

[Act 1996 No 69]



New South Wales

Local Government Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993*:

- (a) to make provision, by the creation of offences and otherwise, concerning the responsibilities of building owners to maintain essential fire and other safety measures to appropriate standards, and
- (b) to make further provision with respect to the making and imposition of rates, charges and fees by councils, and
- (c) to make other miscellaneous amendments and minor amendments.

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedules of amendments to the *Local Government Act 1993*.

Schedule 1 Amendments relating to fire safety

Schedule 1 [2] inserts proposed sections 6538 and 653B into the Act to enhance its fire and other safety measures. The proposed sections support a scheme for periodic certification that appropriate standards are being maintained. Much of the detail of the scheme is to be left to the regulations.

Proposed section 653A makes it an offence for owners of buildings subject to fire safety requirements to fail to maintain essential fire or other safety measures to the standards Prescribed by the regulations. **Schedule 1 [8]** inserts a definition of *essential fire or other safety measures* into the Dictionary for the Act, defining those measures to be the measures prescribed by the regulations. They are proposed to be an extension of the definition of *essential service* in clause 4 of the *Local Government (Approvals) Regulation 1993*.

Proposed section 653B makes it an offence for owners of buildings subject to fire safety requirements to fail to comply with certification procedures to be prescribed by the regulations concerning the maintenance of essential fire or other safety measures.

Schedule 1 [1] prevents a council from charging a fee for the lodgement or processing of a fire safety maintenance certificate.

Schedule 1 [5] makes it an offence for a person, in complying with the fire safety requirements of the Act and regulations, to make a statement that the person knows is false or misleading in a material particular.

Schedule 1 [6] inserts proposed section 691A into the Act, which will prevent proceedings for an offence against proposed sections 653A and 653B being brought against the Crown in respect of certain buildings unless the Minister gives consent after having consulted with the Minister administering the *Crown Lands Act 1989*.

Schedule 1 [7] enhances the regulation-making powers under the Act for the purposes of the scheme.

Schedule 1 [3] and [4] make amendments concerning the operation and obstruction of doors relating to fire exits.

Schedule 2 Amendments relating to rates, charges and fees

Schedule 2 [1], [9] and [10] prevent a council from specifying a minimum amount of an ordinary rate that consists of a base amount to which an ad valorem amount is added.

Schedule 2 [2] makes a minor amendment to clarify the circumstances in which an annual charge may be levied by a council.

Schedule 2 [3] clarifies the services provided by a council for which it may make a charge according to actual use.

Schedule 2 [4] makes a minor amendment to clarify the way in which vacant land is to be categorised for rating purposes.

Schedule 2 [5], [11], [13] and [14] remove differences between charges and special rates so as to prevent the inequitable treatment of ratepayers according to the option chosen by a council for raising revenue.

Schedule 2 [5] inserts Part 3A (Charges) into Chapter 15 of the Act containing proposed sections 531A and 531B.

Proposed section 531A (like section 527 relating to rates) requires a council to make an appropriate adjustment of charges paid or payable following a change in the category of land if the category determines the level of charge.

Proposed section 531B (like section 548A relating to rates) enables a council to aggregate two or more separate parcels of land and levy one charge on the aggregated parcel.

Schedule 2 [11], by amending section 565 relating to rates, extends the section to include charges so that a council may waive the whole or part of a charge for one or more years if the person subject to the charge pays, or enters into an agreement to pay, a lump sum towards the capital cost of the services for which the charge is levied.

Schedule 2 [13], by amending section 572 relating to rates, extends the section to provide that the amount of a charge is to be proportionate to the portion of the year for which the land to which it relates is rateable.

Schedule 2 [14], by amending section 574 relating to rates, extends the section to confer a right of appeal to the Land and Environment Court against the levying of a charge.

Schedule 2 [6], [7] and [8] make it clear that the parts of a building under company title that are not used as dwellings may be rated.

Schedule 2 [12] adds to the circumstances in which a council may write off accrued interest on rates and charges the circumstance of a person who is unable to pay the rates or charges when due for reasons beyond the person's control.

Schedule 2 [15] and [16] clarify the circumstances in which a council may charge a fee for inspecting premises for the purpose of determining whether an approval granted in respect of the premises has been complied with.

Schedule 2 [17], [18] and [19] make it clear that the annual financial imposition on structures under, over or upon public places is a fee and not a charge.

Schedule 3 Miscellaneous amendments

Schedule 3 [1] adds a requirement to a council's charter to promote and to provide and plan for the needs of children.

Schedule 3 [2] and [3] apply provisions in Division 2 of Part 3 of Chapter 6 of the Act to councils that are water supply authorities under the *Water Supply Authorities Act 1987* to facilitate the construction and handing-over of certain water supply and sewerage works and the vesting of land and works.

