

FIRST PRINT

LOCAL GOVERNMENT (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Local Government Act 1919 so as—

- (a) to vary the amounts of allowances payable to members of a council;
- (b) to constitute a Building Regulations Advisory Council and to specify its functions as an advisory body;
- (c) to constitute, from the members for the time being of that Advisory Council, a Building Accreditation Authority, whose principal function will be to accredit building materials, methods of construction, designs and components; and
- (d) to allow the responsibility for payment of the travelling expenses of members of a council to be delegated by the council.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. The amendments to the Principal Act relating to objects (b) and (c) mentioned above will commence on a date to be appointed by the Governor-in-Council. The rest of the proposed Act will commence on the date of assent.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 amends the Land and Environment Court Act 1979 as a consequence of the amendment made by Schedule 1 (4).

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Schedule 1 (1) amends section 29A of the Principal Act so as to provide for a maximum daily allowance of \$60 to be payable to council members (instead of the currently fixed amount of \$30) and to raise the maximum permissible annual aggregate of those allowances for any one member (currently \$1,000) to \$3,000. These amounts may (as the Principal Act currently provides) be varied by ordinance.

Schedule 1 (2) amends section 304 of the Principal Act to insert a definition of "function" for the purposes of Part XI of the Principal Act and proposed Schedule 10 to that Act.

Schedule 1 (3) inserts two new Divisions into Part XI of the Principal Act, the provisions of which may be explained as follows:

DIVISION 3—*Building Regulations Advisory Council*

Proposed section 309 defines the term "Advisory Council" for the purposes of the Division.

Proposed section 309A constitutes the Building Regulations Advisory Council. The Advisory Council consists of representatives of interested Government Departments and private sector organisations.

Proposed section 309B prescribes the functions of the Advisory Council as an advisory body.

DIVISION 3A—*Accreditation of materials, methods of construction, designs and components*

Proposed section 309C defines "accreditation", "Authority" and "certificate" for the purposes of the Division.

Proposed section 309D constitutes the Building Accreditation Authority. The Authority consists of the members for the time being of the Building Regulations Advisory Council.

Proposed section 309E prescribes the functions of the Authority as an accrediting authority for building materials, methods of construction, designs and components. There are similar bodies in other States, and one of the functions of the Authority is to carry out reciprocal arrangements entered into with those bodies so that eventually a nationwide scheme of accreditations can operate.

Proposed section 309F allows the Authority to delegate its functions.

Proposed section 309G provides for the making of applications for accreditation.

Proposed section 309H provides for accreditations by the Authority. Accreditations may be given for specified periods and subject to conditions.

Proposed section 309I provides that a council shall not refuse to give its approval to a building application on the ground that any material, method of construction, design or component relating to the building is unsatisfactory if the material, method of construction, design or component is for the time being accredited by the Authority.

Proposed section 309J provides for the issue of certificates of accreditation.

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Proposed section 309K provides for the periodic renewal of accreditations.

Proposed section 309L allows the Authority to revoke an accreditation in certain circumstances.

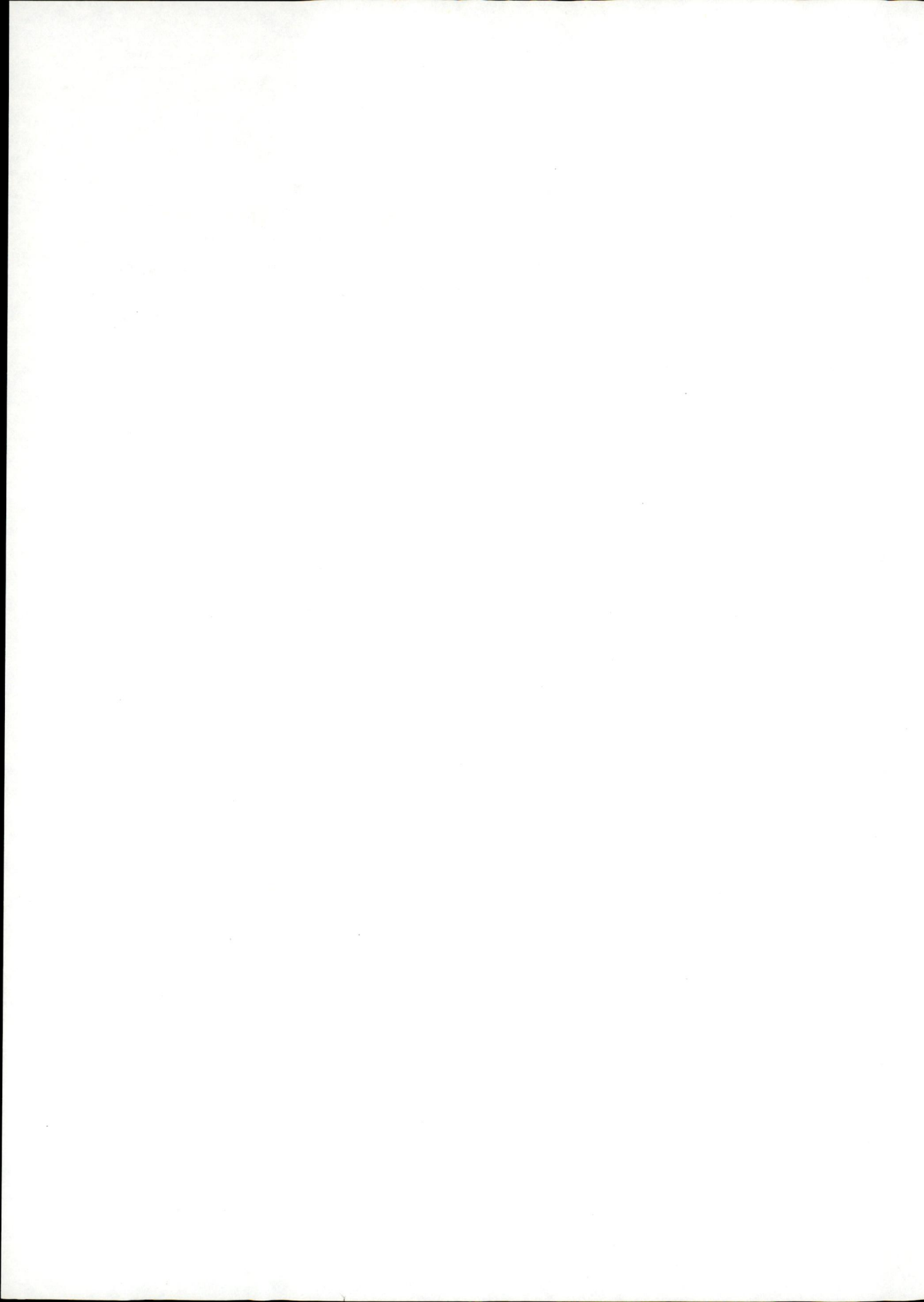
Proposed section 309M indemnifies the members, servants and agents of the Authority against legal action arising from the exercise in good faith of the Authority's functions.

