

Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Bill 2001

Explanatory note

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

Overview of Bill

The use of buildings and temporary structures as places of public entertainment, the installation of temporary structures on land and the installation of oil and solid fuel heating appliances are all matters that currently require approvals under the *Local Government Act 1993* and are subject to conditions imposed on such approvals by regulations made under that Act.

The objects of this Bill are:

- (a) to amend the *Local Government Act 1993* so as:
 - (i) to remove the need for approvals for the use of buildings and temporary structures as places of public entertainment, the installation of temporary structures on land and the installation of oil and solid fuel heating appliances, and
 - (ii) to repeal a provision with respect to the use of places of public entertainment by the Crown, and
 - (iii) to repeal a provision that enables a local council to issue orders under that Act requiring a place of public entertainment to be upgraded to relevant standards, and
 - (iv) to make other minor amendments, and
 - (v) to enact provisions of a savings or transitional nature,
- (b) to amend the *Environmental Planning and Assessment Act 1979* so as:
 - (i) to allow the use of buildings and temporary structures as places of public entertainment and the installation of temporary structures on land to be regulated under that Act, and
 - (ii) to regulate the carrying out by the Crown of development involving the use of a building as a place of public entertainment, and
 - (iii) to enable a local council to issue orders under that Act requiring a place of public entertainment to be upgraded to relevant standards, and
 - (iv) to make other minor amendments, and
 - (v) to enact provisions of a savings or transitional nature.

The Bill also makes consequential amendments to a number of other Acts.

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 on a day or days to be appointed by proclamation, except for an amendment to the *Fines Act 1996* which is expressed to commence on the date of assent to the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to other Acts set out in Schedule 3.

Schedule 1 Amendment of Local Government Act 1993

Removal of need for approvals

Schedule 1 [4] amends section 68 by omitting item 2 (installation of temporary structures on land) and item 3 (use of buildings and temporary structures as places of public entertainment) from Part A of the Table to that section and by omitting item 4 (the installation of domestic oil and solid fuel heating appliances) from Part F of that Table. The effect of this amendment is to

remove the need for an approval under that section in respect of those matters. **Schedule 1 [6], [9], [10] and [13]** effect consequential amendments, removing various references to temporary structures which, because of the amendment to section 68, will no longer be regulated under the Act.

Use of places of public entertainment by the Crown

Schedule 1 [5] omits section 71 (Use by the Crown of places of public entertainment).

Schedule 1 [1] and [8] effect consequential amendments.

Upgrade orders for places of public entertainment

Schedule 1 [11] amends section 124 by omitting paragraph (c) of the matter relating to order No 5 in the Table to that section. The effect of this amendment is to remove the power of a local council to issue orders requiring a place of public entertainment to be upgraded to relevant standards. **Schedule 1 [15]** inserts a new Part at the end of Schedule 8 containing a clause that continues the effect of orders issued before the commencement of the proposed Act.

Minor amendments

Schedule 1 [2] and [3] amend section 12 so as to remove provisions requiring building applications to be made available for public inspection. The erection of a building no longer requires an application under the *Local Government Act 1993* but is dealt with under the *Environmental Planning and Assessment Act 1979* as a consequence of amendments to those Acts made by the *Environmental Planning and Assessment Amendment Act 1997*.

Schedule 1 [7] amends section 92 so as to require a local council to be satisfied as to the standard of any component, process or design if the component, process or design complies with standards imposed by the regulations under the *Environmental Planning and Assessment Act 1979* in respect of the carrying out of development under that Act. This amendment ensures consistency between the two Acts.

Schedule 1 [12] amends section 626 so as to update a cross-reference.

Schedule 1 [14] amends clause 1 of Schedule 8 so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 1 [16] amends the Dictionary as a consequence of the other amendments to be made by Schedule 1.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Places of public entertainment

The use of land for the purposes of a place of public entertainment is controlled under both the *Environmental Planning and Assessment Act 1979* (from an environmental planning perspective) and the *Local Government Act 1993* (from a public safety perspective). It is proposed that the *Environmental Planning and Assessment Act 1979* be amended to ensure that it can impose public safety conditions of the kind currently in force under the *Local Government Act 1993*. To this end it is proposed to amend section 108 (Regulations respecting existing use) and section 109 (Continuance of and limitations on other lawful uses) so as to enable the regulations under the *Environmental Planning and Assessment Act 1979* to impose conditions on the use of a building for the purposes of a place of public entertainment (**Schedule 2 [5] and [6]**). These regulations, together with regulations under section 80A (11) (prescribed conditions for development consents), will be able to apply to all places of public entertainment.

Schedule 2 [1] makes consequential amendments to section 4, inserting definitions of *licensed premises*, *place of public entertainment* and *public entertainment* that are needed to support the proposed regulations. **Schedule 2 [2], [3] and [4]** make consequential amendments to section 78A.

Schedule 2 [8] amends section 121B so as to enable orders to be made under that section in the same terms as orders are currently made under section 124 of the *Local Government Act 1993* with respect to the upgrading of places of public entertainment.

A transitional provision (proposed clause 40 of Schedule 6) allows existing applications for approvals to be determined and continues the existing conditions that apply to the use of places

of public entertainment under the *Local Government Act 1993* (**Schedule 2 [13]**).

Temporary structures

The current definition of *building* in section 4 expressly excludes temporary structures. **Schedule 2 [1]** substitutes the definition so as to expressly include them. Consequently, temporary structures will become subject to the same regulatory scheme as all other buildings.

A transitional provision (proposed clause 41 of Schedule 6) allows existing applications for approvals to be determined and continues the existing conditions that apply to the installation of temporary structures under the *Local Government Act 1993* (**Schedule 2 [13]**).

Crown development for public entertainment

As mentioned in connection with the amendments referred to in Schedule 1, it is proposed to repeal section 71 of the *Local Government Act 1993*. In place of that section, it is proposed to insert a new section 116GA into the *Environmental Planning and Assessment Act 1979* (**Schedule 2 [7]**). The new section subjects the Crown to a regulatory regime similar to that imposed on the Crown by section 116G in relation to building, demolition and incidental work. That regulatory regime requires a Minister of the Crown to certify, in relation to development carried out by the Crown, that the development complies with specified requirements that are prescribed by the regulations under the Act.

Minor amendments

Schedule 2 [9] amends section 126 so as to enable the regulations under the Act to impose lesser penalties than the default penalty of 1,000 penalty units (\$110,000) currently imposed by that section.

Schedule 2 [10] amends section 127 so as to extend to offences against the regulations under the Act the defence afforded by section 127 (7) with respect to offences against the Act.

Schedule 2 [11] amends section 127A so as to make clear that penalty notices can be issued for offences against the regulations under the Act as well as for offences against the Act.

Schedule 2 [12] amends clause 1 of Schedule 6 so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 3 Amendment of other Acts

Schedule 3 makes consequential amendments to each of the following Acts:

Boxing and Wrestling Control Act 1986 No 11

Casino Control Act 1992 No 15

Fines Act 1996 No 99

Liquor Act 1982 No 147

Parliamentary Electorates and Elections Act 1912 No 41

The amendment to the *Fines Act 1996* amends Schedule 1 to that Act (which identifies the penalty notices that may be enforced under that Act) so as to include a reference to section 127A (Penalty notices for certain offences) of the *Environmental Planning and Assessment Act 1979*. This amendment will avoid the need to prescribe that section under the regulations under the *Fines Act 1996*.