
Local Government Amendment (Regional Joint Organisations) Act 2017 No 65

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Schedule 1

Schedule 1 Amendment of Local Government Act 1993 No 30

[1] Section 213 Facilitating provisions of proclamations

Insert “or related joint organisation” after “related county council” in section 213 (1).

[2] Section 213 (3)

Omit the subsection. Insert instead:

(3) In this section:

related county council, in relation to an area constituted or dissolved by a proclamation of the Governor, means a county council that has an area of operations that includes the whole or part of the area so constituted or dissolved.

related joint organisation, in relation to an area constituted or dissolved by a proclamation of the Governor, means a joint organisation for a joint organisation area that includes the whole or part of the area so constituted or dissolved.

[3] Section 355 How a council may exercise functions

Insert “joint organisation or a” before “Voluntary Regional Organisation of Councils” wherever occurring in section 355 (d) and (e).

[4] Section 377 General power of the council to delegate

Insert after section 377 (2):

(3) A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation.

[5] Section 379 Delegation of regulatory functions

Insert at the end of section 379 (1) (c):

, or

(d) a joint organisation.

[6] Section 379 (2A)

Insert after section 379 (2):

(2A) A council may delegate a regulatory function to a joint organisation only with the approval, by resolution, of the board of the joint organisation.

[7] Section 379 (3) (c)

Insert at the end of section 379 (3) (b):

, or

(c) a regulatory function is delegated to a joint organisation, the function may be delegated to the executive officer and by the executive officer to an employee of the joint organisation.

[8] Section 394A

Insert after section 394:

394A County councils to consider regional strategies

A county council must, when exercising its functions, take into account any strategic regional priorities and other plans, programs, strategies and policies of a joint organisation that apply to any relevant part of the county council's area of operations or that are relevant to the county council's operational functions.

[9] Section 400 Application of Act to county councils

Insert “, Part 7 of this Chapter” after “section 365” in section 400 (1).

[10] Chapter 12, Part 7

Insert after Part 6:

Part 7 Joint organisations

4000 Formation of joint organisations

- (1) The Governor may, by proclamation, establish joint organisations for the purposes of this Act.
- (2) A proclamation under this section must contain the following particulars:
 - (a) the name of the joint organisation,
 - (b) the council areas that are to form the area of the joint organisation (which is to consist of the whole of 2 or more council areas).
- (3) A proclamation under this section may contain transitional provisions to facilitate the establishment and early operation of the joint organisation.
- (4) Each council whose area is within the joint organisation area is a *member council* of the joint organisation.

400P Council must approve inclusion of council area in joint organisation area

The Minister must not recommend the making of a proclamation under this Part (including an amending proclamation) that includes the area of a council in a joint organisation area unless the Minister certifies that:

- (a) not less than 28 days before the certificate was given, the council, by resolution, approved the inclusion of the council's area in the joint organisation area, and
- (b) when the certificate was given, the resolution had not been rescinded.

400Q Legal status of joint organisations

- (1) A proclamation establishing a joint organisation operates to constitute the joint organisation as a body corporate.
- (2) A joint organisation as so constituted has the legal capacity and powers of an individual, both in and outside the State.

Note. While the main functions of joint organisations are provided for under this Part, powers are also conferred on the joint organisation as a statutory corporation under section 50 of the *Interpretation Act 1987*.

400R Principal functions of joint organisations

- (1) A joint organisation has the following principal functions:
 - (a) to establish strategic regional priorities for the joint organisation area and to establish strategies and plans for delivering those strategic regional priorities,
 - (b) to provide regional leadership for the joint organisation area and to be an advocate for strategic regional priorities,
 - (c) to identify and take up opportunities for inter-governmental co-operation on matters relating to the joint organisation area.
- (2) In establishing strategic regional priorities for the joint organisation area, a joint organisation is to consider any relevant strategic priorities or plans of member councils and the State government.
- (3) A strategic regional priority, or a plan or strategy for delivering a strategic regional priority, established by a joint organisation does not limit the operation of or otherwise affect any regional plan or strategy given effect to under the *Environmental Planning and Assessment Act 1979* (including any regional plan made under Part 3B of that Act).

400S Other functions of joint organisations

- (1) A joint organisation may deliver services and provide assistance to or on behalf of councils (including capacity building), as agreed with the councils, and subject to any restrictions imposed by the regulations.

Note. Some functions may also be delegated to a joint organisation by a council, see sections 377 and 379.

- (2) A joint organisation has any other function conferred on the joint organisation by or under this Act or any other law.

