

**LOCAL GOVERNMENT LEGISLATION (MISCELLANEOUS
AMENDMENTS) ACT 1994 No. 44**

NEW SOUTH WALES



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**LOCAL GOVERNMENT LEGISLATION (MISCELLANEOUS
AMENDMENTS) ACT 1994 No. 44**

NEW SOUTH WALES



Act No. 44, 1994

An Act to amend the Local Government Act 1993 and certain other instruments with respect to a variety of matters relating to the administration of local government. [Assented to 2 June 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Government Legislation (Miscellaneous Amendments) Act 1994.

Commencement

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

Amendment of Local Government Act 1993 No. 30

3. The Local Government Act 1993 is amended as set out in Schedules 1–18.

Amendment of other instruments

4. Each instrument specified in Schedule 19 is amended as set out in that Schedule.

Explanatory notes

5. The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

**SCHEDULE 1—AMENDMENT OF CHAPTER 4 OF THE
LOCAL, GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 10 (Who is entitled to attend meetings?):

(a) After “litigation” in section 10 (2) (f), insert “or which would otherwise be privileged from production in legal proceedings on the ground of legal professional. privilege”.

(b) Omit section 10 (4), insert instead:

(4) A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or such a committee if expelled from the meeting:

(a) by a resolution of the meeting; or

(b) by the person presiding at the meeting, if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

SCHEDULE 1—AMENDMENT OF CHAPTER 4 OF THE LOCAL GOVERNMENT ACT 1993—*continued***Explanatory note**

Paragraph (a). The proposed amendment will enable a council, or council committee, to exclude the public from so much of a meeting as comprises the receipt and consideration of legal advice that would ordinarily attract legal professional privilege.

Paragraph (b). At present, the power to expel a person from a council or committee meeting is exercisable only by resolution of the council or committee. The proposed amendment will enable this power to be exercised by the person presiding at the meeting if the council or committee so resolves.

(2) Section 12 (What information is publicly available?):

(a) From section 12 (1), omit:

- minutes of council and committee meetings (but not including minutes of a meeting or any part of a meeting that is closed to the public other than the recommendations of that meeting)

insert instead:

- minutes of council and committee meetings, but restricted (in the case of any meeting or part of a meeting that is closed to the public) to minutes of:
 - (a) the recommendations of the meeting, other than recommendations concerning the proposed acquisition of land at a public auction; and
 - (b) such other matters as the council or committee resolves should be made public

(b) At the end of section 12 (1), insert:

- Departmental representatives' reports presented at a meeting of the council in accordance with section 433.

Explanatory note

Paragraph (a). At present, a member of the public is not entitled to inspect the minutes of a council or committee meeting that has been closed to the public except the recommendations of the meeting. The proposed amendment will remove the public's right to inspect the recommendations of a council meeting relating to the proposed acquisition of land at auction, but will enable a council or committee to resolve to allow additional matters to be the subject of public inspection.

SCHEDULE 1—AMENDMENT OF CHAPTER 4 OF THE LOCAL GOVERNMENT ACT 1993— *continued*

Paragraph (b). Section 433 enables a Departmental representative to prepare reports on the activities of a council. The proposed amendment will ensure that members of the public are entitled to inspect such a report once it has been presented to the council.

(3) Section 16 (What matters must be dealt with at 8 constitutional referendum?):

Omit section 16 (e).

Explanatory note

The proposed amendment is consequential on the proposed substitution of section 285 (see Schedule 6 (3)). The amendment to that section will remove any choice of voting system and therefore any scope for the provision being omitted.

SCHEDULE 2—AMENDMENT OF CHAPTER 6 OF THE LOCAL GOVERNMENT ACT 1993

(Sec. 3)

(1) Section 33 (Reclassification of operational land as community land):

Omit section 33 (2).

Explanatory note

The proposed amendment omits a provision that merely duplicates the provisions of section 34 with respect to the giving of public notice.

(2) Section 34 (Public notice to be given of classification or reclassification by council resolution):

After section 34 (3), insert:

(4) This section does not apply to a proposed resolution to classify land to be acquired by the council at a public auction as operational land if the decision to acquire the land has been made at a meeting that was closed to the public and the council has not resolved to make public its proposal to acquire the land.

Explanatory note

The proposed amendment will enable a council to maintain secrecy concerning its proposals to acquire land as operational land where the council proposes to acquire the land at a public auction.

SCHEDULE 2—AMENDMENT OF CHAPTER 6 OF THE LOCAL
GOVERNMENT ACT 1993—*continued*

(3) Section 45 (**What dealings can a council have in community land?**):

After section 45 (3), insert:

(4) This section does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, a Crown reserve or to become, or be added to, land that is reserved or dedicated under the National Parks and Wildlife Act 1974.

Explanatory note

At present, a council may not sell, exchange or otherwise dispose of community land. The proposed amendment will enable a council to do so for the purpose of enabling the creation of, or the addition of land to, a Crown reserve or National Parks and Wildlife reserve. The land will consequently retain its public character. The expression “Crown reserve” is to be defined in the Dictionary to the Principal Act.

(4) Section 55 (**What are the requirements for tendering?**):

After section 55 (3), insert:

(4) A council that invites tenders from selected persons only is taken to comply with the requirements of this section if those persons are selected:

- (a) from persons who have responded to a public advertisement for expressions of interest in the particular contract for which tenders are being invited; or
- (b) from persons who have responded to a public advertisement for recognition as recognised contractors with respect to contracts of the same kind as that for which tenders are being invited.

Explanatory note

The proposed amendment reflects the practice of public authorities in calling for expressions of interest as a first step in the tendering process. Tenders are then invited from selected persons who have shown an expression of interest in the subject-matter of the tender. A proposed savings provision will validate contracts that have been entered into in accordance with this practice (see clause 4 of proposed Schedule 8 to the Principal Act).

SCHEDULE 2—AMENDMENT OF CHAPTER 6 OF THE LOCAL
GOVERNMENT ACT 1993—*continued*

- (5) Chapter 6, Part 3, Division 2, heading:
Omit the heading to Division 2, insert instead:

**Division 2—Water supply, sewerage and stormwater
drainage works and facilities**

Explanatory note

The proposed amendment is one of several that ensures that references to drainage are references to stormwater drainage only.

- (6) Section 56 (**Application of Division**):
Omit “(but not drainage)”, insert instead “(but not stormwater drainage)”.

Explanatory note

The proposed amendment is one of several that ensures that references to drainage are references to stormwater drainage only.

- (7) Section 57 (**Construction of works**):
From section 57 (1), omit “water, sewerage or drainage”, insert instead “water supply, sewerage or stormwater drainage”.

Explanatory note

The proposed amendment is one of several that ensures that references to drainage are references to stormwater drainage only.

- (8) Section 59 (**Vesting of works**):
Omit section 59 (1), insert instead:
- (1) The Minister for Public Works may, by notice published in the Gazette, do either or both of the following:
 - (a) declare that land acquired for the purposes of any such works, or any part of the works, is vested in the council or councils;
 - (b) declare that all right, title and interest of the Minister in any such works, or part of the works, are vested in the council or councils.

Explanatory note

The proposed amendment removes doubt as to the power of the Minister for Public Works to vest works in a council without having to vest in the council the land on which they are situated.

**SCHEDULE 2—AMENDMENT OF CHAPTER 6 OF THE LOCAL
GOVERNMENT ACT 1993—*continued***

(9) Section 61 (Directions of the Minister for Public Works concerning certain works):

From section 61 (1), omit “any works for which the Minister’s approval under section 60 is required.”, insert instead:

any of the following works:

- (a) dams for the impounding or diversion of water for public use or any associated works;
- (b) water treatment works;
- (c) sewage treatment works.

Explanatory note

The proposed amendment removes doubt as to the nature of the works in respect of which safety directions may be given under section 61 of the Act.

**SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 68 (What activities, generally, require the approval of the council?):

- (a) From section 68 (2), omit:

Water Supply Authorities Act 1987

- (b) After section 68 (2), insert:

(3) This section does not apply to the carrying out of an activity specified in item 1, 2, 3, 4 or 6 of Part B of the following Table on land to which the Water Supply Authorities Act 1987 applies.

- (c) In item 2 of Part B of the Table to section 68, after “standpipe”, insert “or sell water so drawn”.

Explanatory note

Paragraphs (a) and (b) of the proposed amendments will require an approval to be obtained for the carrying out of stormwater drainage work in the area of operations of a water supply authority under the Water Supply Authorities Act 1987 where currently no such approval is required.

**SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE LOCAL
GOVERNMENT ACT 1993—*continued***

Paragraph (c) of the proposed amendments will require council approval to the sale of water drawn from a council's water supply or standpipe. The requirement will replace the current prohibition on the sale of water that is currently contained in section 641, which is to be omitted by Schedule 12 (9).

(2) Section 92 (Approval where an accreditation is in force):

Omit “or design” wherever occurring, insert instead “, design or temporary structure”.

Explanatory note

The proposed amendment reflects the extension to temporary structures of the accreditation provisions of Division 5 of Part 1 of Chapter 7 of the Principal Act).

(3) Section 95 (“Deferred commencement” approval):

(a) From section 95 (2), omit “an ‘in principle’ approval”, insert instead “a ‘deferred commencement’ approval”.

(b) From section 95 (3), omit “An ‘in principle’ approval”, insert instead “A ‘deferred commencement’ approval”

Explanatory note

The proposed amendments merely retitle “in principle” approvals as “deferred commencement” approvals.

(4) Section 97 (Conditions concerning security):

From section 97 (4), omit “is to be held in the trust fund and”.

Explanatory note

At present, security deposits are required to be held in a council's trust fund. The proposed amendment will enable them to be kept in the council's consolidated fund.

(5) Section 99 (Notice to applicant of determination of application):

From section 99 (3), omit “an ‘in principle’ approval”, insert instead “a ‘deferred commencement’ approval”.

Explanatory note

The proposed amendment is one of several that merely retitles “in principle” approvals as “deferred commencement” approvals.

SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE LOCAL GOVERNMENT ACT 1993—*continued*(6) Section 107 (**Can approvals be extended or renewed?**):

(a) In section 107 (1), after “may”, insert “determine to”.

