

FIRST PRINT

**LOCAL GOVERNMENT (CONSEQUENTIAL PROVISIONS)
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Local Government Bill 1992.

The object of this Bill is:

- (a) to repeal the Local Government Act 1919 which will be replaced by the proposed Local Government Act 1992 and as a consequence to repeal certain other Acts and Ordinances; and
- (b) to make amendments to various Acts and instruments as a consequence of the enactment of the proposed Local Government Act 1992; and
- (c) to make provision for savings and transitional matters.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 provides for the definition of words and expressions used in the proposed Act.

Clause 4 repeals the instruments specified in Schedule 1.

Clause 5 gives effect to Schedule 2 which contains amendments to various instruments.

Clause 6 gives effect to Schedule 3 which contains savings and transitional provisions.

Local Government (Consequential Provisions) 1992

SCHEDULE 1—REPEALS

Schedule 1 repeals the following instruments:

City of Sydney Improvement Act (1879)

Local Government Act 1919 (except for those Parts that are to be repealed by other Acts)

City of Newcastle Act 1986

All Ordinances under the Local Government Act 1919 (except for those Ordinances that are to be repealed by other Acts)

SCHEDULE 2—AMENDMENT OF INSTRUMENTS

Schedule 2 contains amendments to various instruments which are consequential on the repeal of the instruments referred to in Schedule 1 and the enactment of the proposed Local Government Act 1992 and its cognate Acts.

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Schedule 3 contains savings and transitional provisions required as a consequence of the enactment of the proposed Local Government Act 1992 and its cognate Acts.

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SCHEDULE 1—REPEALS

SCHEDULE 2—AMENDMENT OF INSTRUMENTS

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

**LOCAL GOVERNMENT (CONSEQUENTIAL PROVISIONS)
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to repeal certain enactments; to amend certain other enactments;
and to enact provisions consequential on the enactment of the Local
Government Act 1992.

Local Government (Consequential Provisions) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Local Government (Consequential Provisions) Act 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. Words and expressions used in this Act have the same meanings as
10 in the Local Government Act 1992.

Repeals

4. (1) Each instrument specified in Schedule 1 is repealed.

(2) Different days may be appointed for the commencement of
15 subsection (1) for the purpose of repealing different provisions of the instruments specified in Schedule 1 or any instruments that may be made under them on different days.

Amendment of instruments

5. Each instrument specified in Schedule 2 is amended as set out in that Schedule.

20 Savings, transitional and other provisions

6. Schedule 3 has effect.

SCHEDULE 1—REPEALS

(Sec. 4)

City of Sydney Improvement Act (1879) 42 Vic. No. 25

25 Local Government Act 1919 No. 41 (other than Parts 9, 18, 22 and 28)

City of Newcastle Act 1986 No. 43

All Ordinances made or deemed to have been made under the Local Government Act 1919 and in force at the commencement of this Schedule (other than Ordinances Nos. 30A, 34A, 49, 50, 50A and 59)

SCHEDULE 2—AMENDMENT OF INSTRUMENTS

(Sec. 5)

City of Sydney Act 1988 No. 48

- (1) Section 1 (**Short title**):
After "Sydney", insert "(Planning)". 5
- (2) Section 2 (**Commencement**):
Omit section 2 (3).
- (3) Section 3 (**Principal Act**):
From section 3 (1), omit "1919", insert instead "1992".
- (4) Section 4 (**Definitions**): 10
Omit the definition of "South Sydney Council".
- (5) Parts 2 (**Constitution of the Cities of Sydney and South Sydney**) and 3 (**Elections**):
Omit the Parts.
- (6) Section 33 (**The Planning Committee**): 15
From section 33 (5), omit "section 654", insert instead "section 704".
- (7) Section 34 (**Members of the Planning Committee**):
From section 34 (1) (c), omit "aldermen", insert instead "councillors". 20
- (8) Section 52 (**Regulations**):
Omit the section.
- (9) Sections 54–57:
Omit the sections.
- (10) Section 58 (**Regulations**): 25
At the end of section 58, insert:
 - (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the form in which applications under Division 4 of Part 4 may be made; 30
 - (b) the fees to be lodged with applications;

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (c) the determinations of applications;
- (d) the recording of determinations;
- (e) the notification of the making of determinations;
- 5 (f) the giving of effect to determinations;
- (g) the public availability of determinations.

