

**LOCAL GOVERNMENT (THEATRES AND PUBLIC  
HALLS) AMENDMENT ACT 1989 No. 10**

NEW SOUTH WALES



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**LOCAL GOVERNMENT (THEATRES AND PUBLIC HALLS)  
AMENDMENT ACT 1989 No. 10**

NEW SOUTH WALES



**Act No. 10, 1989**

An Act to amend the Local Government Act 1919 so as to make provision for the approval and regulation of places of public entertainment and certain structures; and for other purposes. [Assented to 18 April 1989]

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See also Miscellaneous Acts (Theatres and Public Halls) Amendment Act 1989.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Local Government (Theatres and Public Halls) Amendment Act 1989.

**Commencement**

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

**Amendment of Local Government Act 1919 No. 41**

3. The Local Government Act 1919 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 10 (**Certain Acts not affected**)—

Section 10 (1)—

Omit “the Theatres and Public Halls Act, 1908;”.

(2) Section 289G (**Standards and control for movable dwellings**)—

Section 289G (3)—

Omit the subsection.

(3) Part 11, Division 4BA—

After Division 4B, insert:

**Division 4BA—Places of public entertainment etc.**

**Definitions**

317JD. (1) In this Division—

“approval” means an approval which is in force under this Division;

“authorised officer” means a person who is employed in the Department of Local Government and who is appointed for the time being by the Minister as an authorised officer for the purposes of this Division;

“drive-in theatre” means any place or structure—

- (a) which is used or intended to be used for the purpose of exhibiting or screening films (within the meaning of the Film and Video Tape Classification Act 1984) in the open air; and

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SCHEDULE 1—AMENDMENTS—*continued*

(b) in respect of which provision is made for the parking or accommodation of motor vehicles from which such films are to be viewed; and

(c) to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission,

and includes any building used or intended to be used in connection with the place or structure;

“entertainment” does not include entertainment that is declared by an ordinance not to be entertainment for the purposes of this Division;

“licensed premises” means premises the subject of—

(a) a licence under the Liquor Act 1982; or

(b) a certificate of registration under the Registered Clubs Act 1976,

that are used or intended to be used for the purpose of providing entertainment;

“open-air theatre” means any place or structure—

(a) which is used or intended to be used for the purpose of exhibiting or screening films (within the meaning of the Film and Video Tape Classification Act 1984) in the open air; and

(b) to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission,

and includes any building used or intended to be used in connection with the place or structure, but does not include a drive-in theatre;

“place of public entertainment” means—

(a) a drive-in theatre; or

(b) an open-air theatre; or

(c) a theatre or public hall; or

(d) licensed premises;

“premises” includes a building or place, and any part of a building or place;

“public entertainment” means entertainment to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission;

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SCHEDULE 1—AMENDMENTS—*continued*

“public meeting” means an assembly held for a public purpose to which admission may ordinarily be gained by members of the public (whether or not on payment of money, or other consideration, as the price or condition of admission), but does not include an assembly held for the purpose of religious worship only;

“register of approvals” means a register referred to in section 317JK (4);

“related building application”, in relation to an application for an approval, means an application under Division 4 that relates to the same premises as those to which the application for the approval relates;

“temporary structure” means—

(a) a booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent; or

(b) a mobile structure;

“theatre or public hall” means any building or part of a building that is used or intended to be used for the purpose of providing public entertainment or conducting public meetings.

(2) An entertainment is a public entertainment for the purposes of this Division even though—

(a) some (but not all) persons may be admitted to the entertainment otherwise than on payment of money, or other consideration, as the price or condition of admission; or

(b) such payment, or other consideration, is demanded—

(i) as the charge for a meal or other refreshment, or for any other service or thing, before admission to the entertainment is granted; or

(ii) as the charge for the entertainment after admission to the entertainment has been granted.

(3) For the purposes of this Division, a reference to entertainment includes a reference to—

(a) amusement provided by means of any ride or device or by any other means (such as pin-ball machines and video games); and

(b) an exhibition, sporting event or contest.

(4) For the purposes of this Division, a person promotes or conducts a public entertainment if the person is interested in the proceeds or profits of the entertainment.