Schedule 1 (4) inserts a new section 317N into the Principal Act. The proposed section allows an appeal to the Land and Environment Court against a refusal or failure by the Authority to grant or renew an accreditation or a decision by the Authority to cancel an accreditation.

Schedule 1 (5) amends section 318 of the Principal Act to enable ordinances to be made in aid of the new provisions inserted by the other provisions of the Schedule.

Schedule 1 (6) amends section 530A of the Principal Act to remove the prohibition on delegation of a council's responsibility for payment of members' travelling expenses.

Schedule 1 (7) inserts new Schedules 10 and 10A into the Principal Act, which contain provisions relating to the members and procedure of the Advisory Council.



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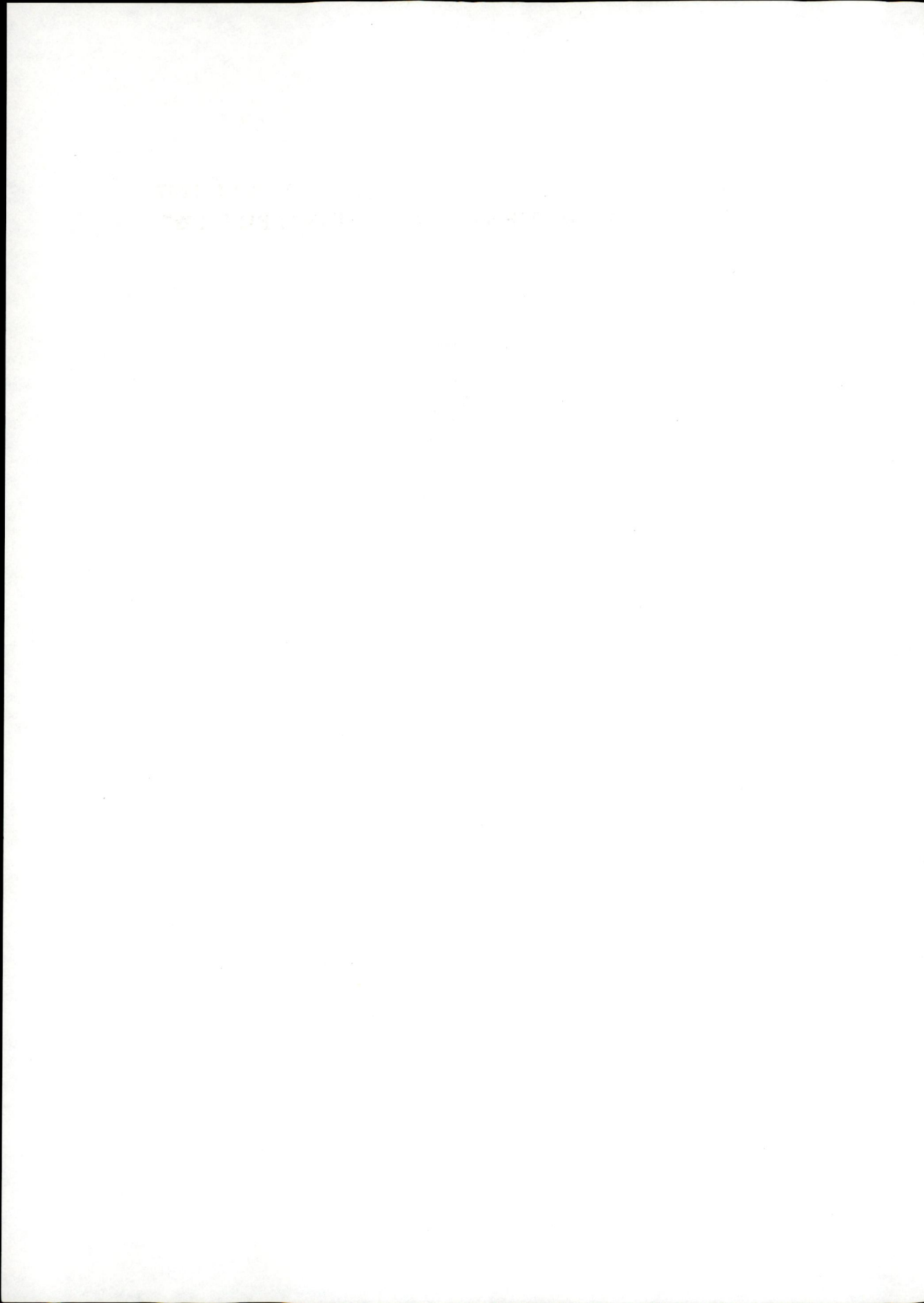
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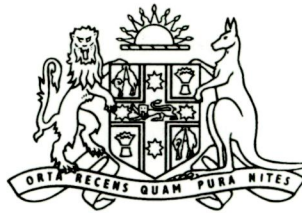
1. Short title
2. Commencement
3. Amendment of Act No. 41, 1919
4. Amendment of Act No. 204, 1979, s. 18 (Class 2—local government and miscellaneous appeals)

SCHEDULE 1—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919



LOCAL GOVERNMENT (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Local Government Act 1919 to vary the amounts of allowances that may be paid to members of a council; to constitute a Building Regulations Advisory Council and to define its functions; to amend the Land and Environment Court Act 1979; and for other purposes.

