



New South Wales

Local Government Amendment Act 1997 No 61

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New South Wales

Local Government Amendment Act 1997 No 61

Act No 61, 1997

An Act to amend the *Local Government Act 1993* with respect to council resolutions, rates and charges and in other miscellaneous respects; to amend the *Valuation of Land Act 1916* consequentially; to amend certain other Acts in respect of matters relating to local government; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment Act 1997*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [22] and [26] commence or are taken to have commenced on 1 July 1997.
- (3) Schedule 1 [38] and [39] 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 Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Local Government Act 1993

(Section 3)

[1] Section 9 Public notice of meetings

Insert after section 9 (4):

- (5) A notice given under this section or a copy of a business paper made available under this section may in addition be given or made available in electronic form.

[2] Section 12 What information is publicly available?

Insert “, any variation from local policies with reasons for the variation,” after “records of approvals granted” in the 19th dot point in section 12 (1).

[3] Section 70 Compliance by the Crown with building standards

Omit section 70 (1). Insert instead:

- (1) This section applies to a building erected by or on behalf of the Crown or a person prescribed by the regulations if the erection of the building commences on or after 1 July 1993.

[4] Section 70 (2)

Insert “in force as at the date of the invitation for tenders to erect the building or, in the absence of tenders, the date on which the erection of the building commences” after “laws”.

[5] Section 70, note

Insert at the end of the section:

Note. *Erection*, in relation to a building, is defined in the Dictionary for this Act as including any structural work and any alteration, addition or rebuilding.

[6] Section 71 Use by the Crown of places of public entertainment

Insert after section 71 (6):

- (7) The Crown does not use a building or temporary structure for the purposes of this section if it is subject to a lease from the Crown to a person who is not or does not represent the Crown.

Note. *Building* is defined in the Dictionary for this Act to include part of a building and any structure or part of a structure, but not to include a moveable dwelling or associated structure or part of a moveable dwelling or associated structure.

[7] Section 82 Objections to application of regulations and local policies

Omit section 82 (3). Insert instead:

- (3) If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Director-General, in determining the application, direct that:
- (a) such provisions of any regulation relating to that activity as are specified in the direction:
- (i) are not to apply, or
- (ii) are to apply with such modifications as are specified in the direction,
- in respect of the carrying out of that activity, or
- (b) such requirements as are specified in the direction are to apply to the carrying out of that activity,
- or give directions under both paragraphs (a) and (b).
- (3A) If the objection relates to a local policy adopted under Part 3 by the council and the council is satisfied that the objection is well founded, it may, in determining the application, direct that:

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- (a) such provisions of any local policy relating to that activity as are specified in the direction:
- (i) are not to apply, or
 - (ii) are to apply with such modifications as are specified in the direction,
- in respect of the carrying out of that activity, or
- (b) such requirements as are specified in the direction are to apply to the carrying out of that activity,
- or give directions under both paragraphs (a) and (b) and the council must give the reasons for its direction or directions.
- (3B) An objection is well founded for the purposes of subsection (3A) only if the council is satisfied that no person or the public interest will be adversely affected by the variation and that any variation is consistent with the principles of ecologically sustainable development.

[8] Section 82 (4)

Insert “or (3A)” after “(3)”.

[9] Section 82 (4)

Omit “paragraph (a) (ii) or (b) of that subsection”.
Insert instead “subsection (3) (a) (ii) or (b) or subsection (3A) (a) (ii) or (b)”.

[10] Section 103 When does an approval lapse?

Insert after section 103 (4):

- (5) In this section, *vary* means increase or reduce.

[11] Section 106 Can approvals be amended?

Omit section 106 (4).

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

Omit “or unsightly” from paragraph (c) in Column 2 of the matter relating to order No 1 in the Table to the section.

[13] Section 124, Table

Omit “or unsightly” from paragraph (b) in Column 2 of the matter relating to order No 3.

[14] Section 131A

Insert after section 131:

131A Orders that make or are likely to make residents homeless

- (1) If an order will or is likely to have the effect of making a resident homeless, the council must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the person is not able to arrange satisfactory alternative accommodation in the locality, the council must provide the person with:
 - (a) information as to the availability of satisfactory alternative accommodation in the locality, and
 - (b) any other assistance that the council considers appropriate.

[15] Section 356 Can a council financially assist others?

Insert after section 356 (2):

- (3) However, public notice is not required if
 - (a) the financial assistance is part of a specific program, and

- (b) the program's details have been included in the council's draft management plan for the year in which the financial assistance is proposed to be given, and
- (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and
- (d) the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.