(b) Omit section 107 (4), insert instead:

(4) The relevant provisions of:

(a) sections 72, 73, 74, 78, 79, 80, 84, 85, 87, 88 and 99;
and

(b) Division 1 of Part 5,

apply to an application made by the Crown or a person prescribed by the regulations referred to in section 72 (1) to extend or renew an approval in the same way as they apply to an application for an approval.

(5) The relevant provisions of:

(a) sections 78, 79, 80, 84, 85, 87, 88 and 99; and

(b) Division 1 of Part 5,

apply to an application made by any other person to extend or renew an approval in the same way as they apply to an application for an approval.

Explanatory note

The proposed amendments ensure that the provisions with respect to the making of an application for an approval and the determination of an application for an approval apply equally to applications for the extension and renewal of an approval.

(7) Section 108 (**Can approvals be revoked or modified?**):

From section 108 (5) (b), omit “drainage work or sewer plumbing work”, insert instead “sanitary plumbing work, sanitary drainage work or stormwater drainage work”.

Explanatory note

The proposed amendment is one of several that ensures that references to drainage are references to sanitary drainage and stormwater drainage only.

(8) Chapter 7, Part 1, Division 5, heading:

Omit “and designs”, insert instead “, designs and temporary structures.”

SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE LOCAL GOVERNMENT ACT 1993—*continued***Explanatory note**

The proposed amendment reflects the extension to temporary structures of the accreditation procedures of Division 5 of Part 1 of Chapter 7 of the Principal Act.

(9) Sections 120, 121, 122:

Omit “or design”, wherever occurring, insert instead “, design or temporary structure”.

Explanatory note

The proposed amendments extend to temporary structures the accreditation procedures of Division 5 of Part 1 of Chapter 7 of the Principal Act.

(10) Section 124 (What orders may be given, in what circumstances and to whom?):

In the matter appearing under Column 1 of the Table to section 124 in relation to order No. 1, after “demolish”, insert “or remove”.

Explanatory note

At present a council can give an order for the demolition, but not the removal, of buildings. The proposed amendment will enable the council to give an order for the removal of a building. Such an order would be appropriate in relation to buildings such as portable builders’ sheds.

(11) Section 142 (Orders affecting heritage items):**(a) After section 142 (3), insert:**

(3A) The Heritage Council may, by instrument in writing served on a council, exempt the council from the requirements of subsection (3).

(3B) An exemption under subsection (3A) may be given unconditionally or subject to such conditions as the Heritage Council determines, and may be varied or revoked by a subsequent instrument in writing made by the Heritage Council and served on the council.

(b) After section 142 (5), insert:

(Q) This section does not apply to order No. 2, 15, 16 or 17 in the Table to section 124 if given by a council in an emergency.

SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE LOCAL GOVERNMENT ACT 1993—*continued***Explanatory note**

At present, a council is required to consult with the Heritage Council before it gives certain kinds of orders in respect of items of the environmental heritage.

Paragraph (a) will enable the Heritage Council to exempt councils from this requirement in general cases.

Paragraph (b) will exempt the council from this requirement in cases of emergency.

(12) Section 150 (Powers of fire brigades):

After section 150 (l), insert:

(1A) The provisions of:

- (a) Division 2; and
- (b) section 142,

do not apply to an order given in accordance with this section in circumstances which the authorised fire officer believes constitute an emergency or a serious risk to safety.

Explanatory note

At present, authorised fire officers are authorised to give certain kinds of orders with respect to buildings they have inspected. The proposed amendment makes it clear that certain restrictions that apply to a council in giving such an order do not apply to such an officer in circumstances that constitute an emergency or a serious risk to safety.

(13) Section 164 (Local policy not to be more onerous than this Act or the regulations):

Omit section 164 (1) (b), insert instead:

- (b) a specified aspect of anything for which an order may be given under Part 2,

a local policy adopted under this Part by a council, to the extent to which its provisions impose a more onerous criterion in relation to the specified aspect, is void.

Explanatory note

The proposed amendment merely corrects a formatting error in section 164.

**SCHEDULE 3—AMENDMENT OF CHAPTER 7 OF THE LOCAL
GOVERNMENT ACT 1993—*continued***

(14) **Section 176 (Appeal by an applicant concerning an approval):**

Omit section 176 (2) (C), insert instead:

- (c) the date of extension or renewal of the approval if the approval has been extended or renewed under section 107,

Explanatory note

The proposed amendment fixes the time within which an appeal must be made in respect of an application to extend or renew an approval.

(15) **Section 177 (Appeal by an applicant as to whether a “deferred commencement” approval operates):**

From section 177 (l), omit “an ‘in principle’ approval”, insert instead “a ‘deferred commencement’ approval”.

Explanatory note

The proposed amendment is one of several that merely retitles “in principle” approvals as “deferred commencement” approvals.

**SCHEDULE 4—AMENDMENT OF CHAPTER 8 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

Section 193 (Notice of entry):

At the end of section 193 (3) (b), insert:

; or

- (c) if entry is required urgently and the case is one in which the general manager has authorised in writing (either generally or in the particular case) entry without notice; or
- (d) if entry is made solely for the purpose of reading a meter or other device for measuring:
- (i) the supply of water to the premises from the council’s water mains; or
- (ii) the discharge of sewage or other waste matter from the premises into the council’s sewer mains.

SCHEDULE 4—AMENDMENT OF CHAPTER 8 OF THE LOCAL GOVERNMENT ACT 1993— *continued***Explanatory note**

The proposed amendment extends the purposes for which notice is not required to be given in relation to the proposed exercise of a power of entry. The amendment brings the Act into line with section 33 of the Sydney Electricity Act 1990, which is in substantially similar terms.

SCHEDULE 5—AMENDMENT OF CHAPTER 9 OF THE LOCAL GOVERNMENT ACT 1993

(Sec. 3)

(1) Section 211 (Ward boundaries):

(a) Omit section 211 (2), insert instead:

(2) Before the end of the third year of each term of office, a council must submit details of:

- (a) the boundaries of the wards into which it proposes to divide its area; or
- (b) any proposed changes to the boundaries of its existing wards,

to the Electoral Commissioner and the Australian Statistician for consideration.

(b) From section 211 (4), omit "A boundary change", insert instead "The division of a council's area into wards, or a change to the boundaries of a ward,".

Explanatory note

The proposed amendments will require a council that is not divided into wards to give due notice to the Electoral Commissioner and the Australian Statistician of details of the boundaries of proposed wards.

(2) Section 213 (Facilitating provisions of proclamations):

In section 213 (1), after the following words:

- the application of regulations

insert:

l the alteration of ward boundaries

**SCHEDULE 5—AMENDMENT OF CHAPTER 9 OF THE LOCAL
GOVERNMENT ACT 1993—*continued***

Explanatory note

The proposed amendment ensures that a proclamation that gives effect to an alteration in the boundaries of a council's area may also make provision with respect to any consequential changes to boundaries of wards within the council's area.

(3) Section 239 (Categorisation of councils and mayoral offices):

- (a) From section 239 (1) (a), omit “, county councils (other than electricity authorities)”.
- (b) From section 239 (1) (b), omit “, county council (other than an electricity authority)”.
- (c) From section 239 (2), omit “, councillors and members of county councils”, insert instead “and councillors”.

Explanatory note

The proposed amendments are consequential on the amendment to section 400 to be made by Schedule 8 (5).

(4) Section 240 (How are the categories to be determined?):

- (a) From section 240 (1), omit “, county councils (other than electricity authorities)”.
- (b) From section 240 (1), omit “or county council” wherever occurring.
- (c) Omit section 240 (2), insert instead:
 - (2) In the application of this section to county councils, the categories of county councils are to be determined having regard also to the functions of county councils.

Explanatory note

The proposed amendments are consequential on the amendment to section 400 to be made by Schedule 8 (5).

(5) Section 241 (Determination of fees):

Omit “, members of county councils”.

Explanatory note

The proposed amendment is consequential on the amendment to section 400 to be made by Schedule 8 (5).

SCHEDULE 5—AMENDMENT OF CHAPTER 9 OF THE LOCAL GOVERNMENT ACT 1993—*continued***(6) Section 242 (Special determinations):**

From section 242 (1), omit “, members of county councils”.

Explanatory note

The proposed amendment is consequential on the amendment to section 400 to be made by Schedule 8 (5).

SCHEDULE 6—AMENDMENT OF CHAPTER 10 OF THE LOCAL GOVERNMENT ACT 1993

(Sec. 3)

(1) Section 270 (Who is an “owner of rateable land” for the purposes of this Part?):

In section 270 (4), after “in an area,” insert “or if joint or several owners of one parcel of land in an area are also joint or several owners of any other parcel of land in the area,”.

Explanatory note

The proposed amendment will limit joint owners of several properties within a single local government area to one vote in elections and polls conducted with respect to that area.

(2) Section 271 (Who is an “occupier” or “ratepaying lessee” for the purposes of this Part?):

After section 271 (4), insert:

(4A) If a corporation or trustees is or are ratepaying lessees of more than one parcel of land in an area, or if joint or several ratepaying lessees of one parcel of land in an area are also joint or several ratepaying lessees of any other parcel of land in the area, it or they can nominate a person as the ratepaying lessee of rateable land only in respect of one of those parcels.

Explanatory note

The proposed amendment will apply the same limitations on voting rights that apply to joint owners of property under section 270 to joint ratepaying lessees under section 271.

**SCHEDULE 6—AMENDMENT OF CHAPTER 10 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*****(3) Section 285:**

Omit the section, insert instead:

Voting system for election of councillors

285. The voting system in a contested election of a councillor or councillors is to be:

- (a) optional preferential, if the number of councillors to be elected is 1 or 2; or
- (b) proportional, if the number of councillors to be elected is 3 or more.

Explanatory note

The proposed amendment is consequential on other amendments to the Act that occurred through amendments in committee made while the Principal Act was passing through Parliament.

**SCHEDULE 7—AMENDMENT OF CHAPTER 11 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

Section 332 (Determination of structure):

Omit section 332 (2), insert instead:

(2) A council may not determine a position to be a senior staff position unless:

- (a) the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the Local Government (State) Award; and
- (b) the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3A of the Statutory and Other Offices Remuneration Act 1975) payable with respect to senior executive office holders whose positions are graded Level 1 (General Management).

