

1993—No. 272

LOCAL GOVERNMENT ACT 1993—REGULATION

(Local Government (Savings and Transitional) Regulation 1993)

NEW SOUTH WALES



[Published in Gazette No. 73 of 1 July 1993]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Local Government Act 1993, has been pleased to make the Regulation set forth hereunder.

GARRY WEST, M.P.,
Minister for Local Government and Co-operatives.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Local Government (Savings and Transitional) Regulation 1993.

Commencement

2. This Regulation commences on 1 July 1993.

Definitions

3. In this Regulation:

new Act means the Local Government Act 1993;

old Act means the Local Government Act 1919.

To which councils does this Regulation apply?

4. (1) This Regulation applies to all councils.

(2) This Regulation (except provisions relating to the making and levying of ordinary rates) applies to:

- (a) county councils in the same way as it applies to councils; and
- (b) members of county councils in the same way as it applies to councillors; and
- (c) the chairperson of a county council in the same way as it applies to the mayor of a council.

PART 2—PROVISIONS ARISING OUT OF CHAPTER 4 OF THE NEW ACT

Preservation of records

5. (1) A person must not destroy the following records of a council:

- (a) minute books of the meetings of the council and, if kept, minute books of the meetings of committees of the council;
- (b) registers of legal records;
- (c) deeds of conveyance of land, certificates of title, leases or mortgages of land, contracts for the sale of land, licences to use the council's property and affidavits of service of rate notices;
- (d) cemetery and burial registers;
- (e) registers and indexes of council files;
- (f) certified copies of electoral rolls, returning officers' declarations of elections and of polls and registers of returning officers' declarations of elections and of polls;
- (g) rate books;
- (h) audited annual statements of accounts, reports of the auditor and reports of a local government inspector or Departmental representative;
- (i) maps of water, sewerage or drainage works;
- (i) registers of development consents;
- (k) maps and registers of residential districts;
- (l) registers of building applications and registers of building approvals;
- (m) approved building applications with relevant plans and specifications;
- (n) road maps and road registers;
- (o) records of contracts entered into by the council relating to engineering, building programs and public works.

Maximum penalty: 2 penalty units.

(2) The records referred to in subclause (1) must, as far as is practicable, be protected from deterioration.

(3) A record of the council not referred to in subclause (1) may be destroyed or otherwise disposed of, if the council so decides:

(a) after the expiration of 6 years from the date of the last entry in or transaction concerning the record; or

(b) in accordance with the schedules for the disposal of records approved by the Minister for the purposes of this subclause.

(4) Despite the other provisions of this clause, a council may, in accordance with standards for microfilming approved by the Minister for the purposes of this subclause, microfilm any record referred to in subclause (1) (e)–(o) and destroy or otherwise dispose of the original record.

(5) Until standards are approved by the Minister for the purposes of subclause (4), the standards are taken to be those approved for the purposes of clause 55 (4) of Ordinance No. 1 made under the old Act immediately before the repeal of that Ordinance.

PART 3—PROVISIONS ARISING OUT OF CHAPTER 6 OF THE NEW ACT

Tenders for contracts

6. Despite the repeal of Ordinance No. 23 made under the old Act by the Local Government (Consequential Provisions) Act 1993, that Ordinance continues to apply to tenders for any contract for which a council, before the repeal:

(a) published an advertisement inviting persons to tender for the contract; or

(b) in the case of selective tendering, published an advertisement inviting applications from persons who may be interested in tendering for the contract.

Application of s. 94 of the Environmental Planning and Assessment Act 1979 and s. 64 of the new Act to certain development applications

7. Section 94 of the Environmental Planning and Assessment Act 1979, as amended by the Local Government (Consequential Provisions) Act 1993, and section 64 of the new Act apply to a development application made, but not finally determined, before 1 July 1993 in the same way as those sections apply to a development application made after that date.

Application of Division 2 of Part 3 of the Water Supply Authorities Act 1987 to certain applications for compliance certificates

8. (1) This clause applies to a council in the exercise of its functions under Division 2 of Part 3 of the Water Supply Authorities Act 1987, as referred to in section 64 of the new Act, with respect to an exempt application.