[16] Section 367 Notice of meetings

Insert after section 367 (2):

- (3) A notice under this section and the business paper relating to the meeting may be given to a councillor in electronic form but only if all councillors have facilities to access the notice and the business paper in that form.

[17] Section 377 General power of the council to delegate

Insert at the end of the section:

- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.

[18] Section 378 Delegations by the general manager

Insert after section 378 (2):

- (3) Subsection (2) extends to a function sub-delegated to the general manager by the council under section 377 (2).

[19] Section 496 Making and levying of annual charges for domestic waste management services

Insert at the end of the section:

- (2) A council may make an annual charge for the provision of a domestic waste management service for a parcel of land that is exempt from rating if
 - (a) the service is available for that land, and
 - (b) the owner of that land requests or agrees to the provision of the service to that land, and
 - (c) the amount of the annual charge is limited to recovering the cost of providing the service to that land.

[20] Section 505 Application of Part

Insert after section 505 (a) (iii):

- (iv) annual charges referred to in section 611, and

[21] Section 509 Maximum general income for a year

Insert “or 511A” after “511” in section 509(1).

[22] Section 511A

Insert after section 511:

511A Catching up of income lost due to reductions in valuation

- (1) This section applies to a council that cannot recover or retain a part of the maximum permissible general income determined under this Part for a year because, after the determination is made, a valuation used in making a rate is reduced on objection under Part 3, or appeal under Part 4, of the *Valuation of Land Act 1916*. The part of the maximum permissible general income that cannot be recovered or retained is referred to in this section as the *unrecovered amount*.

- (2) The council may increase the maximum permissible general income determined under this Part for a year by any unrecovered amount for a previous year.

[23] Section 512 Effect of contravening section 509, 510, 511 or 511A

Omit “or 511” wherever occurring in section 512 (1).
Insert instead “, 511 or 511A”.

[24] Section 513 Estimates of increases and decreases in value for purposes of notional rate income

Omit section 513 (1). Insert instead:

- (1) A council may, at any time after 31 January in any year but before 31 May in that year, request the Valuer-General to provide:
- (a) estimates of increases and decreases in values for parcels of rateable land for which supplementary valuations are required to be furnished under the *Valuation of Land Act 1916* but which, before the date of the request, have not been so furnished, and
 - (b) estimates of increases and decreases in values for parcels of rateable land for which supplementary valuations have been or are required to be furnished under the *Valuation of Land Act 1916* but which have or will have a different base date from those used for rating purposes for that year because of a general valuation furnished in that year for the council’s area.

[25] Section 516 Categorisation as residential

Insert after section 516 (1):

- (1A) For the purposes of this section, a *boarding house* or a *lodging house* means a building wholly or partly let as lodging in which each letting provides the tariff-paying occupant with a principal place of residence and in which:

- (a) each tariff charged does not exceed the maximum tariff for boarding houses or lodging houses for the time being determined by the Minister by order published in the Gazette for the purposes of this subsection, and
- (b) there are at least 3 tariff-paying occupants who have resided there for the last 3 consecutive months, or any period totalling 3 months during the last year,

and includes a vacant building that was so let immediately before becoming vacant, but does not include a residential flat building, licensed premises, a private hotel, a building containing serviced apartments or a backpacker hostel or other tourist establishment.

[26] Sections 518A and 518B

Insert after section 518:

518A Strata lots and company titles taken to be separate parcels of land for categorisation

For the purposes of this Part:

- (a) each lot in a strata plan that is registered under the *Strata Titles Act 1973* or the *Strata Titles (Leasehold) Act 1986*, and
- (b) each dwelling or portion of the kind referred to in section 547 (1),

is taken to be a separate parcel for the purposes of categorisation.

518B Mixed development land

(1) **Definitions**

In this section, *mixed development land* and *non-residential land* have the same meanings as in section 58C of the *Valuation of Land Act 1916*.

(2) **Categorisation of parts of mixed development land**

If a valuation is furnished under the *Valuation of Land Act 1916* for mixed development land:

- (a) the part of the land that is non-residential land is taken to have been categorised as business, and
- (b) the part of the land that is not non-residential land is taken to have been categorised as residential,

despite sections 515–518.

(3) **Sub-categories**

The council may determine a sub-category for a part of land to which subsection (2) applies according to the category determined by that subsection for the part.

(4) **Apportionment of rates and charges**

A rate, the base amount of a rate, or the minimum amount of a rate or of a charge, that is made and levied according to categories or sub-categories of land is to apply to a parcel of mixed development land according to the percentages represented by the apportionment factor for the parcel determined under section 58B of the *Valuation of Land Act 1916*.

