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**ITEM 5.1**                    **MAYORAL MINUTE - AMENDMENTS TO WASTE TENDERING REQUIREMENTS UNDER THE LOCAL GOVERNMENT (GENERAL) REGULATION 2021 (NSW)**

**Attachments:**            1.    **Legal opinion by Arthur Moses Senior Counsel (*Provided in Attachment Booklet*)**

Submitted by:            Councillor Michael Megna (Mayor)

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**MOTION**

That:

1. Council writes to the NSW Minister for Industrial Relations, NSW Minister for Local Government, and local Member of Parliament:
    - a. Expressing serious concerns about recent amendments to the *Local Government (General) Regulation 2021* made by the *Local Government (General) Amendment (Tendering) Regulation (No 2) 2023* (NSW) on 15 December 2023, as highlighted in a legal opinion by Arthur Moses (Senior Counsel) dated 26 February 2024, and
    - b. Calling on the NSW Government to reconsider the amendments as a matter of urgency and to engage in proper consultation with all relevant stakeholders on an appropriate way forward.
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**BACKGROUND**

I am calling on Councillors to support representations to the NSW Government in response to recent amendments to the Local Government (General) Regulation 2021 made by the Local Government (General) Amendment (Tendering) Regulation (No 2) 2023 (NSW) on 15 December 2023.

The amendments introduce new requirements in relation to the tendering of domestic or other waste management services by councils, which are likely to have detrimental effects on NSW councils.

The attached legal opinion from Arthur Moses (Senior Counsel) highlights many problems with the amended Regulations. The Senior Counsel's opinion is that "the amended Regulations are ambiguous, unworkable and apt to produce adverse consequences for councils, tenderers, employees, ratepayers, and the general public...".

As highlighted in the legal opinion (summarised at paragraph 45), taken together the amended regulations:

- (a) are internally inconsistent and poorly drafted;
- (b) undermine relationships between incumbents and their employees;
- (c) affect a far broader range of services and service providers than may have been intended;
- (d) are unworkable in their application to service providers and employees who provide services to multiple clients;
- (e) substantially advantage incumbents and reduce competition in the market for waste services, with flow on adverse cost and service quality consequences for councils, their ratepayers and the broader community; and
- (f) provide unions with a broad and unreviewable veto power in respect of waste management arrangements, preventing or protecting tender processes with flow on adverse competition, cost and service quality consequences.

The amended regulations are also vulnerable to legal challenge creating uncertainty for councils, tenderers, and employees (see paragraphs 46–57 of the legal opinion).

Where a council wishes to change service providers, the new service provider must offer the employees of the existing service provider a job on at least the same terms and conditions of employment with continuity of service and no loss of entitlements, regardless of whether the new provider requires the employees to deliver the service. Furthermore, there is no requirement for the existing service provider to compensate the new service provider (or the council) for the cost of accrued entitlements that will become a liability for the new service provider. This effectively means councils may end up paying twice for accrued employee entitlements – they will have already compensated the existing service provider under the current contract, and then may need to compensate the new service provider for these same costs under a new contract.

Further, for a tender to be successful, the relevant industrial organisations must be consulted and satisfied. The registered industrial organisations who are required to be satisfied may include the Transport Workers Union, United Services Union, Local Government NSW and the Waste Contractors and Recyclers Association of NSW. There is no mechanism for dealing with a dispute where one of the relevant industrial organisations is satisfied and another of the relevant industrial organisations is not satisfied.

Local Government NSW has raised the abovementioned concerns with the NSW Government and is seeking the support of councils across NSW in amplifying this advocacy.



**Michael Megna**

MAYOR