Schedule 3 [4] prevents a person who determined an application for an approval on behalf of a council from deciding whether or not the determination should be reviewed.

Schedule 3 [5], [6] and [14] confer a right of appeal against a failure or refusal to extend or renew an approval.

Schedule 3 [7] and [8] extend the power of a council to order the demolition of a building, or to order that a building erected without the council's approval be brought into compliance with the relevant standards under the Act, to buildings for which the requisite approval should have been obtained under the former *Local Government Act 1919*.

Schedule 3 [9] extends the power of a council to order that the flow of water across land be controlled so as to prevent damage to other land if the water flow damages or is likely to damage a building on the land or other land.

Schedule 3 [10] confers power on a council to order the owner or occupier of a building to cease the use of the building if the building is being used contrary to its classification under the Act or the *Local Government Act 1919* and is a threat to life, public health or public safety.

Schedule 3 [11]–[13] make it clear that an order given to direct the way in which an earlier order is to be complied with is not a separate order but forms part of the earlier order. **Schedule 3 [15]** confers an additional right of appeal that may be exercised within 28 days after service of the later directing order, irrespective of whether an appeal was lodged against the earlier order.

Schedule 3 [16] enables a council to acquire land by compulsory process for re-sale without first obtaining the approval of the owner of the land if the owner cannot, after diligent inquiry, be identified and at least 6 months elapses since the inquiry was made. Diligent inquiry includes the giving of notice to Aboriginal Land Councils.

Schedule 3 [17] places a limit of 6 months from the date of an offence within which summary proceedings for the offence before the Land and Environment Court are to be commenced. This limit does not apply to proceedings concerning building work.

Schedule 3 [18]–[20] amend savings and transitional provisions enacted on the repeal of the *Local Government Act 1919*.

Schedule 3 [18] extends the savings of approvals given under the former Act to include approvals lawfully given by persons other than councils and **Schedule 3 [19]** enables approvals given under the former Act that have been saved to be extended or renewed under the *Local Government Act 1993*.

Schedule 3 [20] provides that an approval of unspecified duration as a place of public entertainment under the former Act that was in force immediately before the repeal of the former Act continues in force and may be revoked or modified as if it were an approval under the *Local Government Act 1993*. These three amendments are expressed to take effect as from 1 July 1993, the date of repeal of the former Act.

Schedule 4 Minor amendments

Schedule 4 [1] corrects a wrong cross-reference.

Schedule 4 [2] inserts proposed sections 123A and 123B into the Act. Proposed section 123A enables the Director-General of the Department of Local Government to extend or renew an accreditation granted for a component, process, design or temporary structure relating to an activity which is subject to the approval of a council. Proposed section 123B extends the regulation-making powers under the Act to enable the submission with an application for accreditation of an accreditation, assessment or appraisal by a person other than the Director-General and to enable the recognition of accreditations granted by other persons.

Schedule 4 [3] removes some unnecessary words.

Schedule 4 [4] inserts proposed section 138A to make it clear that a person who carries out work ordered to be done by a council does not have to obtain the council's approval to carry out the work. **Schedule 4 [5]** makes a consequential amendment.

Schedule 4 [6]–[12] ensure that the fire brigade personnel who may issue fire safety orders and the fire brigade personnel who are authorised to enter land for the purpose of carrying out inspections are the same, and updates references to the Commissioner of New South Wales Fire Brigades.

Schedule 4 [13] and **[14]** remove the impractical possibility that the decision at a constitutional referendum to change the method of election of mayor may be implemented when the next casual vacancy in the office of mayor occurs so that it may only be implemented at the next ordinary election.

Schedule 4 [15] and **[16]** enable a county council to delegate its regulatory functions to a council. **Schedule 4 [15]** also enables the sub-delegation of regulatory functions delegated by a council to a county council or by a county council to a council.

Schedule 4 [17] and **[38]** clarify the meaning of the word “quarter” where used in the Act.

Schedule 4 [18]–[24] make minor amendments to the form of a council's financial reports and the auditor's report.

Schedule 4 [25] adds employees of the Crown to the employees who are not taken to have a pecuniary interest for the purposes of Chapter 14 of the Act just because of their employment.

Schedule 4 [26] clarifies the circumstances in which a person is obliged to disclose an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument.

Schedule 4 [27] inserts proposed section 450A into the Act to formalise the procedure for the lodging of returns disclosing pecuniary interests by requiring the general manager of a council to keep a register of returns and to provide for the tabling of returns at meetings of the council.

Schedule 4 [28] and **[29]** make provisions of a savings or transitional nature consequent on the amendments described above.