Local Government (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Local Government (Amendment) Act 1987".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 3, in its application to a provision of Schedule 1, shall commence on the day on which that provision commences.

(3) Schedule 1 (Schedule 1 (1) and (6) excepted) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 41, 1919

3. The Local Government Act 1919 is amended in the manner set forth in Schedule 1.

Amendment of Act No. 204, 1979, s. 18 (Class 2—local government and miscellaneous appeals)

4. The Land and Environment Court Act 1979 is amended by inserting in section 18 (a) after the matter "317M (2)," the matter "317N,".

SCHEDULE 1

(Sec. 3)

25 AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919

(1) Section 29A (Payments of fees to members)—

(a) Section 29A (1)—

Omit "a fee of \$30", insert instead "such fee, not exceeding \$60".

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) Section 29A (1)—

After “amount)”, insert “, as the council may determine”.

(c) Section 29A (2)—

Omit “\$1,000”, insert instead “\$3,000”.

5 (2) Section 304 (**Interpretation**)—

Section 304 (2)—

At the end of section 304, insert:

(2) In this Part and in Schedule 10—

- 10 (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Part XI, Divisions 3, 3A—

15 After Division 2, insert:

DIVISION 3—*Building Regulations Advisory Council*

Interpretation

309. In this Division, “Advisory Council” means the Building Regulations Advisory Council constituted by this Division.

20 **The Advisory Council**

309A. (1) There is constituted by this Division a Building Regulations Advisory Council.

(2) The Advisory Council—

- 25 (a) shall have and may exercise the functions conferred or imposed upon it by or under this or any other Act;

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

5 (3) The Advisory Council shall consist of 13 members appointed by the Minister.

(4) Of the members—

(a) one shall be an officer or temporary employee of the Department of Local Government;

10 (b) one shall be an officer or temporary employee of the Department of Public Works nominated by the Minister for Public Works;

15 (c) one shall be an officer or temporary employee of the Department of Housing nominated by the Minister for Housing;

(d) one shall be an officer or temporary employee of the Department of Health nominated by the Minister for Health;

20 (e) one shall be a nominee of the Royal Australian Institute of Architects;

(f) one shall be a nominee of the Sydney City Council;

(g) one shall be a nominee of the Local Government and Shires Association;

25 (h) one shall be a nominee of the Australian Institute of Building;

(i) one shall be a nominee of the Master Builders Association;

(j) one shall be a nominee of the Board of Fire Commissioners;

30 (k) one shall be a nominee of the Institution of Engineers, Australia;

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(l) one shall be a nominee of the Australian Institute of Building Surveyors; and

(m) one shall be a nominee of the Building Owners and Managers Association.

5 (5) For the purposes of subsection (4), the Minister may require a person or body responsible for nominating a member of the Advisory Council to furnish a list of so many nominees as the Minister may specify, from which the Minister may select the nominee to be appointed.

10 (6) In default by the nominating person or body in complying with the requirement, the Minister may appoint such person as the Minister considers qualified to represent the person or body concerned.

15 (7) Schedule 10 has effect with respect to the members of the Advisory Council.

(8) Schedule 10A has effect with respect to the procedure of the Advisory Council.

Functions of the Advisory Council

20 309B. The Advisory Council shall furnish advice to the Minister with respect to—

(a) any proposal referred to it, being a proposal for the making of an ordinance or other law relating to building, in particular as to—

25 (i) the extent of necessary regulation of the subject-matter of the proposal;

(ii) whether the proposal is an effective regulating measure or sets satisfactory building standards; and

(iii) the cost-effectiveness of the proposal;

30 (b) the review from time to time, and the consolidation, of existing laws relating to building; and

(c) any other matter referred to it by the Minister.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued*DIVISION 3A—*Accreditation of materials, methods of construction, designs and components***Interpretation**

309C. In this Division—

5 “accreditation” means the accreditation under this Division of a material, method of construction, design or component relating to building;

“Authority” means the Building Accreditation Authority constituted under this Division;

10 “certificate” means a certificate of accreditation under this Division.

The Authority

309D. (1) There is constituted by this Division a Building Accreditation Authority.

15 (2) The Authority—

(a) shall have and may exercise the functions conferred or imposed upon it by or under this or any other Act; and

20 (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

25 (3) The Authority shall consist of the members for the time being of the Building Regulations Advisory Council constituted by Division 3, and the Chairperson for the time being of that Council shall be the Chairperson of the Authority.

(4) Schedules 10 and 10A apply to the membership, meetings and procedure of the Authority in the same way as they apply to the membership, meetings and procedure of the Building Regulations Advisory Council.

SCHEDULE 1—*continued*
AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

Functions of the Authority

309E. The Authority shall have the following functions:

- 5 (a) to accredit materials, methods of construction, designs and components relating to building;
- (b) to determine applications for accreditation;
- (c) to issue certificates of accreditation;
- (d) to cancel accreditations;
- (e) to arrange for the keeping of an accreditation register; and
- 10 (f) to give effect to reciprocal arrangements entered into by the Minister and any Minister of the Crown or authority in any place outside New South Wales for or with respect to accreditations.

