

Legislative Council Hansard – 22 November 2023 – Proof

**LOCAL GOVERNMENT AMENDMENT (DE-AMALGAMATION PLEBISCITES) BILL 2023***First Reading*

Bill introduced, read a first time and ordered to be published on motion by Dr Amanda Cohn.

Second Reading Speech

Dr AMANDA COHN (10:23): I move:

That this bill be now read a second time.

Local government is the closest level of government to the communities it represents. Local government plays a crucial role in shaping the places that we call home. It manages the best parts of community life, from public libraries and community centres to parks and open spaces, sporting facilities, and swimming pools. Councils take seriously their responsibility to make decisions that influence our built and natural environments because they know those decisions resonate for generations and impact our lives every day. That is why it is so critical that communities have a say in the local democracies that represent and serve them.

In 2016, 17 new councils were created through forced amalgamation by the previous Government. This has made many people very angry and has been widely regarded as a bad move. The forced amalgamations of 2016 were promised to offer huge savings and efficiency. Instead, they delivered rate hikes, shrinking services, and a loss of local representation. The justification for those forced amalgamations was never made clear to impacted communities. Former planning Minister, Anthony Roberts, referred to the forced council mergers as failed policy. On the other side of politics, the current Minister for Local Government, Ron Hoenig, called the forced amalgamation of Bayside Council in his electorate an abject failure.

Resilient and tireless community advocates from Canterbury-Bankstown to Bombala, from the Central Coast to Tumbarumba, and more, have worked for the last seven years to undo this mess without success under the provisions of the Local Government Act as it stands. Today I introduce the Local Government Amendment (De-amalgamation Plebiscites) Bill 2023. The bill will amend the Local Government Act 1993 to empower communities through plebiscites on de-amalgamation that will ensure the restoration of former local government areas—that is what communities want. There are three barriers to de-amalgamation in the Act as it stands. The first barrier is that smaller communities whose councils were amalgamated into larger councils have effectively lost their voice if the larger council and larger community do not support their calls for demerger. Guyra is one such example.

The second barrier is the uncertainty regarding costs for councils pursuing demerger through the provisions of the Act as it stands. In Opposition, Labor successfully amended the Local Government Amendment Bill 2021 to ensure that the cost of any de-amalgamation is fully funded by the State Government. Now the Minister has curiously stated, including at a recent budget estimates hearing, that there is no cost to fund. There would obviously be an immediate administrative cost for a demerger, even if the separate councils are more efficient in the long run. I have seen credible estimates in the order of \$10 million. If councils foot that bill, it is local communities that pay, through cuts to local services because of rate-pegging. Those communities have already paid multiple times over through dysfunctional local democracy for the past seven years.

The third current barrier to de-amalgamation is legal. Cootamundra-Gundagai Regional Council has done everything by the book to demerge under the Act as it stands. Their case has been supported by the Local Government Boundaries Commission and by the Minister. But the Minister says he is unable to enact the de-amalgamation under section 218CC of the Act, with no statutory mechanism under the legislation to create two independent and fully functioning councils. Instead of moving amendments to the Local Government Act as I am today, the Minister is forcing this exhausted community to have another public inquiry by the boundaries commission, calling this so-called new pathway a salvage. It is clear that amending the Local Government Act provides the clearest way forward for Cootamundra-Gundagai and any other councils that will take this pathway in future.

I am proud to have worked with and have the support of community groups representing a broad and diverse range of impacted local government areas: Save Bombala, Residents for Demerger of Canterbury Bankstown Council, Central Coast Friends of Democracy, Gundagai Council in Exile, Save and Grow Guyra, Inner West Residents for De-amalgamation, Protect Pittwater Association, and Save Tumbarumba Shire. I am buoyed to see the faces of representatives of those groups in the gallery today. Here is what they have told me about the impact of forced amalgamation on their communities. Snowy Valleys Council, formerly Tumut and Tumbarumba shire councils, is facing a dramatic decline in cash reserves, with staffing efficiencies decreased and rates being raised by up to an extraordinary 75 per cent in some cases from special rate variation and rates harmonisation. That is despite the merger proposal promising a three-year payback period when merger benefits would exceed merger costs. That has clearly not eventuated. Meanwhile, councillor representation for residents of Tumbarumba was reduced more than fourfold. Northern Beaches Council recently voted to close the council customer service centre at Avalon. One Pittwater resident said, "We went from our own council with nine councillors that represented the Pittwater area to three councillors in a council of 15. The concerns which are Pittwater specific are now basically ignored because of the numbers game. When we were amalgamated, 63,000 Pittwater residents were immediately disenfranchised. Local government is supposed to be a democratic system which provides a forum for citizens to vent their concerns on issues that directly affect them."