Community Land Development Act 1989 No. 201

- (1) Section 8 (**Subdivision of a community development lot by a community plan of subdivision**):
- 10 From section 8 (4) omit paragraph (a), insert instead:
 - (a) a registration certificate by the consent authority given under section 109G of the Environmental Planning and Assessment Act 1979; and
- (2) Section 12 (**Subdivision of a precinct development lot by a precinct plan of subdivision**):
- 15 From section 12 (4) omit paragraph (a), insert instead:
 - (a) a registration certificate by the consent authority given under section 109G of the Environmental Planning and Assessment Act 1979; and
- (3) Schedule 1 (**Plans**):
- 20 Omit clause 2 (2), insert instead:
 - (2) A registration certificate by the consent authority given under section 109G of the Environmental Planning and Assessment Act 1979 must be lodged with:
 - 25 (a) a plan of subdivision (including a boundary adjustment plan); and
 - (b) a plan of consolidation.

Conveyancing Act 1919 No. 6

- (1) Section 195 (**Definitions**):
- 30 At the end of section 195, insert:
 - (2) In this Division:
 - “**current plan**”, in relation to land, means the most recent plan of the land registered or recorded in the office of

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

the Registrar-General (other than a plan of subdivision for lease purposes as referred to in section 109C (2) of the Environmental Planning and Assessment Act 1979);

“plan of subdivision” includes: 5

- (a) a strata plan, a strata plan of subdivision or a strata plan of consolidation registered under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986; and
- (b) a map or plan of land comprised in an application made under Part 4 of the Real Property Act 1900; and 10
- (c) a community plan, precinct plan or neighbourhood plan under the Community Land Development Act 1989; 15

“registration certificate” means a certificate given under section 109G of the Environmental Planning and Assessment Act 1979.

(2) Section 195B (**Refusal to accept lodgment**):

From section 195B (a), omit “under section 327AA of the Local Government Act 1919”. 20

(3) Sections 195CA–195CC:

After section 195C, insert:

Plans of subdivision and dealings effecting a subdivision

195CA. (1) A plan of subdivision is not in registrable form within the meaning of section 195F unless it is accompanied: 25

- (a) in the case of land within the area of a council—by a registration certificate for the plan; or
- (b) in the case of land within the Western Division—by a certificate for the plan given by the Minister for the time being administering the Western Lands Act 1901. 30

(2) The Registrar-General may not register an instrument (other than a plan of subdivision) that effects a subdivision of land unless it is accompanied by the appropriate certificate referred to in this section for the plan. 35

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(3) The Registrar-General may not register an instrument that effects a subdivision by reference to a plan that is not a current plan, unless the instrument lodged for registration is a plan that is intended by registration to become a current plan or unless the instrument is a plan of subdivision for lease purposes as referred to in section 109C (2) of the Environmental Planning and Assessment Act 1979.

(4) This section does not apply to:

- (a) a plan of subdivision lodged for registration by the Crown; or
- (b) a plan of subdivision or instrument that relates to a claim to title of land based on possession of the land.

Subdivision by instalments

195CB. If a council gives a registration certificate for a part of the land affected by a subdivision, the plan of subdivision relating to the land is not in registrable form within the meaning of section 195F unless the land that is not so affected and has not been the subject of a previous registration certificate is shown in the plan as comprising a single lot.

Subdivision for lease purposes—caravan parks and manufactured home estates

195CC. The Registrar-General, when registering a plan of subdivision for lease purposes as referred to in section 109C (2) of the Environmental Planning and Assessment Act 1979, is to record the fact that it is a subdivision for lease purposes as referred to in that provision.

(4) Section 195D (**Signatures and consents**):

- (a) From section 195D (1), omit “(other than a plan referred to in paragraph (c) or (g) of the definition of “plan of subdivision” in section 327AA (1) of the Local Government Act 1919) which, if it were registered or recorded in the office of the Registrar-General, would become a current plan under section 327AA of that Act,” insert instead “which, if it were registered or recorded in the office of the Registrar-General, would become a current plan,”.

