

LOCAL GOVERNMENT (AMENDMENT) ACT.

Act No. 21, 1958.

An Act to amend the law relating to appeals Elizabeth II,
No. 21, 1958.
against councils' decisions in respect of
applications for approval to erect buildings,
open new public roads or subdivide
land; to make further provisions with
respect to the division of areas into wards
or ridings; for these and other purposes to
amend the Local Government Act, 1919,
and certain other Acts; to validate certain
matters; and for purposes connected
therewith. [Assented to, 16th April, 1958.]

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

1. (1) This Act may be cited as the "Local Govern- Short title
and
construction.
ment (Amendment) Act, 1958".

(2) The Local Government Act, 1919, as amended
by subsequent Acts, is in this Act referred to as the
Principal Act.

2.

No. 21, 1958. **2.** Part I of the Principal Act is amended—

Amendment
of Act No.
41, 1919,
Part I—
(Prelimin-
ary.)

Sec. 4.
(Defini-
tions.)

- (a) by inserting in section four in the second definition of “Lease” after the words “Crown lands” the words “, land owned by or vested in the Crown”;
- (b) by inserting in the same section immediately before the definition of “Ordinances” the following new definition:—
 - “Operate”, in relation to a vehicle, means convey or offer to convey passengers or goods for hire or for any consideration in or upon such vehicle.
- (c) by omitting from the same section the definition of “Ply for hire”;
- (d) by omitting from the same section the definition of “Public vehicle” and by inserting in lieu thereof the following definition:—
 - “Public vehicle” means a vehicle used or let or intended to be used or let for the conveyance of passengers or goods for hire, whether by plying or standing in a public road or otherwise, but does not include any vehicle which is primarily constructed for the conveyance of goods and which is—
 - (a) used solely for the conveyance of goods in the course of or in relation to the trade or business of the owner thereof; and
 - (b) not used or let or intended to be used or let for the conveyance of goods for hire by plying or standing in a public road.

3.

3. (1) Part IV of the Principal Act is amended— **No. 21, 1958.**

Amendment
of Act No.
41, 1919,
Part IV—
(The Coun-
cils of
Cities,
Municipali-
ties, and
Shires.)

(a) by inserting at the end of subsection one of section twenty-eight the following new paragraph— **Sec. 28.**
(Travelling expenses.)

(e) to and from the annual meeting of the Association for Electrical Development and to and from meetings of the Management Committee of such Association.

(b) by omitting from paragraph (d) of subsection one of section thirty-nine the words “one month in the case of a municipality and two months in the case of a shire” and by inserting in lieu thereof the words “two months”. **Sec. 39.**
(Appointed day for election of aldermen or councillors.)

(2) Part V of the Principal Act is amended—

Amendment
of Act No.
41, 1919,
Part V—
(Electoral
Provisions.)

(a) by omitting subsections four and five of section fifty-eight; **Sec. 58.**

(Division
into
wards.)

(b) by omitting from subsection (2A) of section sixty-six the words “a person under” and by inserting in lieu thereof the words “the same or any other person under the same paragraph or”; **Sec. 66.**

(Enrolment
of person
holding
qualification
in more
than one
ward or
riding.)

(c) (i) by omitting subsection three of section seventy-three; **Sec. 73.**

(Contested
elections of
aldermen or
councillors.)

(ii)

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- (ii) by omitting subsection (3A) of the same section and by inserting in lieu thereof the following subsection:—

(3A) (a) Where an ordinary election is held in an area after the date upon which Her Majesty's assent to the Local Government (Amendment) Act, 1958, is signified and—

- (i) where the number of aldermen or councillors to be elected for that area or for any ward or riding of that area at that election is three or more, the system of election according to the principle of proportional representation shall apply to and in respect of that election, or
- (ii) where the number of aldermen or councillors to be elected for any ward or riding of that area, at that election is less than three, the system of preferential voting for which provision is made by subsection four of this section shall apply to and in respect of that election.

(b) Where an extraordinary election is held in an area after the date aforesaid, and—

- (i) where only one vacancy is to be filled at that election the provisions of Divisions 1 and 4 of Schedule Six to this Act shall apply, mutatis mutandis, to and in respect of that election, and
- (ii) where more than one vacancy is to be filled at that election the system of election that applied at the ordinary election last held in that area shall apply to and in respect of that election.

(c)

(c) The provisions of paragraph No. 21, 1958.
 (a) and of subparagraph (ii) of paragraph
 (b) of this subsection shall take effect sub-
 ject to the provisions of any proclamation
 under subsection (3c) of this section
 whether such proclamation was made before
 or after the date aforesaid.

- (iii) by omitting from subparagraph (v) of para-
graph (d) of subsection four of the same
section the word "proviso" and by inserting
in lieu thereof the word "subsection";
- (iv) by omitting from paragraph (e) of the
same subsection the word "proviso" and
by inserting in lieu thereof the word "sub-
section";
- (v) by omitting from paragraph (f) of the
same subsection the word "proviso" and
by inserting in lieu thereof the word
"subsection".

(3) Part VI of the Principal Act is amended by
 omitting from subsection five of section ninety-nine the
 word "Governor" and by inserting in lieu thereof the
 word "Minister".

Amendment
 of Act No.
 41, 1919,
 Part VI—
 (Administra-
 tion.)
 Sec. 99.
 (Inquiry
 before
 dismissal of
 certain
 servants.)

4. Part VII of the Principal Act is amended—

Amendment
 of Act No.
 41, 1919,
 Part VII—
 (Finance.)

(a) by omitting subsections two and three of section
 one hundred and fifty-eight and by inserting in
 lieu thereof the following subsection:—

Sec. 158.
 (Overdue
 rates—
 extra
 charge.)

(2) If the rates are unpaid at the expiration
 of three months from the due date, the amount
 due shall—

- (a) during any period in respect of which
 the council has determined that any
 amount due shall be increased by a
 sum

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sum calculated at a rate in excess of five per centum per annum simple interest but not exceeding seven per centum per annum simple interest, be increased by a sum calculated at the rate so determined by the council; and

- (b) during any period in respect of which no such determination is in force, be increased by a sum calculated at the rate of five per centum per annum simple interest.

Any such increase shall be deemed to be part of the rates.

Any calculation as aforesaid shall be made in respect of as many complete months as there are in the period in respect of which such calculation is made and any portion of a month shall be disregarded.

Any determination of a council under this subsection may be made from time to time and may be varied or revoked.

Sec. 160.
(Certificate
as to
amount
due.)

- (b) (i) by omitting from subsection one of section one hundred and sixty the words "or which will become due or payable";
- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) The council shall upon payment of the prescribed fee for each certificate having reference to a parcel of land separately assessed forthwith give or post to the applicant a certificate in writing signed by the town or shire clerk. Such certificate shall state—

- (a) what rates, charges, or sums of money (if any) are due or payable to the council in respect of the land with

with the particulars thereof and when the same became due or payable, or that no such rates, charges or sums are then due or payable, as the case may be; No. 21, 1958.

(b) what work (if any) the cost or part of the cost of which may be recovered by the council under this Act from the owner or occupier of the land has been carried out by the council, or that no such work has been carried out, as the case may be.

(iii) by inserting at the end of subsection four of the same section the words “and that no work the cost or part of the cost of which may be recovered by the council under this Act from the owner or occupier of the land other than that stated in the certificate has been carried out by the council”;

(c) by omitting from section 160B the words “the Invalid and Old-age Pensions Act 1908” and by inserting in lieu thereof the words “Part III of the Social Services Consolidation Act 1947”;

Sec. 160B.
(Abandonment of rates. Invalid and old-age pensioners.)

(d) by inserting next after section one hundred and sixty-three the following new section:—

New sec. 163A.

163A. Where Crown lands or lands owned by or vested in the Crown or land within a State forest are or is leased to any person for private purposes the department of the Government or statutory body which takes the necessary action for or in connection with the grant of such lease shall furnish the council in whose area the land the subject of such lease is situated with particulars of such lease within sixty days of the granting thereof unless particulars of the lease are within that period notified in the Gazette.

Leases granted by the Crown.

(e)

Local Government (Amendment) Act.

No. 21, 1958.
 Sec. 174.
 (Limited
 overdrafts.)

(e) (i) by inserting in subsection one of section one hundred and seventy-four after the word "purpose" the word "for";

(ii) by inserting next after subsection two of the same section the following new subsection:—

(2A) The limit of the amount which may be borrowed by the council by way of overdraft in respect of each of the first three years of operation of a fund shall be the amount fixed for the time being by the Minister on the application of the council.

Sec. 186.
 (Loan
 repayment
 accounts.)

(f) by omitting subsection twelve of section one hundred and eighty-six and by inserting in lieu thereof the following subsection:—

Withdrawal
 of surplus
 from loan
 repayment
 reserve.