400T Board of joint organisation

- (1) The board of a joint organisation is to consist of:
- (a) the mayors of each of the member councils, who are each entitled to 1 vote at a meeting of the board, and
 - (b) any additional voting representatives of the member councils appointed under this section, who are each entitled to 1 vote at a meeting of the board, and
 - (c) other non-voting representatives, who may attend but are not entitled to vote at a meeting of the board.
- (2) The following persons are the non-voting representatives on the board of a joint organisation:
- (a) an employee of the Public Service nominated by the Secretary of the Department of Premier and Cabinet,
 - (b) any other person invited by the board to be a non-voting representative on the board,
 - (c) any other person, or a member of a class of persons, prescribed by the regulations.
- (3) The general manager of each member council may attend meetings of the board.
- (4) The chairperson (or, in the absence of the chairperson, a person elected by the voting representatives who are present at a meeting of the board) is to preside at a meeting of the board.
- (5) The board may, by resolution, determine to expand the voting representatives on the board to include 1 additional representative nominated by each member council.
- (6) Each additional voting representative must be a councillor of the member council. A nomination of a councillor as an additional voting representative may be revoked by the member council at any time without notice and for no stated or any reason.
- (7) The quorum for a meeting of the board is a majority of the voting representatives for the time being.
- (8) A decision of the board supported by a majority at which a quorum is present is a decision of the joint organisation. The chairperson or person presiding at a meeting of the board does not have, in the event of an equality of votes, a second or casting vote.
- (9) The board is required to meet at least 4 times each year, each time in a different quarter of the year.
- (10) The regulations may:
- (a) prescribe a mechanism for resolving decisions of a board in the event of an equality of votes, and

- (b) provide for the operation of the board during a period when councillors or mayors cease to hold office because of pending council elections.

400U Role of board

- (1) The role of the board of a joint organisation is to direct and control the affairs of the joint organisation in accordance with this Act.
- (2) The board is to consult with the executive officer in directing and controlling the affairs of the joint organisation.
- (3) The board is to prepare and adopt a charter for the joint organisation containing (but not limited to) the following:
 - (a) operational principles for the joint organisation,
 - (b) governance principles for the joint organisation.
- (4) A charter may adopt requirements for a joint organisation that are additional or supplementary to, or more stringent than, requirements made by or under this Act but cannot adopt requirements that:
 - (a) are less stringent than requirements made by or under this Act, or
 - (b) are inconsistent with or contravene regulations under this Act relating to charters.
- (5) The regulations may:
 - (a) make provision for or with respect to requirements for the form and content of a charter, and
 - (b) require a charter to be made publicly available.

400V Chairperson

- (1) The chairperson of a joint organisation is the person elected to the office of chairperson by the voting representatives on the board from among the voting representatives who are mayors.
- (2) The chairperson holds office for 2 years and may, if otherwise qualified, be re-elected as chairperson.
- (3) Despite subsection (2), the term of office of a person elected as chairperson on the occurrence of a casual vacancy is the remaining period of the term of office of the previous chairperson.
- (4) The office of chairperson:
 - (a) commences on the day the person elected to the office is declared to be so elected, and
 - (b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

Note. Section 400X (1) sets out when a casual vacancy occurs.

- (5) The joint organisation may determine that the chairperson is to be a non-voting chairperson and, if that occurs, the relevant member council is to nominate a councillor to be the voting representative for the council concerned instead of the person appointed as a non-voting chairperson for the period for which the chairperson holds office.
- (6) The councillor nominated is to be the deputy mayor of the relevant member council or another councillor if there is no deputy mayor or if the deputy mayor is already a voting representative.

400W Alternates for voting representatives

- (1) The regulations may make provision for or with respect to the appointment, and functions, of alternates for voting representatives on the boards of joint organisations.
- (2) The regulations may impose limitations on the use and appointment of alternates.

400X Vacancy in office of representatives or non-voting chairperson

- (1) A voting representative on or a non-voting chairperson of a joint organisation ceases to hold office as a voting representative or chairperson if the person:
 - (a) ceases to be the mayor or a councillor of a member council, or
 - (b) is a voting representative (other than a mayor) and resigns the office by writing addressed to the chairperson, or
 - (c) is a voting representative (other than a mayor) and the person's nomination as a voting representative is revoked, or
 - (d) is removed from office by the Minister.

Note. See section 275 for the circumstances in which a person is disqualified from holding civic office.