(2) A council may not make any requirement of the kind referred to in section 27 (1) (b), (c) or (d) of the Water Supply Authorities Act 1987, as amended by the Local Government (Consequential Provisions) Act 1993, with respect to an exempt application, but, on compliance by the applicant with the relevant section 94 conditions, must grant the applicant a compliance certificate as referred to in section 27 (1) (a) of that Act.

(3) In this clause:

compliance certificate means a certificate referred to in section 26 of the Water Supply Authorities Act 1987;

exempt application means an application for a compliance certificate that is made on the basis of a development consent granted under Part 4 of the Environmental Planning and Assessment Act 1979, being a development consent that is subject to a relevant section 94 condition;

relevant section 94 condition means a condition under section 94 of the Environmental Planning and Assessment Act 1979, being a condition requiring a dedication of land or a monetary contribution, or both, towards the provision of water or sewerage services.

Application of certain monetary contributions under s. 94 of the Environmental Planning and Assessment Act 1979

9. Any monetary contribution held by a council immediately before the commencement of this Regulation, being a contribution arising from a condition:

- (a) that was imposed under section 94 of the Environmental Planning and Assessment Act 1979; and
- (b) that specifies that the contribution is to be applied towards providing specified water or sewerage services or towards providing water or sewerage services generally,

is to be applied towards the construction of works within the meaning of Division 2 of Part 3 of the Water Supply Authorities Act 1987, or towards the repayment of money borrowed for the construction of such works, and is not to be applied towards any other purpose.

**PART 4—PROVISIONS ARISING OUT OF CHAPTER 7 OF
THE NEW ACT**

Existing licences and permits

10. A licence or permit issued by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before 1 July 1993, if it is of a kind for which an approval may be given under the new Act, continues in force and is taken to be an approval granted under the new Act and may be revoked or modified under the new Act.

Crown approvals

11. (1) Nothing in the new Act requires the Crown to obtain an approval:

- (a) to carry out an activity that was commenced to be carried out before 1 July 1993 which, if it had not been so commenced, would require approval under the new Act; or
- (b) to carry out an approval that would otherwise require approval under the new Act if the activity is carried out under a contract entered into following the seeking, before 1 October 1993, of tenders in writing or following the publication, before 1 October 1993, of an advertisement for a proposed contract relating to the carrying out of the activity or an advertisement inviting tenders in relation to the carrying out of the activity; or
- (c) to carry out water supply work, sewerage work or stormwater drainage work if the work is carried out as, or as part of, subdivision works.

(2) In this clause, **subdivision works** means any physical activity carried out in, on, under or over land in connection with the subdivision or proposed subdivision of land and includes the construction of roads and drainage systems.

Subdivision for lease purposes

12. Section 289K of the old Act applies to land in respect of which an approval is granted under the new Act to install a manufactured home, moveable dwelling or associated structure on the land in the same way as it applies to land that is licensed under Division 5B of Part 10 of the old Act.

**PART 5—PROVISIONS ARISING OUT OF CHAPTER 9 OF
THE NEW ACT****Completion of certain proceedings to fill casual vacancies in civic office**

13. (1) Proceedings that were commenced before 1 July 1993 to fill a casual vacancy in a civic office that occurred before that date may be continued and completed after that date.

(2) This clause has effect whether or not, as a result of the proceedings, a council may have more than 15 councillors.

Payment of fees to councillors and mayors

14. (1) Until the Remuneration Tribunal determines the annual fees payable to councillors, the fees payable to a councillor of a council must not exceed the fees payable under section 29A of the old Act to a member of the council immediately before 1 July 1993.

(2) Until the Remuneration Tribunal determines the annual fees payable to mayors, the fees payable to a mayor of a council must not exceed the allowance payable under section 29 of the old Act to the mayor or president of the council immediately before 1 July 1993.

**PART 6—PROVISIONS ARISING OUT OF CHAPTER 11 OF
THE NEW ACT****Inquiries under s. 99 of the old Act**

15. Section 99 of the old Act continues to apply to and in respect of any person in respect of whom action had been taken before its repeal as if it had not been repealed, but so applies only to the extent necessary to enable that action, and any other action consequent on the completion of that action, to be completed,

**PART 7—PROVISIONS ARISING OUT OF CHAPTER 12 OF
THE NEW ACT****Existing delegations**

16. A delegation under the old Act by a council that continues to have effect because of clause 3 (1) of Schedule 7 to the new Act ceases to have effect on 1 October 1993, unless sooner revoked.

