



New South Wales

Local Government Amendment Act 1996 No 69

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New South Wales

Local Government Amendment Act 1996 No 69

Act No 69, 1996

An Act to amend the *Local Government Act 1993* with respect to fire safety, rates and charges and in other miscellaneous respects. [Assented to 27 September 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment Act 1996*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 3 [18], [19] and [20] are taken to have commenced on 1 July 1993.
- (3) Schedule 4 [28] and [29] commence on the date of assent.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedules 1–4.

Schedule 1 Amendments relating to fire safety

(Section 3)

[1] Section 608 Council fees for services

Insert after section 608 (4):

- (5) A council may not charge an approved fee for the lodgement or processing of a certificate concerning essential fire or other safety measures.

[2] Sections 653A, 653B

Insert after section 653:

653A Maintenance of essential fire and other safety measures

The owner of:

- (a) a building that, immediately before the repeal of Ordinance No 70 made under the *Local Government Act 1919*, was subject to the maintenance requirements under Part 59 of that Ordinance, or
- (b) a building the subject of an approval granted, before or after the commencement of this section, under item 1 or 7 of Part A of the Table to section 68, or
- (c) a building for which an order in terms of order No 4 in the Table to section 124 has been given, before or after the commencement of this section,

who fails to maintain an essential fire or other safety measure applicable to the building to the standard prescribed by the regulations is guilty of an offence.

Maximum penalty: 100 penalty units.

653B Provision of certificate as to maintenance

The owner of:

- (a) a building that, immediately before the repeal of Ordinance No 70 made under the *Local Government Act 1919*, was subject to the maintenance requirements under Part 59 of that Ordinance, or
- (b) a building the subject of an approval granted, before or after the commencement of this section, under item 1 or 7 of Part A of the Table to section 68, or
- (c) a building for which an order in terms of order No 4 in the Table to section 124 has been given, before or after the commencement of this section,

who fails to comply with the certification procedure prescribed by the regulations concerning the maintenance of essential fire or other safety measures applicable to the building is guilty of an offence.

Maximum penalty: 100 penalty units.

[3] Section 656 Doors relating to fire exits

Insert “(unless the locking of the door is permitted by the regulations)” after “locks” in section 656 (a).

[4] Section 657 Paths of travel to fire exits

Omit section 657 (b). Insert instead:

- (b) who fails to ensure that any door that:
 - (i) serves as or forms part of a required exit, or
 - (ii) is situated in a path of travel,is capable of being operated in accordance with the requirements of the regulations, or

[5] Section 665 False or misleading information

Insert at the end of the section:

- (2) A person who, in purporting to comply with a requirement of this Act or the regulations concerning essential fire or other safety measures, makes any statement that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

[6] Section 691A

Insert after section 691:

691A Proceedings for offences against secs 653A and 653B involving the Crown

Proceedings for an offence against section 653A or 653B must not be brought against the Crown in respect of a building on land that is a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, or a building that is a School of Arts or a Mechanics Institute, without the consent of the Minister given after the Minister has consulted the Minister administering the *Crown Lands Act 1989*.

[7] Schedule 6 Regulations

Insert:

The prescription of essential fire or other safety measures

The standard of maintenance of essential fire or other safety measures

Certificates as to the maintenance of essential fire or other safety measures

Other matters concerning essential fire or other safety measures

after “Authorisation of persons under this Act to enter premises” in paragraph 21 of Schedule 6.

[8] Dictionary

Insert in alphabetical order:

essential fire or other safety measures means essential fire or other safety measures prescribed by the regulations.

Schedule 2 Amendments relating to rates, charges and fees

(Section 3)

[1] Section 497 What is the structure of a rate?

Insert “(which may, in accordance with section 548, be subject to a minimum amount of the rate)” after "amount" in section 497 (a).

[2] Section 501 For what services can a council impose an annual charge?

Omit “and levy” from section 501 (1) and (2) wherever occurring.

[3] Section 502

Omit the section. Insert instead:

502 Charges for actual use

A council may make a charge for a service referred to in section 496 or 501 according to the actual use of the service.