Delegation

15 309F. (1) The Authority may delegate to a committee (in this section called a “delegate committee”) consisting of the Chairperson, and 2 or more other members, of the Authority the exercise of any of its functions, other than this power of delegation.

(2) A delegation—

- 20 (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Authority.

25 (3) A delegate committee is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(4) A delegated function, when exercised by the delegate committee, shall be deemed to have been exercised by the Authority.

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(5) A delegation does not prevent the exercise of a function by the Authority.

5 (6) A function purporting to have been exercised by a delegate committee shall, until the contrary is proved, be deemed to have been duly exercised by a delegate committee under this section.

Application for accreditation

309G. (1) Any person may apply to the Authority for the accreditation of any material, method of construction, design or component relating to building.

10 (2) The application shall be accompanied by the prescribed fee.

(3) The Authority may refuse to consider an application but shall, in that event, refund the fee paid.

Accreditation

15 309H. (1) The Authority may, if it thinks fit, accredit a material, method of construction, design or component.

(2) An accreditation may be granted subject to such conditions and qualifications, and for such period, as the Authority thinks fit.

20 (3) In determining any application for accreditation, the Authority may have regard to sources of information published or otherwise made available by such persons or bodies as the Authority considers appropriate.

Effect of accreditation

25 309I. A council shall not refuse to give its approval to the erection of a building on the ground that any material, method of construction, design or component relating to the building is unsatisfactory if the material, method of construction, design or component is for the time being accredited under this Division.

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Certificates**

5 309J. (1) If the Authority accredits, or renews the accreditation of, a material, method of construction, design or component it may, on payment of the prescribed fee, issue to the applicant for the accreditation or renewal a certificate of accreditation.

(2) On being satisfied that a certificate has been lost or destroyed, the Authority may, on payment of the prescribed fee, issue a duplicate certificate which shall have the same force as the original.

10 (3) A certificate issued in respect of any material, method of construction, design or component is evidence of the accreditation of the material, method of construction, design or component during the period specified in the certificate.

Renewal of accreditation

15 309K. (1) The holder of a certificate of accreditation may apply in the year of expiry of the accreditation for a renewal of the accreditation.

(2) Every such application—

20 (a) shall be accompanied by the current certificate and by the prescribed fee; and

(b) shall be lodged with the Authority not less than 1 month before the date of expiry of the accreditation.

(3) Except as provided by subsection (4), the Authority shall grant renewal of an accreditation if it is satisfied—

25 (a) that the standard of the material, method of construction, design or component in respect of which the application for renewal is made is the same as or of a higher standard than the standard of that material, method of construction, design or component at the time the accreditation was first granted; and

30 (b) that any conditions and qualifications to which the accreditation was subject have been complied with.

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(4) The Authority may refuse to grant a renewal of accreditation—

5 (a) if the accredited material, method of construction, design or component is provided for in any code, standard, rule, specification or provision issued by the Standards Association of Australia; or

(b) if it resolves to revoke the accreditation under section 309L.

10 (5) Any renewal of an accreditation may be granted upon such conditions and for such period as the Authority thinks fit.

(6) If the Authority determines not to renew an accreditation, it shall notify the holder of the certificate in writing of the Authority's determination.

Revocation of accreditation

15 309L. (1) The Authority may at any time revoke an accreditation if it finds that—

(a) the accreditation has been obtained by fraud, misrepresentation or concealment of facts;

20 (b) the standard of the material, method of construction, design or component which is the subject-matter of the accreditation—

(i) is unsatisfactory; or

25 (ii) differs from or fails to comply with the standard of that material, method of construction, design or component as at the time the accreditation was granted; or

30 (c) an accreditation, certificate of accreditation or similar authorisation issued or granted in respect of that material, method of construction, design or component in any place outside New South Wales has been revoked or cancelled for any reason other than the failure to renew the accreditation, certificate or authorisation.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(2) If the Authority determines to revoke an accreditation, it shall notify the holder of the certificate in writing of the Authority's determination.

Liability of members etc.

5 309M. No matter or thing done by the Authority, any member of the Authority or any person acting under the direction of the Authority shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or
10 demand.

(4) Section 317N—

After section 317M, insert:

Appeals in respect of accreditation of materials etc.

15 317N. (1) A person aggrieved by a determination of the Building Accreditation Authority—

(a) to revoke an accreditation; or

(b) not to renew an accreditation,

may, within 1 month of being notified of the determination, appeal to the Land and Environment Court.

20 (2) A person aggrieved by a failure of the Building Accreditation Authority—

(a) to accredit any material, method of construction, design or component; or

(b) to renew an accreditation,

25 may, within 2 months after an application duly made for any such accreditation or renewal, appeal to the Land and Environment Court.

30 (3) An appeal shall be by way of a new hearing, and the Court shall have and may exercise the functions of the Building Accreditation Authority in relation to the matter under appeal.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(4) The Court's decision shall (except for the purposes of this section) have effect as if it were a determination of the Authority.

(5) Section 318 (**Ordinances**)—

Section 318 (37)–(39)—

5 At the end of section 318, insert:

(37) prescribing the fees to be paid in connection with applications under this Part;

(38) the procedure on applications and other proceedings under this Part;

10 (39) establishing an accreditation register for the purposes of Division 3A, the form and manner of its keeping and the entries and particulars to be entered in it.

(6) Section 530A (**Delegation**)—

(a) Section 530A (2) (e)—

15 After “Minister;”, insert “or”.

(b) Section 530A (2) (f)—

Omit the paragraph.

(7) Schedules 10, 10A—

After Schedule 9, insert:

20 SCHEDULE 10

(Sec. 309A (7))

PROVISIONS RELATING TO THE MEMBERS OF THE BUILDING
REGULATIONS ADVISORY COUNCIL**Age of members**

25 1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Advisory Council or to act in the office of a member.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Chairperson**

2. (1) The member referred to in section 309A (4) (a) shall be the Chairperson of the Advisory Council.