**SCHEDULE 7—AMENDMENT OF CHAPTER 11 OF THE
LOCAL GOVERNMENT ACT 1993—*continued***

(3) For the purposes of subsection (2) (b), the total remuneration package payable with respect to a position within a council's organisation structure includes:

- (a) the total value of the salary component of the package; and
- (b) the total amount payable by the council by way of the employer's contribution to any superannuation scheme to which the holder of the position may be a contributor; and
- (c) the total value of any non-cash benefits for which the holder of the position may elect under the package; and
- (d) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits.

Explanatory note

The proposed amendment will identify more precisely the criteria according to which a council may determine a position to be a senior staff position.

**SCHEDULE 8—AMENDMENT OF CHAPTER 12 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 366 (Calling of extraordinary meeting on request by councillors):

Omit "21", insert instead "7".

Explanatory note

The proposed amendment reduces, from 21 days to 7, the time within which an extraordinary council meeting must be held if councillors so request.

(2) Section 377 (General power of the council to delegate):**(a) Before:**

- the making of a rate

insert:

- the appointment of a general manager

(b) After "the review of a determination", insert "made by the council, and not by a delegate of the council,".

SCHEDULE 8—AMENDMENT OF CHAPTER 12 OF THE
LOCAL GOVERNMENT ACT 1993— *continued*

(c) At the end of the section, insert:

- any function under this or any other Act that is expressly required to be exercised by resolution of the council.

Explanatory note

Paragraph (a) of the proposed amendments will prevent a council from delegating the power of appointment of its general manager.

Paragraph (b) of the proposed amendments will allow a council to delegate the review of decisions made by a delegate of the council.

Paragraph (c) of the proposed amendments will prevent a council from delegating the exercise of a function that is expressly required to be exercised by a resolution of the council.

(3) Section 381 (**Exercise of functions conferred or imposed on council employees under other Acts**):

After the words “a council” in section 381 (1), insert “or on the mayor or a councillor of a council, otherwise than by delegation in accordance with this section”.

Explanatory note

The proposed amendment will ensure that functions conferred under other Acts on a mayor or a councillor of a council will be construed as having been conferred on the council.

(4) Section 391 A:

After section 391, insert:

What are the functions of the chairperson?

391A. The role of the chairperson of a county council is:

- (a) to preside at meetings of the county council; and
- (b) to exercise such other functions of the county council as the county council determines.

Explanatory note

The proposed amendment states the role of the chairperson of a county council in terms corresponding to those in which the Act states the role of the mayor of a council.

**SCHEDULE 8—AMENDMENT OF CHAPTER 12 OF THE
LOCAL GOVERNMENT ACT 1993— *continued***

(5) Section 400 (Application of Act to county councils):

At the end of the section, insert:

(2) In the application of this Act to county councils and members of county councils:

- (a) a reference to the mayor of a council includes a reference to the chairperson of a county council; and
- (b) a reference to mayoral office includes a reference to the office of the chairperson of a county council; and
- (c) a reference to a councillor includes a reference to a member of a county council.

Explanatory note

The proposed amendment removes doubt as to how the Act is to apply to a county council.

**SCHEDULE 9—AMENDMENT OF CHAPTER 13 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 407:

Omit the section, insert instead:

**General manager to report periodically on
implementation of management plan**

407. (1) The general manager must report to the council within 6 weeks after the end of each quarter as to the extent to which the performance targets set by the council's current management plan have been achieved during that quarter.

(2) In this section, a quarter is the period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

Explanatory note

The proposed amendment brings the general manager's reporting requirement under section 407 in line with the reporting requirements under the Act in relation to financial matters.

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**SCHEDULE 9—AMENDMENT OF CHAPTER 13 OF THE
LOCAL GOVERNMENT ACT 1993—*continued***

(2) Section 428 (Annual reports):

From section 428 (2) (1), omit “section 354”, insert instead “section 356”.

Explanatory note

The proposed amendment corrects a wrong cross-reference.

**SCHEDULE 10—AMENDMENT OF CHAPTER 14 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 439 (Conduct of councillors, staff and delegates):

In section 439 (1), after “under this”, insert “or any other”.

Explanatory note

The proposed amendment makes it clear that a councillor’s statutory obligations to act honestly apply to functions exercised under other Acts as well as to functions under the Principal Act.

(2) Section 441 (Who are “designated persons?”):

At the end of section 441, insert:

- a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council’s functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member’s duty as a member of the committee and the member’s private interest.

Explanatory note

The proposed amendment will extend the definition of “designated person” in Chapter 14 so as to include a member of a council committee where the matters dealt with by the committee could give rise to a conflict between the member’s private and civic interests.

SCHEDULE 10—AMENDMENT OF CHAPTER 14 OF THE
LOCAL GOVERNMENT ACT 1993— *continued*

(3) Section 443 (**Who has a pecuniary interest?**):

- (a) In section 443 (2) (a), after “or a relative of the person”, insert “, or a partner or employer of the person.”.
- (b) Omit section 443 (3) (b), insert instead:
 - (b) just because the person is a member of, or is employed by, a council or a statutory body; or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

Explanatory note

Paragraph (a) of the proposed amendments will provide that a person has a pecuniary interest in a matter in situations where the person’s employer has a pecuniary interest in the matter.

Paragraph (b) of the proposed amendments will ensure that a council delegate to a company or body is not taken to have a pecuniary interest in a matter merely because the company or body has such an interest in that matter.

(4) Section 475 (**Power to summon witnesses and take evidence**):

- (a) From section 475 (3), omit “or affirmation and,”, insert instead “, and”.
- (b) From section 475 (3) (a), omit “either”.
- (c) From section 475 (3) (a), omit “or to make an affirmation”.
- (d) From section 475 (3) (b), omit “or take an affirmation from”.
- (e) From section 475 (5) (a), omit “or affirm”.

Explanatory note

The proposed amendments remove unnecessary references to affirmations. Under the Interpretation Act 1987, a reference to an oath includes a reference to an affirmation.

**SCHEDULE 10—AMENDMENT OF CHAPTER 14 OF THE
LOCAL GOVERNMENT ACT 1993—*continued***

(5) Section 482 (Decision of Pecuniary Interest Tribunal):

After section 482 (2), insert:

(3) The Pecuniary Interest Tribunal may, if it finds a complaint against a member of a council committee is proved:

- (a) counsel the member; or
- (b) reprimand the member; or
- (c) suspend the member from office as member of the committee for a period not exceeding 2 months; or
- (d) disqualify the member from holding office as a member of any committee of that council for a period not exceeding 5 years.

(4) The Pecuniary Interest Tribunal may, if it finds a complaint against an adviser to a council is proved:

- (a) counsel the adviser; or
- (b) reprimand the adviser; or
- (c) suspend the adviser from office as adviser for a period not exceeding 2 months; or
- (d) disqualify the adviser from holding office as an adviser to that council for a period not exceeding 5 years.

Explanatory note

The proposed amendments will enable the Pecuniary Interest Tribunal to take disciplinary action against members of council committees and council advisers where a complaint is proved in connection with a failure to disclose pecuniary interests.

**SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 493 (Categories of ordinary rates and categories of land):

In section 493 (1), after “ordinary rate”, insert “and 4 categories of rateable land”.

SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

Explanatory note

The proposed amendment makes it clear that the same categories and subcategories apply both to rateable land and to the ordinary rates that are levied on rateable land.

(2) Section 494 (Ordinary rates must be made and levied annually):

At the end of the section, insert:

(2) Each category or subcategory of ordinary rate is to apply only to land of the same category or subcategory.

Explanatory note

The proposed amendment will ensure that a particular category or subcategory of land will be subject only to the same category or subcategory of ordinary rate.

(3) Section 496 (Making and levying of annual charges for domestic waste management services):

Omit “a charge for each year”, insert instead “an annual charge”.

Explanatory note

The proposed amendment merely clarifies the annual nature of charges imposed under section 496.

(4) Section 504 (Domestic waste management services):

(a) After section 504 (1), insert:

(1A) Subsection (1) does not prevent income from an ordinary rate from being lent (by way of internal loan) for use by the council in meeting the cost of providing domestic waste management services.

(b) From section 504 (2), omit “of a charge”, insert instead “of annual charges or the imposition of charges for the actual use of the service, or both”.

Explanatory note

Paragraph (a). The proposed amendment will enable a council to finance the cost of providing a domestic waste management service by way of internal loan from its ordinary rate revenue.

SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

Paragraph (b). The proposed amendment will clarify that the charges imposed in relation to the provision of domestic waste management services are annual charges (under section 496) or charges for actual use (under section 502).

(5) Section 505 (**Application of Part**):

From section 505 (a), omit “special rates and charges”, insert instead “special rates and annual charges”.

Explanatory note

The proposed amendment makes it clear that charges that are not annual charges are not “general income” for the purposes of the provisions of the Principal Act that impose limits on the revenue that a council can budget for in levying its rates and charges.

(6) Section 510 (**Maximum annual charge for domestic waste management services**):

(a) Before “for the previous year”, insert “for the parcel”.

(b) At the end of section 510, insert:

(2) The annual charge for a parcel of land for a previous year:

(a) in the case of a parcel for which a charge has been made for part of the year only, is taken to be the charge that was actually made, multiplied by 365 and divided by the number of days in respect of which the charge was made; and

(b) in the case of a parcel for which no charge was actually made for the previous year, is taken to be the charge that was actually made for that year in relation to a comparable parcel of land (that is, a parcel of land of the same classification, of a similar size and in the same general locality).

Explanatory note

The proposed amendments ensure that full annual charges are payable with respect to a parcel of land even if the parcel has only been subject to such a charge for part of the previous year or has not previously been subject to such a charge at all.

SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

(7) Section 518 (**Categorisation as business**):

Omit “or residential”, insert instead “, residential or mining”.

Explanatory note

The proposed amendment corrects an anomaly that arose through amendments in committee made while the Principal Act was passing through Parliament.