[4] Section 519 How is vacant land to be categorised?

Omit “Subject to sections 515 and 516, vacant”.

Insert instead “If vacant land is unable to be categorised under section 515, 516 or 517, the”.

[5] Chapter 15, Part 3A

Insert after Part 3:

Part 3A Charges

531A Adjustment of charges following change in category

If the amount of a charge paid or payable by a person is determined by reference (or partly by reference) to a category or sub-category of land declared by the council

under Part 3, the council must make an appropriate adjustment of the charge following a change in category or sub-category of the land.

531B Aggregation of certain parcels subject to a charge

- (1) If the council is of the opinion that the levying of a charge:
 - (a) would apply unfairly, and
 - (b) could cause hardship to a person who is liable to the charge in respect of two or more separate parcels of land,it may treat the parcels as being a single parcel and levy the charge accordingly.
- (2) Separate parcels may be treated as being a single parcel under this section only if each separate parcel is subject to the same category or sub-category declared by the council under Part 3.
- (3) A council must not treat separate parcels as being a single parcel under this section:
 - (a) if each parcel is a parcel on which a dwelling is erected or a parcel that comprises (or substantially comprises) a dwelling in a residential flat building, or
 - (b) if the parcels are a combination of parcels referred to in paragraph (a).

[6] Section 547 Method of rating dwellings and other premises under company title

Insert “ , or a portion of,” after “a dwelling in” in section 547 (1) (a).

[7] Section 547 (1) (a)

Insert “ or portion of,” after “the same dwelling in”.

[8] Section 547 (1) (a)

Insert “or portions” after "dwellings".

[9] Section 548 Minimum amounts

Insert “consisting of an ad valorem amount” after “rate” where firstly occurring in section 548 (1)

[10] Section 548 (7)

Insert after section 548 (6):

- (7) A council may not specify a minimum amount of a rate consisting of a base amount to which an ad valorem amount is added.

[11] Section 565 Capital contributions instead of payment of special rates or charges

Insert “or charge” after “special rate” wherever occurring.

[12] Section 567

Omit the section. Insert instead:

567 Writing off of accrued interest

The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

- (a) the person was unable to pay the rates or charges when they became due and payable for reasons beyond the person’s control, or
- (b) the person is unable to pay the accrued interest for reasons beyond the person’s control, or
- (c) payment of the accrued interest would cause the person hardship.

[13] Section 572 What happens if the rateability of land changes?

Insert at the end of the section:

- (2) A charge, other than a charge limited under section 503 (2) to the cost of providing a particular service to land, is proportionate to the portion of the year for which land is rateable.

[14] Section 574 Appeal on question of whether land is rateable or subject to a charge

Omit section 574 (1). Insert instead:

- (1) A person who has an estate in land, or who is the holder of a licence or permit for land under the *Crown Lands Act 1989*, in respect of which a rates and charges notice is served may appeal to the Land and Environment Court:
 - (a) in the case of a rate — against the levying of the rate on the ground that the land or part of it is not rateable or is not rateable to a particular ordinary rate or a particular special rate, or
 - (b) in the case of a charge — against the levying of the charge on the ground that the land is not subject to any charge (excluding a charge limited under section 503 (2)) or is not subject to the particular charge.

[15] Section 608 Council fees for services

Insert "or in connection with any inspection that is reasonably necessary to determine if an approval has been complied with" after "premises" where lastly occurring in section 608 (4).

[16] Section 608 (6), (7)

Insert at the end of section 608:

- (6) If inspections of premises are reasonably necessary to determine if an approval has been complied with:
 - (a) an approved fee may be charged for such an inspection only if the charging of the fee has been included as a condition of the approval, and
 - (b) an approved fee may not be charged for such an inspection before the approval is granted, and
 - (c) an approved fee may not be charged for the inspection of any thing for which the council relies on a certificate under section 93 that the thing has been done in compliance with the approval.
- (7) An approved fee charged for inspecting premises must be repaid to the person who paid it if the inspection is not carried out.