A councillor at Hilltops Council has spoken up about the amalgamated council eating into its financial reserves just to stay afloat and the inequitable application of water and sewer fees and services across three diverse former shires. Central Coast residents have described the difficulty of living in a council area under administration for four of the past seven years: "The merger of Gosford and Wyong has failed to deliver the benefits that the New South Wales Government claimed it would. Instead, seven years later, we have increased rates, loss of staff, loss of services and the removal of local democracy."

At Canterbury Bankstown Council, the 2023-24 budget predicts that the council will not be able to fund required asset maintenance by 2026-27 and will require a rate increase providing \$40 million per year from 2026 just to balance the books. Residents have complained that the new council is unable to meet basic needs, like park and street maintenance, where the former councils could. Inner West Council has already held a poll of its residents in which 63 per cent of residents voted to demerge Inner West Council, formerly Ashfield, Leichhardt and Marrickville councils. Inner West councillors have told me, "Under the amalgamated council, services have deteriorated. The promised efficiencies from the merger, to free up spending for services and community programs, have not been realised. Instead, the performance of the council has declined, and there have been significant cost blowouts. Many residents complain of a reduction in services and reduced localisation. Council debt has increased, and rates increased in some areas as a result of rate harmonisation across the three council areas." Regarding Cootamundra-Gundagai Regional Council, the boundaries commission report itself stated:

... the level of anger towards the 2016 merger decision felt by many in the Gundagai community has not subsided ...

What has changed however is the effect that this anger is having on the mental health of the community and the Council's employees.

Communities across our State have weathered a loss of representation, a lack of accountability, diminished local services and the serious burden of significantly increased rates amid a cost-of-living crisis. Amalgamated councils have not allowed effective representation. Critically, this bill is not about whether any particular council should or should not demerge. This is about ensuring that these decisions are made with the unequivocal support of the community itself. I could spend all day talking about why local representation matters, but I will now turn to the details of the bill.

The bill seeks to do two things. Firstly, it seeks to provide a clear pathway for councils already undertaking to de-amalgamate through the boundaries commission by removing the legislative roadblocks that the Minister has stated are thwarting his intention to demerge Cootamundra-Gundagai Regional Council. Secondly, it seeks to empower communities with a direct voice for de-amalgamation through a plebiscite process. Despite Labor's best efforts in 2021 to amend the Act to create a pathway for de-amalgamations via section 218CC, this falls short in that it provides a pathway only to the point where the Minister responds to a council whether or not the Minister supports a de-amalgamation proposal. Section 218CC fails to provide the final processes of proclamation, dissolution and reconstitution required for de-amalgamation.

With the lack of necessary provisions, de-amalgamation efforts currently have nowhere to go but to section 212, which requires the Minister to consider another public inquiry report before recommending that the Governor dissolve the area. The bill fixes this roadblock by amending section 218CC to ensure that the final processes for de-amalgamation are provided for. Items [1], [2] and [5] of schedule 1 achieve this. Item [5] inserts subsections (5A) and (5B) into section 218CC. Section 218CC (5A) provides that, if the Minister supports the de-amalgamation proposal, the Minister must make recommendations to the Governor for proclamations under division 1 to give effect to the de-amalgamation proposal. This provides for the necessary remaining stages of de-amalgamation that were missing from section 218CC. To remove unnecessary barriers, section 218CC (5B) ensures that the requirements of division 2 and section 210A do not apply to the proclamations. Item [2] of schedule 1 also provides that the requirement of a public inquiry for dissolution of an area does not apply to de-amalgamations under section 218CC, should another council in future seek to de-amalgamate via this pathway.

Schedule 1 [2] also makes clear the boundaries of constituted areas. If the area constituted arises from the dissolution of an area because of a de-amalgamation proposal or plebiscite, the boundaries for the area must reflect the former areas the subject of the proposal or plebiscite in accordance with the outcome of the proposal or plebiscite. Finally, to avoid doubt, schedule 1 [8] (2) provides explicitly that the amendments extend to the current de-amalgamation proposal relating to Cootamundra-Gundagai Regional Council.

I now turn to the second purpose of the bill: to empower local democracy through a plebiscite process. Items [6] and [7] of schedule 1, and proposed schedules 10 and 11 provide for this. These amendments to the Local Government Act allow electors of a former council area that has been amalgamated to bring forth a petition that triggers a binding plebiscite for de-amalgamation of that former area. Schedule 10 sets out the process for plebiscites. The Minister may initiate a plebiscite on the Minister's own motion at any time but must initiate a plebiscite within 28 days of receiving a petition. Item [3] provides that the petition must consist of more than 10 per cent of electors of a former area, be submitted within 12 years of the constitution of the new area and include a proposal for the reconstitution of the former area and a statement of reasons in support of the proposal.