(8) Section 520 (**Notice of declaration of category**):

At the end of the section, insert:

- (2) The notice must be in the approved form and must:
 - (a) state that the person has the right to apply to the council for a review of the declaration that the land is within the category stated in the notice; and
 - (b) state that the person has the right to appeal to the Land and Environment Court if dissatisfied with the council’s review; and
 - (c) refer to sections 525 and 526.

Explanatory note

At present, a council is required to give to the rateable person for a parcel of land a notice as to the rateable category to which the parcel has been assigned. The proposed amendment ensures that the notice advises the rateable person as to the person’s right to challenge the declaration and to seek a reclassification of the land.

(9) Section 525 (**Application for change of category**):

From section 525 (2), omit “in writing”, insert instead “in the approved form”.

Explanatory note

The proposed amendment will require applications for a change in the rateable category of land to be in an approved form.

(10) Section 548A:

After section 548, insert:

Aggregation of values of certain parcels subject to rates containing base amounts

548A. (1) If the council is of the opinion that the levying of a minimum rate or of a rate containing a base amount:

SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

- (a) would apply unfairly; and
- (b) could cause hardship to a rateable person who is rateable in respect of two or more separate parcels of land subject to the rate,

it may aggregate the land values of such of the parcels as it determines and levy the rate on the aggregated land values.

(2) Land values may be aggregated under this section for separate parcels of land only if each separate parcel is subject to:

- (a) the same category or subcategory of the same ordinary rate; or
- (b) the same special rate.

(3) A council must not aggregate the land values of two or more separate parcels of land:

- (a) if each parcel is a parcel on which a dwelling is erected or a parcel that comprises (or substantially comprises) a dwelling in a residential flat building; or
- (b) if the parcels are a combination of parcels referred to in paragraph (a).

Explanatory note

The proposed amendment will enable a council to aggregate parcels of land within the same ownership to alleviate the burden that would otherwise be caused by the application of minimum rates for each parcel.

(11) Section 551 (**Application of Division 2**):

Omit the section, insert instead:

Application of Division 2

551. This Division applies to a special rate or charge that is made in connection with water supply, sewerage or drainage services that are actually being provided by the council.

Explanatory note

The proposed amendment permits special rates and charges to be made in connection with water supply, sewerage or drainage services that are actually provided by a council rather than, as is currently the case, in connection with any purpose in relation to such services.

SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

(12) Section 555 (**What land is exempt from all rates?**):

After section 555 (1) (c), insert:

- (cl) land that is within a special area (within the meaning of the Hunter Water Board (Corporatisation) Act 1991) for the Hunter Water Corporation Limited and is Crown land or land vested in that company;

Explanatory note

The proposed amendment ensures that certain land within a special area for the Hunter Water Corporation Limited is exempt from all council rates. Special areas for all other water supply authorities are currently exempt.

(13) Section 562 (**Payment of rates.-and annual charges**):

(a) Omit section 562 (1), insert instead:

(1) Annual rates and charges may be paid in a single instalment or by quarterly instalments.

(b) From section 562 (2), omit “Each”, insert instead “If payment is made by quarterly instalments, each”.

(c) Omit section 562 (3) and (4), insert instead:

(3) Except as provided by subsection (4):

(a) if payment is made in a single instalment, the instalment is payable by 31 August; and

(b) if payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.

(4) If the rates and charges notice is not served by 1 August:

(a) the single instalment (if payment is made in a single instalment); or

(b) the first 2 instalments (if payment is made by quarterly instalments),

is or are payable by 30 November, or by the day that is 30 days after service of the notice, whichever is the later.

(d) Omit section 562 (5), insert instead:

(5) On or before 31 October, 31 January and 30 April, a council must send reminder notices (to be sent separately from the rates and charges notice) to each person whose rates and charges are being paid by quarterly instalments.

**SCHEDULE 11—AMENDMENT OF CHAPTER 15 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*****Explanatory note**

Paragraph (a) clarifies that rates may either be paid immediately in full or else may be paid in quarterly instalments.

Paragraphs (b) and (c) are consequential amendments.

Paragraph (d) will ensure that separate reminder notices are sent to persons who pay their rates by quarterly instalments.

(14) Section 608 (Council fees for services):

From section 608 (1), omit “for which it may make an annual charge under section 501”, insert instead “for which it is authorised or required to make an annual charge under section 496 or 501”.

Explanatory note

The proposed amendment will prevent a council from imposing annual fees for the provision of domestic waste management services in addition to the annual charges that it is authorised to impose under section 496.

**SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 626 (Failure to obtain approval):

After section 626 (3), insert:

(4) A person:

- (a) who carries out an activity without having obtained a prior approval of the council under Part 1 of Chapter 7 required ~~for~~ the carrying out of that activity; and
- (b) who so carries out the activity on the basis of an exemption granted by or under this Act, being an exemption that is subject to conditions; and
- (c) who carries out the activity otherwise than in accordance with the conditions to which the exemption is subject,

is guilty of an offence under subsection (1), (2) or (3) as if the exemption did not apply.

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

Explanatory note

The proposed amendment makes it clear that a person who fails to comply with the conditions of an exemption from the requirements of obtaining council approval to the carrying out of an activity is guilty of an offence as if the exemption did not apply.

- (2) Chapter 16, Part 2, heading:

Omit the heading to Part 2, insert instead:

PART 2—PUBLIC PLACES

Explanatory note

This is a consequential amendment that arises from the extension of Chapter 16 to public places generally, rather than to public land only.

- (3) Section 629 (**Injuring plants and animals**):

- (a) From section 629 (1), omit “on public land”, insert instead “in a public place”.
- (b) From section 629 (2), omit “public land”, insert instead “a public place”.

Explanatory note

The proposed amendments extend the ambit of the section to public places rather than, as is currently the case, to public land only.

- (4) Section 630 (**Breaking glass and other matter**):

Omit “on public land or a public road” wherever occurring, insert instead “in a public place”.

Explanatory note

The proposed amendments extend the ambit of the section to public places rather than, as is currently the case, to public land and public roads only.

- (5) Section 632 (**Acting contrary to notices erected by councils**):

- (a) From section 632 (1), omit “on public land or in a public bathing place under the control of a council”, insert instead “in a public place within the area of a council”.
- (b) From section 632 (2) (a) and (f), omit “the land” wherever occurring, insert instead “the place”.

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

- (c) From 632 (2) (b), (d) and (e), omit “on the land” wherever occurring, insert instead “in the place”.
- (d) From section 632 (2)(c), omit “onto the land”, insert instead “into the place”.

Explanatory note

The proposed amendments extend the ambit of the section to public places rather than, as is currently the case, to public land and public bathing places only.

- (6) Section 633 (**Bathing (including nude bathing) and other water-based recreational activities**):
 - (a) From section 633 (4), omit “either or both”, insert instead “one or more”.
 - (b) After section 633 (4) (b), insert:
 - ;
 - (c) the use of water-based recreational equipment in the place.

Explanatory note

The proposed amendments will enable a council to regulate (by the erection of notices) the use of recreational equipment (such as surfboards and windsurfers) at Beaches, and the waters off beaches, in the same way as it is able to regulate bathing.

- (7) Sections 633A–633C:

After section 633, insert:

Use of skateboards, roller blades and roller skates

633A. A person who, in a public place, uses skating equipment so as to obstruct, annoy, inconvenience or cause danger to any other person in that place is guilty of an offence.

Maximum penalty: 5 penalty units.

Part not to apply to National Park reserves

633B. This Part (section 633 excepted) does not apply to land within a National Parks and Wildlife reserve or land within a State forest or flora reserve within the meaning of the Forestry Act 1916.

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

Part not to affect roads and traffic functions under other Acts

633C. The provisions of this Part:

- (a) do not limit or restrict the operation of the Traffic Act 1909 with respect to public streets or the Roads Act 1993 with respect to public roads; and
- (b) do not authorise the erection of any notice containing a direction requiring or prohibiting the doing of anything if the giving of any such direction is a function exercisable under the Traffic Act 1909 with respect to public streets or under the Roads Act 1993 with respect to public roads.

Explanatory note

Proposed section 633A will prohibit dangerous skating and skateboarding in public places.

Proposed section 633B will exclude National Parks and Wildlife reserves, State forests and flora reserves from the operation of the provisions of Part 2 of Chapter 16 (relating to offences in public places), other than section 633 (Bathing (including nude bathing) and other water-based recreational activities).

Proposed section 633C will ensure that the Principal Act will not operate inconsistently with the Traffic Act 1909 or the Roads Act 1993.

(8) **Section 639 (Pollution of public water supply):**

From section 639 (2) (b), omit “Principal Engineer, Sewerage Services and Operations, Public Works Department”, insert instead “Director-General of NSW Public Works or by a person authorised by the Director-General to grant such an approval”.

Explanatory note

The proposed amendment ensures that approvals under section 639 can be given by the Director-General of NSW Public Works, or by a person authorised by the Director-General, rather than by the Principal Engineer only.

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

- (9) Section 641 (**Unlawful sale of water**):
Omit the section.

Explanatory note

The proposed amendment omits a provision that prohibits the sale of water supplied by a council. It is proposed that the sale of such water be required to be the subject of an approval under section 68 of the Act (see Schedule 3 (1) (c)).

- (10) Section 651:

Omit the section, insert instead:

Liability of vehicle owner for certain offences

651. (1) This section applies to any offence against section 650 (1) or (4) that arises from the parking of a vehicle, in this section referred to as a **parking offence**.

(2) The owner of a vehicle with respect to which a parking offence is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:

- (a) if the offence is dealt with by penalty notice, the owner satisfies a prescribed officer that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used; or
- (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.

(3) Nothing in this section affects the liability of the actual offender but, if a penalty has been imposed on, or recovered from, any person in relation to a parking offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.

(4) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, where the offence is dealt with by penalty notice:

- (a) within 21 days after service on the owner of the penalty notice in respect of the offence, the owner gives notice to the prescribed officer (verified by statutory declaration) of the name and address of the person who was at all relevant times in charge of the vehicle; or

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

(b) the owner satisfies the prescribed officer that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(5) The owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any other case:

(a) within 21 days after service on the owner of a summons in respect of the offence, the owner gives notice to the informant (verified by statutory declaration) of the name and address of the person who was at all relevant times in charge of the vehicle; or

(b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(6) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the parking offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.