**PART 8—PROVISIONS ARISING OUT OF CHAPTER 13 OF
THE NEW ACT****Definition**

17. In this Part, **Ordinance No. 26** means Ordinance No. 26 made under the old Act as in force immediately before the repeal of that Ordinance by the Local Government (Consequential Provisions) Act 1993.

Accounting records

18. (1) All principal and subsidiary books of account and registers kept or used by a council under Ordinance No. 26 are taken to be accounting records of the council for the purposes of the Local Government (Financial Management) Regulation 1993.

(2) In particular, a General Ledger, Journal or Cash Book that is being used by a council in accordance with clause 3, 4 or 5 of Ordinance No. 26 immediately before 1 July 1993 is taken respectively to be a general ledger, general journal or cash record kept by the council for the purposes of clause 12 of the Local Government (Financial Management) Regulation 1993.

Authorisation of expenditure

19. Expenditure approved or money voted by council under clause 16 of Ordinance No. 26 may, subject to clause 17 of that Ordinance, be incurred or spent despite the repeal of that Ordinance.

Bank accounts

20. A bank account established by a council for the purposes of clause 32 of Ordinance No. 26 is taken to be a bank account established by the council for the purposes of clause 10 of the Local Government (Financial Management) Regulation 1993.

Orders for goods

21. Despite the repeal of Ordinance No. 26, clause 37 of that Ordinance continues to apply to orders for goods made by or for a council before that repeal took effect.

Overpayments

22. Despite the repeal of Ordinance No. 26, clause 40 of that Ordinance continues to apply to overpayments made to a council before that repeal took effect.

Writing off money

23. Any resolution of a council made for the purposes of clause 41 of Ordinance No. 26 and not implemented before 1 July 1993 may be implemented despite the repeal of that Ordinance.

Statement of accounts

24. (1) Despite the repeal of Ordinance No. 26, the provisions of Parts 11 and 12 of that Ordinance relating to:

- (a) the preparation and auditing of statements of accounts of a council and of committees appointed by a council; and
- (b) the preparation of ledger balances in relation to a council; and
- (c) the completion of a council's subsidiary books and registers,

continue to apply to a council and to the committees of a council with respect to any period before 1 July 1993.

(2) Despite the repeal of Ordinance No. 26, clause 50AB of that Ordinance continues to apply to a council in relation to making available for inspection the council's annual statements of accounts for any period before 1 July 1993.

(3) For the purposes of applying subclause (1), a reference to the Clerk of a council is to be read as a reference to the general manager of the council.

Appointment of auditor

25. If the appointment of a person made before 1 July 1993 as a council's auditor would end after that date and before 30 June 1994, the council may extend the appointment to a date not later than 30 June 1995.

Annual report for the period 1.1.93–31.12.93

26. (1) Section 428 of the new Act applies with respect to the period of 12 months from 1 January 1993 to 31 December 1993:

- (a) as if the words "with respect to the objectives and performance targets set out in its management plan" were omitted from section 428 (1); and

1993—No. 272

(b) as if the words “(measured in accordance with the criteria set out in the relevant management plan)” were omitted from section 428 (2) (b); and

(c) as if the references in that section to a year were references to that period of 12 months.

(2) A council is not required to include in a report for the period of 12 months from 1 January 1993 to 31 December 1993 any matter referred to in section 428 (2) (c) of the new Act relating to a period before 1 July 1993.

Annual report for the period 1.1.94–30.6.94

27. Section 428 of the new Act applies with respect to the period of 6 months from 1 January 1994 to 30 June 1994:

(a) as if the words “with respect to the objectives and performance targets set out in its management plan” were omitted from section 428 (1); and

(b) as if the words “(measured in accordance with the criteria set out in the relevant management plan)” were omitted from section 428 (2) (b); and

(c) as if the references in that section to a year were references to that period of 6 months.

Inspections under s. 212 of the old Act

28. (1) Sections 433 and 434 of the new Act apply to an investigation carried out by a person under clause 51 (1) of Schedule 7 to that Act in the same way as they apply to an investigation carried out by a Departmental representative under Division 1 of Part 5 of Chapter 13 of the new Act.

