

FIRST PRINT

**LOCAL GOVERNMENT (MOVABLE DWELLINGS)
AMENDMENT BILL 1986**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Land and Environment Court (Movable Dwellings) Amendment Bill 1986 is cognate with this Bill.

The object of this Bill is to repeal the existing provisions of the Local Government Act 1919 dealing specifically with movable dwellings (that is, caravans, tents and the like) and to provide for a new scheme for the regulation of movable dwellings and land used for the placement and keeping of movable dwellings.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 repeals an enactment (most of whose provisions have not commenced to operate) relating to movable dwellings.

Clause 5 gives effect to the savings and transitional provisions contained in Schedule 2.

Schedule 1 (1) repeals section 288A of the Principal Act.

Schedule 1 (2) inserts a new Division 5B (Caravans, tents and other movable dwellings) into Part X of the Principal Act. The inserted provisions may be summarised as follows:

- (a) proposed section 289E is an interpretation and application provision which, among other things, defines "movable dwelling" and provides that the proposed Division binds the Crown;
- (b) proposed section 289F prohibits (except for certain periods and in certain circumstances) the use of any land for the placement or keeping of movable dwellings unless a licence is in force in respect of the land;
- (c) proposed section 289G enables an ordinance to be made for the control and regulation generally of movable dwellings and land used for the placement or keeping of movable dwellings;
- (d) proposed section 289H provides for the issue by a council of a licence to the occupier of land used for the placement or keeping of movable dwellings;
- (e) proposed section 289I enables a person aggrieved by certain decisions of a council in respect of the person's licence, or by a council's failure to issue a licence, to appeal to the Land and Environment Court;
- (f) proposed section 289J provides that Part XI of the Principal Act (Building regulation) shall not, in general, apply to movable dwellings and enables the suspension of other legislative provisions which would otherwise impede the use or development of land in accordance with an ordinance or a licence made or issued under the new provisions.

Schedule 2 enacts certain savings and transitional provisions.

LOCAL GOVERNMENT (MOVABLE DWELLINGS) AMENDMENT BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 41, 1919
4. Repeal of Act No. 21, 1975
5. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919
SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

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

5 289I. (1) A person aggrieved by the council's refusal to grant the person a licence or by the imposition, variation or restriction by the council of a condition to which a licence is subject may, within 30 days of receiving notice conveying the refusal or the imposition or variation of the condition, as the case may be, appeal to the Land and Environment Court.

(2) Subsection (1) does not apply to or in respect of—

- 10 (a) the refusal by a council to grant a licence which the council is, by virtue of section 289H (3), unable to grant;
- (b) the imposition of a condition referred to in section 289H (7) (b); or
- 15 (c) the imposition, variation or rescission, at the direction of the Minister under section 289H (8), of a condition of a licence.

20 (3) A person aggrieved by the council's failure to give, within the period of 40 days after lodgment of an application for a licence, a decision on the application may, at any time after the expiration of that period and before being notified of such a decision, appeal to the Land and Environment Court.

Suspension of certain laws

289J. (1) Except to the extent provided by an ordinance, Part XI shall not apply to or in respect of a movable dwelling.

25 (2) For the purpose of enabling, or of controlling or regulating—

- (a) the design or construction of a movable dwelling in accordance with an ordinance; or
- 30 (b) the use or development of land in accordance with an ordinance or in accordance with the terms and conditions of a licence,

Local Government (Movable Dwellings) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

the ordinance may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in the ordinance shall not apply to any such design, construction, use or development or shall apply subject to the modifications specified in that ordinance.

(3) Any such provision shall have effect according to its tenor.

(4) Any such provision shall not be made except with the prior approval in writing of the Minister administering the regulatory instrument whose application is affected by the provision.

(5) In this section, “regulatory instrument” means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.

SCHEDULE 2

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule, “the Principal Act” means the Local Government Act 1919.

Licences

2. A licence granted under section 288 (2) (a) of the Principal Act, including a licence deemed by the operation of section 288A (6) of the Principal Act to have been so granted, and in force immediately before the commencement of this Act shall be deemed to be a licence issued under section 289H of the Principal Act, as amended by this Act, and in force subject to Division 5B of Part X of the Principal Act, as so amended.

Applications

3. An application made, before the commencement of this Act, for a licence under section 288A (2) (a) of the Principal Act shall be deemed to be an application for a licence under section 289H of the Principal Act, as amended by this Act, and section 289H of the Principal Act, as so amended, shall apply to the application as if that section had been in force when the application was made.