[27] Section 555 What land is exempt from all rates?

Insert after section 555 (1) (b):

- (b1) subject to subsection (3), land that is the subject of a conservation agreement (within the meaning of the *National Parks and Wildlife Act 1974*),

[28] Section 555 (3)

Insert after section 555 (2):

- (3) If land to which subsection (1) (b1) applies comprises part of a single parcel of land for rating purposes, that part is exempt from all rates. However, rates may be made and levied on the other part of that parcel proportionately.

[29] Section 608 Council fees for services

Insert after section 608 (7):

- (8) An approved fee charged in connection with a service provided at an airport established and maintained by the council may be recovered from the holder of the certificate of registration issued under the *Civil Aviation Regulations* of the Commonwealth for the aircraft in respect of which the service was provided. This subsection applies whether or not the holder is the person to whom the service is actually provided.

[30] Section 610A

Insert after section 610:

610A Council may waive or reduce fees

- (1) A council may waive payment of, or reduce, an approved fee (whether expressed as an actual or a maximum amount) in a particular case if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be so waived or reduced.
- (2) However, a council must not determine a category of cases under this section until it has given public notice of the proposed category in the same way as it is required to give public notice of the amount of a proposed approved fee under section 612 (2) or (3).

[31] Section 611 Annual charge on rails, pipes etc

Insert “but is not to be regarded as a rate for the purposes of calculating a council’s general income under Part 2” after “rate” in section 611 (2).

[32] Section 628 Failure to comply with order

Omit “1–17” from section 628 (1).
Insert instead “1–3,5–14 or 15A”.

[33] Section 628 (1A)

Insert after section 628 (1):

- (1A) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 4, 15, 16 or 17 in the Table to section 124 is guilty of an offence.

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

[34] Section 713 Sale of land for unpaid rates and charges

Omit section 713 (1) and (2). Insert instead:

- (1) For the purposes of this Division, a rate or charge is overdue if
- (a) in the case of vacant land, it has remained unpaid for more than one year, or
 - (b) in the case of any other land, it has remained unpaid for more than 5 years,
- from the date on which it became payable.
- (2) A council may, in accordance with this Division:
- (a) sell any vacant land on which any rate or charge is overdue but only if
 - (i) the council obtains a valuation of the land from the Valuer-General, and
 - (ii) the amount of unpaid rates or charges on the land exceeds the valuation, and
 - (iii) the council sells the land within 6 months after the date when the council received the valuation, or
 - (b) sell any other land on which any rate or charge is overdue.

[35] Section 732 Exemption from liability—accreditation and certification

Insert after section 732 (b):

, or

- (c) the council's receipt of a certificate issued in accordance with the certification procedure referred to in section 653B (Provision of certificate as to maintenance).

[36] Section 735A

Insert after section 735:

735A Certificate as to notices

- (1) A person may apply to a council for a certificate as to whether there are any outstanding notices issued by the council under this Act in respect of any land within the council's area.
- (2) The application must be in the approved form and be accompanied by the approved fee.
- (3) The council is to issue a certificate to the applicant stating:
 - (a) whether or not a notice is outstanding in respect of the land as at the date of the certificate and, if so, the terms of the notice, and
 - (b) any action proposed to be taken or that may be taken by the council in relation to the notice.
- (4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices.

Note. *Notice* is defined in the Dictionary for this Act as including a notification, order, direction and demand.

[37] Schedule 7 Savings, transitional and other provisions consequent on the enactment of this Act

Insert after clause 32 in Part 5:

33 Maitland City Council

The number of councillors for the Maitland City Council for the term of office commencing next after the ordinary election in September 1999 is 13 despite:

- (a) the result of the constitutional referendum held by that Council in 1995 in relation to the number of councillors, and
- (b) sections 17 (1) and 224 (2) and (3).

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

Insert at the end of clause 1 (1):

Local Government Amendment Act 1997

[39] Schedule 8, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Local Government Amendment Act 1997

22 Meaning of “amending Act”

In this Part, *amending Act* means the *Local Government Amendment Act 1997*.

23 Crown buildings

The amendments made to section 70 by Schedule 1 [2]–[4] to the amending Act are taken to have commenced on 1 July 1993.

24 Duration of existing approvals

Section 103 (5), as inserted by the amending Act, extends to an approval in force immediately before the commencement of that subsection.

25 Land exempt from rating

Section 496 (2) and section 555 (1) (b1) and (3), as inserted by the amending Act, do not apply to or in respect of a year commencing before 1 July 1997.