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SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (b) From section 195D (1) (b) omit “section 340D of that Act”, insert instead “section 48 of the Local Government Act 1992”. 5
- (c) From section 195D (1) (c) omit “section 340E of that Act”, insert instead “section 48 of the Local Government Act 1992”. 5
- (d) After section 195D (1), insert:
 - (1A) Subsection (1) does not prevent the Registrar-General from registering or recording a plan lodged under this Division that is: 10
 - (a) a strata plan, a strata plan of subdivision or a strata plan of consolidation registered under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986; or
 - (b) a plan showing land that has been compulsorily acquired or purchased by a body authorised by an Act to compulsorily acquire land. 15

Crown Lands Act 1989 No. 6

- (1) Sections 75 (**Definitions**), 76 (**Vesting of certain land in councils**): 20
 - Omit “Local Government Act 1919” wherever occurring, insert instead “Local Government Act 1992”.
- (2) Section 77 (**Effect of vesting**):
 - From section 77 (1) (a), omit “Local Government Act 1919 by the council subject to the operation of section 518 (2) and (5) of that Act”, insert instead “Local Government Act 1992 and to have been classified as community land under that Act”. 25
- (3) Section 78 (**Definitions**):
 - Omit “Local Government Act 1919” wherever occurring, insert instead “Local Government Act 1992”. 30
- (4) Section 98 (**Application of Local Government Act where a council manages a reserve trust**):
 - (a) Omit “Local Government Act 1919” wherever occurring, insert instead “Local Government Act 1992”. 35

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(b) After section 98 (1), insert:

5 (1A) However, the trust has no power to classify the public reserve or any part of it as operational land under the Local Government Act 1992.

Environmental Offences and Penalties Act 1989 No. 150

(1) Section 8F (**Littering**):

From section 8F (3) (a) (ii), omit "Local Government Act 1919", insert instead "Local Government Act 1992".

10 (2) Section 25 (**Restraint of breaches of an Act or statutory rule which harm the environment**):

After section 25 (1), insert:

15 (1A) This section does not enable a person to bring proceedings for an order to restrain a breach (or a threatened or apprehended breach) of the Local Government Act 1992 or an ordinance made under that Act.

Environmental Planning and Assessment Act 1979 No. 203

(1) Section 4 (**Definitions**):

20 (a) Insert in section 4 (1) in alphabetical order, the following definitions:

 "**Crown land**" has the same meaning as in the Crown Lands Act 1989;

 "**subdivision**" has the meaning given by section 109C;

25 "**subdivision works**" has the meaning given by section 109D.

(b) Section 4 (2) (d):

Omit the paragraph.

(2) Section 77 (**Making of development applications**):

30 (a) From section 77 (2), omit "Crown lands within the meaning of the Crown Lands Consolidation Act 1913", insert instead "Crown land".

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (b) After section 77 (3A), insert:
- (3B) The consent authority may reject a development application within 7 days after its receipt if it is not clear and easily legible. An application so rejected is taken not to have been made and the application fee is to be refunded. 5
- (3) Section 91 (**Determination of development application**):
- From section 91 (3) (h), omit “section 94”, insert instead “section 91AA, 91AB or 94”.
- (4) Sections 91AA, 91AB: 10
- After section 91, insert:
- “In principle” consent**
- 91AA. A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition. 15
- Staged development**
- 91AB. (1) A development consent may be granted:
- (a) for the development for which the consent is sought; or
- (b) for that development, except for a specified part or aspect of that development; or 20
- (c) for a specified part or aspect of that development.
- (2) Such a development consent may be granted subject to a condition that the development or the specified part or aspect of the development, or any thing associated with the development or the carrying out of the development, must be the subject of another development consent. 25
- (5) Section 92:
- Omit the section, insert instead:
- Notice to applicant of determination of development application** 30
92. (1) The consent authority (or the Minister in the case of a determination by the Minister under section 91A) must give notice of the determination of the development application in the prescribed form and manner. 35