(12) If, after a loan raised in respect of any fund has been repaid, there remains in the reserve for loan repayment in that fund any balance in respect of such loan, such balance may be transferred to the current account of that fund.

Subst.
 sec. 200D.

(g) by omitting section 200D and by inserting in lieu thereof the following section:—

Registries
 and
 registrars.

200D. A Registry of Inscribed Stock shall be established at such place or places as the council may appoint.

The proper servant of the council or the person for the time being acting in his place shall be the registrar.

The council may appoint such other persons, whether servants of the council or not, to be deputy registrars or assistant deputy registrars.

(h)

- (h) (i) by inserting at the end of subsection three of section two hundred and eleven the following new paragraph:—

The appointment of an auditor shall be renewed from year to year unless the Minister otherwise determines.

Sec. 211.
(Appointment and duties of auditors.)

- (ii) by inserting at the end of subsection five of the same section the following new proviso:—

Provided that in any case where he deems it necessary or expedient the Minister may fix the remuneration of an auditor and for the purposes of this Act such remuneration shall be deemed to have been fixed, and shall be payable, by the council.

5. Part IX of the Principal Act is amended---

Amendment of Act No. 41, 1919, Part IX—
(Public Roads.)

- (a) by omitting from section 249A the words “five pounds nor less than five shillings” and by inserting in lieu thereof the words “fifteen pounds”;

Sec. 249A.
(Straying animals.)

- (b) by inserting next after section 249c the following new section:—

New sec. 249d.

249d. (1) Where a fence is likely to create a danger to traffic by limiting the field of vision of the driver of a motor or other vehicle the council may by notice in writing direct the owner of the land bounded by the fence to reduce the height of the fence to a height not greater than that specified in the direction.

Fences obstructing view of drivers.

(2) The council may, if it thinks fit, make a contribution towards the cost or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's direction.

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(3) Any such notice shall allow a reasonable time, not being less than one month, within which such owner shall comply with such direction.

(4) Such owner may, within the time allowed by the notice, appeal to a stipendiary magistrate or any two justices in petty sessions (such magistrate or justices in this section being referred to as the "court") having jurisdiction in the district in which the land is situated, against the council's direction.

(5) The court may hear and determine the matter having regard to the danger to traffic and the contribution which the council is prepared to make and make such order as in the circumstances it thinks fit.

(6) The costs of the appeal shall be in the discretion of the court.

(7) Any order for the payment of costs made by the court under this section shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act.

(8) The order of the court upon any such appeal shall be final and shall be binding upon the council and the appellant, and for the purposes of this Act shall be deemed to be the final decision of the council.

Sec. 251A.
(By-passes
for motor
vehicles.)

- (c) (i) by omitting from subsection nine of section 251A the word "rabbit-proof,";
- (ii) by inserting next after the same subsection the following new subsection:—

(9A) The council may at any time revoke any permission granted by it under this section for the erection of a by-pass for motor

motor vehicles and the person by whom the by-pass was erected or his successor in title shall within the time specified in the notice of revocation served on him by the council remove the by-pass and notices displayed in connection therewith and take such steps as the council may require to ensure the safety of persons using the road. No. 21, 1958.

- (d) by inserting next after section two hundred and sixty-seven the following new section:— New sec.
267A.

267A. Where any vehicle has been involved in an accident or has broken down or any matter or thing carried in or upon a vehicle has fallen or escaped or been removed therefrom and such firstmentioned vehicle or such matter or thing is a danger or obstruction to traffic on a road, the council may move such firstmentioned vehicle or such matter or thing and take such measures as may be necessary for the protection of the public from accident or for the facilitation of the free flow of traffic in or upon such road, and the council may recover in any court of competent jurisdiction the costs and expenses incurred by it pursuant to this section from the person who at the time of the exercise by it of any powers conferred upon it by this section had the custody of such firstmentioned vehicle or the vehicle in or upon which any such matter or thing was carried, as the case may be. Vehicles,
matters or
things caus-
ing obstruc-
tions on
roads.

- (e) by inserting at the end of subsection one of section two hundred and seventy-seven the following new paragraph:— Sec. 277.
(Ordin-
ances.)

(ee) prescribing the requirements to be observed in case of an accident occurring upon a public road owing to the presence thereon of a horse or a vehicle, other than a motor vehicle.

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No. 21, 1958. **6.** (1) Part X of the Principal Act is amended—

Amendment
of Act No.
41, 1919,
Part X—
(Public
Health,
Safety, and
Conveni-
ence.)

Sec. 281.
(Sanitation,
use, and
occupation
of
premises.)

(a) by inserting at the end of subsection two of section two hundred and eighty-one the following new paragraph:—

(q) control and regulate the use and occupation of premises whereon the business of receiving, storing, cleaning, sorting or disposing of used bottles is carried on.

Sec. 295.
(Dairies
Supervision
Act.)

(b) by omitting from subsection two of section two hundred and ninety-five the words “Board of Health” and by inserting in lieu thereof the words “Minister for the time being administering the Dairies Supervision Act, 1901”;

Sec. 299D.
(Powers of
Council.)

(c) by omitting from Division 8A the figures and letter “229D” and by inserting in lieu thereof the figures and letter “299D”;

Sec. 303.
(Ordin-
ances.)

(d) by inserting at the end of subsection one of section three hundred and three the following new paragraph:—

(q) prohibiting and regulating the making of noises and the use of premises so as to prevent or minimise the emission of noises therefrom and prescribing the noises to which any ordinance made under this paragraph may relate.

(2)

(2) Part XI of the Principal Act is amended— **No. 21, 1958.**

Amendment
of Act No.
41, 1919,
Part XI—
(Building
Regula-
tion.)

(a) (i) by inserting at the end of subsection two of section three hundred and five the following new paragraph:—

Sec. 305.
(Application
to muni-
cipalities
and parts
of shires.)

(e) in the shires specified in Schedule Nine to this Act and shires to which the Governor by proclamation applies the provisions of this Part whether such proclamation relates to the whole of the shire or portions of the shire other than those portions to which the provisions of this Part apply under paragraph (a) of this subsection or have been applied under paragraph (b) of this subsection.

(ii) by inserting at the end of the same section the following new subsection:—

(4) (a) No proclamation under paragraph (e) of subsection two of this section relating to the whole of any shire shall be made unless the Minister has first given the prescribed notice of the proposal so to apply such provisions.

(b) Within the time fixed in such notice objection to the proposal may be lodged with the Minister by any elector of the shire concerned.

(c) The Minister may, if in his opinion the circumstances warrant, refer the proposal to a person appointed by him for inquiry and report.

(d)

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(d) After considering any objections received to the proposal or the report of the person appointed to hold the inquiry, if any, the Minister may submit the proposal to the Governor for decision.

Sec. 312.
(Application.)

(b) by inserting in paragraph (a) of subsection one of section three hundred and twelve after the words "his architect" the words "or structural engineer";

Sec. 313.
(Subjects for consideration.)

(c) by inserting at the end of section three hundred and thirteen the following new paragraph:—

(1) whether the site is subject to flooding or tidal inundation.

Further amendment of Act No. 41, 1919, Part XI—
(Building Regulation.)

7. (1) Part XI of the Principal Act is further amended—

Sec. 317A. |
(Certificate of compliance.)

(a) (i) by inserting in subsection one of section 317A after the words "the plans and specifications" the words ", if any,";

(ii) by inserting in subsection three of the same section after the words "the plans and specifications" the words ", if any,";

Sec. 317B.
(Repair or demolition of existing buildings.)

(b) (i) by inserting next after subsection one of section 317B the following new subsection:—

(1A) If any building is erected or altered after the commencement of the Local Government (Amendment) Act, 1958, without the approval of the council having been obtained therefor beforehand, the council may, by notice in writing specifying a reasonable time for compliance therewith, order the owner to demolish the building or the alteration, as the case may be, or, as an alternative, to carry out to the satisfaction

satisfaction of the council such work **No. 21, 1958.**
specified in the notice as is necessary to
make the building or the building as altered,
as the case may be, comply with the Act and
ordinances.

This subsection shall not apply to or in respect of any building in respect of which the council has issued a certificate under section 317A of this Act except as regards any alteration or addition thereto or any rebuilding thereof effected without the approval of the council after the issue of such certificate.

- (ii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) (a) Any owner who has received an order under this section may, within the time and in the manner prescribed by rules of court, appeal against the order to a district court judge having jurisdiction within the area.

(b) Such judge may summon witnesses, hear evidence, and determine the matter, having regard to this Act, the ordinances, the circumstances of the case, and the public interest.

(c) The decision of such court upon any such appeal shall be final, and shall be binding upon the council and the appellant, and for the purposes of this Act shall be deemed to be the final decision of the council.