Schedule 3 Miscellaneous amendments

(Section 3)

[1] Section 8 The council's charter

Insert after the third dot point in section 8 (1):

- to promote and to provide and plan for the needs of children

[2] Section 56 Application of Division

Omit "*Water Supply Authorities Act 1987*".

[3] Section 56 (2)

Insert at the end of section 56:

- (2) The provisions of this Division (sections 57, 58 and 59 excepted) relating to water supply and sewerage (but not stormwater drainage) do not apply to land to which the *Water Supply Authorities Act 1987* applies.

[4] Section 100 Review of determination

Insert after section 100 (4):

- (4A) The decision whether or not to review the determination must not be made by the person who made the determination, unless that person was the council, but is to be made by a person who is qualified under subsection (5) to make the review.

[5] Section 106 Can approvals be amended?

Omit "and 97–99" from section 106 (2).

Insert instead " , 97–99 and 105".

[6] Section 107 Can approvals be extended or renewed?

Omit "and 99" from section 107 (4) (a) and (5) (a) wherever occurring.

Insert instead " , 99 and 105".

[7] Section 124 What orders may be given, in what circumstances and to whom?

Insert “under this Act or the *Local Government Act 1919*” after “council” in paragraph (a) of the matter in Column 2 of the Table to section 124 relating to order No 1.

[8] Section 124

Insert “under this Act or the *Local Government Act 1919*” after “council” in order No 5 (g) in the Table.

[9] Section 124

Insert “, or a building on the land or other land,” after “Other land” in the matter in Column 2 of the Table relating to order No 12.

[10] Section 124

Insert the following order after order No 15 in the Table:

15A.	To cease the use of a building	The use of the building:	The owner or occupier of the building
		(a) is not consistent with its classification under this Act or the <i>Local Government Act 1919</i> , and	
		(b) constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and	
		(c) is not regulated or controlled under any other Act by a public authority.	

[11] Section 140 Compliance with order referred to in sec 139 (2)

Omit “under” from section 140 (1) where firstly occurring.
Insert instead “referred to in”.

[12] Section 141 Council’s response to submission of particulars of work by owner

Omit “the order given to the owner under section 139” from section 141 (3) (a).
Insert instead “the order referred to in section 139 given to the owner”.

[13] Section 141 (4A)

Insert after section 141 (4):

(4A) An order under this section forms part of the order under section 124 to which it relates.

[14] Section 176 Appeal by an applicant concerning an approval

Omit section 176 (2) (c). Insert instead:

(c) the date endorsed on the notice of extension or renewal of the approval if the approval has been extended or renewed under section 107 or the date endorsed on the refusal to extend or renew the approval if extension or renewal of the approval is refused under section 107,

[15] Section 180 Appeals concerning orders

Insert “or, if an order is given under section 141, within 28 days after the service of the order given under section 141 on the person. The person may make an appeal within the later period whether or not the person has made an appeal within the earlier period.” after “person” in section 180 (3).

[16] Section 188 Restriction on compulsory acquisition of land for re-sale

Omit section 188 (2). Insert instead:

- (2) However, the owner's approval is not required if:
 - (a) the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Part for a purpose other than the purpose of re-sale, or
 - (b) the owner of the land cannot be identified after diligent inquiry has been made and at least 6 months has elapsed since that inquiry was made.
- (3) For the purposes of subsection (2) (b), *diligent inquiry* has the meaning given by the regulations, and includes the giving of notice of the proposed acquisition to the New South Wales Aboriginal Land Council and to the relevant Local Aboriginal Land Council.

[17] Section 691 Proceedings for offences

Insert after section 691 (2):

- (3) Proceedings for an offence dealt with summarily before the Land and Environment Court in its summary jurisdiction may be instituted at any time within 6 months after the offence is alleged to have been committed, except as provided by section 692.

[18] Schedule 7 Savings, transitional and other provisions

Omit "by a council or council officer" from clause 14.
Insert instead " , or deemed to have been given,".