(7) A statutory declaration that relates to more than one parking offence is taken not to be a statutory declaration supplying a name and address for the purposes of this section.

(8) This section does not limit any other provision of this Act, any provision of any other Act or any provision of any instrument in force under this or any other Act.

(9) In this section:

(a) a reference to a penalty notice is a reference to a penalty notice under section 18B of the Traffic Act 1909; and

(b) a reference to an owner of a vehicle is a reference to an owner of a vehicle within the meaning of that section; and

(c) a reference to a prescribed officer is a reference to a prescribed officer within the meaning of that section.

SCHEDULE 12—AMENDMENT OF CHAPTER 16 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

Explanatory note

The proposed amendment recasts section 651 in terms similar to those of the equivalent provision in the Roads Act 1993 and the Impounding Act 1993, and extends the section to offences under section 650 (1) and (4), rather than just those under section 650 (1).

(11) Section 660 (**Obstruction**):

Omit “section 747”, insert instead “section 746”.

Explanatory note

The proposed amendment corrects a wrong cross-reference that arose through amendments in committee made during the passage of the Principal Act through Parliament.

(12) Section 664 (**Disclosure and misuse of information**):

After section 664 (1), insert:

(1A) In particular, if a meeting or part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10 (2), a person must not, without the authority of the council or the committee, disclose (otherwise than to the council or a councillor of the council) information with respect to the discussion at, or the business of, the meeting.

(1B) Subsection (1A) does not apply to:

- (a) the report of a committee of a council after it has been presented to the council; or
- (b) disclosure made in any of the circumstances referred to in subsection (1) (a)–(e); or
- (c) disclosure made in circumstances prescribed by the regulations.

Explanatory note

The proposed amendment extends to councillors and members of council committees the prohibition on the disclosure of information with respect to information arising out of council meetings and committee meetings that have been closed to the public.

**SCHEDULE 13—AMENDMENT OF CHAPTER 17 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

- (1) Chapter 17, Part 1, Division 1, heading:
Before section 672, insert:

Division 1—Legal proceedings**Explanatory note**

This is merely a formal amendment.

- (2) Section 678 (**Failure to comply with order—carrying out of work by the council**):

After section 678 (9), insert:

(10) In any proceedings before the Land and Environment Court that are brought by a council against a person as a result of the person's failure to comply with an order under Part 2 of Chapter 7, the Court may, at any stage of the proceedings, order the council to exercise the council's functions under this section. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.

Explanatory note

Section 678 empowers a council to carry out work that has not been carried out by some other person by whom the work is otherwise required to be carried out. The proposed amendment will enable the Land and Environment Court to order a council to carry out work under this section. This will prevent the council from relying on the Court to make and enforce an order requiring the other person to carry out the work, in particular, where it is clear that the other person is unwilling or unable to carry out the work.

- (3) Section 679 (**Penalty notices for certain offences**):

From section 679 (1), omit "642 or 650", insert instead "312, 642, 650 or 651".

Explanatory note

The proposed amendment will prevent a council from being able to issue penalty notices in relation to offences under section 312 (failure to vote at council elections) or 651 (owner liability for parking offences).

SCHEDULE 13—AMENDMENT OF CHAPTER 17 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

- (4) Chapter 17, Part 1, Division 2, heading:
Before section 680, insert:

Division 2—Other remedies

Explanatory note

This is merely a formal amendment.

- (5) Section 680 (**Demanding name of offender**):

From section 680 (1), omit “finds a person committing an offence under this Act”, insert instead “finds a person whom the authorised person reasonably suspects of committing an offence under this Act”.

Explanatory note

The proposed amendment extends section 680 so that an authorised person will be able to demand a person’s name and address where the person is reasonably suspected of committing (rather than found actually committing) an offence.

- (6) Section 681A:

After section 681, insert:

Confiscation of recreational equipment

681A. (1) This section applies to:

- (a) any item of skating equipment that is being used in contravention of the provisions of a notice referred to in section 632 or of the provisions of section 633A; or
- (b) any item of water-based recreational equipment that is being used in contravention of the provisions of a notice referred to in section 633.

(2) An authorised person may take possession of equipment to which this section applies:

- (a) if the authorised person has directed the person using the equipment to stop using it in contravention of the provisions referred to in subsection (1); and
- (b) if, despite the direction, the person has continued to use the equipment in contravention of those provisions, but may not use force to do so.

SCHEDULE 13—AMENDMENT OF CHAPTER 17 OF THE
LOCAL GOVERNMENT ACT 1993—*continued*

(3) Equipment that an authorised person takes possession of under this section is referred to in this section as confiscated equipment.

(4) On taking possession of confiscated equipment, the authorised person must give a receipt to the person from whom it has been taken, indicating the nature of the equipment and the date and time when the authorised person took possession of it.

(5) The confiscated equipment:

- (a) must be returned to the person from whom it was taken, or be delivered to a public pound within the meaning of the Impounding Act 1993, within 24 hours after possession of it is taken; and
- (b) if it is delivered to a public pound, the person from whom it was taken must be notified in writing of the address of the pound.

(6) The Impounding Act 1993 (sections 20 and 23 (2) (b) and (c) excepted) applies to confiscated equipment that is delivered to a public pound as if the equipment had been impounded under that Act. Accordingly, it will become returnable on demand.

(7) The deadline for release for confiscated equipment, as referred to in section 24 of the Impounding Act 1993, is taken to be 28 days from the day on which possession of it was taken.

(8) In this section, a reference to an authorised person extends to a member of a surf life saving organisation who is authorised by the council concerned to exercise the functions conferred on an authorised person by this section, but so extends only with respect to an item of water-based recreational equipment that is being used in contravention of the provisions of a notice referred to in section 633.

(9) A council is liable for the acts and omissions of a member of a surf life saving organisation who is an authorised person by virtue of subsection (8) as if the member were an employee of the council.

SCHEDULE 13—AMENDMENT OF CHAPTER 17 OF THE
LOCAL, GOVERNMENT ACT 1993—*continued*

Explanatory note

The proposed amendment will enable an authorised person to confiscate recreational equipment (surfboards, windsurfers, skateboards, roller blades and the like) that is being used in contravention of section 632, 633 or 633A. Once confiscated, the equipment must be returned within 24 hours. Alternatively, it will be delivered to a public pound, in which case it will be dealt with as if it had been impounded under the Impounding Act 1993.

(7) Section 691 (Proceedings for offences):

Omit the section, insert instead:

Proceedings for offences

691. (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against section 626 (1) or (2), 627 (1) or (2) or 628 (1) may be dealt with:

(a) summarily by a Local Court constituted by a Magistrate sitting alone; or

(b) summarily before the Land and Environment Court in its summary jurisdiction.

Explanatory note

The proposed amendment merely clarifies that proceedings for an offence may always be dealt with summarily before a Local Court. The jurisdiction of the Land and Environment Court with respect to certain offences is additional to, rather than in replacement of, the jurisdiction of a Local Court.

(8) Section 716 (Sale of land by public auction):

Omit section 716 (2), insert instead:

(2) Land that fails to sell at public auction may be sold by private treaty.

Explanatory note

The proposed amendment recognises that land may not sell at a public auction.

**SCHEDULE 14—AMENDMENT OF CHAPTER 18 OF THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Section 740A:

After section 740, insert:

Ministerial committees

740A. (1) The Minister may establish committees in addition to those established by this Act.

(2) The functions of a committee established under this section are to be as determined by the Minister.

(3) The regulations may make provision for or with respect to the constitution and procedure of a committee established under this section.

Explanatory note

The proposed amendment will remove doubt as to the power of the Minister for Local Government and Co-operatives to establish advisory committees under the Principal Act.

(2) Section 749:

Omit the section, insert instead:

Savings, transitional and other provisions

749. Schedules 7 and 8 have effect.

Explanatory note

The proposed amendment is consequential on the insertion into the Principal Act of proposed Schedule 8.

**SCHEDULE 15—AMENDMENT OF SCHEDULE 6 TO THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Item 8:

After the words “Approvals concerning moveable dwellings”, insert “and temporary structures”.

Explanatory note

The proposed amendment enables regulations to be made with respect to approvals concerning temporary structures, such as circus tents,

**SCHEDULE 15—AMENDMENT OF SCHEDULE 6 TO THE
LOCAL GOVERNMENT ACT 1993—*continued***

(2) Item 21:

At the end of the list of examples, insert:

Safety standards for swimming pools situated on public land, including requirements with respect to:

- (a) the staff to be employed in connection with any such pool; and
- (b) the safety equipment to be provided at any such pool.

The exercise by authorised persons (including persons who are authorised persons by virtue of section 681A. (8)) of the functions conferred on an authorised person by or under this Act.

Explanatory note

The proposed amendment enables regulations to be made with respect to safety standards for swimming pools situated on public land and with respect to the exercise of functions by authorised persons.

**SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

(1) Schedule 7, heading:

Omit the heading to Schedule 7, insert instead:

**SCHEDULE 7—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THIS ACT**

(2) Clause 6:

- (a) In clause 6 (6), after “plan”, insert “or, in the case of land that has been classified as operational land, by a resolution under section 33”.
- (b) After clause 6 (7), insert:
 - (8) The provisions of this clause are in addition to, and do not limit the operation of, the other provisions of this Act with respect to the classification of land.

Local Government Legislation (Miscellaneous Amendments) Act 1994 No.44

SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(3) Clause 11:

Omit the clause.

(4) Clause 13:

(a) From clause 13 (1), omit “Part A of the Table to that section (other than the activity specified in paragraph 5 of that Part)”, insert instead “item 1,2,6 or 7 of Part A of the Table to that section”.

(b) Omit clause 13 (2), insert instead:

(2) This clause ceases to apply to an activity carried out in the area of a council:

(a) on 1 July 1995; or

(b) on the day on which the council exempts a person from the requirement to obtain approval for the carrying out of the activity in Part 1 of a local approvals policy adopted by the council under Part 3 of Chapter 7,

whichever first occurs.