(d) If in any decision under this section costs are awarded, such costs may be enforced and recovered in like manner to costs awarded in a judgment of the district court.

(c)

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Sec. 317O.
(Application.)
- (c) by omitting from subsection three of section 317c the words "Board of Appeal" and by inserting in lieu thereof the words "Cumberland, Newcastle and Wollongong Board of Appeal";
- Division 4c.
(Heading.)
- (d) (i) by inserting after the word "*Appeals*" in the heading to Division 4c the words "*, other than Country Appeals*";
- (ii) by omitting from the same heading the words "*Board of Appeal*" and by inserting in lieu thereof the words "*Cumberland, Newcastle and Wollongong Board of Appeal*";
- Subst. secs.
317K and
317L.
- (e) by omitting sections 317K and 317L and by inserting in lieu thereof the following sections:—
- Application
of Division.
- 317K. (1) This Division shall apply to the areas for the time being specified in Schedule Ten to this Act and to the councils of such areas.
- (2) The Governor may by proclamation amend Schedule Ten to this Act by inserting therein the name of any area or by omitting therefrom the name of any area for the time being specified therein.
- The said Schedule Ten, as so amended, shall be Schedule Ten to this Act.
- Cumberland,
Newcastle
and Wollongong
Board of Appeal.
- 317L. There shall be a board of appeal to be called the "Cumberland, Newcastle and Wollongong Board of Appeal" which in this Division is referred to as "the board".
- Sec. 317M.
(Appointment.)
- (f) (i) by inserting next after subsection two of section 317M the following new subsection:—
- (2A) (a) The Minister may in the case of the absence, through illness, disqualification or otherwise, of any member, other than

than the chairman, from time to time No. 21, 1958.
appoint a deputy member to act in the place
of any such member.

(b) A deputy member so appointed to act in the place of any such member shall be a member of the panel and shall be a person nominated to the panel by the same body which nominated the member of the board in whose place the deputy member is appointed to act.

(c) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy member to act in the place of a member; and all acts and things done or omitted to be done by a deputy member when so acting as aforesaid shall have the same consequences as if the same had been done or omitted to be done by the member in whose place the deputy member is acting.

- (ii) by omitting from subsection three of the same section the words "the council" and by inserting in lieu thereof the words "any council";
- (iii) by omitting subsection four of the same section;
- (g) by omitting subsection one of section 317N and Sec. 317N. by inserting in lieu thereof the following sub- (Chairman.) section:—

(1) The chairman, or in his absence the person known as the deputy chairman of the board, shall preside at the meetings of the board:

Provided that in the absence of the chairman, and of the person known as the deputy chairman of the board, from any meeting of the board the members present at the meeting may elect from amongst

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amongst their number a vice-chairman to preside at that meeting. The deputy chairman and any vice-chairman shall, when so presiding, have all the powers and authorities of the chairman.

Sec. 317o.
(Disqualification.)

- (h) (i) by inserting in subsection one of section 317o after the word "member" wherever occurring the words "or deputy member";
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) A member or deputy member of the board, being an officer of a council, shall be disqualified from acting and shall not act as a member or deputy member on an appeal relating to a building proposed to be erected in the area of the council, or within the district of the county council, of which such member or deputy member is an officer.

Sec. 317P.
(Remuneration of members.)

- (i) (i) by omitting from section 317P the words "of the board, or a member of the panel while he fills the place of a member of the board in accordance with the provisions of section 317o of this Act," and by inserting in lieu thereof the words "or deputy member of the board";
- (ii) by inserting in the same section after the word "council" the word "concerned";

Sec. 317Q.
(Panel.)

- (j) (i) by omitting subsection one of section 317Q and by inserting in lieu thereof the following subsection:—

(1) There shall be a board of appeal panel to be called the "Cumberland, Newcastle and Wollongong Board of Appeal Panel" which in this Division is referred to as "the panel".

(ii)

- (ii) by omitting from paragraph (a) of sub-^{No. 21, 1958.} section three of the same section the words "Board of Appeal" and by inserting in lieu thereof the word "board";
- (iii) by omitting subsection four of the same section;
- (k) (i) by omitting from paragraph (a) of sub-^{Sec. 317s.} section one of section 317s the words "the ^(Cessation of term of office.) council" and by inserting in lieu thereof the words "any council to which this Division applies";
- (ii) by omitting from paragraph (f) of the same subsection the words "or to the town clerk";
- (iii) by omitting from paragraph (g) of the same subsection the words "he receives notice in writing from the town clerk that he has been" and by inserting in lieu thereof the words "he is";
- (l) by omitting from section 317r the words "Board ^{Sec. 317r.} of Appeal" and by inserting in lieu thereof the ^(Declaration.) words "Cumberland, Newcastle and Wollongong Board of Appeal";
- (m) by omitting from section 317u the words "of ^{Sec. 317v.} the council under this Part, section 317B ^(Appeal.) excepted, or under any ordinance made thereunder," and by inserting in lieu thereof the words "under this Part, or under any ordinance made thereunder, of any council to which this Division applies (such decision being in respect of an application for approval to erect any building) or by any neglect or delay by such council to give within forty days after service on such council of such party's application for approval to erect any building a decision with respect thereto,";

(11)

No. 21, 1958.
 Sec. 317v.
 (Reference
 of
 objections.)

(n) (i) by inserting in subsection one of section 317v after the word "architect" the words "or structural engineer";

(ii) by inserting in the same subsection after the word "council" the words "in whose area the building is proposed to be erected";

Sec. 317x.
 (Appeal
 deemed
 submission
 to
 arbitration.)

(o) by inserting at the end of subsection one of section 317x the following new proviso:—

Provided that for the purposes only of such application such provisions shall be deemed to be amended—

(a) (i) by omitting from section three of that Act the definition of "Court" and by inserting in lieu thereof the following definition:—

"Court" means the Land and Valuation Court, or a judge, deputy judge or additional judge thereof.

(ii) by omitting from the same section the definition of "Judge" and by inserting in lieu thereof the following definition:—

"Judge" means judge, deputy judge or additional judge of the Land and Valuation Court.

(b) by omitting section twenty of that Act and by inserting in lieu thereof the following section:—

20. The judge of the Land and Valuation Court may, from time to time, make general rules and orders for carrying the purposes of this Act into effect.

Sec. 317z.
 (Minutes.)

(p) (i) by omitting from paragraph (b) of subsection one of section 317z the words "town clerk" and by inserting in lieu thereof the words "clerk of the council concerned";

(ii)

- (ii) by omitting from subsection two of the same section the words “town clerk, who” and by inserting in lieu thereof the words “clerk of the council concerned and such council clerk”;
- (iii) by omitting from subsection two of the same section the words “the council” and by inserting in lieu thereof the words “such council”;
- (iv) by inserting in subsection three of the same section after the words “the council” the word “concerned”;

- (q) by inserting next after section 317z the following new Division:—

DIVISION 4D.—*Country Appeals.*

Constitution of Country Board of Appeal.

317AA. This Division shall apply to and in respect of—

- (a) all areas, and parts of areas, to which this Part applies and to which Division 4c of this Part does not apply; and
- (b) to the councils of all areas and parts of areas to and in respect of which this Division applies.

317AB. There shall be a board of appeal to be called the “Country Board of Appeal” which in this Division is referred to as “the board”.

317AC. (1) The Governor shall appoint the members of the board, who shall, subject to this Division, hold office for three years.

(2) The board shall consist of five members, that is to say—

- (a) one member, being an officer of the Department of Local Government, who shall be the chairman;
- (b)

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—

- (b) one member, who shall be an architect selected by the Governor from three architects who shall be nominated by the Royal Australian Institute of Architects;
- (c) one member, who shall be a structural engineer selected by the Governor from three structural engineers who shall be nominated by the Institution of Engineers, Australia (Sydney Division);
- (d) one member, who shall be a master builder selected by the Governor from three master builders who shall be nominated by the Master Builders' Association of New South Wales;
- (e) one member, who shall be an officer of a council and shall be selected by the Governor from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales.

(3) (a) The Minister may in the case of the absence, through illness, disqualification or otherwise, of any member, other than the chairman, from time to time appoint a deputy member to act in the place of any such member.

(b) A deputy member so appointed to act in the place of any such member shall be a member of the panel and shall be a person nominated to the panel by the same body which nominated the member of the board in whose place the deputy member is appointed to act.

(c) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy member to act in the place of a member; and all acts and things

things done or omitted to be done by a deputy member when so acting as aforesaid shall have the same consequences as if the same had been done or omitted to be done by the member in whose place the deputy member is acting. **No. 21, 1958.**

(4) A servant of any council shall not be a member of the board.