5 (2) The Chairperson shall be deemed to have vacated office if the Chairperson ceases to be a member of the Advisory Council.

Term of office

10 3. Subject to this Schedule, a member of the Advisory Council shall hold office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Alternative members

4. (1) The Minister may appoint a person to be an alternative member of the Advisory Council.

15 (2) The alternative members shall be appointed by the Minister after consultation with the persons or bodies responsible for nominating the members.

(3) The provisions of this Schedule shall, with any necessary modifications, apply to and in respect of alternative members in the same way as they apply to members.

20 (4) An alternative member may act in the office of the member for whom he or she is the alternative member during the illness or absence of that member and, while so acting, shall have and may exercise all the functions and entitlements of that member and shall be deemed to be that member.

Expenses and remuneration

25 5. (1) A member of the Advisory Council is entitled to receive such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

30 (2) A member of the Advisory Council (not being a member of the Public Service appointed on the nomination of a Minister of the Crown) is entitled to receive such remuneration as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of member

35 6. If the office of any member of the Advisory Council becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy for the remainder of that member's term of office.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Casual vacancies**

7. (1) A member of the Advisory Council shall be deemed to have vacated office if the member—

(a) dies;

5 (b) absents himself or herself from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after
10 the last of those meetings, the member is excused by the Advisory Council for being absent from those meetings;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

15 (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

20 (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

(f) resigns the office by instrument in writing addressed to the Minister;

(g) reaches the age of 70 years; or

(h) is removed from office by the Minister under subclause (2) or (3).

25 (2) The Minister may remove a member of the Advisory Council from office.

(3) Without affecting the generality of subclause (2), the Minister may remove a member of the Advisory Council from office if the member contravenes the provisions of clause 8.

Disclosure of pecuniary interests

30 8. (1) A member of the Advisory Council who has a direct pecuniary interest—

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Advisory Council; or

Local Government (Amendment) 1987

SCHEDULE 1—*continued*
 AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) in a thing being done or about to be done by the Advisory Council, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.

5 (2) A disclosure by a member of the Advisory Council at a meeting of the Council that the member—

(a) is a member, or is in the employment, of a specified company or other body;

(b) is a partner, or is in the employment, of a specified person; or

10 (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

15 (3) The Advisory Council shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Minister from time to time.

20 (4) After a member of the Advisory Council has, or is deemed to have, disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

25 (a) be present during any deliberation of the Advisory Council, or take part in any decision of the Advisory Council, with respect to that matter; or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

30 (5) Notwithstanding that a member of the Advisory Council contravenes the provisions of this clause, that contravention does not invalidate any decision of the Advisory Council or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member of the Advisory Council in a matter or thing which arises only because the member is a member of or associated with any institution, organisation or body mentioned in section 309A (4).

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(7) A reference in this clause to a meeting of the Advisory Council includes a reference to a meeting of a committee of the Advisory Council.

Effect of certain other Acts

9. (1) If by or under any other Act provision is made—

- 5 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

10 that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Advisory Council or from accepting and retaining any expenses or remuneration payable to the person under this Act as such a member.

(2) The office of a member of the Advisory Council shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

 SCHEDULE 10A

(Sec. 309A (8))

PROVISIONS RELATING TO THE PROCEDURE OF THE BUILDING
REGULATIONS ADVISORY COUNCIL**General procedure**

20 1. The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Chairperson of the Advisory Council.

Quorum

2. The quorum for a meeting of the Advisory Council is 7 members.

Presiding member

25 3. (1) The Chairperson of the Advisory Council or, in the absence of the Chairperson, the Chairperson's alternative member or, in the absence of both, another member elected to chair the meeting by the members present, shall preside at a meeting of the Advisory Council.

Local Government (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(2) The person presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

- 5 4. A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present shall be the decision of the Advisory Council.

