

**LOCAL GOVERNMENT (FLOOD LIABLE LAND) AMENDMENT
ACT, 1985, No. 99**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 99, 1985.

An Act to amend the Local Government Act, 1919, with respect to rates payable on flood liable land and to the liability of councils and others in connection with flood liable land. [Assented to, 12th June, 1985.]

See also Broken Hill Water and Sewerage (Flood Liable Land) Amendment Act, 1985; Hunter District Water, Sewerage and Drainage (Flood Liable Land) Amendment Act, 1985; Land Tax (Flood Liable Land) Amendment Act, 1985; Metropolitan Water, Sewerage, and Drainage (Flood Liable Land) Amendment Act, 1985.

Local Government (Flood Liable Land) Amendment 1985

BE it enacted by the Queen'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:—

Short title.

1. This Act may be cited as the "Local Government (Flood Liable Land) Amendment Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1)–(3), and section 3 in its application to those provisions, shall commence on 1st January, 1986.

Amendment of Act No. 41, 1919.

3. The Local Government Act, 1919, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919. (Sec. 3.)

(1) (a) Section 126 (1)—

Omit the subsection, insert instead:—

(1) In this section and section 126A—

"vacant flood liable land" means vacant land which has been determined, by the council of the area in which the land is situated, to be unsuitable for the erection of a building because it is liable to flooding;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919—*continued.*

“vacant land” means land (other than land of such class or description as may be prescribed) which does not have a building (other than a building of such class or description as may be prescribed) erected thereon.

(b) Section 126 (2) (a)—

Omit “or”.

(c) Section 126 (2) (b), (c)—

At the end of section 126 (2) (b), insert:—

; or

(c) may specify—

(i) a minimum amount of the rate which shall be levied in respect of each separate parcel, other than a separate parcel consisting of vacant land;

(ii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (i), which shall be levied in respect of each separate parcel consisting of vacant land, other than a separate parcel consisting of vacant flood liable land; and

(iii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (ii), which shall be levied in respect of each separate parcel of vacant flood liable land.

(d) Section 126 (3)—

After “(2) (b)”, insert “or (c)”.

(2) (a) Section 126A (2) (b)—

After “(2) (b)”, insert “or (c)”.

(b) Section 126A (3)—

Omit “the minimum amount of the class specified under section 126 (2) (a), or either of the minimum amounts of the class specified under section 126 (2) (b), as the case may be,” insert instead “a minimum amount of the class specified under section 126 (2)”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919—*continued.*

(c) Section 126A (3) (a) (ii)—

Omit “neither the minimum amount of the class specified under section 126 (2) (a) nor either of the minimum amounts of the class specified under section 126 (2) (b), as the case may be, applied”, insert instead “a minimum amount of the class specified under section 126 (2) did not apply”.

(d) Section 126A (4)—

Omit the subsection, insert instead:—

(4) The amount referred to in subsection (3) (b) to be determined in accordance with this subsection is—

(a) the amount of the rate in the dollar on the aggregate determined in accordance with subsection (3) (a); or

(b) the minimum amount of the class, being—

(i) except as provided by subparagraphs (ii) and (iii)—the minimum amount of the class specified under section 126 (2) (a), (2) (b) (i) or (2) (c) (i), as the case may be;

(ii) except as provided by subparagraph (iii), where the separate parcels, the land values of which are aggregated in accordance with subsection (3) (a), all consist of vacant land and a minimum amount of the class is specified under section 126 (2) (b) (ii) or (2) (c) (ii)—the minimum amount of the class so specified; or

(iii) where the separate parcels, the land values of which are aggregated in accordance with subsection (3) (a), all consist of vacant flood liable land and a minimum amount of the class is specified under section 126 (2) (c) (iii)—the minimum amount of the class so specified,

whichever is the higher.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919—*continued.*

(3) Section 379 (5D)—

Omit the subsection, insert instead:—

(5D) The council may exempt from water supply local rates and sewerage local rates any land—

- (a) which is unoccupied;
- (b) which is not supplied with water from any water-pipe of the council and is not connected to any sewer of the council; and
- (c) which has been determined, by the council, to be unsuitable for the erection of a building because it is liable to flooding or tidal inundation.

(4) Section 582A—

After section 582, insert:—

Exculpation from liability—flood liable land.

582A. (1) A council shall not incur any liability in respect of—

- (a) any advice furnished in good faith by the council relating to the likelihood of any land being flooded or the nature or extent of any such flooding; or
- (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.

(2) Without limiting the generality of subsection (1), that subsection applies to—

- (a) the preparation or making of an environmental planning instrument or development control plan, or the granting or refusal of consent to a development application, under the Environmental Planning and Assessment Act, 1979;
- (b) the granting or refusal of an application for the erection of a building under Part XI or for the subdivision of land under Part XII;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919—*continued.*

- (c) the imposition of any condition in relation to an application referred to in paragraph (a) or (b);
- (d) advice furnished in a certificate under section 149 of the Environmental Planning and Assessment Act, 1979;
- (e) the carrying out of flood mitigation works; and
- (f) any other thing done or omitted to be done in the exercise of a council's powers, authorities, duties or functions under this or any other Act.

(3) Without limiting any other circumstances in which a council may have acted in good faith, a council shall, unless the contrary is proved, be deemed to have acted in good faith for the purposes of subsection (1) if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant manual published under subsection (4) at that time.

(4) For the purposes of this section, the Minister for Planning and Environment may, from time to time, publish in the Gazette a manual relating to the development of flood liable land.

(5) This section applies to and in respect of—

- (a) the Crown, a statutory body representing the Crown and a public or local authority constituted by or under any Act;
- (b) a member or servant of a council or of any such body or authority;
- (c) a public servant; and
- (d) a person acting under the direction of a council or of the Crown or any such body or authority,

in the same way as it applies to and in respect of a council.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT, 1919—*continued.*

(6) This section applies to and in respect of any advice furnished or thing done or omitted to be done before the commencement of this section, as well as to and in respect of any advice furnished or thing done or omitted to be done after the commencement of this section.