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (2) The date of the determination and the date from which the development consent operates (if development consent is granted) must be endorsed, as prescribed, on the notice.
- 5 (3) In the case of a development consent granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition:
- 10 (a) the date from which the consent operates must not be endorsed on the notice; and
- (b) if the applicant satisfies the consent authority as to the matter, the consent authority must give notice to the applicant, in the prescribed form and manner, of the date from which the consent operates.
- 15 (4) If the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notice of the determination must:
- (a) indicate the reasons for the imposition of the conditions or the refusal; and
- 20 (b) notify the applicant of the provisions of this Act conferring a right of appeal against the determination.
- (6) Section 93 (**Date from which consent operates**):
- (a) From section 93, omit “under section 91” wherever occurring.
- 25 (b) From section 93 (1), omit “, as prescribed,” wherever occurring.
- (c) After section 93 (4), insert:
- 30 (5) A development consent in respect of a development application that is taken to have been determined under section 91A operates from the date on which it is taken to have been determined.
- (7) Section 99 (**Lapsing of consent**):
- Omit section 99 (1)–(4), insert instead:
- (1) A development consent lapses:
- 35 (a) 5 years after the date from which it operates, except as provided by paragraph (b); or

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(b) in the case of a development consent that is subject to a condition under section 91AB (2), 2 years after the date on which the last consent, approval or permission required to be obtained in accordance with the condition operates. 5

(2) A consent authority, in granting development consent, may vary either or both of the periods referred to in subsection (1).

(3) Such a variation may not be made so as to cause: 10

(a) a development consent to erect or demolish a building or to carry out subdivision works to lapse within 2 years after the date from which the consent operates; or

(b) a development consent of a kind prescribed by regulation to lapse within the period prescribed by regulation in relation to the consent. 15

(4) Development consent for:

(a) the erection of a building; or

(b) the carrying out of subdivision works; or

(c) the carrying out of a work, 20

does not lapse if building, engineering or construction work relating to the building, subdivision works or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section. 25

(4A) Development consent for subdivision that does not require the carrying out of subdivision works does not lapse if a certificate is given under section 109G before the date on which the consent would otherwise lapse under this section.

(4B) Development consent for development other than that referred to in subsection (4) or (4A) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse under this section. 30

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(8) Part 4, Division 3:

After Division 2, insert:

Division 3—Subdivision

5

Definitions

109B. In this Division:

10

“certificate of compliance” means a certificate issued under section 27 of the Water Board Act 1987, section 50 of the Hunter Water Board (Corporatisation) Act 1991 or section 27 of the Water Supply Authorities Act 1987;

“plan of subdivision” has the same meaning as in section 195 of the Conveyancing Act 1919;

15

“registration certificate” means a certificate given under section 109H;

“water supply authority” means the Water Board, the Hunter Water Corporation Limited or a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987;

20

“Western Division” has the same meaning as it has in the Crown Lands Act 1989.

What is subdivision of land?109C. (1) In this Act, **“subdivision”** means:

25

(a) division of land (whether or not shown in the most recent plan of the land registered or recorded in the office of the Registrar-General) into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition, whether the division is:

30

(i) by sale, conveyance, transfer or partition; or

(ii) by any agreement, dealing, plan or instrument rendering different parts of the land immediately available for separate occupation or disposition; or

35

(iii) by procuring the creation of a folio of the Register kept under the Real Property Act 1900 in respect of part of the land; or

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (iv) by a subdivision effected under Division 1 of Part 2 of the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986; or
 - (v) to form part of a scheme under the Community Land Development Act 1989; or 5
 - (b) procuring the creation of a folio of the Register kept under the Real Property Act 1900 in respect of land that has been physically divided by a road.
 - (2) Subdivision includes the division for lease purposes of land subject to an approval under the Local Government Act 1992 to operate a caravan park or manufactured home estate, not being Crown land that has been reserved or dedicated for any public purpose (within the meaning of the Crown Lands Act 1989). 10
 - (3) Subdivision does not include any process whereby land becomes a public road under the Roads Act 1992 otherwise than by registration of a plan of subdivision as referred to in section 8 (1) (a) or (b) of that Act. 15
 - (4) Subdivision does not include subdivision works. 20
- What are subdivision works?**
- 109D. In this Act, “**subdivision works**” means any physical activity carried out in, on, under or over land in connection with the subdivision or proposed subdivision of land and includes the construction of roads and drainage systems. 25
- Subdivision by the Crown**
- 109E. Nothing in this Act or an environmental planning instrument:
- (a) requires the Crown to obtain development consent for: 30
 - (i) subdivision that is required solely for the purpose of bringing Crown land under the provisions of the Real Property Act 1900 pursuant to Part 3 of that Act without significant change in the boundaries of the land (except where significant change is required to be made because of a claim based on possession); or 35