Minutes

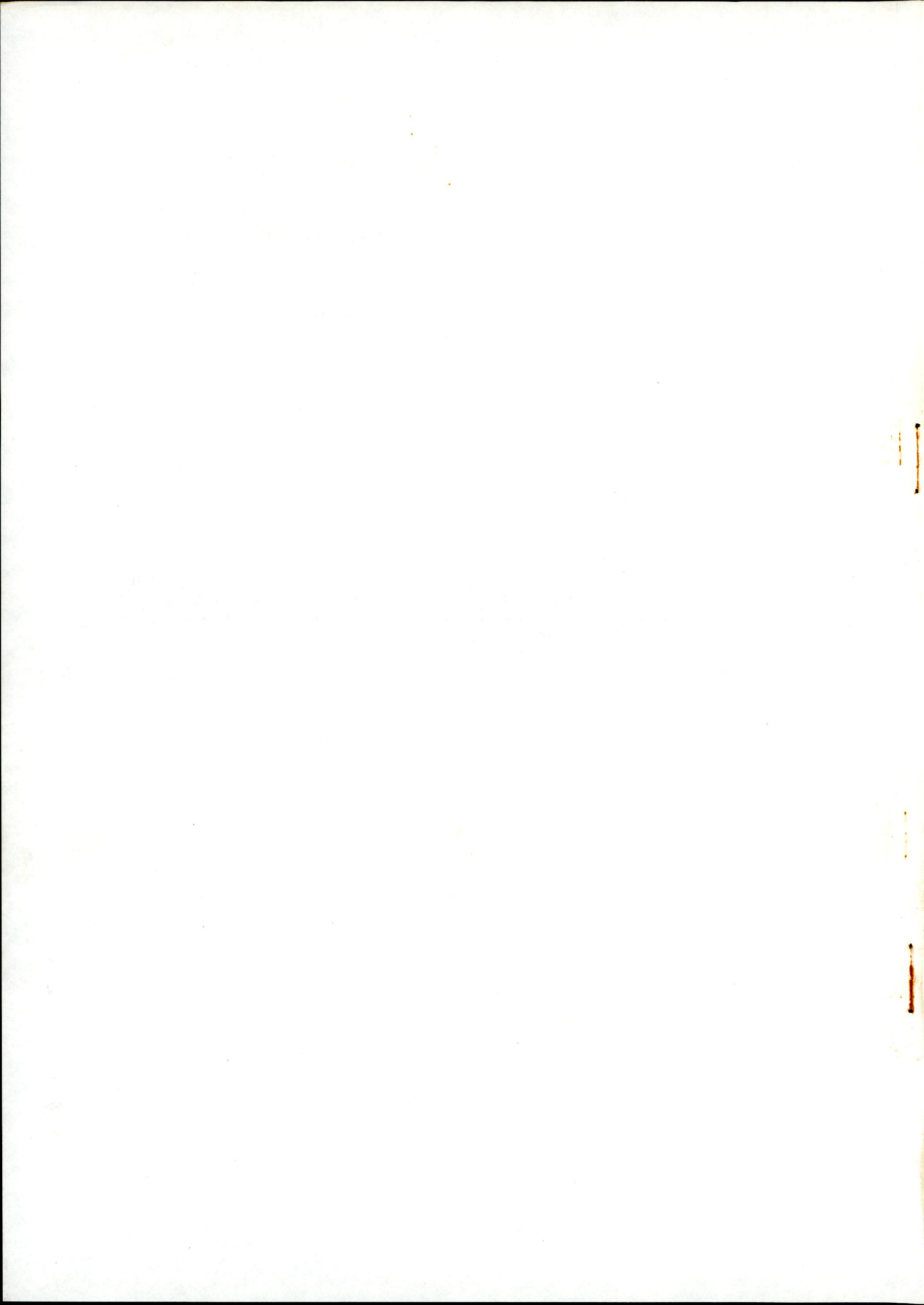
- 10 5. The Advisory Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Advisory Council.

Authentication of documents

6. Any document requiring authentication by the Advisory Council is sufficiently authenticated if it is signed by the Chairperson of the Advisory Council or by any member who is authorised by the Chairperson in that behalf.

15 **First meeting of the Advisory Council**

7. The Minister shall call the first meeting of the Advisory Council in such manner as the Minister thinks fit.



LOCAL GOVERNMENT (AMENDMENT) ACT 1987 No. 150

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 41, 1919
4. Amendment of Act No. 204, 1979, s. 18 (Class 2—local government and miscellaneous appeals)

SCHEDULE 1—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919

LOCAL GOVERNMENT (AMENDMENT) ACT 1987 No. 150

NEW SOUTH WALES



Act No. 150, 1987

An Act to amend the Local Government Act 1919 to vary the amounts of allowances that may be paid to members of a council; to constitute a Building Regulations Advisory Council and to define its functions; to amend the Land and Environment Court Act 1979; and for other purposes.
[Assented to 23 October 1987]

Local Government (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Local Government (Amendment) Act 1987".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 3, in its application to a provision of Schedule 1, shall commence on the day on which that provision commences.

(3) Schedule 1 (Schedule 1 (1) and (6) excepted) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 41, 1919

3. The Local Government Act 1919 is amended in the manner set forth in Schedule 1.

Amendment of Act No. 204, 1979, s. 18 (Class 2—local government and miscellaneous appeals)

4. The Land and Environment Court Act 1979 is amended by inserting in section 18 (a) after the matter "317M (2)," the matter "317N,".

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919

(1) Section 29A (**Payments of fees to members**)—

(a) Section 29A (1)—

Omit "a fee of \$30", insert instead "such fee, not exceeding \$60".

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) Section 29A (1)—

After “amount)”, insert “, as the council may determine”.

(c) Section 29A (2)—

Omit “\$1,000”, insert instead “\$3,000”.

(2) Section 304 (**Interpretation**)—

Section 304 (2)—

At the end of section 304, insert:

(2) In this Part and in Schedule 10—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Part XI, Divisions 3, 3A—

After Division 2, insert:

DIVISION 3—*Building Regulations Advisory Council***Interpretation**

309. In this Division, “Advisory Council” means the Building Regulations Advisory Council constituted by this Division.

The Advisory Council

309A. (1) There is constituted by this Division a Building Regulations Advisory Council.

(2) The Advisory Council—

- (a) shall have and may exercise the functions conferred or imposed upon it by or under this or any other Act;

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Advisory Council shall consist of 13 members appointed by the Minister.

(4) Of the members—

- (a) one shall be an officer or temporary employee of the Department of Local Government;
- (b) one shall be an officer or temporary employee of the Department of Public Works nominated by the Minister for Public Works;
- (c) one shall be an officer or temporary employee of the Department of Housing nominated by the Minister for Housing;
- (d) one shall be an officer or temporary employee of the Department of Health nominated by the Minister for Health;
- (e) one shall be a nominee of the Royal Australian Institute of Architects;
- (f) one shall be a nominee of the Sydney City Council;
- (g) one shall be a nominee of the Local Government and Shires Associations;
- (h) one shall be a nominee of the Australian Institute of Building;
- (i) one shall be a nominee of the Master Builders Association;
- (j) one shall be a nominee of the Board of Fire Commissioners;
- (k) one shall be a nominee of the Institution of Engineers, Australia;

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

- (l) one shall be a nominee of the Australian Institute of Building Surveyors; and
 - (m) one shall be a nominee of the Building Owners and Managers Association.
- (5) For the purposes of subsection (4), the Minister may require a person or body responsible for nominating a member of the Advisory Council to furnish a list of so many nominees as the Minister may specify, from which the Minister may select the nominee to be appointed.
- (6) In default by the nominating person or body in complying with the requirement, the Minister may appoint such person as the Minister considers qualified to represent the person or body concerned.
- (7) Schedule 10 has effect with respect to the members of the Advisory Council.
- (8) Schedule 10A has effect with respect to the procedure of the Advisory Council.