317AD. (1) The chairman, or in his absence the person known as the deputy chairman of the board, shall preside at the meetings of the board: **Chairman.**

Provided that in the absence of the chairman, and of the person known as the deputy chairman of the board, from any meeting of the board the members present at the meeting may elect from amongst their number a vice-chairman to preside at that meeting. The deputy chairman and any vice-chairman shall, when so presiding, have all the powers and authorities of the chairman.

(2) Where the voting on any question at a meeting of the board is equal the chairman shall have a casting vote in addition to his deliberative vote.

(3) Three members of the board shall form a quorum.

317AE. (1) A member or deputy member of the board shall be disqualified from acting and shall not act as a member or deputy member on an appeal to the board or on any reference to the board under this Part, with respect to any building of which he is the owner, architect, engineer, or in which he is in any manner, directly or indirectly, interested. **Disqualification.**

(2) A member or deputy member of the board, being an officer of a council, shall be disqualified from acting and shall not act as a member or deputy member on an appeal relating to a building proposed to be erected in the area of

No. 21, 1958.

of the council, or within the district of the county council, of which such member or deputy member is an officer.

Remuneration of members.

317AF. A member or deputy member of the board shall be entitled to receive from the council concerned such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be prescribed.

Panel.

317AG. (1) There shall be a board of appeal panel, to be called the "Country Board of Appeal Panel", which in this Division is referred to as "the panel".

(2) The Governor shall appoint the members of the panel, who shall, subject to this Division, hold office for three years.

(3) The panel shall consist of fourteen members, that is to say—

- (a) one member, being an officer of the Department of Local Government, who shall be known as the deputy chairman of the board;
- (b) three members, who shall be architects selected by the Governor from six architects who shall be nominated by the Royal Australian Institute of Architects;
- (c) three members, who shall be structural engineers selected by the Governor from six structural engineers who shall be nominated by the Institution of Engineers, Australia (Sydney Division);
- (d) three members, who shall be master builders selected by the Governor from six master builders who shall be nominated by the Master Builders' Association of New South Wales;

(e)

- (e) four members, who shall be officers of **No. 21, 1958.**
councils and shall be selected by the
Governor from a panel of eight such
officers nominated jointly as prescribed
by the governing bodies of the Local
Government Association of New South
Wales and the Shires Association of
New South Wales.

317AH. (1) Every nomination for the appoint- Failure of
nomination.
ment of a person as a member of the board or of
the panel shall be made in the manner and within
the time prescribed, and shall be accompanied
by the written consent of the person nominated
to serve on the board or panel, as the case may
be, if appointed.

(2) If within the time prescribed the
necessary nomination for membership of the
board or panel, as the case may be, has not been
validly made by the body entitled to make such
nomination, the Governor may appoint a person
or persons, as the case may require, having the
appropriate qualification, as representative or
representatives of such body on the board or
the panel.

317AL. (1) A member of the board or of the Cessation
of term of
office.
panel shall cease to hold his office—

- (a) if he holds any position of profit under
or in the gift of any council to which
this Division applies;
- (b) if he becomes a bankrupt, compounds
with his creditors, or makes any assign-
ment of his estate for their benefit;
- (c) if he becomes an insane person or
patient, or an incapable person within
the meaning of the Lunacy Act of 1898,
as amended by subsequent Acts;
- (d)

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- (d) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- (e) if being summoned he is absent from three consecutive sittings of the board or panel without leave granted by the board or panel;
- (f) if he resigns his office in writing under his hand delivered to the chairman of the board;
- (g) if having been appointed to the board or the panel in his capacity as an officer of the Public Service he ceases to be employed in the Public Service in the capacity by virtue of which he was appointed to the board or the panel, as the case may be;
- (h) if he is removed from office by the Governor.

(2) Upon any vacation of office under this section, the Governor shall forthwith appoint a new member to be nominated in accordance with the provisions of section 317AC or section 317AG, as the case may require, to fill the vacant office.

(3) A person appointed to fill any vacancy occasioned otherwise than by the expiration of the term of office of a member of the board or panel shall, subject to this Division, hold office for the residue of his predecessor's term.

317AJ.

317AJ. Before any member of the board, or **No. 21, 1958.**
any member of the panel who takes the place of ^{Declaration.}
a member of the board, acts in such office, he
shall make the following declaration before a
judge of the Supreme Court or a judge of the
District Court or a stipendiary magistrate:—

I, A.B., do solemnly and sincerely declare
that I will diligently, faithfully, and impar-
tially execute my duties as a member of the
Country Board of Appeal under Part XI of
the Local Government Act, 1919, as
amended by subsequent Acts.

Jurisdiction of Board.

317AK. Any party who feels himself aggrieved **Appeal.**
by any decision under this Part, or under any
ordinance made thereunder, of any council to
which this Division applies (such decision being
in respect of an application for approval to
erect any building) or by any neglect or delay
by such council to give within forty days after
service on such council of such party's applica-
tion for approval to erect any building a
decision with respect thereto, may appeal to the
board.

The person making the appeal shall lodge
therewith the fee prescribed for appeals to the
board.

317AL. (1) Where in the case of any particu- **Reference of**
lar building proposed to be erected the builder **objections.**
or architect or structural engineer thereof lodges
with the council in whose area the building is
proposed to be erected an objection in writing
to the effect that with respect to that building
any of the provisions of the ordinances are in-
applicable or will needlessly affect with injury
the course and operation of business or will
defeat the objects of such ordinances and that
by

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No. 21, 1958.

by the adoption of a modification of such provisions such objects will be attained either better or as effectually than the objection shall be referred to the board.

(2) If the board is of the opinion that the objection is well founded it may direct with respect to such building such modification of such provisions to be made as will give effect to the purposes of the said ordinances.

Procedure.

Procedure.

317AM. Appeals and references to the board shall be made and enforced in the manner prescribed.

Appeal
deemed
submission
to
arbitration.

317AN. (1) Subject to this Part and to any ordinances thereunder, every appeal shall be deemed to be a submission to arbitration under the Arbitration Act, 1902, and the provisions of that Act, so far as applicable, shall, mutatis mutandis, apply accordingly:

Provided that for the purposes only of such application such provisions shall be deemed to be amended—

- (a) (i) by omitting from section three of that Act the definition of “Court” and by inserting in lieu thereof the following definition:—

“Court” means the Land and Valuation Court, or a judge, deputy judge or additional judge thereof.

- (ii) by omitting from the same section the definition of “Judge” and by inserting in lieu thereof the following definition:—

“Judge” means judge, deputy judge or additional judge of the Land and Valuation Court. (b)

- (b) by omitting section twenty of that Act No. 21, 1958. and by inserting in lieu thereof the following section:—

20. The judge of the Land and Valuation Court may, from time to time, make general rules and orders for carrying the purposes of this Act into effect.

(2) For the purposes of this Division, the board shall be deemed to be arbitrators within the meaning of the said Act.

317A0. On any appeal under this Part the board may— Powers of board.

- (a) if the appellant does not appear at the time appointed for the hearing of the appeal, proceed with the hearing and make its award notwithstanding the absence of any of the parties;
- (b) appoint one of its members to make any inquiry or any survey which appears to it to be necessary or expedient for the purposes of the appeal;
- (c) regulate its own proceedings;
- (d) by its award confirm, amend, vary, or disallow all or any of the decisions appealed from.

317AP. (1) The board shall—

Minutes.

- (a) keep proper minutes of its proceedings; and
- (b) lodge the same or true copies thereof certified under the hand of the chairman with the clerk of the council concerned.

(2) Every decision, adoption, or award of the board shall be in writing signed by the members of the board, and a true copy thereof certified under the hand of the chairman shall be lodged with the clerk of the council concerned and such council clerk shall cause the copy lodged with him to be filed in the office of such council.

(3)

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(3) Any person on payment of the prescribed fee may inspect the copy of the decision, adoption, or award so filed in the office of the council concerned and may take copies thereof or make extracts therefrom.

(4) In any proceedings in any court or before any judge or justice a copy of a decision, adoption, or award of the board shall, if certified under the hand of the chairman, be prima facie evidence of the matters therein contained.

Sec. 318.
(Ordinances.)

(r) by omitting from paragraph (32) of section three hundred and eighteen the words "to obtain with the consent of the Council of the City of Sydney" and by inserting in lieu thereof the words ", or the board, constituted under Division 4b of this Part, to obtain".

Amendment
of Act No.
41, 1919,
Part XII—
(Town
Planning.)

(2) Part XII of the Principal Act is amended—

Sec. 333.
(Subjects
for con-
sideration re
sub-
divisions.)

(a) by inserting next after paragraph (j) of section three hundred and thirty-three the following word and new paragraph:—

and

(k) whether the land is subject to flooding or tidal inundation.

Subst.
Division 3.

(b) by omitting Division 3 and by inserting in lieu thereof the following Division:—

DIVISION 3.—*Constitution of Board of
Subdivision Appeals.*

Board of
Sub-
division
Appeals.