[19] Schedule 7, clause 14

Omit "or modified".
Insert instead " , modified, extended or renewed".

[20] Schedule 7, clause 14A

Insert after clause 14:

14A Existing places of public entertainment

- (1) An approval given, or deemed to have been given, under the old Act to use a building as a place of public entertainment, and in force immediately before 1 July 1993, continues in force according to its tenor and may be revoked or modified as if it were an approval given under Division 1 of Part 1 of Chapter 7.
- (2) Such an approval lapses, or is taken to have lapsed when the building ceases, or ceased, to be used as a place of public entertainment.

Schedule 4 Minor amendments

(Section 3)

[1] Section 102 Payment of insurance premium for residential building work

Omit “paragraph (b)” from section 102 (5).
Insert instead “subsection (4) (b)”.

[2] Sections 123A, 123B

Insert after section 123:

123A Application for extension or renewal of accreditation

- (1) A person who has been granted an accreditation under the *Local Government Act 1919* or under this Division (section 123B (b) excepted) may apply to the Director-General for an extension or renewal of the accreditation.
- (2) This Division applies:
 - (a) to an application under this section in the same way as it applies to an application for accreditation, and
 - (b) to the extension or renewal of an accreditation in the same way as it applies to an accreditation.

123B Acceptance of accreditation by others

The regulations:

- (a) may provide for the submission with an application under this Division of an accreditation granted, or an assessment or appraisal made or given by a person or body other than the Director-General, and

- (b) may provide that an accreditation granted by a person or body other than the Director-General is to be taken to be an accreditation granted and notified under, and subject to the revocation provisions of, this Division.

[3] Section 138 Notice of right to appeal against order

Omit “ or any other person affected by the order”.

[4] Section 138A

Insert after section 138:

138A Approval not required to comply with order

A person who carries out work in compliance with a requirement of an order does not have to make an application under Division 1, 2 or 3 of Part 1 for approval of the work.

[5] Section 140 Compliance with order under sec 139

Omit section 140 (2).

[6] Section 150 Powers of fire brigades

Omit section 150 (5). Insert instead:

- (5) In this section, a reference to an authorised fire officer, in relation to the exercise of a power under this Part, is a reference to:
- (a) the Commissioner of New South Wales Fire Brigades, or
 - (b) a member of staff of New South Wales Fire Brigades who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power, or
 - (c) an officer or member of a fire brigade who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power.

[7] Section 151 Inspection reports by fire brigades

Omit “Director-General of New South Wales Fire Brigades” wherever occurring.
Insert instead “Commissioner of New South Wales Fire Brigades”.

[8] Section 151 (1)

Omit “Director-General” where secondly and thirdly occurring.
Insert instead “Commissioner”.

[9] Section 202 Special provision with respect to fire brigades

Omit “The Director-General of New South Wales Fire Brigades, or any members of staff of the New South Wales Fire Brigades or any officers or members of a fire brigade authorised for the purposes of this section by the Minister administering the *Fire Brigades Act 1989*,” from section 202 (1).
Insert instead “An authorised fire offices within the meaning of section 150”.

[10] Section 202 (2), (3) and (4)

Omit “Director-General of New South Wales Fire Brigades” wherever occurring.
Insert instead “Commissioner of New South Wales Fire Brigades”.

[11] Section 202 (5)

Omit “the Director-General of New South Wales Fire Brigades and a person authorised by the Minister administering the *Fire Brigades Act 1989*”.
Insert instead “an authorised fire officer within the meaning of section 150”.

[12] Section 203 Councils to carry out fire-safety inspections on request of Commissioner of NSW Fire Brigades

Omit “Director-General of New South Wales Fire Brigades” wherever occurring.

Insert instead “Commissioner of New South Wales Fire Brigades”

[13] Section 228 How is it decided that the mayor be elected by the electors?

Omit “or the next casual vacancy in the office of mayor, whichever happens first,” from section 228 (2).

[14] Section 229 Can the decision be changed?

Omit “or the next casual vacancy in the office of mayor, whichever happens first,” from section 229 (2).