(5) Clause 23:

At the end of clause 23, insert:

(2) A person who had been elected to civic office, but had not assumed that office, before 1 July 1993 is taken to have assumed that office at the time he or she would have done so, but for this Act, and continues in that office for the balance of the person’s term of office, subject to this Act.

(6) Clause 25:

After clause 25 (1), insert:

(1A) If, before 1 July 1993:

(a) a poll was taken under section 25A (6) of the old Act in relation to an area; and

(b) the decision of the poll was in favour of applying section 25A of the old Act to the area,

the area is, for the purposes of this Act, taken to be an area for which there is a decision in force under this Act that the mayor is to be elected by the electors.

SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(7) Clause 26:

From clause 26, omit “1 July 1994” wherever occurring, insert instead “1 January 1995”.

(8) Clause 26A:

After clause 26, insert:

Councils with 15 councillors or less

26A. (1) A council with 15 councillors or less at the commencement of section 224 may, before 1 January 1995, prepare a draft resolution determining a lesser number, in accordance with section 224 (1), of its councillors for the following term.

(2) In addition, that or another draft resolution prepared before 1 January 1995 may contain provisions for any of the following:

- (a) dividing its area into wards;
- (b) abolishing all wards;
- (c) altering ward boundaries;
- (d) naming or renaming a ward.

(3) Action may be taken by a council under this clause whether or not a vacancy has arisen in the office of any of its councillors.

(9) Clause 27:

In clause 27 (1), after “26”, insert “or 26A”.

(10) Clause 28:

(a) From clause 28, omit “1 September 1994”, insert instead “1 March 1995”.

(b) After clause 28 (4), insert:

(5) The council may resolve not to hold a by-election to fill a vacancy in a councillor’s office during the current term of office:

- (a) if a resolution referred to in clause 26 or 26A has been approved under this clause; and

SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(b) if the number of councillors is equal to or greater than the number of councillors specified in the resolution for future terms of office.

(6) A resolution under subclause (5) must be made within 5 months after the vacancy occurs and, in the case of a vacancy that arose before the commencement of this subclause and in respect of which a by-election has been called, before the closing date for the by-election.

(7) For the purposes of applying this Division, the period of 3 months referred to in section 292 is taken to commence, not from the date on which the vacancy occurs, but from:

(a) the date that is 5 months after:

(i) the date on which the vacancy occurs; or

(ii) the commencement of this subclause, in the case of a vacancy that arose before the commencement of this subclause,

if the council has not passed a resolution under subclause (5) within the 5-month period; or

(b) the date on which the Minister declines to approve a draft resolution of the council as referred to in subclause (2); or

(c) the date on which the council resolves that it will not seek or will no longer seek, under this Division, to reduce the number of councillors,

whichever is the earliest.

(8) The commencement date ascertained in accordance with subclause (7) is taken, for the purposes of section 294, to be the date on which the vacancy occurred.

(11) Clause 29:

From clause 29, omit “1 September 1994”, insert instead “1 March 1995”.

SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(12) Clause 30A

After clause 30, insert:

Minister may extend time

30A (1) The Minister may extend, from 1 January 1995 to 1 March 1995, the time within which action is to be taken under clause 26 or 26A.

(2) In that event, the references in clauses 28 and 29 to 1 March 1995 are taken to be references to 1 July 1995.

Validation

30B. (1) Any thing done before the commencement of an amendment made to this Division by the Local Government Legislation (Miscellaneous Amendments) Act 1994 that would, had the provision as so amended been in force when the thing was done or purported to be done, have been valid is validated.

(2) Botany Council is taken to have validly prepared a draft resolution under this Division to reduce the number of its councillors to 7 (one of whom is the mayor), the Minister is taken to have approved the draft resolution under this Division without any amendments and no by-election is required to fill a vacancy that occurred before the commencement of this clause.

(13) Clause 37:

From clause 37 (1), omit “the council must”, insert instead “the general manager of the council must”.

(14) Clause 40:

(a) After clause 40 (1), insert:

(1A) Despite any other Act or law, the council may by resolution terminate the employment of a person identified in the resolution on the grounds that:

- (a) the position previously held by the person has been abolished as a result of the determination by the council of its organisation structure; and
- (b) the person has been offered, but has refused to accept, an alternative position in the council’s organisation structure, being a position having remuneration no less than that of the position previously held by the person.

SCHEDULE 16—AMENDMENT OF SCHEDULE 7 TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

- (b) From clause 40 (3), omit “this clause”, insert instead “subclause (1)”.

(15) Clause 42:

- (a) Omit clause 42 (1), insert instead:

(1) This clause applies to:

- (a) persons who, since 1 July 1991, have completed; and
(b) persons who have undertaken but not completed,
any course of study or training prescribed, .approved or recognised by ordinance under the old Act as necessary or appropriate for obtaining suitable qualifications to hold an office referred to in Part 6 of the old Act.

- (b) In clause 42 (2), after “acknowledging”, insert “the person’s completion of the course concerned or”.

(16) Clause 53:

At the end of clause 53, insert:

(2) In the application of Schedule 3 to the first return made under section 449 (3), a reference to the date on which the last return under Part 2 of Chapter 14 was made is a reference to 1 July 1993.

Explanatory note

The proposed amendments effect minor changes to the existing savings and transitional provisions contained in Schedule 7 to the Act.

(17) Clause 55A:

After clause 55, insert:

Temporary operation of section 548

55A. (1) Section 548 ceases to have effect on 1 July 1995.

(2) This clause does not affect the operation of section 548 in respect of the period before 1 July 1995 or anything done in accordance with that section during that period.

**SCHEDULE 17—INSERTION OF SCHEDULE 8 INTO THE
LOCAL GOVERNMENT ACT 1993**

(Sec. 3)

After Schedule 7, insert:

**SCHEDULE 8—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS CONSEQUENT ON THE
ENACTMENT OF OTHER ACTS**

(Sec. 749)

Part 1—Preliminary**Regulations**

1. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Local Government Legislation (Miscellaneous Amendments) Act 1994

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2—Provisions consequent on the enactment of
the Local Government Legislation (Miscellaneous
Amendments) Act 1994****Definitions**

2. In this Part:

“**relevant commencement**”, in relation to a provision of the 1994 amending Act, means the day appointed under section 2 of that Act in relation to the commencement of that provision;

SCHEDULE 17—INSERTION OF SCHEDULE 8 INTO THE
LOCAL GOVERNMENT ACT 1993—*continued*

“the 1994 amending Act” means the Local Government Legislation (Miscellaneous Amendments) Act 1994.

Public availability of council and committee minutes and Departmental representatives’ reports

3. The amendments to section 12 made by the 1994 amending Act apply to:

- (a) the minutes of meetings that occurred before the relevant commencement; and
- (b) Departmental representatives’ reports that were presented to a council before the relevant commencement,

in the same way as they apply to the minutes of meetings that occur, and to reports that are presented, after that commencement.

Selective tendering

4. Any contract that was entered into before the commencement of the 1994 amending Act is validated to the extent to which it would have been valid had the amendments to section 55 made by that Act then been in force.

Appeals with respect to applications for extension of approvals

5. Section 176, as amended by the 1994 amending Act, does not apply to an application for extension of an approval, or to an extension of an approval, made or granted before the relevant commencement.

Councils may retain “municipality” and “shire” as part of their corporate names

6. (1) Despite section 221 (1):

- (a) the council of an area which, immediately before 1 July 1993, was a municipality may resolve that the corporate name of the council is to be “the Council of the Municipality of X” or “the X Municipal Council”, X being the name of the council’s area; and

SCHEDULE 17—INSERTION OF SCHEDULE 8 INTO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(b) the council of an area which, immediately before 1 July 1993, was a shire may resolve that the corporate name of the council is to be “the Council of the Shire of X” or “the X Shire Council”, X being the name of the council’s area,

and, in that event, the corporate name of the council is the name so resolved.

(2) A resolution under subclause (1) may not be made after 31 December 1994, but may be revoked at any time.

(3) A resolution under this clause takes effect when it is published in the Gazette.

Senior staff positions

7. The amendment to section 332 made by the 1994 amending Act does not affect the status, as senior staff positions, of positions that were determined to be senior staff positions, in accordance with the Principal Act as then in force, before the relevant commencement.

Complaints against committee members and council advisers

8. The amendments to section 482 made by the 1994 amending Act apply to complaints made before the relevant commencement in the same way as they apply to complaints made after that commencement.

General valuations furnished after 1 January 1994

9. A new general valuation furnished on or after 1 January 1994 and before 1 July 1995 is not to be used for the purpose of making or levying a rate before the year commencing on 1 July 1995.

Fees and charges prior to 1 July 1994

10. Section 612 does not apply to the determination by a council of an approved fee if the determination is made before 1 July 1994.

Orders by the Land and Environment Court

11. The amendment to section 678 made by the 1994 amending Act applies to proceedings commenced before the relevant commencement in the same way as it applies to proceedings commenced after that commencement.

SCHEDULE 17—INSERTION OF SCHEDULE 8 INTO THE LOCAL GOVERNMENT ACT 1993—*continued***Effect of amendment to regulations**

12. The amendments made by the 1994 amending Act to the Local Government (Approvals) Regulation 1993 and the Public Health Regulation 1991 do not affect the future amendment or repeal of those Regulations.

Explanatory note

The new Schedule enacts provisions of a savings or transitional nature consequent on the proposed amendments to the Principal Act.

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE LOCAL GOVERNMENT ACT 1993

(Sec. 3)

(1) Definition of “building”:

After “part of a structure”, insert “, but does not include a moveable dwelling or associated structure or part of a moveable dwelling or associated structure”.

Explanatory note

The proposed amendment ensures that moveable dwellings and associated structures do not come within the definition of “building”.

(2) Definition of “carry out an activity”:

After the definition of “business day”, insert:

carry out an activity includes to organise, arrange for or otherwise cause the activity to be carried out.

Explanatory note

The proposed amendment ensures that references to the carrying out of an activity extend to causing an activity to be carried out.

(3) Definition of “Crown reserve”:

After the definition of “Crown land”, insert:

Crown reserve has the meaning given to “reserve” in section 78 of the Crown Lands Act 1989.

