
- (2) Without limiting subclause (1), the regulations may disapply or modify a provision of Chapter 13, Parts 1–4 in relation to a rural and remote council.