- (2) A voting representative who is suspended from office as a mayor or councillor of a member council (other than as a result of the suspension of a council and the appointment of an administrator) is suspended from office as a voting representative for the duration of the suspension.
- (3) A member council may make a written request to the Minister that the mayor of the council be removed by the Minister as a voting representative on the board of a joint organisation on the ground of exceptional circumstances. The request may, but need not, be supported by the mayor.
- (4) The Minister may remove a person from office as a voting representative on the board of a joint organisation at any time without notice and for no stated or any reason.
- (5) However, the Minister must provide a written statement setting out the reasons for any such removal and make those reasons publicly available.
- (6) If a person ceases to be a voting representative on the board of a joint organisation because the person is removed from office under this section, the relevant member council must appoint a councillor of the council to be a voting representative instead of the former representative for the remainder of the former representative's term of office.

400Y Executive officer

- (1) The executive officer of a joint organisation is:
 - (a) to conduct the day-to-day management of the joint organisation in accordance with the strategic regional priorities and other plans, programs, strategies and policies of the organisation, and
 - (b) to implement, without delay, lawful decisions of the joint organisation.
- (2) The executive officer may also, if the joint organisation determines an organisation structure requiring other staff:
 - (a) appoint staff in accordance with the organisation structure and the resources approved by the joint organisation, and
 - (b) direct and dismiss staff.
- (3) The executive officer is to be the public officer of the joint organisation or is to designate another member of staff as the public officer.

400Z Exercise of functions

A function of a joint organisation may, subject to this Part, be exercised:

- (a) by the joint organisation by means of the voting representatives or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means, or
- (b) by a committee of the board, or
- (c) partly or jointly by the joint organisation and another person or persons, or
- (d) jointly by the joint organisation and a member council or councils or another joint organisation, or
- (e) by a delegate of the joint organisation (which may, for example, be a member council or a committee of the board).

400ZA Decisions and powers of joint organisations

- (1) A council cannot be required, by a decision of a joint organisation, to delegate any of its functions to the joint organisation.
- (2) A decision made, in good faith, by a voting representative on the board of a joint organisation is taken for the purposes of provisions of this Act relating to the functions and conduct of councillors not to have been taken by the representative in his or her capacity as the mayor or a councillor of a council.

400ZB Effect of appointment of administrator for member council

- (1) If an administrator is appointed for a member council, the administrator who exercises the functions of the mayor of the council has:

- (a) the functions of the mayor of a member council under this Part, other than the functions of chairperson if the mayor was the chairperson, and
 - (b) the functions of any additional voting representative from the member council on the board of the joint organisation immediately before the appointment of the administrator.
- (2) An administrator who is exercising the functions of the mayor of a council under this section is, while exercising those functions, eligible for election as chairperson in any election for the chairperson (whether or not occurring as a result of a casual vacancy arising because of the administrator's appointment).
- Note.** The removal of the mayor on an administrator being appointed creates a casual vacancy in the office of chairperson (see sections 400V and 400X).
- (3) A voting representative is taken not to be absent from a meeting of the board if an administrator exercising the representative's functions under this Part is present.
- (4) An administrator who is exercising the functions of a mayor or other voting representative of a member council that has 2 voting representatives on the board may cast a vote at a meeting of the board for each representative of the member council.

400ZC Amendment and dissolution of joint organisations

- (1) The Governor may, by proclamation, amend or revoke a proclamation in force under this Part for the purpose of amending the constitution of, or of dissolving, a joint organisation.
- (2) A proclamation for the purpose of amending the constitution of a joint organisation:
- (a) may change the name of the joint organisation, or
 - (b) may vary the joint organisation area by adding or removing council areas and may specify the name of each council whose area is included in or removed from the joint organisation area.

400ZD Facilitating provisions of proclamations

A proclamation of the Governor for the purposes of this Part may include provisions of the kind referred to in section 213.

400ZE Delegations

- (1) A joint organisation may delegate to the executive officer, a committee of the board of the joint organisation or any other person or body (not including another employee of the joint organisation) any of the functions of the joint organisation, other than a function prescribed by the regulations for the purposes of this section.
- (2) A joint organisation may sub-delegate to the executive officer, a committee of the board of the joint organisation or any other person or body (not including another employee of the joint organisation) any function delegated to the joint organisation by the Departmental Chief Executive or a council, except as provided by the regulations or the instrument of delegation to the joint organisation.

- (3) The executive officer may delegate any of the functions of the executive officer, other than this power of delegation.
- (4) The executive officer may sub-delegate a function delegated to the executive officer by the joint organisation to any person or body (including another employee of the joint organisation).
- (5) Subsection (4) extends to a function sub-delegated to the executive officer under subsection (2).