Functions of the Advisory Council

309B. The Advisory Council shall furnish advice to the Minister with respect to—

- (a) any proposal referred to it, being a proposal for the making of an ordinance or other law relating to building, in particular as to—
 - (i) the extent of necessary regulation of the subject-matter of the proposal;
 - (ii) whether the proposal is an effective regulating measure or sets satisfactory building standards; and
 - (iii) the cost-effectiveness of the proposal;
- (b) the review from time to time, and the consolidation, of existing laws relating to building; and
- (c) any other matter referred to it by the Minister.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

DIVISION 3A—*Accreditation of materials, methods of construction, designs and components*

Interpretation

309C. In this Division—

“accreditation” means the accreditation under this Division of a material, method of construction, design or component relating to building;

“Authority” means the Building Accreditation Authority constituted under this Division;

“certificate” means a certificate of accreditation under this Division.

The Authority

309D. (1) There is constituted by this Division a Building Accreditation Authority.

(2) The Authority—

(a) shall have and may exercise the functions conferred or imposed upon it by or under this or any other Act; and

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Authority shall consist of the members for the time being of the Building Regulations Advisory Council constituted by Division 3, and the Chairperson for the time being of that Council shall be the Chairperson of the Authority.

(4) Schedules 10 and 10A apply to the membership, meetings and procedure of the Authority in the same way as they apply to the membership, meetings and procedure of the Building Regulations Advisory Council.

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Functions of the Authority**

309E. The Authority shall have the following functions:

- (a) to accredit materials, methods of construction, designs and components relating to building;
- (b) to determine applications for accreditation;
- (c) to issue certificates of accreditation;
- (d) to cancel accreditations;
- (e) to arrange for the keeping of an accreditation register; and
- (f) to give effect to reciprocal arrangements entered into by the Minister and any Minister of the Crown or authority in any place outside New South Wales for or with respect to accreditations.

Delegation

309F. (1) The Authority may delegate to a committee (in this section called a "delegate committee") consisting of the Chairperson, and 2 or more other members, of the Authority the exercise of any of its functions, other than this power of delegation.

(2) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Authority.

(3) A delegate committee is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(4) A delegated function, when exercised by the delegate committee, shall be deemed to have been exercised by the Authority.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(5) A delegation does not prevent the exercise of a function by the Authority.

(6) A function purporting to have been exercised by a delegate committee shall, until the contrary is proved, be deemed to have been duly exercised by a delegate committee under this section.

Application for accreditation

309G. (1) Any person may apply to the Authority for the accreditation of any material, method of construction, design or component relating to building.

(2) The application shall be accompanied by the prescribed fee.

(3) The Authority may refuse to consider an application but shall, in that event, refund the fee paid.

Accreditation

309H. (1) The Authority may, if it thinks fit, accredit a material, method of construction, design or component.

(2) An accreditation may be granted subject to such conditions and qualifications, and for such period, as the Authority thinks fit.

(3) In determining any application for accreditation, the Authority may have regard to sources of information published or otherwise made available by such persons or bodies as the Authority considers appropriate.

Effect of accreditation

309I. A council shall not refuse to give its approval to the erection of a building on the ground that any material, method of construction, design or component relating to the building is unsatisfactory if the material, method of construction, design or component is for the time being accredited under this Division.

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Certificates**

309J. (1) If the Authority accredits, or renews the accreditation of, a material, method of construction, design or component it may, on payment of the prescribed fee, issue to the applicant for the accreditation or renewal a certificate of accreditation.

(2) On being satisfied that a certificate has been lost or destroyed, the Authority may, on payment of the prescribed fee, issue a duplicate certificate which shall have the same force as the original.

(3) A certificate issued in respect of any material, method of construction, design or component is evidence of the accreditation of the material, method of construction, design or component during the period specified in the certificate.

Renewal of accreditation

309K. (1) The holder of a certificate of accreditation may apply in the year of expiry of the accreditation for a renewal of the accreditation.

(2) Every such application—

- (a) shall be accompanied by the current certificate and by the prescribed fee; and
- (b) shall be lodged with the Authority not less than 1 month before the date of expiry of the accreditation.

(3) Except as provided by subsection (4), the Authority shall grant renewal of an accreditation if it is satisfied—

- (a) that the standard of the material, method of construction, design or component in respect of which the application for renewal is made is the same as or of a higher standard than the standard of that material, method of construction, design or component at the time the accreditation was first granted; and
- (b) that any conditions and qualifications to which the accreditation was subject have been complied with.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(4) The Authority may refuse to grant a renewal of accreditation—

- (a) if the accredited material, method of construction, design or component is provided for in any code, standard, rule, specification or provision issued by the Standards Association of Australia; or
- (b) if it resolves to revoke the accreditation under section 309L.

(5) Any renewal of an accreditation may be granted upon such conditions and for such period as the Authority thinks fit.

(6) If the Authority determines not to renew an accreditation, it shall notify the holder of the certificate in writing of the Authority's determination.

Revocation of accreditation

309L. (1) The Authority may at any time revoke an accreditation if it finds that—

- (a) the accreditation has been obtained by fraud, misrepresentation or concealment of facts;
- (b) the standard of the material, method of construction, design or component which is the subject-matter of the accreditation—
 - (i) is unsatisfactory; or
 - (ii) differs from or fails to comply with the standard of that material, method of construction, design or component as at the time the accreditation was granted; or
- (c) an accreditation, certificate of accreditation or similar authorisation issued or granted in respect of that material, method of construction, design or component in any place outside New South Wales has been revoked or cancelled for any reason other than the failure to renew the accreditation, certificate or authorisation.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(2) If the Authority determines to revoke an accreditation, it shall notify the holder of the certificate in writing of the Authority's determination.