341. There shall be a board to be called the "Board of Subdivision Appeals", which in this Division is referred to as "the board".

Appoint-
ment.

341A. (1) The Governor shall appoint the members of the board, who shall, subject to this Division, hold office for three years.

(2)

(2) The board shall consist of five members, that is to say— No. 21, 1958.

- (a) one member, being an officer of the Department of Local Government, who shall be the chairman;
- (b) one member, who shall be an officer of the Department of Lands and a registered surveyor, and who shall be nominated by the Under Secretary for Lands;
- (c) one member, who shall be an engineer selected by the Governor from three engineers who shall be nominated by the Institution of Engineers, Australia (Sydney Division);
- (d) one member, who shall be an officer of a council and shall be selected by the Governor from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales;
- (e) one member, who shall be a registered surveyor holding a certificate as Town and Country Planner qualifying him to assist councils in the preparation of schemes in accordance with section 342E of this Act and shall be selected by the Governor from a panel of three such surveyors nominated by the Institution of Surveyors of New South Wales.

(3) (a) The Minister may in the case of the absence, through illness, disqualification or otherwise, of any member, other than the chairman, from time to time appoint a deputy member to act in the place of any such member.

(b) A deputy member so appointed to act in the place of any such member shall be a member of the panel and shall be a person nominated

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nominated to the panel by the same person or body who or which nominated the member of the board in whose place the deputy member is appointed to act.

(c) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy member to act in the place of a member; and all acts and things done or omitted to be done by a deputy member when so acting as aforesaid shall have the same consequences as if the same had been done or omitted to be done by the member in whose place the deputy member is acting.

(4) A servant of any council shall not be a member of the board.

Chairman.

341B. (1) The chairman, or in his absence the person known as the deputy chairman of the board, shall preside at the meetings of the board:

Provided that in the absence of the chairman, and of the person known as the deputy chairman of the board, from any meeting of the board the members present at the meeting may elect from amongst their number a vice-chairman to preside at that meeting. The deputy chairman and any vice-chairman shall, when so presiding, have all the powers and authorities of the chairman.

(2) Where the voting on any question at a meeting of the board is equal the chairman shall have a casting vote in addition to his deliberative vote.

(3) Three members of the board shall form a quorum.

Disqualification.

341c. (1) A member or deputy member of the board shall be disqualified from acting and shall not act as a member or deputy member on an appeal to the board under this Part, with respect to an application to open any new public road
or

or to subdivide any land where he is the owner of such land or the surveyor who carried out the survey or certified the plan of the public road or of the subdivision, or in which he is in any manner, directly or indirectly interested. No. 21, 1958.

(2) A member or deputy member of the board, being an officer of a council, shall be disqualified from acting and shall not act as a member or deputy member on an appeal relating to the opening of a new public road, or the subdivision of land, within the area of the council, or within the district of the county council, of which such member or deputy member is an officer.

341D. A member or deputy member of the board shall be entitled to receive from the council concerned such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be prescribed. Remuneration of members.

341E. (1) There shall be a panel to be called the "Board of Subdivision Appeals Panel", which in this Division is referred to as "the panel". Panel.

(2) The Governor shall appoint the members of the panel, who shall, subject to this Division, hold office for three years.

(3) The panel shall consist of twelve members, that is to say—

- (a) one member, being an officer of the Department of Local Government, who shall be known as the deputy chairman of the board;
- (b) one member, who shall be an officer of the Department of Lands and a registered surveyor, and who shall be nominated by the Under Secretary for Lands;

(c)

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- (c) three members, who shall be engineers selected by the Governor from six engineers who shall be nominated by the Institution of Engineers, Australia (Sydney Division);
- (d) four members, who shall be officers of councils and shall be selected by the Governor from a panel of eight such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales;
- (e) three members, each of whom shall be a registered surveyor holding a certificate as Town and Country Planner qualifying him to assist councils in the preparation of schemes in accordance with section 342E of this Act and shall be selected by the Governor from six such surveyors nominated by the Institution of Surveyors of New South Wales.

Failure of nomination.

341F. (1) Every nomination for the appointment of a person as a member of the board or of the panel shall be made in the manner and within the time prescribed, and shall be accompanied by the written consent of the person nominated to serve on the board or panel, as the case may be, if appointed.

(2) If within the time prescribed the necessary nomination for membership of the board or panel, as the case may be, has not been validly made by the person or body entitled to make such nomination, the Governor may appoint a person or persons, as the case may require, having the appropriate qualification, as representative or representatives of such person or body on the board or the panel.

341G.

341G. (1) A member of the board or of the panel shall cease to hold his office—

No. 21, 1958.
Cessation
of term
of office.

- (a) if he holds any position of profit under or in the gift of any council;
- (b) if he becomes bankrupt, compounds with his creditors, or makes any assignment of his estate for their benefit;
- (c) if he becomes an insane person or patient, or an incapable person within the meaning of the Lunacy Act of 1898, as amended by subsequent Acts;
- (d) if he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour which is punishable as aforesaid;
- (e) if being summoned he is absent from three consecutive sittings of the board or panel without leave granted by the board or panel;
- (f) if he resigns his office in writing under his hand delivered to the chairman of the board;
- (g) if having been appointed to the board or the panel in his capacity as an officer of the Public Service he ceases to be employed in the Public Service in the capacity by virtue of which he was appointed to the board or the panel, as the case may be;
- (h) if he is removed from office by the Governor.

(2) Upon any vacation of office under this section, the Governor shall forthwith appoint a new member to be nominated in accordance

No. 21, 1958.
—

accordance with the provisions of section 341A or section 341E, as the case may require, to fill the vacant office.

(3) A person appointed to fill any vacancy occasioned otherwise than by the expiration of the term of office of a member of the board or panel shall, subject to this Division, hold office for the residue of his predecessor's term.

**Declara-
tion.**

341H. Before any member of the board, or any member of the panel who takes the place of a member of the board, acts in such office, he shall make the following declaration before a judge of the Supreme Court or a judge of the District Court or a stipendiary magistrate:—

I, A.B., do solemnly and sincerely declare that I will diligently, faithfully, and impartially execute my duties as a member of the Board of Subdivision Appeals under Part XII of the Local Government Act, 1919, as amended by subsequent Acts.

Jurisdiction of Board.

Appeal.

341I. Any applicant for approval to open any new public road or to subdivide any land may appeal to the board against the decision of the council within whose area such proposed public road or such land is situated, or any neglect or delay of such council to give within forty days after service on such council of the application by such applicant a decision with respect thereto.

The person making the appeal shall lodge therewith the fee prescribed for appeals to the board.

Procedure.

Procedure.

341J. Appeals to the board shall be made and enforced in the manner prescribed.

**Appeal
deemed
submission
to
arbitration.**

341K. (1) Subject to this Part and to any ordinances thereunder, every appeal shall be deemed to be a submission to arbitration under
the

the Arbitration Act, 1902, and the provisions of **No. 21, 1958.** that Act, so far as applicable, shall, mutatis mutandis, apply accordingly: —

Provided that for the purposes only of such application such provisions shall be deemed to be amended—

- (a) (i) by omitting from section three of that Act the definition of “Court” and by inserting in lieu thereof the following definition:—

“Court” means the Land and Valuation Court, or a judge, deputy judge or additional judge thereof.

- (ii) by omitting from the same section the definition of “Judge” and by inserting in lieu thereof the following definition:—

“Judge” means judge, deputy judge or additional judge of the Land and Valuation Court.

- (b) by omitting section twenty of that Act and by inserting in lieu thereof the following section:—

20. The judge of the Land and Valuation Court may, from time to time, make general rules and orders for carrying the purposes of this Act into effect.

(2) For the purposes of this Division, the board shall be deemed to be arbitrators within the meaning of the said Act.

341L. On any appeal under this Part the board may— **Powers of board.**

- (a) if the appellant does not appear at the time appointed for the hearing of the appeal, proceed with the hearing and make its award notwithstanding the absence of any of the parties;

(b)

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- (b) appoint one of its members to make any inquiry or any survey which appears to it to be necessary or expedient for the purposes of the appeal;
- (c) regulate its own proceedings;
- (d) by its award confirm, amend, vary or disallow all or any of the decisions appealed from.

Minutes.

341m. (1) The board shall—

- (a) keep proper minutes of its proceedings; and
- (b) lodge the same or true copies thereof certified under the hand of the chairman with the clerk of the council concerned.

(2) Every decision, adoption, or award of the board shall be in writing signed by the members of the board, and a true copy thereof certified under the hand of the chairman shall be lodged with the clerk of the council concerned and such council clerk shall cause the copy lodged with him to be filed in the office of such council.

(3) Any person on payment of the prescribed fee may inspect the copy of the decision, adoption, or award so filed in the office of the council concerned and may take copies thereof or make extracts therefrom.