*Local Government (Theatres and Public Halls) Amendment 1989***SCHEDULE 1—AMENDMENTS—continued****Division binds Crown**

317JE. This Division binds the Crown.

**Buildings etc. not to be used for public entertainment without approval**

317JF. (1) A person shall not promote or conduct a public entertainment in any building, or in any place of public entertainment, unless—

- (a) the building or place is the subject of an approval as a place of public entertainment; or
- (b) the public entertainment is conducted in a temporary structure the subject of an approval as a temporary structure.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(2) The occupier of any building or any place of public entertainment shall not, for fee or reward, permit the building or place to be used for the purpose of providing public entertainment unless—

- (a) the building or place is the subject of an approval as a place of public entertainment; or
- (b) the public entertainment is conducted in a temporary structure the subject of an approval as a temporary structure.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(3) This section does not apply to licensed premises.

**Hotels and clubs etc. not to be used for entertainment without approval**

317JG. (1) A person shall not promote or conduct an entertainment in any licensed premises unless the premises are the subject of an approval as a place of public entertainment.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(2) The holder of—

- (a) the relevant licence under the Liquor Act 1982 in respect of licensed premises; or
- (b) the relevant certificate of registration under the Registered Clubs Act 1976 in respect of licensed premises,

shall not permit the premises to be used for the purpose of providing entertainment unless the premises are the subject of an approval as a place of public entertainment.

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SCHEDULE 1—AMENDMENTS—*continued*

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(3) This section does not apply to licensed premises merely because approved amusement devices (within the meaning of the Liquor Act 1982) or poker machines (within the meaning of the Registered Clubs Act 1976) are used, or available for use, in or on the premises or any part of the premises.

**Temporary structures not to be used for public entertainment without approval**

317JH. (1) A person shall not promote or conduct a public entertainment in any temporary structure unless the structure is the subject of an approval as a temporary structure.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(2) The occupier of any land on which a temporary structure is situated shall not, for fee or reward, permit the structure to be used for the purpose of providing public entertainment unless the structure is the subject of an approval as a temporary structure.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

**Buildings not to be used for public meetings without approval**

317JI. (1) A person shall not promote or conduct a public meeting in any building unless the building is the subject of an approval as a theatre or public hall.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

(2) The occupier of any building shall not, for fee or reward, permit the building to be used for the purpose of conducting a public meeting unless the building is the subject of an approval as a theatre or public hall.

Maximum penalty: 10 penalty units (in the case of an individual) or 20 penalty units (in the case of a corporation).

**Design, construction, equipment and maintenance standards**

317JJ. (1) For the purposes of this Division, an ordinance may be made for or with respect to controlling and regulating, and prescribing standards for, places of public entertainment and temporary structures.

(2) Without affecting the generality of subsection (1), an ordinance may make provision for—

- (a) standards of design, construction and maintenance of places of public entertainment and temporary structures; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) the management and use of places of public entertainment and temporary structures; and
- (c) the issue, duration, revocation and suspension of approvals; and
- (d) the imposition, variation and rescission of conditions of approvals; and
- (e) the manner and form of, and the fees payable in connection with, approvals and applications for approvals; and
- (f) the variation, by the conditions of an approval, of the application of any provisions of the ordinance to or in respect of—
  - (i) the holder of the approval; or
  - (ii) the owner or occupier of any place of public entertainment, or the owner of any temporary structure, to which the approval relates; and
- (g) the making, keeping and production of records and returns; and
- (h) the keeping of registers of approvals; and
- (i) the exemption from any provision of this Division of any specified premises or structure or specified class of premises or structures; and
- (j) the exercise by councils of the powers conferred on them by section 317JN.

**Approvals**

317JK. (1) The council may give its approval to the owner of any premises for their use as a place of public entertainment.

(2) The council shall not give an approval unless it is satisfied that—

- (a) any consent required under the Environmental Planning and Assessment Act 1979 has been given; and
- (b) the use of the premises concerned in accordance with the approval will not contravene the provisions of that Act, or of any environmental planning instrument within the meaning of that Act, in so far as that Act or any such instrument applies to the premises.