(2) The person by whom the investigation is carried out is taken to be a Departmental representative for the purposes of those sections.

**PART 9—PROVISIONS ARISING OUT OF CHAPTER 14 OF
THE NEW ACT****Complaints concerning contraventions of**

29. (1) A person may make a complaint to the Director-General, or the Director-General may make a complaint, that a person has or may have contravened Division 9A of Part 4 of the old Act.

(2) Part 3 of Chapter 14 of the new Act applies to a complaint made under this clause in the same way as it applies to a complaint made under section 460 of the new Act.

PART 10—PROVISIONS ARISING OUT OF CHAPTER 15 OF THE NEW ACT

Division 1—Preliminary

Definition

30. In this Part, **transition period** means the period from 1 January 1994 to 30 June 1994.

Division 2—Making and levying of rates and annual charges for period 1.1.94 to 30.6.94

Application of Division 2

31. This Division applies to the making and levying of rates and annual charges for the transition period.

Halving of a full year's rates and annual charges

32. (1) Rates and annual charges are to be made under the old Act (and the ordinances under the old Act) for the whole of the year commencing on 1 January 1994 as if the old Act (and those ordinances) had not been repealed, but subject to this Part.

(2) However, the rate or annual charge is to be levied on a parcel of rateable land subject to the rate or charge only for the transition period.

(3) The amount of a rate (including the minimum amount of a rate) or annual charge (including a minimum charge and a standard charge) levied for the transition period on a parcel of rateable land subject to the rate or charge is to be one-half of the amount that would, but for this Part, be levied on the parcel under the old Act for the whole of the year commencing on 1 January 1994.

Transition period taken to be a rating year

33. The transition period is taken to be a year (or a rating year) for the purposes of sections 118, 118AB, 118AC, 124, 126A, 139, 139A, 158A, 160AA (10), 160C, 165B, 165C, 165D, 165E, 165F, 171, 378 (3B) and 379 (5) (b) of the old Act.

Provisions of the old Act that do not apply

34. Sections 118AAA, 118AC (4), 132A, 153 (1A) (b), (2), (2A) and (3), 160, 160A, 160AA (9A), 160DA, 163 and 378 (4) of the old Act do not apply to the making and levying of rates for the transition period, but the corresponding provisions of the new Act, in so far as they are relevant, do apply.

Advertisement of rates estimates

35. (1) The estimates required to be advertised under section 138 of the old Act are to show the estimates for the whole of the year commencing on 1 January 1994 and the estimates for the transition period.

(2) The estimates are required to be accompanied by a statement that explains why estimates are included for the transition period.

Rate notice for transition period

36. The rate notice for a parcel of rateable land for the transition period is:

(a) to show:

- (i) the amount of the rates and annual charges that would, but for clause 32 (3), have been levied on the parcel for the whole of the year commencing on 1 January 1994; and
- (ii) the amount levied in accordance with clause 32 (3); and

(b) to explain clearly that the amount levied is levied for the transition period only and that rates and annual charges will thereafter be made and levied under the new Act for yearly periods commencing on 1 July.

Arrangements for payment of rates and annual charges

37. (1) Rates and annual charges levied for the transition period become due and payable to the council on the expiration of 1 month after service of the rate notice.

(2) The rates and annual charges may be paid:

- (a) as a lump sum; or
- (b) by instalments in accordance with subclause (3); or
- (c) by instalments in accordance with section 160D of the old Act.

(3) A person liable to pay rates and annual charges levied for the transition period may pay the rates and charges in 2 instalments, 1 month and 3 months, respectively, after service of the rate notice. Each instalment is to be one-half of the amount levied for the transition period, disregarding any remainder, together, in the case of the first instalment, with that remainder.

Rebates under s. 139A of the old Act

38. A rebate under section 139A of the old Act applies to the amount of a rate levied in accordance with this Part.

Existing agreements to pay rates

39. The respective proportions under section 151 (3) of the old Act of a general rate levied for the transition period are to be of so much of the general rate as is equal to one-half of the amount of five-twelfths of a cent in the dollar on the land value of the land.

Reduction of rates payable by eligible pensioners

40. In the application of section 160AA of the old Act to rates made in the transition period:

- (a) “eligible pensioner” has the same meaning as in the new Act; and
- (b) references to \$250 and \$87.50 are taken to be references to \$125 and \$43.75, respectively.