(4) In any proceedings in any court or before any judge or justice a copy of a decision, adoption, or award of the board shall, if certified under the hand of the chairman, be prima facie evidence of the matters therein contained.

Sec. 342.
(Ordinances.)

(c) by omitting paragraph (e) of section three hundred and forty-two and by inserting in lieu thereof the following paragraph:—

- (e) authorising the board constituted under Division 3 of this Part to obtain the services of surveyors, consulting engineers, and other experts of not less than

than five years' standing for the purpose of assisting it in giving effect to this Part. **No. 21, 1958.**

(3) Part XIIA of the Principal Act is amended by omitting subsection two of section 342N and by inserting in lieu thereof the following subsections:—

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall be done only with the approval, consent or permission of the council which is the responsible authority or shall not be done except with the approval, consent or permission of such council, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council or any neglect or delay of the council to give within forty days after service of his application on the council a decision with respect thereto, may appeal to the Land and Valuation Court.

Amendment of Act No. 41, 1919, Part XIIA— (Town and Country Planning Schemes.) Sec. 342N. (Powers, etc., of responsible authority.)

(3) Such court may summon witnesses, hear evidence, and determine the matter, having regard to this Act, the ordinances, the circumstances of the case, and the public interest.

(4) The decision of such court upon any such appeal shall be final, and shall be binding upon the council and the appellant, and for the purposes of this Act shall be deemed to be the final decision of the council.

(5) If in any decision under this section costs are awarded, such costs may be enforced and recovered in like manner to costs awarded in a judgment of the Land and Valuation Court.

(6) (a) Any appeal made under this section may be remitted by the court to the court of petty sessions nearest to the proposed building or land in respect of which the appeal is made, and such court of petty sessions shall hear and determine the appeal,

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—

appeal, and for such purposes shall have the powers and authorities conferred on the Land and Valuation Court by this section.

(b) The decision of a court of petty sessions on any appeal so remitted to it shall for all purposes be deemed to be the decision of the Land and Valuation Court and shall have effect accordingly.

(4) The amendments made by subsections one (paragraph (a) and subparagraph (i) of paragraph (b) excepted) two (paragraph (a) excepted) and three of this section shall commence upon a day, in this section referred to as the "appointed day", to be appointed by the Governor and notified by proclamation published in the Gazette.

(5) The persons who immediately before the appointed day were members of the Board of Appeal and the Board of Appeal Panel constituted under Division 4c of Part XI of the Principal Act shall subject to the said Division 4c, as amended by this section, hold office as members of the Cumberland, Newcastle and Wollongong Board of Appeal and the Cumberland, Newcastle and Wollongong Board of Appeal Panel, respectively, constituted under the provisions of the said Division 4c, as amended by this section, in all respects as if the amendments made by this section had been in force at the time of their appointment as members as aforesaid and they were appointed under the said Division 4c, as amended by this section.

(6) (a) For the purposes only of the constitution of the Country Board of Appeal, the Country Board of Appeal Panel, the Board of Subdivision Appeals and the Board of Subdivision Appeals Panel and of any matter necessary for or incidental to such constitution the amendments made by subsections one and two of this section shall commence upon the day upon which the assent of Her Majesty to this Act is signified.

(b) Upon the appointed day the amendments made by subsections one and two of this section shall have full force and effect for all purposes.

(7)

(7) All appeals made under section three hundred and forty-one of the Principal Act to the Land and Valuation Court before the appointed day may, notwithstanding the amendments made by subsection one of this section, be continued and completed under the said section three hundred and forty-one in all respects as if such amendments had not been made. No. 21, 1958.

(8) Where by or under any provision of this or any other Act a right of appeal to the Land and Valuation Court in accordance with the provisions of section three hundred and forty-one of the Principal Act is expressly conferred upon any person in respect of any matter arising out of or with respect to the carrying into effect or enforcing of a prescribed scheme under Part XIII A of the Principal Act, a reference in any such provision to the said section three hundred and forty-one shall be read and construed as a reference to section 342x of the Principal Act, as amended by this Act.

8. (1) Part XIII of the Principal Act is amended— Amendment
of Act No.
41, 1919,
Part XIII—
(Public
Recrea-
tion.)

(a) by inserting next after section 365A the following new section and short heading thereto:— New sec.
365B.

Enforcement of Part.

365B. The council may appoint honorary rangers to assist in securing the observance of provisions made by or under this Part. Honorary
rangers.

(b) by omitting from section three hundred and sixty-six the word "other"; Sec. 366.
(Aid of
police.)

(c) by inserting at the end of section three hundred and sixty-seven the following new paragraph:— Sec. 367.
(Ordi-
nances.)

(k) conferring powers and imposing duties on honorary rangers.

No. 21, 1958.

Amendment
of Act No.
41, 1919,
Part
XVIII—
(Impound-
ing.)

Sec. 431.
(Fees and
charges.)

(2) Part XVIII of the Principal Act is amended—

(a) (i) by inserting next after paragraph (d) of subsection one of section four hundred and thirty-one the following new paragraphs:—

(e) Driving charges and fees incurred by the council in connection with the sale or offering for sale of any impounded animal at a market or cattle saleyard.

(f) Pound use fees in respect of animals impounded by an occupant.

(ii) by omitting from the same subsection the word and symbols “paragraph (b)” and by inserting in lieu thereof the words and symbols “paragraphs (b), (e) and (f)”;

(iii) by omitting from subsection four of the same section the words “driving charges, pound fees as aforesaid, and”;

(iv) by inserting in the same subsection after the words “fees aforesaid” the words “in addition to any fees and charges otherwise payable”;

Sec. 435.
(Complaint
to
justices.)

(b) by inserting in paragraph (b) of subsection two of section four hundred and thirty-five after the words “pound fees” wherever occurring the words “, pound use fees”;

Sec. 436.
(Pound
sale day.)

(c) (i) by inserting next after subsection two of section four hundred and thirty-six the following new subsection:—

(2A) Notwithstanding the provisions of subsections one and two of this section, the council may sell or cause to be sold any impounded animal by public auction at any market or cattle saleyard.

(ii)

- (ii) by inserting in subsection three of the same section after the word “sustenance,” the words “and then to payment of pound use fees and fees incurred by the council in connection with the sale of the animal”.

- (3) Part XIX of the Principal Act is amended by omitting section four hundred and forty-seven and by inserting in lieu thereof the following section:—

Amendment
of Act No.
41, 1919.
Part XIX—
(Burials.)
Subst. sec.
447.

447. The council may, in any cemetery under its control or on any land vested in or owned by the council, establish and conduct a crematory, and in connection therewith may provide, control and manage a columbarium or such other means as it may consider necessary or appropriate for the interment or disposal of the ashes.

Provision
of
crematories.

- (4) Part XXII of the Principal Act is amended—

Amend-
ment of
Act No. 41,
1919, Part
XXII—
(Noxious
Plants.)

- (a) (i) by omitting from subsection one of section four hundred and seventy-two the words “ a municipality” and by inserting in lieu thereof the words “an area”;
- (ii) by omitting from paragraph (b) of subsection two of the same section the words “which is not free from noxious plants”;
- (b) by omitting section four hundred and seventy-five;
- (c) by omitting from subsection one of section 475E the words “a municipality” and by inserting in lieu thereof the words “an area”.

Sec. 472.
(Notice of
proclamation
to be
published—
duty of
owners and
occupiers of
private
land.)

Sec. 475.
(Private
lands
adjoining
infested
public
lands.)

Sec. 475E.
(Application
to private
lands in
Western
Division.)

No. 21, 1958. **9.** (1) Part XXIII of the Principal Act is amended—

Amendment
of Act No.
41, 1919,
Part
XXIII—
(Miscellaneous
Powers.)

Sec. 500.
(Work on
private
land.)

(a) by inserting in section five hundred after the word “gas” the word “, electricity”;

Sec. 503.
(War ex-
penditure.)

(b) by inserting next after paragraph (f) of subsection one of section five hundred and three the following new paragraph:—

(f1) write off rates and extra charges (on overdue rates) due by any widow or widowed mother eligible for a pension under Table A of the Third Schedule to the Repatriation Act 1920 of the Parliament of the Commonwealth of Australia or any Act amending the same, if the enforcement of the payment of such rates and extra charges would cause hardship to such widow or widowed mother.

Sec. 504.
(General
fund may
be applied
to any
purpose.)

(c) by inserting next after subsection two of section five hundred and four the following new subsection:—

(2A) Subject to this Act a county council may expend for purposes not authorised but not expressly prohibited by law a sum not exceeding one hundred pounds in any one year.

New sec.
504A.

(d) by inserting next after section five hundred and four the following new section:—

Events of
national or
historic
importance.