(3) An approval shall be subject to such conditions as may from time to time be prescribed by, or imposed in accordance with, an ordinance under this Division.

(4) The council shall cause a register to be kept of approvals given under this Division.



SCHEDULE 1—AMENDMENTS—*continued*

(5) The Minister may, by a written direction given to a council, require—

- (a) the revocation or suspension of an approval given by the council; or
- (b) the imposition, variation or rescission of a condition to which such an approval is subject,

and the council concerned shall comply with the direction.

(6) Such a direction shall not be given unless—

- (a) the owner of the premises the subject of the approval; and
- (b) the council,

have each been given an opportunity to make submissions to the Minister in relation to the proposed direction.

**Minister to exercise the functions of a council in certain cases**

317JL. (1) This section applies to—

- (a) any application relating to—
  - (i) a place of public entertainment the subject of an interim conservation order or permanent conservation order in force under the Heritage Act 1977; or
  - (ii) a place of public entertainment that is owned by the Crown or by a statutory body representing the Crown; or
  - (iii) a place of public entertainment situated on land that is not within a local government area; or
  - (iv) a temporary structure; or
  - (v) a prescribed place of public entertainment or a place of public entertainment belonging to a prescribed class of places of public entertainment; and
- (b) any application the subject of a direction under subsection (2).

(2) If the Minister is of the opinion that it is in the public interest to do so (having regard to matters which, in the opinion of the Minister, are of State or regional significance), the Minister may give a written direction to a council to refer to the Secretary of the Department of Local Government a particular application or class of applications.

(3) If the Minister has given a direction under subsection (2), the Secretary of the Department of Local Government may require a council to furnish such information concerning applications for approvals as the Secretary considers expedient for the purpose of enabling the Minister to exercise the Minister's functions under this section.

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SCHEDULE 1—AMENDMENTS—*continued*

(4) A council—

(a) shall not determine an application to which this section applies or any related building application; but

(b) shall forthwith refer any such application (including any related building application) to the Secretary of the Department of Local Government to be determined by an authorised officer.

(5) A council that refers such an application (including any related building application) to the Secretary of the Department of Local Government shall cause written notice to be given to the applicant that the application has been so referred.

(6) Subject to subsections (7) and (8), an authorised officer's decision under this section in respect of an application (including any related building application) shall be given effect to as if it were the decision of a council.

(7) An applicant who is dissatisfied with an authorised officer's decision under this section in respect of an application (other than a related building application) may apply to the Minister for a review of the decision.

(8) The Minister's decision under this section in respect of such a review is final and shall be given effect to as if it were the decision of a council.

(9) The provisions of section 317JK (1)–(4) apply to an authorised officer and to the Minister in the same way as they apply to a council.

(10) The provisions of Division 4C do not apply in respect of an application (other than a related building application) that is determined by an authorised officer or by the Minister.

(11) The provisions of Divisions 4 and 4C apply to a related building application, and any decision by an authorised officer in respect of such an application, as if references in those Divisions to a council were references to an authorised officer.

(12) The Minister may remit any related building application to a council for determination by the council if the Minister is of the opinion that it is appropriate for the application to be determined by the council rather than by an authorised officer.

(13) In any proceedings under this Division, a certificate that purports to have been signed by the Minister or by an authorised officer and that purports to contain particulars concerning an entry in a register of approvals kept by the Minister is admissible in evidence and is evidence of those particulars.

SCHEDULE 1—AMENDMENTS—*continued***Relationship to Construction Safety Act 1912**

317JM. (1) If the provisions of this Division are inconsistent with any of the provisions of the Construction Safety Act 1912, or the regulations under that Act, with respect to an amusement device within the meaning of that Act, the provisions of this Division shall prevail to the extent of the inconsistency.

(2) If the provisions of any ordinance under this Division are inconsistent with the provisions of any regulation under the Construction Safety Act 1912 with respect to an amusement device within the meaning of that Act, the provisions of the ordinance shall prevail to the extent of the inconsistency.