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

Explanatory note

The proposed amendment defines an expression that is to be used in section 45 and in the definitions of “public place” and “public reserve”.

(4) Definition of “eligible pensioner”:

Omit “(such a class being prescribed by reference to eligibility to receive a pension, benefit or allowance under the Social Security Act 1991 of the Commonwealth)”.

Explanatory note

The proposed amendment removes the current requirement that a regulation prescribing a class of eligible pensioners must refer to pensions, benefits or allowances under the Social Security Act 1991 of the Commonwealth.

(5) Definition of “entertainment”:

After “but does not include”, insert “amusement provided by means of an approved amusement device (within the meaning of the Liquor Act 1982) or poker machine (within the meaning of the Registered Clubs Act 1976), and does not include”.

Explanatory note

The proposed amendment ensures that certain kinds of amusement (approved amusement devices and poker machines) are not entertainment for the purposes of the Principal Act.

(6) Definition of “local environmental plan”:

After the definition of “licensed premises”, insert:

local environmental plan has the same meaning as it has in the Environmental Planning and Assessment Act 1979.

Explanatory note

The proposed amendment defines an expression that is used in several provisions of the Principal Act.

(7) Definition of “manufactured home estate”:

Omit the definition, insert instead:

manufactured home estate means land on which manufactured homes are or are to be placed, being land

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

that is prescribed by the regulations & land that is a
manufactured home estate for the purposes of this Act.

Explanatory note

The proposed amendment defines an expression that is used in sections 68
and 124 of the Principal Act.

(8) Definition of “National Parks and Wildlife reserve”:

Before the definition of “newspaper”, insert:

National Parks and Wildlife reserve means a national
park, state recreation area, conservation area, karst
conservation reserve, historic site, nature reserve, state
game reserve, Aboriginal area, protected archaeological
area, wildlife district, wildlife refuge, wildlife
management area or Aboriginal place within the
meaning of the National Parks and Wildlife Act 1974.

Explanatory note

The proposed amendment defines an expression that is to be used in section
633B.

(9) Definition of “promote or conduct a public entertainment”:

Omit the definition.

(10) Definition of “public car park”:

Omit “that Act”, insert instead “the Traffic Act 1909”.

(11) Definition of “public entertainment”:

(a) From paragraph (b), omit “meeting; and”, insert instead
“meeting.”.

(b) Omit paragraph (c).

Explanatory note

The proposed amendment is consequential on the amendment to the
definition of “entertainment”.

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(12) Definition of “public land”:

Omit paragraph (a), insert instead:

- (a) a public road; or

Explanatory note

The proposed amendment will result in private roads that are under the control of a council becoming public land for the purposes of the Principal Act.

(13) Definition of “public place”:

Omit the definition, insert instead:

public place means:

- (a) a public reserve, public bathing reserve, public baths or public swimming pool; or
- (b) a public road, public bridge, public wharf or public road-ferry; or
- (c) a Crown reserve comprising land reserved for future public requirements; or
- (d) public land or Crown land that is not:
 - (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)); or
 - (ii) a common; or
 - (iii) land subject to the Trustees of Schools of Arts Enabling Act 1902; or
 - (iv) land that has been sold or leased or lawfully contracted to be sold or leased; or
- (e) land that is declared by the regulations to be a public place for the purposes of this definition

Explanatory note

The proposed amendment extends the definition of “public place” to include certain Crown land and public land and certain other land to be prescribed by the regulations.

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(14) Definition of “public reserve”:

Omit paragraph (g) of the definition of “public reserve”,
insert instead:

(g) a Crown reserve that is dedicated or reserved:

(i) for public recreation; or

(ii) for a purpose that is declared to be a purpose that
falls within the scope of this definition by means
of an order published in the Gazette by the
Minister administering the Crown Lands Act
1989,

being a Crown reserve in respect of which a council
has been appointed as manager of a reserve trust for
the reserve or for which no reserve trust has been
established; of

Explanatory note

The proposed amendment limits the classes of Crown reserve that are to be included within the definition of “public reserve” for the purposes of the Principal Act.

(15) Definition of “public wharf”:

After the definition of “public road”, insert:

public wharf means a wharf, boat ramp, jetty or other
structure that is situated in, on or over water and that the
public are entitled to use.

Explanatory note

The proposed amendment defines an expression that is to be used in the definition of “public place”.

(16) Definition of “remuneration”:

Omit the definition.

(17) Definition of “residential flat building”:

After the definition of “required exit”, insert:

residential flat building means a building containing 2 or
more dwellings.

SCHEDULE 18—AMENDMENT OF THE DICTIONARY TO THE
LOCAL GOVERNMENT ACT 1993—*continued*

(18) Definition of “skating equipment”:

After the definition of “single dwelling-house”, insert:

skating equipment means roller skates, roller blades or skateboards, and includes other like things prescribed by the regulations for the purposes of this definition.

Explanatory note

The proposed amendment defines a term that is used in proposed sections 633A and 681A.

(19) Definition of “water-based recreational equipment”:

After the definition of “water supply work”, insert:

water-based recreational equipment means surfboards, windsurfers, sailboards, jetskis or rubber floats, and includes other like things prescribed by the regulations for the purposes of this definition.

Explanatory note

The proposed amendment defines a term that is used in proposed sections 633 and 681A.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS

(Sec. 4)

City of Sydney Act 1988 No. 48

Part 3, Division 3 (**First elections for Cities of Sydney and South Sydney** (sections 23–30)):

Omit the Division,

Explanatory note

The proposed amendment is consequential on the enactment of the Local Government Act 1993.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Community Land Development Act 1989 No. 201

Section 47 (Access ways remain as association property):

From section 47 (2), omit “Local Government Act 1919”, insert instead “Roads Act 1993”.

Explanatory note

The proposed amendment is consequential on the enactment of the Roads Act 1993.

Community Land Management Act 1989 No. 202

Section 116 (Open and private access ways):

Omit section 116 (2).

Explanatory note

The proposed amendment is consequential on the enactment of the Local Government Act 1993.

Darling Harbour Authority Act 1984 No. 103

Section 18

After section 17, insert:

Construction of roads

18 The Authority may set out and construct roads:

- (a) on controlled land or on land within the Development Area of which the Authority has exclusive possession; or
- (b) on any other land within the Development Area, with the consent of the person in whom that other land is vested.

Explanatory note

The proposed amendment restores to the Darling Harbour Authority the power to set out and construct roads that it had prior to the commencement of the Roads Act 1993.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Environmental Planning and Assessment Act 1979 No. 203

(1) Section 4 (**Definitions**):

From section 4 (5), omit “Subject to section 56, a reference”, insert instead “A reference”.

Explanatory note

The proposed amendment is consequential on the repeal of section 56 by proposed item (4).

(2) Section 11 (**Functions of corporation**):

After section 11 (4) (f), insert:

- (g) set out and construct roads on land vested in the corporation or on land of which the corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested;

Explanatory note

The proposed amendment restores to the corporation constituted under the Act the power to set out and construct roads that it had prior to the commencement of the Roads Act 1993.

(3) Section 54 (**Decision to prepare draft local environmental plan**):

From section 54 (3), omit “under section 521 of the Local Government Act 1919”.

Explanatory note

The proposed amendment merely updates a cross-reference

(4) Section 56 (**Appointment of qualified person**):

Omit the section.

Explanatory note

The proposed amendment is consequential on amendments made to the Local Government Act 1993 by Schedules 1–18

(5) Section 91AA (**“Deferred commencement” consent**):

- (a) From section 91AA (2), omit “an ‘in principle’ consent”, insert instead “a ‘deferred commencement’ consent”.

- (b) From section 91AA (3), omit “An ‘in principle’ consent”, insert instead “A ‘deferred commencement’ consent”.

Explanatory note

The proposed amendments rename “in principle” consents in the same way as it is proposed to rename “in principle” approvals under the Local Government Act 1993.

- (6) Section 97 (**Appeal by an applicant**):

From section 97 (1A), omit “an ‘in principle’ consent”, insert instead “a ‘deferred commencement’ consent”.

Explanatory note

The proposed amendment renames “in principle” consents in the same way as it is proposed to rename “in principle” approvals under the Local Government Act 1993.

- (7) Section 150 (**Evidence**):

From section 150 (1) (b) (ii), omit “the proper servant, as defined in section 4 of the Local Government Act 1919, of the council”, insert instead “the mayor, general manager or public officer of the council”.

Explanatory note

The proposed amendment merely updates certain references.

- (8) Section 151 (**Delegation by councils**):

Omit the section.

Explanatory note

The proposed amendment merely repeals a redundant provision.

Fish River Water Supply Administration Act 1945 No. 16

- Section 17 (**Default by a council**):

Omit section 17 (2).

Explanatory note

The proposed amendment merely repeals a redundant provision.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Impounding Act 1993 No. 31

After section 32, insert:

Owner liable for offences concerning motor vehicles

32A. (1) The owner of a vehicle with respect to which an offence under section 32 is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:

- (a) if the offence is dealt with by way of penalty notice, the owner satisfies a person specified in the notice that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used; or
- (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.

(2) Nothing in this section affects the liability of an actual offender in respect of the offence but, if a penalty has been imposed on, or recovered from, any person in relation to the offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.

(3) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, where the offence is dealt with by way of penalty notice:

- (a) within 21 days after service on the owner of the penalty notice for the offence, the owner gives notice in writing to a person specified in the notice (verified by statutory declaration) of the name and address of the person who was, at all relevant times, in charge of the vehicle; or
- (b) the owner satisfies a person specified in the notice that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(4) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, in any other case:

- (a) within 21 days after service on the owner of a summons for the offence, the owner gives notice in writing to the informant (verified by statutory declaration) of the name and address of the person who was, at all relevant times, in charge of the vehicle; or

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

(b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.

(5) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.

(6) A statutory declaration that relates to more than one offence is taken not to be a statutory declaration supplying a name and address for the purposes of this section.

(7) This section does not limit any other provision of this Act, any provision of any other Act or any provision of an instrument in force under this or any other Act.

Explanatory note

The proposed amendment introduces into the Act an “owner onus” provision with respect to the offence of abandoning a car in a public place. The new provision is modelled on similar provisions contained in the Local Government Act 1993 and the Roads Act 1993.

