

LOCAL GOVERNMENT (AMENDMENT) ACT.

Act No. 29, 1941.

An Act to amend the Local Government Act, 1919, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 10th April, 1941.]

**George VI.
No. 29, 1941.**

BE

No. 29, 1941.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title
and division
into Parts.

1. (1) This Act may be cited as the "Local Government (Amendment) Act, 1941."

(2) This Act is divided into Parts as follows :—

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919.

PART III.—GENERAL.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919.

Construc-
tion.

2. (1) This Part shall be read and construed with the Local Government Act, 1919, as amended by subsequent Acts.

(2) The Local Government Act, 1919, as so amended, is in this Part referred to as the Principal Act.

Amendment
of Act No.
41, 1919.
Sec. 33 (2).
(Oath of
allegiance
and decla-
ration of
office.)

3. The Principal Act is amended by inserting at the end of subsection two of section thirty-three the following words :—

In the application of this subsection to a person who at the date of his election or appointment is absent from the State on war service as defined in the Defence Act, 1903-1939, of the Parliament of the Commonwealth of Australia or who at the date is engaged in munitions works, Red Cross work or Australian Comforts Funds work abroad in connection with the Defence Force as defined in that Act, this subsection shall be read and construed as if the words "if such return is within sixty days of the election or appointment" were omitted.

4.

4. (1) The Principal Act is further amended—

No. 29, 1941.

Further
amendment of
Act No. 41,
1919.

- (a) (i) by inserting in subsection four of section one hundred and seventy-seven after the word "section" the words "other than for the purpose of works for extending electricity works trading undertakings into rural districts and the purchase of necessary machinery and equipment for such purpose";
- (ii) by inserting at the end of the same subsection the words "The approval of the Governor of an ordinary loan for the purpose of works for extending electricity works trading undertakings into rural districts and for the purchase of necessary machinery and equipment for such purpose shall not be given after the thirty-first day of December, one thousand nine hundred and forty-one";
- (b) by omitting from subsection five of section 422B the words "thirtieth day of June, one thousand nine hundred and forty" and by inserting in lieu thereof the words "thirty-first day of December, one thousand nine hundred and forty-one";
- (c) by inserting at the end of subsection four of section 493A the following words: "except in the case of borrowings made by a council in respect of which the Minister had prior to that date undertaken to the council to make a recommendation or in the case of borrowings for the purpose of works for extending electricity works trading undertakings into rural districts and for the purchase of necessary machinery and equipment for such purpose. A recommendation shall not be made by the Minister in respect of such borrowings after the thirty-first day of March, one thousand nine hundred and forty-two."

Sec. 177 (4).
(Approval
of certain
ordinary
loans.)Sec. 422B
(5).
(Agreement
by Treasurer
in relation
to certain
franchises.)Sec. 493A
(4).
(Agreement
by Treasurer
—loan
liabilities.)

Local Government (Amendment) Act.

No. 29, 1941.

(2) Subsection one of this section shall be deemed to have commenced on the thirtieth day of June, one thousand nine hundred and forty.

Further amendment of Act No. 41, 1919.
Sec. 177B.

Ordinary loans may be raised.

5. The Principal Act is further amended by inserting next before section one hundred and seventy-eight the following new section:—

177B. Notwithstanding any other provision of this Act, a loan for the purpose of any work or service or any object which the council is authorised by law to construct, carry on or effect, may be raised as an ordinary loan in any case where the Minister by notice published in the Gazette has indicated that a supplementary advance not less than twenty-five per centum of the estimated cost of such work or service or object will be made to the council under section five hundred and thirty-nine of this Act.

Further amendment of Act No. 41, 1919.
New sec. 282A.

Collection of salvage.

6. The Principal Act is further amended—

(a) by inserting after section two hundred and eighty-two the following new section:—

282A. The council shall have and shall be deemed always to have had the power to undertake the collection and the disposal for salvage purposes of waste products.

Sec. 289
(m).

(b) by omitting paragraph (m) of section two hundred and eighty-nine and by inserting in lieu thereof the following new paragraph:—

(m) by notice in writing direct the owner of any land on which there is a dangerous waterhole to do such one or more of the following things as may be specified in the notice, that is to say—

- (i) fence such waterhole;
- (ii) empty such waterhole of water;
- (iii) fill in such waterhole;
- (iv) cover up such waterhole.

Quarries, mines, &c.

Where the council directs the owner of land to fence or cover up a dangerous waterhole it shall give to the owner reasonable particulars of the kind of fence or covering which it considers will be sufficient to comply with the requirements of the notice.

Where

Where the dangerous waterhole is situated on two or more parcels of land which are not owned by the same person the council may in and by notices given under this paragraph direct the several owners to join in doing the thing or things specified in the notices.

Any owner who has been served with a notice under this paragraph may within the time and in the manner prescribed by rules of court appeal to a district court judge having jurisdiction within the area against the direction given in the notice.

Such judge may determine whether the direction of the council is reasonable in all the circumstances of the case and whether it shall or shall not be carried out either in its entirety or with modifications, and may extend the time within which anything is to be done. The costs of the appeal shall be in the discretion of the judge.

If costs are awarded they may be recovered in like manner to costs awarded in a judgment of the district court.

For the purposes of this paragraph a "dangerous waterhole" means any quarry, pit, excavation, dam or waterhole which, in the opinion of the council, is, or may become, dangerous to life.

- (c) (i) by omitting from subsection five of section three hundred and seventy-nine the words "may supply water free of charge to any such hospital or institution" and by inserting in lieu thereof the words "shall supply water free of charge to any such hospital and may so supply water to any such institution";
- (ii) by omitting from paragraph (a) of the same subsection the word "fifty" and by inserting in lieu thereof the word "sixty-five";
- (d)

No. 29, 1941.