504A. The council may expend its funds for the purpose of promoting any function, pageant or demonstration arranged in connection with the celebration, whether within or outside the area, of any event of national or historic importance, or in contributing towards the erection of buildings of national importance, whether within or outside the area.

(e)

- (e) (i) by omitting subsection one of section five hundred and seven and by inserting in lieu thereof the following subsection:—

No. 21, 1958.
Sec. 507.
(Public
vehicles.)

(1) A person shall not operate a vehicle as a public vehicle unless it is licensed as a public vehicle under this Act, and is in charge of a driver licensed under this Act. Licenses in respect of public vehicles under this section may, subject to the further provisions of this section, be issued by the council of any area whether such vehicles are intended to be operated within or both within and outside its area. An application for a license shall be in writing, and an application for a license in respect of a public vehicle shall specify—

- (a) whether it is desired to operate the public vehicle—
- (i) within the area only, but without restriction of route; or
 - (ii) within the area only, upon a specified route; or
 - (iii) within the area and certain adjoining areas, without restriction of route; or
 - (iv) upon a route passing through the area and other adjoining areas; and
- (b) the class of vehicle for which a license is desired.

- (ii) by omitting subsection ten of the same section and by inserting in lieu thereof the following subsection:—

(10) The council may charge fees for a license for a public vehicle, for a license for the driver of a public vehicle and for each half-yearly inspection of a public vehicle. Such fees shall not exceed the amounts prescribed

(f)

Local Government (Amendment) Act.

- No. 21, 1958.** (f) by inserting next after section 510A the following new section:—
- New sec.
510B.
Petrol
pumps.
- 510B. The council may control and regulate the installation of petrol pumps on any land.
- Subst.
sec. 514.
- (g) by omitting section five hundred and fourteen and by inserting in lieu thereof the following section:—
- Subscrip-
tions.
514. The council may pay subscriptions to any of the Associations, district associations of councils, regional councils or committees mentioned in paragraphs (d) and (e) of subsection one of section twenty-eight of this Act.
- Amendment
of Act No.
41, 1919,
Part
XXIV—
(Ancillary
Powers.)
- (2) Part XXIV of the Principal Act is amended—
- Sec. 519.
(Power to
let
property.)
- (a) by omitting subsection two of section five hundred and nineteen and by inserting in lieu thereof the following subsection:—
- (2) The council shall not enter into any lease for a term exceeding two years, except—
- (a) as elsewhere provided in this Act;
- (b) as provided by ordinance;
- (c) upon competition either by public auction or tender; or
- (d) with the approval of the Minister.
- Sec. 524.
(Entry and
other
powers.)
- (b) by inserting at the end of subsection two of section five hundred and twenty-four the following new proviso:—
- Provided further that where any difference arises between the council or any person authorised by it and the owner or occupier of land as to whether or not the land is improved pasture, either party may submit such difference to the Minister who after making such inquiry as he thinks sufficient shall decide the matter.
- The

The Minister's decision shall be final and conclusive and binding on the parties to the difference. **No. 21, 1958.**

10. (1) Part XXV of the Principal Act is amended— Amendment of Act No. 41, 1919, Part XXV— (Acquisition of Land.)

(a) by inserting at the end of subsection two of section five hundred and thirty-one the words “and includes Crown lands and land owned by or vested in the Crown”; Sec. 531. (Interpretation.)

(b) by inserting at the end of section 536A the following new subsection:— Sec. 536A. (Vesting.)

(2) Where at the date of such publication the land resumed or appropriated is Crown lands or land owned by or vested in the Crown or is dedicated or reserved for a public purpose by virtue of any statute, the effect of such publication shall be to withdraw the said land (to the extent resumed or appropriated) from any lease or license or promise thereof, and to cancel, to the like extent, any dedication or reservation of the said land made under the authority of any such Act, and to vest the said land to the extent aforesaid in the council for the purposes mentioned and for the estate limited in the notice of resumption or appropriation in respect of the land published in the Gazette as aforesaid. cf. Act No. 45, 1912, sec. 44.

(c) by inserting next after the same section the following new section:— New sec. 536AA.

536AA. The council shall not be entitled to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under any land so resumed or appropriated, except only such portions thereof as necessarily must Mines and deposits excepted. cf. Act No. 45, 1912, s. 141.

be

No. 21, 1958.

be dug or carried away or used in the construction by the council of any works upon such land, unless the same are expressly resumed or appropriated; and all such mines and deposits, except as aforesaid, shall be deemed to be excepted on the resumption or appropriation of such lands unless they are expressly resumed or appropriated.

Sec. 536B.
(Owner entitled to compensation.)

(d) by inserting in section 536B after the word "resumed" the words "or appropriated";

New secs.
536DA-
536DH.

(e) by inserting next after section 536b the following new sections:—

Working of mines on or near resumed land.
cf. Act No. 45, 1912, s. 142.

536DA. (1) If the owner, lessee, or occupier of any mines or minerals lying under any land resumed or appropriated by the council, or within forty yards from the boundary thereof, is desirous of working the same, such owner, lessee, or occupier shall give to the council notice in writing of his intention so to do, thirty days before the commencement of working.

Inspection after notice.

(2) Upon the receipt of such notice, the council may cause such mines to be inspected by any person appointed by it for the purpose.

Compensation.

(3) If it appears to the council that the working of such mines or minerals is likely to damage the land resumed or appropriated by it, and if the council is willing to make compensation for such mines or any part thereof to the owner, lessee, or occupier, then such owner, lessee, or occupier shall not work or get such minerals.

Disputed compensation.

(4) If the council and such owner, lessee, or occupier do not agree as to the amount of such compensation, the claim may be heard and determined as provided in section nine of the Land and Valuation Court Act, 1921, as amended by subsequent Acts.

536DB.

536bb. (1) If before the expiration of such thirty days the council does not state its willingness to treat with the owner, lessee or occupier for the payment of such compensation, such owner, lessee, or occupier may work the said mines or any part thereof for which the council has not agreed to give compensation:

No. 21, 1958.
 If council unwilling to purchase, owner may work the mines.
 cf. Act No. 45, 1912, s. 143.

Provided that such work shall be done in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district where the same are situate.

(2) If any damage or obstruction is occasioned to the land resumed or appropriated by the council by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee, or occupier of such mines or minerals and at his own expense.

Damage or obstruction to resumed land by improper working of mines.

(3) If such repair or removal is not forthwith carried out by such owner, lessee, or occupier, or, if the council thinks fit, without waiting for the same to be so carried out, the council may carry out the same and recover from such owner, lessee, or occupier the expense occasioned thereby by action in the Supreme Court.

Powers of council.

536bc. (1) If the working of any such mines under the land resumed or appropriated by the council or within the abovementioned distance therefrom is prevented as aforesaid, by reason of apprehended injury to such land, the respective owners, lessees, and occupiers of such mines and whose mines extend so as to lie on both sides of such land may cut and make so many airways, headways,

Mining communications.
 cf. Act No. 45, 1912, s. 144.

No. 21, 1958.

headways, gateways, or water-levels through the mines, measures or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines.

Dimensions of communications.

(2) No such airway, headway, gateway, or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions are prescribed, not greater than eight feet wide and eight feet high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

Council to make compensation for injury done to mines.

cf. Act No. 45, 1912, s. 145.

536DD. (1) The council shall from time to time pay the owner, lessee, or occupier of any such mines, lying on both sides of the land resumed or appropriated by the council—

- (a) all such additional expenses and losses as such owner, lessee, or occupier incurs by reason of the severance of the lands lying over such mines by such resumption or appropriation or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the land resumed or appropriated by the council; and
- (b) for any minerals not resumed or appropriated or purchased by the council which cannot be obtained by reason of the said resumption or appropriation.

Disputes as to amount of injury.

(2) If any dispute or question arises between the council and such owner, lessee, or occupier as aforesaid, touching the amount of such

such losses or expenses, the same shall be settled in like manner as a claim for compensation under subsection four of section 536DA of this Act. **No. 21, 1958.**

536DE. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the council shall make full compensation to such owner or occupier for the loss or damage so sustained by him, if he is not also the owner, lessee or occupier of any mine under such lands, in connection with which such airway or other work has been made.

And also for any airway or other work made necessary by the resumption or appropriation. cf. Act No. 45, 1912, s. 146.

536DF. For better ascertaining whether any such mines are being worked or have been worked so as to damage the land resumed or appropriated by the council, the council, after giving twenty-four hours' notice in writing, may enter upon any lands near the land so resumed or appropriated, and in which land any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith. For that purpose the council may make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and may use all necessary means for discovering the distance from the land so resumed or appropriated to the parts of such mines which are being worked or about so to be.

Power to council to enter and inspect the working of mines. cf. Act No. 45, 1912, s. 147.