Justices Act 1902 No. 27

Section 100I (Interpretation):

From the matter relating to the Local Government Act 1993 in paragraph (a) of the definition of “penalty notice” in section 100I (1), omit “section 679”, insert instead “section 314, 647 or 679”.

Explanatory note

The proposed amendment ensures that the penalty notice provisions of the Justices Act 1902 apply to all penalty notice offences under the Local Government Act 1993 rather than just those under section 679 of that Act.

Land and Environment Court Act 1979 No. 204

(1) **Section 18 (Class 2—local government and miscellaneous appeals and applications):**

From section 18 (a), omit “82,”.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Explanatory note

The proposed amendment prevents an appeal being made to the Land and Environment Court against a council's determination of an objection to the application of regulations or a local policy to a particular activity for which approval is sought. A right of appeal with respect to those matters will continue to exist by way of an appeal against the council's determination of the application for the relevant approval.

(2) Section 39 (Powers of Court on appeals):

- (a) In section 39 (6), before "a consent authority", insert "a council within the meaning of the Local Government Act 1993 or".
- (b) From section 39 (6), omit "that authority", insert instead "that council or consent authority".

Explanatory note

The proposed amendments will enable the Land and Environment Court to determine an appeal against a council's determination of an application for approval without consulting the bodies that would have to be consulted by the council in determining such an application. This same power exists in relation to concurrences required under the Environmental Planning and Assessment Act 1979.

Library Act 1939 No. 40**Section 13 (Subsidy):**

- (a) In section 13 (2) (a) (i), before "a municipality", insert "an area that (immediately before the commencement of the Local Government Act 1993) was".
- (b) In section 13 (2) (a) (ii), before "a shire", insert "an area that (immediately before the commencement of the Local Government Act 1993) was".

Explanatory note

The proposed amendments are consequential on the commencement of the Local Government Act 1993.

Local Government (Approvals) Regulation 1993

Clause 38A:

After clause 38, insert:

Consolidation of lots

38A. (1) The council may, as a condition of an approval to erect a building on a site comprising 2 or more lots in a lawful division of land, require those lots to be consolidated into a single lot.

(2) Such a requirement may not be made unless each of the lots:

- (a) comprises land that is under the provisions of the Real Property Act 1900; or
- (b) comprises land of the same class of tenure.

Explanatory note

The proposed amendment reproduces in the Regulation a provision that was previously section 314B of the Local Government Act 1919.

Public Health Regulation 1991Clause 90 (**Funeral industries**):

Omit the clause.

Explanatory note

The proposed amendment repeals a clause that continues in force, as an ordinance under the Local Government Act 1919, certain provisions relating to the funeral industry.

Public Works Act 1912 No. 45Section 81 (**Constructing Authority may dedicate highway**):

Omit the section.

Explanatory note

The proposed amendment is consequential on the enactment of the Roads Act 1993.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Roads Act 1993 No. 33

(1) Section 32A:

After section 32, insert:

Extension of RTA's functions under sec, 64

32A. Without limiting the operation of section 64, the RTA may exercise the functions of a roads authority under this Division with respect to any classified road and any public road adjoining a classified road.

Explanatory note

The proposed amendment ensures that the RTA can fix the levels not only of classified roads but also of public roads that adjoin classified roads.

(2) Section 99 (**Private bodies to maintain or repair certain water supply and drainage works**):

In section 99 (1), before "to repair or maintain", insert "or the Irrigation Corporations Act 1994".

(3) Section 102 (**Liability for damage to public road**):

After section 102 (3), insert:

(4) This section applies to tollways and to private roads that are classified roads in the same way as it applies to public roads.

Explanatory note

The proposed amendment extends the provisions of section 102 (which render a person liable to the appropriate roads authority for damage done by the person to a public road) to tollways and private roads that are classified.

(4) Section 139 (**Nature of consent**):

At the end of section 139, insert:

(2) In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located:

- (a) in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar-General with respect to the road; or

(b) in such other position as the roads authority may direct.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—

*continued***Explanatory note**

The proposed amendment enables a roads authority to indicate its consent to the positioning of utility services along a road that has been opened by registration of a plan at the office of the Registrar-General by marking the plan accordingly.

(5) Section 142 (Maintenance of works and structures):

(a) From section 142 (2) and (3), omit “This section” wherever occurring, insert instead “Subsection (1)”.

(b) After section 142 (3), insert:

(4) If:

(a) a roads authority has granted a consent under this Division ~~to the doing of anything~~; and

(b) that thing has been or is being done otherwise than in accordance with the consent,

the roads authority may direct the person ~~to whom the consent was granted~~ to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

Explanatory note

The proposed amendments will enable a roads authority to direct a person to put right any damage caused by that person as a result of carrying out an activity to which the roads authority has granted consent under Division 3 of Part 9 of the Roads Act 1993.

(6) Section 231 (Vehicles exceeding maximum weight limits):

(a) In section 231 (1), after “an authorised officer”, insert “may give a direction”.

(b) From section 231 (1) (a), omit “may prohibit”, insert instead “prohibiting”.

(c) From section 231 (1) (b), omit “may require”, insert instead “requiring”.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

- (d) From section 231 (1) (c), omit “may prohibit”, insert instead “prohibiting”.
- (e) From section 231 (1) (d), omit “may require”, insert instead “requiring”.

Explanatory note

The proposed amendments are merely consequential.

(7) Section 237 (**Manner and form in which directions to be given**):

- (a) In section 237 (2), before “95,”, insert “93,”.
- (b) After section 237 (2), insert:
 - (3) A direction under section 230 may be given orally.

Explanatory note

Paragraph (a) of the proposed amendments enables emergency oral directions to be given with respect to the filling in of excavations that threaten the stability of a public road. Currently, such directions may only be given in writing.

Paragraph (b) of the proposed amendments enables oral directions to be given (without the need for an emergency) for the purpose of enabling vehicles to be weighed in accordance with section 230.

(8) Section 244 (**Liability of owner of vehicle for certain driving offences**):

After section 244 (8), insert:

(9) If action is taken under section 18B of the Traffic Act 1909 in relation to an offence to which this section applies:

- (a) a reference in this section to a penalty notice is taken to be a reference to a penalty notice under that section; and
- (b) a reference in this section to an owner of a vehicle is a reference to an owner of a vehicle within the meaning of that section; and

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

- (c) a reference in this section to an authorised officer is a reference to a prescribed officer within the meaning of that section.

Explanatory note

The proposed amendment clarifies the operation of section 244 where penalty notices are issued under the Traffic Act 1909.

(9) Dictionary:

From paragraph (d) of the definition of “Sydney metropolitan area”, omit “the Shire of Hawkesbury”, insert instead “the City of Hawkesbury”.

Explanatory note

The proposed amendment reflects the change of name of the Hawkesbury local government area.

Sydney Harbour Trust Act 1900 (1901 No. 1)

Section 101 (The Governor with consent of commissioners may proclaim highways):

Omit the section.

Explanatory note

The proposed amendment is consequential on the enactment of the Roads Act 1993.

Traffic Act 1909 No. 5

(1) Section 10X (**Definitions**):

Omit the definition of “traffic route”, insert instead:

“traffic route” means:

- (a) a main road or secondary road within the meaning of the Roads Act 1993; or

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

- (b) a public road within the meaning of that Act (other than a main road or secondary road) in respect of which the Authority has, by reason of the volume of vehicular or pedestrian traffic carried on it, determined requires lighting to a standard approved by the Authority.

Explanatory note

The proposed amendment is consequential on the enactment of the Roads Act 1993.

(2) Section 18B (Penalty notices for certain offences):

- (a) Omit section 18B (1) (bb), insert instead:
(bb) has committed, or by virtue of section 651 of the Local Government Act 1993, is guilty of, an offence under section 650 (1) or (4) of that Act;
- (b) Omit section 18B (1) (h), insert instead:
(h) has committed, or by virtue of section 244 of the Roads Act 1993 is guilty of, any prescribed offence under that Act or the regulations under that Act,
- (c) From section 18B (2) (b), omit “section 270O or 270R of the Local Government Act 1919”, insert instead “section 651 of the Local Government Act 1993”.

Explanatory note

The proposed amendments are consequential on amendments made to the Local Government Act 1993 by Schedules 1–18 and the Roads Act 1993 by this Schedule.

(3) Section 25 (Removal of dangers and obstructions to traffic):

- (a) After section 25 (2), insert:
(2A) A certificate that is issued on behalf of the appropriate roads authority by a person prescribed by the regulations, or by a person belonging to a class of persons so prescribed, being a certificate that states that:
(a) a specified amount represents the costs incurred by the authority in carrying out specified work or in taking specified action for the purposes of this section; or

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

- (b) a specified amount represents the costs incurred by the authority in relation to the exercise by an authorised officer of a function under this section,
is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (b) At the end of paragraph (b) of the definition of “authorised officer” in section 25 (3), insert:
- or
- (c) a person of a class prescribed by the regulations who is authorised by the appropriate roads authority to exercise the functions of an authorised officer under this section;

Explanatory note

The proposed amendments reproduce in section 25 certain provisions of the Roads Act 1993 with respect to evidentiary certificates and enable the regulations to extend the definition of “authorised officer” for the purposes of that section.

(4) Section 26 (**Removal of unattended motor vehicles from clearways, transit lanes and other places**):

At the end of paragraph (b) of the definition of “authorised officer” in section 26 (8), insert:

; or

- (c) a person of a class prescribed by the regulations who is authorised by the Authority to exercise the functions of an authorised officer under this section.

Explanatory note

The proposed amendment enables the regulations to extend the definition of “authorised officer” for the purposes of section 26.

SCHEDULE 19—AMENDMENT OF OTHER INSTRUMENTS—
continued

Traffic (Parking Regulation) Amendment Act 1993 No. 34

Schedule 1 (Amendment of Traffic Act 1909):

Omit Schedule 1 (4) (b), (c) and (d).

Explanatory note

The proposed amendment is consequential on the amendments to be made to the Traffic Act 1909.

*[Minister's second reading speech made in—
Legislative Assembly on 3 May 1994
Legislative Council on 13 May 1994]*