**Emergency closure orders**

317JN. (1) If it appears to the council, on reasonable grounds, that—

- (a) there is being, or is about to be, conducted—
  - (i) entertainment in any place of public entertainment or in any temporary structure; or
  - (ii) a meeting in any theatre or public hall; and
- (b) the conduct of the entertainment or meeting constitutes a life-threatening hazard,

the council may, by order in writing served on any person apparently engaged in the promotion or conduct of the entertainment or meeting, direct that the entertainment or meeting not be conducted, or forthwith cease to be conducted, as the case requires.

(2) A person shall not engage in the conduct of an entertainment or meeting in contravention of an order under this section.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both (in the case of an individual) or 100 penalty units (in the case of a corporation).

(3) It is a sufficient defence to a prosecution under this section if the defendant satisfies the court that he or she was unaware of the fact that the entertainment or meeting in respect of which the offence arose was the subject of an order under this section.

(4) As soon as practicable (and, in any case, no later than the next working day) after an order under this section has been served, the council shall furnish written notice to the person on whom the order was served of the reasons for which the order was served.

(5) The powers conferred on a council by this section shall be exercised in accordance with any relevant provisions of an ordinance under this Division.

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SCHEDULE 1—AMENDMENTS—*continued*

**Minister may exercise powers of council to make emergency closure orders**

317JO. (1) This section applies to—

- (a) any place of public entertainment or temporary structure the subject of an approval given by an authorised officer or by the Minister; and
- (b) any place of public entertainment the subject of an approval given to a council.

(2) The Minister may, in respect of any place of public entertainment or temporary structure to which this section applies, exercise the functions of a council under section 317JN.

**Authorised officer's powers of entry under section 524**

317JP. (1) This section applies to—

- (a) any place of public entertainment the subject of—
  - (i) an approval under this Division or under Division 4 in relation to a related building application; or
  - (ii) an application for such an approval; and
- (b) any premises in or on which is situated any temporary structure.

(2) An authorised officer may exercise the powers conferred on a council by section 524 for the purpose of inspecting any place of public entertainment or premises to which this section applies to determine whether the place, or any temporary structure situated in or on the premises, complies with—

- (a) the provisions of an ordinance under this Division; or
- (b) the conditions of any approval relating to the place or structure.

(3) In exercising the powers referred to in subsection (2), an authorised officer may be accompanied by a member of the police force.

**Authorised officer may require upgrading of buildings**

317JQ. (1) This section applies to any building the subject of an approval under this Division, or under Division 4 in relation to a related building application, other than a building that is owned by the Crown or by a statutory body representing the Crown.

(2) An authorised officer may exercise the powers conferred on a council by Division 4B in respect of any building to which this section applies.

SCHEDULE 1—AMENDMENTS—*continued***Powers of entry generally**

317JR. (1) An authorised officer or member of the police force may, at any reasonable time, enter any premises, and any temporary structure situated in or on the premises, in or on which the authorised officer or member of the police force suspects, on reasonable grounds, that a provision of this Division, or of an ordinance under this Division, is being or has been contravened.

(2) An authorised officer or member of the police force may not exercise the powers conferred by this section in relation to that part of any premises being used for residential purposes except—

- (a) with the permission of the occupier of that part of the premises; or
- (b) under the authority conferred by a search warrant issued under section 317JS.

**Search warrants**

317JS. (1) An authorised officer or member of the police force may apply to an authorised justice if the authorised officer or member of the police force has reasonable grounds for believing that a provision of this Division, or of an ordinance under this Division, is being or has been contravened in or on any premises being used for residential purposes.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer or member of the police force named in the warrant—

- (a) to enter the premises; and
- (b) to search the premises for evidence of a contravention of this Division or of an ordinance under this Division.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an authorised officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.

(5) In this section—

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General's Department.

(4) Section 317K (**Definitions**)—

Section 317K, definition of “applicant”—

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**SCHEDULE 1—AMENDMENTS—*continued***

Omit “approval to erect a building”, insert instead “an approval”.

(5) Section 319 (**Additional provisions concerning ordinances**)—

Section 319 (3)—

Omit the subsection.