Extension of garbage removal charges

41. The amount of a charge to which a person is subject under section 165E of the old Act for the transition period is one-half of the amount calculated in accordance with that section.

Application of new general valuations of rateable land

42. The transition period is not a year for the purposes of section 62 of the Valuation of Land Act 1916. Consequently, new general valuations are not to be used in making and levying rates for the transition period.

Division 3—Limit of annual income from rates and charges for year commencing 1.7.94

Notional general income of a council for the previous year

43. In making rates and charges for the year commencing on 1 July 1994, the notional general income of a council for the previous year, for

the purposes of section 509 (2) of the new Act, is the amount that would have been derived if the same rates and charges as were made to produce the general income for the transition period had been made but, in the case of rates, had been made in respect of:

- (a) the valuations of rateable land in the council's valuation record applicable as at 30 June 1994; and
- (b) any estimates of increase in value of rateable land that are provided to the council under section 513 of the new Act in respect of the transition period.

Maximum annual charge for domestic waste management services

44. Section 510 for the new Act does not prevent a council that did not make an annual charge specifically for domestic waste management services before 1 July 1994 from making such a charge.

Catching up of shortfall in general income

45. (1) A shortfall referred to in section 131A (1B) of the old Act occurring for the year commencing on 1 January 1993 and not caught up in the making of general purpose rates for the year commencing on 1 January 1994 may be caught up in the year commencing on 1 July 1994 or the year commencing on 1 July 1995.

(2) If:

- (a) the general purpose rates made by a council in accordance with clause 32 (1) for the whole of the year commencing on 1 January 1994 had been levied for the whole year under the old Act; and
- (b) those rates if so levied would have produced an amount which is less than the maximum permissible under section 131A (1) of the old Act for that year,

the shortfall is to be halved for the purpose of determining the amount of a shortfall that may be caught up in accordance with section 511 of the new Act.

Division 4—Miscellaneous

Application of Parts 7 and 14 of the old Act

46. Parts 7 and 14 of the old Act (and any ordinances made for the purposes of that Part) apply, for the purposes of this Part, with such modifications as may be necessary having regard to the provisions of this Part and the new Act.

Application of Chapter 15 of the new Act

47. Chapter 15 of the new Act and any regulations made for the purposes of that Chapter:

- (a) do not authorise the making or levying of a rate or charge for a year commencing before 1 July 1994; and
- (b) do not affect a rate or charge made under the old Act (or the old Act as applied by this Part) before that date, whether the rate or charge was levied before or after that date, except as provided by this Part.

Recovery of rates and charges made before 1.7.94

48. (1) A rate or charge made and levied before 1 July 1994 under the old Act (or the old Act as applied by this Part) and any interest or extra charges accrued on such a rate or charge are, for the purpose of their recovery, taken to be made or levied, or to have accrued, under the new Act.

(2) A rate, or part of a rate, postponed under section 160C of the old Act is taken to be postponed under Division 2 of Part 8 of Chapter 15 of the new Act.

(3) For the purposes of sections 595 and 713 of the new Act, the transition period is taken to be a year.

(4) A rate or charge made before 1 July 1994 under the old Act (or the old Act as applied by this Part) but not levied before that date may be levied after that date as if the rate or charge had been made under the new Act.

(5) Except to the extent to which this clause otherwise provides, nothing in this clause affects the operation of section 30 of the Interpretation Act 1987.

Saving for certain inscribed stock, debentures etc.

49. Inscribed stock, debentures, mortgage-deeds and bonds issued by a council in accordance with section 188 of the old Act are not affected by the repeal of that Act.

PART 11—MISCELLANEOUS**Saving of notifications with respect to certain public works**

50. (1) Any work the subject of a notification published in the Gazette before 1 July 1993 under section 36 (2) or (7) of the State Roads Act 1986 is to be maintained, managed and administered in accordance with

the notification as if the notification were a notice published in the Gazette under section 154 (1) or (4), as the case requires, of the Public Works Act 1912, as amended by the Local Government (Consequential Provisions) Act 1993.