400ZF Financial matters

- (1) The regulations may make provision for or with respect to the making of financial contributions to a joint organisation by the member councils, including the following:
 - (a) the purposes for which contributions may be made,
 - (b) the circumstances in which contributions may be required,
 - (c) the assessment of contributions,
 - (d) the payment of contributions,
 - (e) the recovery of contributions.
- (2) For the purposes of this section, a financial contribution by a member council may include making employees of the member council available for the purposes of the joint organisation.
- (3) A joint organisation may obtain income from charges, fees, grants, borrowings and investments. This subsection does not prevent a joint organisation exercising the functions of a council from obtaining income from other sources that may be used by the council.

400ZG Staff

- (1) Despite any other provision of this Act, a joint organisation (including an executive officer) may only appoint staff if the joint organisation is not a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.
- (2) This section does not apply to the appointment of an executive officer.

400ZH Application of Act to joint organisations

- (1) Except as provided by subsection (3), this Act applies:
 - (a) to a joint organisation in the same way as it applies to a council, and
 - (b) to the representatives on the board of a joint organisation in the same way as it applies to the councillors of councils, and
 - (c) to the executive officer of a joint organisation in the same way as it applies to the general manager of a council.

- (2) In the application of this Act to a joint organisation and to a representative on the board of a joint organisation:
- (a) a reference to the mayor of a council includes a reference to the chairperson of a joint organisation, and
 - (b) a reference to mayoral office includes a reference to the office of the chairperson of a joint organisation, and
 - (c) a reference to a councillor includes a reference to a voting representative on or a non-voting chairperson of the board of a joint organisation, and
 - (d) a reference to the holding of civic office includes a reference to holding office as a voting representative on or a non-voting chairperson of the board of a joint organisation, and
 - (e) a reference to the general manager of a council includes a reference to the executive officer of a joint organisation, and
 - (f) a reference to the area of a council includes a reference to the joint organisation area of a joint organisation, and
 - (g) a reference to a proclamation under Chapter 9 includes a reference to a proclamation under this Part.
- (3) The following provisions (the *excluded provisions*) of this Act do not apply to or in respect of a joint organisation:
- (a) Chapter 3,
 - (b) Part 3 of Chapter 4,
 - (c) Chapter 6 (other than Part 3),
 - (d) Chapter 7,
 - (e) Chapter 9,
 - (f) Chapter 10,
 - (g) sections 335 and 342,
 - (h) sections 355, 365, 370, 371, 375A and 377–380 and Part 5 of Chapter 12,
 - (i) Parts 2 and 4 of Chapter 13 and sections 438T, 438ZA and 438ZB,
 - (j) Chapter 15 (other than Parts 10, 12 and 13 and section 620),
 - (k) Division 4 of Part 2 of Chapter 17,
 - (l) section 736 (2),
 - (m) Schedules 1–5,

- (n) any other provisions prescribed by the regulations for the purposes of this section.
- (4) Despite subsection (3), an excluded provision applies to or in respect of a joint organisation if:
 - (a) the joint organisation is exercising a function of a council conferred on the joint organisation by or under this Act and the excluded provision is applicable to or in respect of the function, or
 - (b) the regulations provide that the provision is not an excluded provision in relation to the specified joint organisation, a class of joint organisations (that includes that organisation) or all joint organisations, or
 - (c) the provision applies expressly to a joint organisation or applies expressly or impliedly to all bodies constituted under this Act.
- (5) The regulations may:
 - (a) modify the application of any provision of this Act that applies to or in respect of a council for the purpose of its application to a joint organisation, or
 - (b) exclude a provision of this Act from applying to or in respect of a joint organisation.

Note. The provisions applied to joint organisations by this section include provisions relating to codes of conduct and protection against personal liability (section 731).

[11] Section 674A Provisions of Act that do not give rise to or affect legal proceedings

Omit “(or that applies)” from section 674A (1) (a).

[12] Section 674A (1A)

Insert after section 674A (1):

(1A) A provision is also a relevant provision to the extent that it applies a provision referred to in subsection (1).

[13] Schedule 6 Regulations

Insert after item 17A:

17B Joint organisations

Examples. Staffing (including use of staff of member councils and other organisations)

Voting (including remote voting) and meeting procedures of board (including remote participation in a meeting)

Governance

Planning and reporting

Travel and other expenses payable to board representatives

Operational guides

Principles for joint organisations

Roles and responsibilities of board representatives, board chairpersons and executive officers

[14] Dictionary

Insert in alphabetical order:

joint organisation means a joint organisation established under Part 7 of Chapter 12.

joint organisation area means the area of a joint organisation established under Part 7 of Chapter 12.

member council of a joint organisation—see section 400O (4).