Liability of members etc.

309M. No matter or thing done by the Authority, any member of the Authority or any person acting under the direction of the Authority shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(4) Section 317N—

After section 317M, insert:

Appeals in respect of accreditation of materials etc.

317N. (1) A person aggrieved by a determination of the Building Accreditation Authority—

- (a) to revoke an accreditation; or
- (b) not to renew an accreditation,

may, within 1 month of being notified of the determination, appeal to the Land and Environment Court.

(2) A person aggrieved by a failure of the Building Accreditation Authority—

- (a) to accredit any material, method of construction, design or component; or
- (b) to renew an accreditation,

may, within 2 months after an application duly made for any such accreditation or renewal, appeal to the Land and Environment Court.

(3) An appeal shall be by way of a new hearing, and the Court shall have and may exercise the functions of the Building Accreditation Authority in relation to the matter under appeal.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(4) The Court's decision shall (except for the purposes of this section) have effect as if it were a determination of the Authority.

(5) Section 318 (**Ordinances**)—

Section 318 (37)–(39)—

At the end of section 318, insert:

- (37) prescribing the fees to be paid in connection with applications under this Part;
- (38) the procedure on applications and other proceedings under this Part;
- (39) establishing an accreditation register for the purposes of Division 3A, the form and manner of its keeping and the entries and particulars to be entered in it.

(6) Section 530A (**Delegation**)—

(a) Section 530A (2) (e)—

After “Minister;”, insert “or”.

(b) Section 530A (2) (f)—

Omit the paragraph.

(7) Schedules 10, 10A—

After Schedule 9, insert:

SCHEDULE 10

(Sec. 309A (7))

PROVISIONS RELATING TO THE MEMBERS OF THE BUILDING
REGULATIONS ADVISORY COUNCIL**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Advisory Council or to act in the office of a member.

Local Government (Amendment) 1987

SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Chairperson**

2. (1) The member referred to in section 309A (4) (a) shall be the Chairperson of the Advisory Council.

(2) The Chairperson shall be deemed to have vacated office if the Chairperson ceases to be a member of the Advisory Council.

Term of office

3. Subject to this Schedule, a member of the Advisory Council shall hold office for such period, not exceeding 4 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Alternative members

4. (1) The Minister may appoint a person to be an alternative member of the Advisory Council.

(2) The alternative members shall be appointed by the Minister after consultation with the persons or bodies responsible for nominating the members.

(3) The provisions of this Schedule shall, with any necessary modifications, apply to and in respect of alternative members in the same way as they apply to members.

(4) An alternative member may act in the office of the member for whom he or she is the alternative member during the illness or absence of that member and, while so acting, shall have and may exercise all the functions and entitlements of that member and shall be deemed to be that member.

Expenses and remuneration

5. (1) A member of the Advisory Council is entitled to receive such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

(2) A member of the Advisory Council (not being a member of the Public Service appointed on the nomination of a Minister of the Crown) is entitled to receive such remuneration as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of member

6. If the office of any member of the Advisory Council becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy for the remainder of that member's term of office.

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
*continued***Casual vacancies**

7. (1) A member of the Advisory Council shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 3 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) reaches the age of 70 years; or
- (h) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member of the Advisory Council from office.

(3) Without affecting the generality of subclause (2), the Minister may remove a member of the Advisory Council from office if the member contravenes the provisions of clause 8.

Disclosure of pecuniary interests

8. (1) A member of the Advisory Council who has a direct pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Advisory Council; or

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(b) in a thing being done or about to be done by the Advisory Council, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Council.

(2) A disclosure by a member of the Advisory Council at a meeting of the Council that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Advisory Council shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Minister from time to time.

(4) After a member of the Advisory Council has, or is deemed to have, disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Advisory Council, or take part in any decision of the Advisory Council, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member of the Advisory Council contravenes the provisions of this clause, that contravention does not invalidate any decision of the Advisory Council or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member of the Advisory Council in a matter or thing which arises only because the member is a member of or associated with any institution, organisation or body mentioned in section 309A (4).

*Local Government (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(7) A reference in this clause to a meeting of the Advisory Council includes a reference to a meeting of a committee of the Advisory Council.

Effect of certain other Acts

9. (1) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Advisory Council or from accepting and retaining any expenses or remuneration payable to the person under this Act as such a member.

(2) The office of a member of the Advisory Council shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

SCHEDULE 10A

(Sec. 309A (8))

PROVISIONS RELATING TO THE PROCEDURE OF THE BUILDING
REGULATIONS ADVISORY COUNCIL**General procedure**

1. The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Chairperson of the Advisory Council.

Quorum

2. The quorum for a meeting of the Advisory Council is 7 members.

Presiding member

3. (1) The Chairperson of the Advisory Council or, in the absence of the Chairperson, the Chairperson's alternative member or, in the absence of both, another member elected to chair the meeting by the members present, shall preside at a meeting of the Advisory Council.

Local Government (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(2) The person presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present shall be the decision of the Advisory Council.

Minutes

5. The Advisory Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Advisory Council.

Authentication of documents

6. Any document requiring authentication by the Advisory Council is sufficiently authenticated if it is signed by the Chairperson of the Advisory Council or by any member who is authorised by the Chairperson in that behalf.

First meeting of the Advisory Council

7. The Minister shall call the first meeting of the Advisory Council in such manner as the Minister thinks fit.

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Method of selection of the sample

The sample was selected by the method of random selection

The results of the investigation are given in the following table