(6) Section 635 (**Obstruction**)—

Section 635 (j)—

After section 635 (i), insert:

- (j) an authorised officer within the meaning of Division 4BA of Part 11,

(7) Section 656—

After section 655, insert:

**Savings and transitional provisions**

656. Schedule 12 has effect.

(8) After Schedule 11, insert:

**SCHEDULE 12—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 656)

**PART 1—Preliminary**

**Savings and transitional ordinances**

1. (1) An ordinance may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Local Government (Theatres and Public Halls) Amendment Act 1989

Miscellaneous Acts (Theatres and Public Halls) Amendment Act 1989

(2) Any such provision may, if an ordinance so provides, take effect on the date of assent to the Act concerned or a later date.

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

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

**PART 2—Provisions consequent on the enactment of the Local Government (Theatres and Public Halls) Amendment Act 1989 and the Miscellaneous Acts (Theatres and Public Halls) Amendment Act 1989**

**Definitions**

2. In this Part—

“amended Act” means the Theatres and Public Halls Act 1908;

“amending Act” means the Local Government (Theatres and Public Halls) Amendment Act 1989;

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“appointed day”, in relation to a provision of this Part, means the day appointed under section 2 of the amending Act for the commencement of the provision of the amending Act to which the provision of this Part relates.

**Exemptions under the amended Act**

3. An exemption in force under section 5 of the amended Act immediately before the repeal of that section shall be taken to be an exemption in force under an ordinance under Division 4BA of Part 11 of this Act.

**Fees under the amended Act**

4. A fee paid for a licence under the amended Act shall be taken to have been paid for an approval under Division 4BA of Part 11 of this Act.

**Licences under the amended Act**

5. (1) An application under the amended Act that had not been finally dealt with before the repeal of the relevant provision of that Act shall continue to be dealt with under the amended Act as if that provision were still in force.

(2) Any regulations in force under section 14 of the amended Act immediately before the repeal of that section shall, for the purpose only of enabling a licence to be issued or transferred pursuant to subclause (1), be taken to have continued in force.

(3) A licence in force under the amended Act immediately before the repeal of the relevant provision of that Act, or issued under the amended Act pursuant to subclause (1), shall be taken to be an approval granted under Division 4BA of Part 11 of this Act and to have been so granted on the date when it was in fact issued.

(4) Any conditions imposed on such a licence under section 12A of the amended Act shall be taken to have been imposed on the approval under Division 4BA of Part 11 of this Act.

**Registers under the amended Act**

6. The register kept under section 28 of the amended Act shall be taken to form part of the register of approvals kept by the Minister under Division 4BA of Part 11 of this Act.

**Evidentiary certificates under the amended Act**

7. A certificate referred to in section 30 of the amended Act shall be taken to have been given under Division 4BA of Part 11 of this Act.

**Authorisations under section 89 of the Liquor Act 1982**

8. (1) An application under section 89 of the Liquor Act 1982 that had not been finally dealt with before the repeal of that section shall continue to be dealt with under the Liquor Act 1982 as if that section were still in force.

(2) An authorisation in force under section 89 of the Liquor Act 1982 immediately before the repeal of that section, or granted under that section pursuant to subclause (1), shall be taken to be an approval granted under Division 4BA of Part 11 of this Act.

(3) Any conditions imposed on such an authorisation under section 89 of the Liquor Act 1982 shall be taken to have been imposed on the approval under Division 4BA of Part 11 of this Act.

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SCHEDULE 1—AMENDMENTS—*continued*

**Authorities under section 23 of the Registered Clubs Act 1976**

9. (1) An application under section 23 of the Registered Clubs Act 1976 that had not been finally dealt with before the repeal of that section shall continue to be dealt with under the Registered Clubs Act 1976 as if that section were still in force.

(2) An authority in force under section 23 of the Registered Clubs Act 1976 immediately before the repeal of that section, or granted under that section pursuant to subclause (1), shall be taken to be an approval granted under Division 4BA of Part 11 of this Act.

(3) Any conditions imposed on such an authority under section 23 of the Registered Clubs Act 1976 shall be taken to have been imposed on the approval under Division 4BA of Part 11 of this Act.

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[*Minister's second reading speech made in—  
Legislative Assembly on 17 November 1988  
Legislative Council on 4 April 1989*]