26 Catching up of income lost due to valuation reductions

Section 511 A, as inserted by the amending Act, does not extend to an unrecovered amount (within the meaning of that section) for a rating year that commenced before 1 July 1996.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Bush Fires Act 1949 No 31

[1] Section 27A

Insert after section 27:

27A Councillors not to be appointed under this Part

- (1) A councillor within the meaning of the *Local Government Act 1993* is not eligible to be appointed as a fire control officer or a deputy fire control officer.
- (2) Any fire control officer or deputy fire control officer who becomes a councillor ceases to be such an officer on the date that is 3 months after the date on which his or her election as a councillor takes effect unless the officer otherwise vacates his or her office as a fire control officer or deputy fire control officer.
- (3) A fire control officer or deputy fire control officer does not, by virtue of holding office as such an officer, hold an office or place of profit for the purposes of section 275 (2) of the *Local Government Act 1993*.

[2] Schedule I A Savings and transitional provisions

Insert after Part 3:

Part 4 Provision consequent on enactment of Local Government Amendment Act 1997

9 Certain fire control officers who are councillors to cease to hold office

- (1) A fire control officer or a deputy fire control officer who, immediately before the commencement of section 27A,

as inserted by the *Local Government Amendment Act 1997*, is a councillor ceases to be such an officer on the date that is 3 months after that commencement unless the officer otherwise vacates his or her office as a fire control officer or deputy fire control officer.

- (2) Any such fire control officer or deputy fire control officer does not, by virtue of holding office as such an officer, hold an office or place of profit for the purposes of section 275 (2) of the *Local Government Act 1993* during those 3 months.
- (3) In this clause, ***councillor*** has the same meaning as it has in the *Local Government Act 1993*.

2.2 Defamation Act 1974 No 18

[1] Section 17T

Insert after section 17S:

17T Matters relating to the Local Government Pecuniary Interest Tribunal

There is a defence of absolute privilege for a publication to or by the Local Government Pecuniary Interest Tribunal constituted under the *Local Government Act 1993* if the publication is made for the purpose of the execution or administration of that Act.

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Insert after clause 2 (21):

- (22) without limiting the operation of any other subclause, proceedings of the Local Government Pecuniary Interest Tribunal under the *Local Government Act 1993*.

[3] Schedule 2, clause 3

Insert after clause 3 (6):

- (7) a document that consists of a decision (including reasons given for the decision) made by the Local Government Pecuniary Interest Tribunal under the *Local Government Act 1993*.

[4] Schedule 3 Savings and transitional provisions

Insert after Part 2:

**Part 3 Provision consequent on enactment of
Local Government Amendment Act 1997**

4 Local Government Pecuniary Interest Tribunal

An amendment made by Schedule 2.2 [1]–[3] to the *Local Government Amendment Act 1997* extends to a publication made before the commencement of the amendment.

2.3 Valuation of Land Act 1916 No 2

**[1] Section 7F Protected archaeological areas, wildlife districts,
wildlife refuges and game reserves**

Insert “or” at the end of section 7F (2) (c).

[2] Section 7F (2) (d)

Omit “or”.

[3] Section 7F (2) (e)

Omit the paragraph.

[4] Section 58C Definitions

Omit paragraph (d) of the definition of *residential land* in section 58C (1).

Insert instead:

- (d) a parcel of land occupied or used solely as the site of a boarding house or lodging house,

[5] Section 58C(1), definition of “residential land”

Omit “separate dwelling.” from paragraph (g). Insert instead:

separate dwelling,

but does not include a parcel of land occupied or used solely as the site of a hotel, motel, guest-house, backpacker hostel, nursing home or other form of residential accommodation prescribed under section 516 (1) (a) of the *Local Government Act 1993*.

[6] Section 58C (3) (b)

Omit “guest-house or a boarding-house”.

Insert instead “boarding house or a lodging house”.

[7] Section 58C (3)

Omit “guest-house or boarding-house”.

Insert instead “boarding house or lodging house”.

[8] Section 58C (6), definition of “flat”

Insert “or a dwelling, or a portion of a building, under company title that is rated in accordance with section 547 of the *Local Government Act 1993*” after “lot”.

[9] Section 58C (6), definition of “office”

Insert “but does not include a dwelling, or a portion of a building, under company title that is rated in accordance with section 547 of the *Local Government Act 1993*” after “purpose”.

[Minister’s second reading speech made in—
Legislative Assembly on 28 May 1997
Legislative Council on 23 June 1997]