*Local Government (Movable Dwellings) Amendment 1986*SCHEDULE 2—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Rights of certain occupiers**

4. Section 289F (1) or (3) of the Principal Act, as amended by this Act, shall not prohibit the use of land, at any time during the period of 40 days immediately following the commencement of this Act, for the placement or keeping of movable dwellings on the land by persons who, immediately before the commencement of this Act, held a licence referred to in section 288A (2) (b) of the Principal Act as in force immediately before the commencement of this Act.

Effect of the Interpretation Act

5. (1) A right conferred by clause 3 or 4, by which a person—
- 10 (a) may lodge an appeal against a council's refusal or failure to grant the person a licence; or
- (b) may allow land occupied by the person to be used for the placement or keeping of movable dwellings,
- displaces any right which would otherwise have been conferred by the Interpretation Act 15 1897 by which the person might have lodged such an appeal or allowed any land to be so used.

- (2) Section 8 of the Interpretation Act 1897 shall not operate so as to enable any licence to be deemed to have been granted, or to be deemed to have been granted unconditionally, after the commencement of this Act by reason of the provisions of 20 section 288A (6) of the Principal Act, as in force immediately before the commencement of this Act.

Saving of certain amendments

6. The amendments made to the Principal Act by section 3 (c) of the Local Government (Amendment) Act 1975 shall, notwithstanding the repeal of that Act by 25 section 4, continue to have force and effect as if section 4 had not been enacted.

**LOCAL GOVERNMENT (MOVABLE DWELLINGS)
AMENDMENT ACT 1986 No. 21**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 41, 1919
4. Repeal of Act No. 21, 1975
5. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919
SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

RECEIVED

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**LOCAL GOVERNMENT (MOVABLE DWELLINGS) AMENDMENT
ACT 1986 No. 21**

NEW SOUTH WALES



Act No. 21, 1986

An Act to amend the Local Government Act 1919 with respect to caravans
and other movable dwellings. [Assented to 2 May 1986.]

See also Land and Environment Court (Movable Dwellings) Amendment Act 1986.

Local Government (Movable Dwellings) Amendment 1986

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 (Movable Dwellings) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act 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.

Repeal of Act No. 21, 1975

4. The Local Government (Amendment) Act 1975 is repealed.

Savings and transitional provisions

5. Schedule 2 has effect.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919

(1) Section 288A (Structures on wheels, tents, caravans, etc.)—

Omit the section.

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

(2) Part X, Division 5B

After Division 5, insert:

DIVISION 5B—*Caravans, tents and other movable dwellings*

Interpretation and application

289E. (1) In this Division, except in so far as the context or subject-matter otherwise indicates or requires—

“licence” means a licence under section 289H which is in force;

“movable dwelling” means—

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation; or
- (b) any conveyance, structure or thing of a prescribed class or description.

(2) For the purposes of this Division, the owner of any land that is not let shall be deemed to be the occupier of the land.

(3) This Division binds the Crown.

Use of land for movable dwellings

289F. (1) The occupier of any land shall not allow the land to be used, on more than 2 consecutive days or more than 60 days in any 12 consecutive months, for the placement of a movable dwelling inhabited by any person, unless the occupier is the holder of a licence authorising the use of the land for that purpose.

(2) For the purposes of subsection (1), land which is in the occupation of the same person as, and within 100 metres of, a site on which there is during any part of any day a movable dwelling shall be regarded as being used for the placement of a movable dwelling on that day.

Local Government (Movable Dwellings) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(3) A person shall not keep a movable dwelling on any one site, or on 2 or more sites in succession, if any one of those sites is within 100 metres of another of them, on more than 2 consecutive days, or more than 60 days in any 12 consecutive months, unless the occupier of each piece of land on which the dwelling is kept holds in respect of that piece of land a licence authorising its use for the placement of movable dwellings.

(4) If a movable dwelling is removed from the site on which it was placed, but within 24 hours is brought back to the same site or to another site within 100 metres of that site, then for the purpose of reckoning a period of 2 days as mentioned in subsection (1) or (3) it shall be deemed not to have been removed or, as the case may be, to have been moved direct from the one site to the other.