Sec. 379 (5).
(Hospitals—
charitable
institutions
—free
water.)

Local Government (Amendment) Act.

No. 29, 1941.

Sec. 418.

(Extending
outside
boundaries.)

(d) by inserting after subsection four of section four hundred and eighteen the following new subsection:—

(4A) The power of a council to extend a trading undertaking referred to in paragraph (a) or paragraph (b) of subsection one of this section into another area shall include the power to trade in electricity or gas as the case may be within that area for the purpose of sale or distribution in that area only or in any area to which such undertaking may be extended in accordance with this section either as a separate trading undertaking or as part of its existing trading undertaking.

Sec. 493.

New subsec.
(1A).Guarantees
—Ferry
services.

(e) (i) by inserting after subsection one of section four hundred and ninety-three the following new subsection:—

(1A) Where any area is served by a ferry service or where the council deems it advisable that a ferry service should be extended to or established to serve its area, the council may enter into an agreement guaranteeing to the person or company operating the ferry service payment in each year of the period covered by the agreement and subject to such conditions as may be specified therein of an amount which shall not exceed the deficiency (if any) of the annual earnings of the ferry service in relation to the annual working expenses thereof plus interest on the capital cost thereof; and in such agreement provision shall be made for ascertaining the amount of such deficiency. Where more than one area is or is to be served by the ferry service the councils of such areas may join in making an agreement under this subsection.

(ii) by inserting in subsection three of the same section after the words "subsection one" the words "subsection (1A)";

(iii)

- (iii) by inserting in paragraph (a) of the same subsection after the word "tramway" the words "or ferry service"; No. 29, 1941.
- (f) by inserting after section five hundred and sixteen the following new section:— New sec. 516A.
- 516A. (1) This section shall apply only to contracts for the removal of night-soil or garbage or trade refuse or any combination of such removals which were entered into by the council prior to the third day of September, one thousand nine hundred and thirty-nine. Cancellation of certain contracts.
- (2) Where the council is satisfied that it is in the public interest so to do, and that such action has become desirable owing to war conditions, the council may, subject to the approval of the Minister, cancel a contract on such terms and conditions as may be agreed upon by the council and the contractor.
- (g) by inserting after section five hundred and eighteen the following new section:— New sec. 518A.
- 518A. On the sale of any land under this Division the council may, where the land is sold for housing purposes and if the Governor so approves, transfer the land and take a first or second mortgage, as the case may require, over such land to secure the repayment of the purchase money: Sale of land for housing.
- Provided, however, that the amount secured by any second mortgage taken by the council in pursuance of this section shall not exceed an amount equal to twenty per centum of the estimated value of the land and the dwelling house to be erected thereon.
- (h) (i) by inserting in paragraph (a) of subsection two of section five hundred and twenty-four after the word "fallow" the words "improved pasture"; Sec. 524 (2). (Entry and other powers.)
- (ii) by inserting after paragraph (d) of the same subsection the following new paragraph:— New par. (e).
- (e) the council or person authorised by it shall, unless the owner or occupier of

No. 29, 1941.

of the land otherwise consents, or the Minister otherwise approves, dig, raise, gather, take and carry away any necessary materials from pits or holes and not otherwise.

Such pits or holes shall be made by the council or by the person authorised by it on sites on the land selected by the council in agreement with the owner or occupier and, in default of an agreement between the council and the owner or occupier, a site shall be selected by a person appointed for that purpose by the Minister.

(iii) by omitting subsection seven of the same section and by inserting in lieu thereof the following new subsection:—

(7) Notwithstanding the other provisions of this section, materials shall not be removed from land which has been dedicated a State forest under the Forestry Act, 1909, or the Forestry Act, 1916-1935, except with the consent of the Forestry Commission, or from land comprised within a travelling stock reserve within the meaning of the Pastures Protection Act, 1934, except with the consent of the Pastures Protection Board of the district.

Further
amendment
of Act No.
41, 1919.

Sec. 597.
(Proceed-
ings.)

7. The Principal Act is further amended by inserting after subsection one of section five hundred and ninety-seven the following new subsection:—

(1A) Proceedings for the recovery of any rate by suit in equity for the enforcement of the charge on the land shall not be taken after the commencement of the Local Government (Amendment) Act, 1941.

PART III.

No. 29, 1941.

GENERAL.

8. (1) In order to resolve doubts it is hereby declared that—

Validation
of certain
elections.

- (a) on the first day of January, one thousand nine hundred and forty-one, five vacancies in the office of aldermen existed in the Municipal Council of Liverpool;
- (b) the extraordinary election held on the eighteenth day of January, one thousand nine hundred and forty-one, to fill the vacancies referred to in paragraph (a) of this subsection is hereby validated;
- (c) the following persons, namely, Harold Havelock Chapman, Esquire, Edwin Clarence Gruchy, Esquire, William James Newcombe, Esquire, John Malcolm Kelly, Esquire, Henry Charles Leslie Sampson, Esquire, who were, in pursuance of the election referred to in paragraph (b) of this subsection, declared to have been elected as aldermen of the Municipal Council of Liverpool shall be deemed to have been validly elected as such aldermen and the oaths of allegiance and declarations of office taken and subscribed by such persons shall be deemed to have been validly taken and subscribed;
- (d) extraordinary vacancies in the office of such aldermen or any of them shall not be deemed to have occurred by reason only of the absence of such aldermen or any of them from any meetings of the Municipal Council of Liverpool held between the eighteenth day of January, one thousand nine hundred and forty-one, and the date of commencement of this Act.

(2) Nothing contained in this section shall limit the effect of section forty-eight of the Local Government Act, 1919.