[15] Section 379 Delegation of regulatory functions

Insert at the end of section 379:

- (2) A regulatory function of a county council under Chapter 7 must not be delegated or sub-delegated to a person or body other than:
 - (a) a committee of the county council of which all the members are members of the county council or of which all the members are either members of the county council or employees of the county council, or
 - (b) an employee of the county council, or
 - (c) a council.

- (3) However, if:
- (a) a regulatory function is delegated to a county council, the function may be delegated to the general manager and by the general manager to an employee of the county council, or
 - (b) a regulatory function is delegated to a council, the function may be delegated to the general manager and by the general manager to an employee of the council.

[16] Section 394 Functions of county council

Insert after section 394 (2):

- (3) Subsection (2) does not prevent a council from exercising a function delegated to it by a county council.

[17] Section 407 General manager to report periodically on implementation of management plan

Omit section 407 (2).

[18] Section 413 Preparation of financial reports

Omit section 413 (2) (b) and (c). Insert instead:

- (b) any other matter prescribed by the regulations, and
- (c) a statement in the approved form by the council as to its opinion on the general purpose financial report.

[19] Section 413 (3)

Insert “this Act and the regulations and” after “in accordance with”.

[20] Section 413 (3) (a)

Omit “the titles ‘Statements of Accounting Concepts’ and”.
Insert instead “the title”.

[21] Section 413 (4)

Omit the subsection.

[22] Section 417 Auditor’s reports

Omit “3” from section 417 (1). Insert instead “2”.

[23] Section 417 (1)

Omit “a report on any special schedules prescribed by the regulations”.

[24] Section 417 (2) (d)

Insert “material” before “deficiency”.

[25] Section 443 Who has a pecuniary interest?

Insert “or is employed by the Crown” after “body” in section 443 (3) (b).

[26] Section 448 What interests do not have to be disclosed?

Omit the sixth dot point. Insert instead:

- an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument (other than an instrument that effects a change of the permissible uses of:

- (a) land in which the person or another person with whom the person is associated as provided in section 443 has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
- (b) land adjoining, or adjacent to, or in proximity to land referred to in paragraph (a),

if the person or the other person with whom the person is associated would by reason of the proprietary interest have a pecuniary interest in the proposal).

[27] Section 450A

Insert after section 450:

450A Register and tabling of returns

- (1) The general manager must keep a register of returns required to be lodged with the general manager under section 449.
- (2) Returns required to be lodged with the general manager under section 449 must be tabled at a meeting of the council, being:
 - (a) in the case of a return lodged in accordance with section 449 (1)—the first meeting held after the last day for lodgement under that subsection, or
 - (b) in the case of a return lodged in accordance with section 449 (3)—the first meeting held after the last day for lodgement under that subsection, or
 - (c) in the case of a return otherwise lodged with the general manager—the first meeting after lodgement.

[28] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

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[29] Schedule 8, Part 5

Insert after Part 4:

Part 5 Provisions consequent on enactment of Local Government Amendment Act 1996

17 Extension or renewal of accreditation

Section 123A extends to an accreditation granted under the *Local Government Act 1919* or Division 5 of Part 1 of Chapter 7 before the commencement of that section.

18 Appeals concerning orders

Section 180, as amended by the *Local Government Amendment Act 1996*, extends to orders given before the commencement of the amendment.

19 Writing off of accrued interest

Section 567, as substituted by the *Local Government Amendment Act 1996*, extends to interest accrued before the date of substitution of that section.

20 Appeal on question of whether land is subject to a charge

Section 574 (1), as substituted by the *Local Government Amendment Act 1996*, does not apply to a charge levied before the date of substitution of that subsection.

21 Proceedings for offences before the Land and Environment Court

Section 691 (3) does not apply to proceedings commenced before the commencement of that subsection.

[30] Dictionary

Insert in alphabetical order:

quarter means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

[Minister's second reading speech made in—
Legislative Assembly on 1 May 1996
Legislative Council on 11 September 1996]