(2) Section 155 of the Public Works Act 1912, as amended by the Local Government (Consequential Provisions) Act 1993, applies to a dispute arising under subclause (1) in the same way as it applies to a dispute arising under section 154 of that Act.

Validity of certain documents

51. A document issued on or after 1 July 1993 which is expressed to be issued under the old Act or an ordinance made or deemed to have been made under the old Act is not invalid if the document could be issued under the new Act or the regulations made under the new Act.

NOTE

TABLE OF PROVISIONS

PART 1—PRELIMINARY

- I. Citation
2. Commencement
3. Definitions
4. To which councils does this Regulation apply?

PART 2—PROVISIONS ARISING OUT OF CHAPTER 4 OF THE NEW ACT

5. Preservation of records

PART 3—PROVISIONS ARISING OUT OF CHAPTER 6 OF THE NEW ACT

6. Tenders for contracts
7. Application of s. 94 of the Environmental Planning and Assessment Act 1979 and s. 64 of the new Act to certain development applications
8. Application of Division 2 of Part 3 of the Water Supply Authorities Act 1987 to certain applications for compliance certificates
9. Application of certain monetary contributions under s. 94 of the Environmental Planning and Assessment Act 1979

1993—No. 272

PART 4—PROVISIONS ARISING OUT OF CHAPTER 7 OF THE
NEW ACT

10. Existing licences and permits
11. Crown approvals
12. Subdivision for lease purposes

PART 5—PROVISIONS ARISING OUT OF CHAPTER 9 OF THE
NEW ACT

13. Completion of certain proceedings to fill casual vacancies in civic office
14. Payment of fees to councillors and mayors

PART 6—PROVISIONS ARISING OUT OF CHAPTER 11 OF THE
NEW ACT

15. Inquiries under s. 99 of the old Act

PART 7—PROVISIONS ARISING OUT OF CHAPTER 12 OF THE
NEW ACT

16. Existing delegations

PART 8—PROVISIONS ARISING OUT OF CHAPTER 13 OF THE
NEW ACT

17. Definition
18. Accounting records
19. Authorisation of expenditure
20. Bank accounts
21. Orders for goods
22. Overpayments
23. Writing off money
24. Statement of accounts
25. Appointment of auditor
26. Annual report for the period 1.1.93–31.12.93
27. Annual report for the period 1.1.94–30.6.94
28. Inspections under s. 212 of the old Act

PART 9—PROVISIONS ARISING OUT OF CHAPTER 14 OF THE
NEW ACT

29. Complaints concerning contraventions of the old Act

1993—No. 272

PART 10—PROVISIONS ARISING OUT OF CHAPTER 15 OF THE
NEW ACT

Division 1—Preliminary

30. Definition

Division 2—Making and levying of rates and annual charges for period 1.1.94
to 30.6.94

- 31. Application of Division 2
- 32. Halving of a full year's rates and annual charges
- 33. Transition period taken to be a rating year
- 34. Provisions of the old Act that do not apply
- 35. Advertisement of rates estimates
- 36. Rate notice for transition period
- 37. Arrangements for payment of rates and annual charges
- 38. Rebates under s. 139A of the old Act
- 39. Existing agreements to pay rates
- 40. Reduction of rates payable by eligible pensioners
- 41. Extension of garbage removal charges
- 42. Application of new general valuations of rateable land

Division 3—Limit of annual income from rates and charges for year
commencing 1.7.94

- 43. Notional general income of a council for the previous year
- 44. Maximum annual charge for domestic waste management services
- 45. Catching up of shortfall in general income

Division 4—Miscellaneous

- 46. Application of Parts 7 and 14 of the old Act
- 47. Application of Chapter 15 of the new Act
- 48. Recovery of rates and charges made before 1.7.94
- 49. Saving for certain inscribed stock, debentures etc.

PART 11—MISCELLANEOUS

- 50. Saving of notifications with respect to certain public works
 - 51. Validity of certain documents
-

EXPLANATORY NOTE

The object of this Regulation is to make provision of a savings or transitional nature consequent on the commencement of the Local Government Act 1993 and certain consequential amendments to the Environmental Planning and Assessment Act 1979 and the Water Supply Authorities Act 1987.

This Regulation is made under clauses 2, 3 and 5 of Schedule 7 to the Local Government Act 1993 which give power for the making of regulations of a savings or transitional nature.