(5) Nothing in this section applies—

(a) to a movable dwelling of a prescribed kind which—

(i) is kept by its owner on land occupied by that owner in connection with that owner's dwelling-house and is used for habitation only by that owner or by members of that owner's household; or

(ii) is kept on pastoral or agricultural land and is used for habitation only at certain seasons and only by persons employed in pastoral or farming operations on that land;

(b) to a movable dwelling while it is not in use for human habitation and is being kept on premises the occupier of which permits no movable dwelling to be kept on them except such as are for the time being not in use for human habitation; or

(c) in respect of any prescribed lands.

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

Standards and control for movable dwellings

289G. (1) For the purposes of this Division, an ordinance may be made for or with respect to controlling and regulating, and prescribing standards for, movable dwellings and land used for the placement of movable dwellings.

(2) Without affecting the generality of subsection (1), an ordinance may make provision for or with respect to—

- (a) standards of design, construction, installation and maintenance of movable dwellings;
- (b) necessary or optional features, apparatus or accessories of or pertaining to movable dwellings;
- (c) standards of development in relation to land used or developed or intended to be used or developed for the placement of movable dwellings;
- (d) programmes for works to be carried out on any such land to secure compliance with any such standards;
- (e) the terms and conditions on which movable dwellings are occupied by persons under a lease or other agreement or under licence and the resolution of disputes between the parties to any such lease, agreement or licence;
- (f) the issue, duration, revocation and suspension of licences, the variation of conditions of licences and the manner or form of, and fees payable in connection with, licences and applications for licences;
- (g) the variation, by the conditions of any licence, of the application of any provisions of the ordinance to and in respect of the holder of the licence or the owner or occupier of any land to which the licence relates;

Local Government (Movable Dwellings) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(h) the imposition, on the owners or occupiers of land used for the placement of movable dwellings, of a levy to be applied to—

(i) expenses in connection with the examination and review, by or on behalf of the Minister, of the terms and conditions of licences generally; or

(ii) the undertaking, by or on behalf of the Minister, of research in connection with the administration of this Division,

or to any prescribed purpose;

(i) the making, keeping and production of records and returns; and

(j) regulating the presence of animals and the lighting and use of fires.

(3) The provisions of section 319 (2) apply to and in respect of an ordinance made for the purposes of this Division in the same way as they apply to and in respect of an ordinance made for the purposes of Part XI.

Licences

289H. (1) The council may, in respect of any land within its area, issue a licence to the occupier of the land, authorising the use of the land for the placement of movable dwellings.

(2) The council shall not issue a licence unless it is satisfied that—

(a) any consent required under the Environmental Planning and Assessment Act 1979 for the use of any land in accordance with the licence and with any conditions referred to in subsection (7) (a) or (b) with respect to the licence has been given; and

Local Government (Movable Dwellings) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

- (b) the use of any land in accordance with the licence and with any such conditions will not contravene the provisions of that Act or of any environmental planning instrument within the meaning of that Act, in so far as that Act or any such instrument applies to the land.
- (3) The council shall not issue a licence—
- (a) in respect of any Crown lands, or land in a reserve within the meaning of Part IIIB of the Crown Lands Consolidation Act 1913, except in accordance with the consent of the Minister for Natural Resources;
 - (b) in respect of any land reserved or dedicated under the National Parks and Wildlife Act 1974, or declared to be land of a specified designation or significance under that Act, except in accordance with the consent of the Minister for Planning and Environment; or
 - (c) in respect of any land reserved or dedicated by the provisions of an Act to a public purpose, or in respect of which the provisions of an Act provide that the land shall be used for a purpose referred to in the Act, except in accordance with the consent of the Minister administering the provisions of the Act concerned.
- (4) Subsection (3) does not, nor does any consent of a Minister under that subsection, authorise the issue of a licence in respect of any land whose use, for the placement of movable dwellings in accordance with the licence, would be unlawful by virtue of any law.
- (5) A Minister referred to, or administering the provisions of an Act described, in subsection (3) may, for the purposes of that subsection, by instrument in writing—
- (a) consent unconditionally;
 - (b) consent on such terms as that Minister thinks fit; or

*Local Government (Movable Dwellings) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

(c) refuse to consent,

to the issue of a licence.

(6) Without limiting the generality of subsection (5) (b), the terms on which a consent is given may include directions as to the duration of any proposed licence or the conditions to which a licence, when issued, shall be subject, or both.