Clause 4 of schedule 10 provides for how the plebiscite must be initiated. Subclauses (1) and (2) provide that the Minister must initiate a plebiscite by directing the secretary of the department to decide a date to hold the plebiscite, no later than six months after the Minister receives the petition, and to prepare a case for and against the proposed reconstitution of the former area in consultation with electors enrolled in relation to addresses in the new area. Subclause (5) provides that the secretary must advise the council for the new area and the electoral commissioner of the date for the plebiscite.

Clause 4 (3) and (4) of schedule 10 protect council assets and planning instruments during the plebiscite and de-amalgamation process. From the date when the Minister gives the direction to the secretary of the department, the new area is prohibited from selling businesses or other assets of the council and making or amending a local environment plan until the date the result of the plebiscite is known, if the plebiscite is not carried, or, if the plebiscite is carried, until the date the de-amalgamation takes effect.

There are new areas in New South Wales that are the result of more than two former areas amalgamating. Clause 4 (6) of schedule 10 addresses this by providing an equal opportunity for electors of former areas to achieve de-amalgamation of the former area in which they reside. Subclause (6) provides that nothing in schedule 10 prevents two or more plebiscites for former areas in the same new area from being held simultaneously. To allow for sufficient time to conduct a plebiscite and give effect to a de-amalgamation if the plebiscite is carried, item [7] of schedule 1 to the bill provides for the postponement of council elections by the Minister of areas that are the subject of a plebiscite under schedule 10. Clauses 6 and 7 of schedule 10 describe the nature and conduct of the plebiscites for de-amalgamation. Clause 6 (4) states:

(4) The question at the plebiscite is—

Should the [former area] be reconstituted as a separate local government area? Yes/No.

The persons entitled to vote at the plebiscite are the electors of the former area that is subject to the question. The plebiscite may be held on a Saturday, and the question is carried if a majority of the votes cast support it. Proper democratic processes are enforced through clause 6 (1), including who is entitled to vote in council elections and the governing of elections, which are applied to the plebiscite in the same way as they apply to elections. Clause 5 of schedule 10 provides that de-amalgamation cases must be available on the website of the Office of Local Government and also posted to electors of the former area.

Schedule 11 gives effect to a plebiscite where a majority of electors of a former area vote for de-amalgamation by requiring that, within 28 days after the plebiscite, the Minister must make a recommendation to the Governor that a proclamation be made to give effect to the de-amalgamation. The Governor may, by proclamation, de-amalgamate the new area into two areas with the same boundaries as the former areas if the new area is made up of two former areas. If the new area is made up of three former areas and electors of two or three of the former areas have supported the de-amalgamation, the new area will be de-amalgamated into the three areas with the same boundaries as the former three areas. If the majority of electors in one former area support the de-amalgamation but the majority of electors in the two other former areas do not, the former area that supports the de-amalgamation will be able to leave the rest of the amalgamation intact. The former area that supported the de-amalgamation will be reinstated, and another area, which reflects the boundaries of the remaining two former areas combined, will be constituted.

The proclamation must specify the date on which the new area is to be de-amalgamated and must be no more than 12 months after the date of the plebiscite. The new area is dissolved on this date, and the former areas are reconstituted. To avoid doubt, clause 1 (7) of schedule 11 provides that proclamations under section 218C extend to proclamations under schedule 11. To ensure that the processes required for de-amalgamation do not hinder local democracy but empower it, clauses 2, 3 and 4 of schedule 11 provide provisions for elections, costs and further regulations to assist the processes. Clause 2 states an election must be held no later than 12 months after a de-amalgamation. That ensures that reconstituted areas are not held in administration for inappropriate lengths of time. Clause 3 recommends that the direct and immediate costs of a plebiscite and de-amalgamation be paid for by the State Government, not by councils, and clause 4 allows for regulations to be made to facilitate the implementation of the de-amalgamation, the making of the proclamation and the transfer of assets and liabilities.

I thank India Sweeney for her hard work supporting the drafting of the bill. I also thank the Demerge NSW Alliance and its coordinator Grantley Ingram for their extraordinary work to bring together impacted communities across the State in a collective effort to restore local democracy. I especially thank Brian Halstead for his particular interest and support of the bill. I am proud of the five years I served my local community as a local government councillor and deputy mayor of AlburyCity Council. I hope that through the bill communities across our State can be empowered, have a voice about their local representation in the future and have the level of local democracy that they deserve. It is something that I hope every member of this Parliament can support. Let's put the local back into local government. I submit the bill to the House.

Debate adjourned.