536DG. If any such owner, lessee, or occupier of any such mine refuses to allow any person, appointed by the council for that purpose, to enter

Penalty. cf. Act No. 45, 1912, s. 148.

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enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal be liable to a penalty not exceeding fifty pounds.

Mines worked contrary to this Act.
cf. Act No. 45, 1912, s. 149.

536DH. (1) If it appears that any such mines have been worked contrary to the provisions of this Act the council may give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land resumed or appropriated by the council and preventing injury thereto.

Powers of council.

(2) If, after such notice, any such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe such land the council may itself construct such works and recover the expense thereof from such owner, lessee, or occupier by action in the Supreme Court.

(2) The amendments made by paragraphs (a) and (b) of subsection one of this section shall be deemed to have commenced on the twenty-seventh day of June, one thousand nine hundred and fifty-one.

Amendment of Act No. 41, 1919, Part XXIX—
(County Councils.)
Sec. 564.
(Powers.)

11. (1) Part XXIX of the Principal Act is amended—

(a) by inserting in subsection three of section five hundred and sixty-four after the word “appliances” the words “or in relation to the provision, control and management of abattoirs, or to making provision for the prevention or mitigation of menace to the safety of life or property from floods (including the provision of flood boats and the organisation of flood brigades)”;

(b)

- (b) (i) by omitting from subsection five of section **No. 21, 1958.** five hundred and sixty-five the words “in like manner to the assessment of cost of destruction of aquatic pests as in this Part provided” and by inserting in lieu thereof the words “in the manner prescribed by section 572b of this Act”;
- (ii) by omitting from subsection six of the same section the words “or with this Act”;
- (c) (i) by inserting in subsection one of section five hundred and sixty-seven after the word “powers” the words “during the next succeeding year”;
- (ii) by omitting subsections two, three, four and five of the same section and by inserting in lieu thereof the following subsections:—
- (2) The county council shall assess the additional amount required upon the councils concerned in the manner prescribed by section 572b of this Act.
- (3) The county council shall, at least fourteen days before making any such assessment, serve upon each of the councils concerned a copy of the estimates and a statement of the amounts which it is proposed to assess against each of them.
- (4) Any council concerned may make representations in writing to the county council against the estimates and the amount proposed to be assessed against it if it considers that the estimates are excessive or that there has been an error in calculating such amount; and the county council may in its discretion thereupon amend its estimates and proposed assessments.

(d)

Local Government (Amendment) Act.

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Subst.
sec. 572A
and new
sec. 572B.Assessment
of loan
commit-
ments.

(d) by omitting section 572A and by inserting in lieu thereof the following sections:—

572A. Where a county council is required to pay interest on or to repay the whole or any part of the principal of a loan the county council may, notwithstanding the provisions of subsection six of section one hundred and twenty-four and subsection four of section one hundred and seventy-seven of this Act, decide in any year to refrain from levying in the ensuing year a loan rate in respect of such loan.

Where a county council decides in any year to refrain from levying in the ensuing year a loan rate in respect of any loan in pursuance of the provisions of this section the county council shall—

- (a) assess the amount required for such payment of interest or repayment of principal upon the councils concerned in the manner prescribed by section 572B of this Act; and
- (b) refrain from levying a loan rate in such ensuing year in respect of such loan.

Method of
assessment.

572B. (1) Where under this Part a county council is authorised to make an assessment of moneys upon the councils concerned, the county council shall make an assessment upon each of the councils concerned for such amount as bears to the total amount to be assessed upon all the councils concerned the same proportion as the unimproved capital value, shown in the statement last furnished by that council to the county council in pursuance of section five hundred and seventy-one of this Act, of the ratable land in the area of that council and in the district of such county council bears to the unimproved capital value, shown in the statements last furnished by all the councils concerned to the
county

county council in pursuance of the said section **No. 21, 1958.**
five hundred and seventy-one, of all the ratable
land in the areas of all the councils concerned
and in the district of such county council:

Provided that where the amount so assessed is in respect of a loan raised for any work or service which in the opinion of the county council would be of special benefit to a portion only of the county district the amount required for payment of interest or repayment of principal may, at the discretion of the county council, be assessed only on the councils of the areas within which such portion is situated and the assessment shall be made upon each of the councils concerned of the areas within which such portion is situated for such amount as bears to the total amount to be assessed upon all councils concerned of such areas the same proportion as the unimproved capital value, shown in the statement last furnished by that council to the county council in pursuance of the said section five hundred and seventy-one, of that part of the ratable land in the area of that council and in that portion of the district of such county council bears to the unimproved capital value, shown in the statements last furnished by all the councils concerned to the county council in pursuance of the said section five hundred and seventy-one, of all the ratable land in the areas of all the councils concerned and in that portion of the district of such county council.

(2) Notice of any such assessment shall be served by the county council upon the councils concerned on or before the first day of December in the year preceding the year to which the assessment relates.

(3) Any council so assessed shall pay the amount of the assessment from the appropriate fund or where any amount of the assessment is in respect of a loan and the loan
is,

No. 21, 1958.

is, in the opinion of the council, for the benefit of only portion of the area, from the proceeds of a local rate levied in respect of such portion.

(4) Notwithstanding any other provision of this Act the county council may recover as a debt any amount assessed upon a council concerned in accordance with this Part and not paid on or before the thirtieth day of June in the year to which the assessment relates.

Amendment
of Act No.
41, 1919,
Part XXX—
(Supple-
mentary.)

(2) Part XXX of the Principal Act is amended—

Sec. 576
(4).
(General
Provisions
as to
Ordinances.)

(a) by omitting from subsection four of section five hundred and seventy-six the words “fifty pounds” and by inserting in lieu thereof the words “one hundred pounds”;

Sec. 633.
(Penalty.)

(b) by omitting from subsection one of section six hundred and thirty-three the word “twenty” and by inserting in lieu thereof the words “one hundred”;

Sec. 635.
(Obstruc-
tion.)

(c) by inserting next after paragraph (h) of section six hundred and thirty-five the following new paragraph:—

(i) an honorary ranger appointed under section 365B of this Act.

Further
amendment
of Act No.
41, 1919.
New
Schedules
Nine and
Ten.

12. The Principal Act is further amended by inserting next after Schedule Eight the following new Schedules:—

Sec. 305.

SCHEDULE NINE.

Shires of Abererombie, Ashford, Barraba, Baulkham Hills, Bibbenluke, Blaxland, Boree, Byron, Canobolas, Coff's Harbour, Cockburn, Demondrille, Dumaresq, Goobang, Gosford, Gundurimba, Guyra, Hastings, Imlay, Kyeamba, Lake Macquarie, Leeton, Lower Hunter, Macintyre, Manning, Mitchell, Molong, Mumbulla, Nundle, Patrick Plains, Peel, Port Stephens, Shoalhaven, Stroud, Talbragar, Tallaganda, Tenterfield, Terania, Tintenbar, Tumbarumba, Turon, Waradgery, Waugoola, Wyong.

SCHEDULE

SCHEDULE TEN.

No. 21, 1958.

Cities of Sydney, Newcastle, Greater Wollongong, Parramatta. Sec. 317k.

Municipalities of Ashfield, Auburn, Bankstown, Botany, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Holroyd, Hunter's Hill, Hurstville, Kogarah, Kuringgai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Penrith, Randwick, Rockdale, Ryde, Strathfield, Waverley, Willoughby, Windsor, Woollahra.

Shires of Baulkham Hills, Blacktown, Hornsby, Sutherland, Warringah.

13. (1) Any license issued by a council under section five hundred and seven of the Principal Act and in force immediately before the commencement of this Act shall be deemed to be a license issued by that council under section five hundred and seven of the Principal Act, as amended by this Act, and shall, subject to that section of that Act, as so amended, continue in force until the expiration of the period for which it was issued. Savings.

(2) The amendments made by paragraphs (b) and (d) of subsection one of section eleven of this Act shall not affect the right of a county council to recover under the provisions of section five hundred and sixty-five or 572A of the Principal Act from a municipal or shire council as a debt any sum assessed under those provisions before the commencement of this Act upon such municipal or shire council but such sum shall be so recoverable as if such amendments had not been made.

14. (1) The expenditure incurred by the Electricity Commission of New South Wales for and in connection with the powers, authorities, duties and functions of the Emergency Electricity Commissioner appointed under the regulations made under the Gas and Electricity Act, 1935, as amended by subsequent Acts, and published in the Gazettes Numbers 74 of the third day of May, one thousand nine hundred and forty-nine, and 59 of the sixth day of April, one thousand nine hundred and fifty-one, is hereby validated. Validations.

(2)

No. 21, 1958.

(2) The donation of the sum of five thousand pounds made in the year one thousand nine hundred and fifty-five by the Sydney County Council to the N.S.W. Flood Victims' Relief Fund is hereby validated.