(7) Except as otherwise provided by an ordinance, a licence shall be subject to—

(a) conditions prescribed by or imposed in accordance with an ordinance;

(b) the conditions, if any, imposed at the direction of a Minister referred to, or administering an Act described, in subsection (3); and

(c) such other reasonable conditions, if any, as may be specified by the council in the licence or by a variation effected in the prescribed manner.

(8) The Minister may, by a direction given to a council, require—

(a) the revocation or suspension of a licence granted by the council; or

(b) the imposition, variation or rescission of a condition—

(i) which may be imposed on a licence in the exercise of a discretion conferred on a council by an ordinance; or

(ii) imposed on a licence by a council under subsection (7) (c),

and the council concerned shall comply with the direction.

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

289I. (1) A person aggrieved by the council's refusal to grant the person a licence or by the imposition, variation or restriction by the council of a condition to which a licence is subject may, within 30 days of receiving notice conveying the refusal or the imposition or variation of the condition, as the case may be, appeal to the Land and Environment Court.

(2) Subsection (1) does not apply to or in respect of—

- (a) the refusal by a council to grant a licence which the council is, by virtue of section 289H (3), unable to grant;
- (b) the imposition of a condition referred to in section 289H (7) (b); or
- (c) the imposition, variation or rescission, at the direction of the Minister under section 289H (8), of a condition of a licence.

(3) A person aggrieved by the council's failure to give, within the period of 40 days after lodgment of an application for a licence, a decision on the application may, at any time after the expiration of that period and before being notified of such a decision, appeal to the Land and Environment Court.

Suspension of certain laws

289J. (1) Except to the extent provided by an ordinance, Part XI shall not apply to or in respect of a movable dwelling.

(2) For the purpose of enabling, or of controlling or regulating—

- (a) the design or construction of a movable dwelling in accordance with an ordinance; or
- (b) the use or development of land in accordance with an ordinance or in accordance with the terms and conditions of a licence,

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919—
continued

the ordinance may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in the ordinance shall not apply to any such design, construction, use or development or shall apply subject to the modifications specified in that ordinance.

(3) Any such provision shall have effect according to its tenor.

(4) Any such provision shall not be made except with the prior approval in writing of the Minister administering the regulatory instrument whose application is affected by the provision.

(5) In this section, “regulatory instrument” means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.

SCHEDULE 2

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule, “the Principal Act” means the Local Government Act 1919.

Licences

2. A licence granted under section 288 (2) (a) of the Principal Act, including a licence deemed by the operation of section 288A (6) of the Principal Act to have been so granted, and in force immediately before the commencement of this Act shall be deemed to be a licence issued under section 289H of the Principal Act, as amended by this Act, and in force subject to Division 5B of Part X of the Principal Act, as so amended.

Applications

3. An application made, before the commencement of this Act, for a licence under section 288A (2) (a) of the Principal Act shall be deemed to be an application for a licence under section 289H of the Principal Act, as amended by this Act, and section 289H of the Principal Act, as so amended, shall apply to the application as if that section had been in force when the application was made.

Local Government (Movable Dwellings) Amendment 1986

SCHEDULE 2—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Rights of certain occupiers

4. Section 289F (1) or (3) of the Principal Act, as amended by this Act, shall not prohibit the use of land, at any time during the period of 40 days immediately following the commencement of this Act, for the placement or keeping of movable dwellings on the land by persons who, immediately before the commencement of this Act, held a licence referred to in section 288A (2) (b) of the Principal Act as in force immediately before the commencement of this Act.

Effect of the Interpretation Act

5. (1) A right conferred by clause 3 or 4, by which a person—

- (a) may lodge an appeal against a council's refusal or failure to grant the person a licence; or
- (b) may allow land occupied by the person to be used for the placement or keeping of movable dwellings,

displaces any right which would otherwise have been conferred by the Interpretation Act 1897 by which the person might have lodged such an appeal or allowed any land to be so used.

(2) Section 8 of the Interpretation Act 1897 shall not operate so as to enable any licence to be deemed to have been granted, or to be deemed to have been granted unconditionally, after the commencement of this Act by reason of the provisions of section 288A (6) of the Principal Act, as in force immediately before the commencement of this Act.

Saving of certain amendments

6. The amendments made to the Principal Act by section 3 (c) of the Local Government (Amendment) Act 1975 shall, notwithstanding the repeal of that Act by section 4, continue to have force and effect as if section 4 had not been enacted.