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- 5 (ii) subdivision that is required solely for the purpose of transferring land to a claimant Aboriginal Land Council as a consequence of the granting of a claim for land under the Aboriginal Land Rights Act 1983; or

- (b) requires the Crown to comply with Part 5 in relation to such a subdivision.

Subdivision works by the Crown

10 109F. Nothing in this Act or an environmental planning instrument:

- (a) prohibits or restricts the Crown from carrying out subdivision works; or
- 15 (b) requires the Crown to obtain development consent for carrying out subdivision works; or
- (c) requires the Crown to comply with Part 5 in relation to subdivision works for which development consent for subdivision is required, or has been given, under this Part.

20 **Registration certificate**

109G. (1) The council of an area may give a certificate under this section concerning the subdivision of land in its area which states that development consent is required and has been obtained for the subdivision or that development consent is not required.

25

(2) A council must not give a certificate under this section unless it is satisfied that:

- 30 (a) development consent (if required) has been obtained for any subdivision works associated with the subdivision and:
- (i) the works have been carried out in accordance with that consent; or
- 35 (ii) the applicant has agreed to pay to the council a sum agreed with the council as the cost of carrying out the works, and agreed with the council as to when the works will be carried out by the council; or

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—continued

- (iii) the applicant has agreed to give the council security to the satisfaction of the council to ensure that the applicant will carry out the works within the time fixed by the council; and 5
- (b) any requirement made by the Court under section 40 of the Land and Environment Court Act 1979 concerning the provision of drainage easements has been complied with; and
- (c) in the case of land wholly or partly within the area of operations of a water supply authority, the authority has issued a certificate of compliance in respect of the subdivision. 10
- (3) The council must not give a certificate under this section if the subdivision or subdivision works are prohibited from being carried out under this or any other Act. 15

Subdivision by instalments

109H. The council may give a registration certificate in respect of any part of the land affected by a subdivision if:

- (a) development consent (if required) has been obtained for the subdivision and for any subdivision works associated with the subdivision of the part; and 20
- (b) with regard to any subdivision works to be carried out on the part:
 - (i) the works have been carried out in accordance with the consent relating to them; or 25
 - (ii) the applicant has agreed to pay to the council a sum agreed with the council as the cost of carrying out the works, and agreed with the council as to when the works will be carried out by the council; or 30
 - (iii) the applicant has agreed to give the council security to the satisfaction of the council to ensure that the applicant will carry out the works within the time fixed by the council; and 35
- (c) with regard to any subdivision works that are or are likely to be carried out on the remainder of the land affected by the subdivision:

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- 5 (i) the applicant has agreed to pay to the council a sum agreed with the council as the cost of carrying out the works, and agreed with the council as to when the works will be carried out by the council; or
- 10 (ii) the applicant has agreed to give the council security to the satisfaction of the council to ensure that the applicant will carry out the works within the time fixed by the council.

Subdivision of land within the area of operations of Water Board or water supply authority

15 109I. (1) This section applies to an application to subdivide land that is wholly or partly within the area of operations of a water supply authority (not being a subdivision effected only by the opening of a public road) and for which, under the Act that constitutes the water supply authority, a certificate of compliance is required.

20 (2) As soon as practicable after granting consent to the application, the consent authority must send a copy of the plan of subdivision together with a copy of the development consent to the water supply authority.

25 (3) On an appeal against the determination of the consent authority in respect of the application, the consent authority must send a copy of the Court's decision (except a decision to dismiss the appeal) to the authority as soon as practicable after the decision is made.

Subdivision works by consent authorities

30 109J. (1) The consent authority may carry out subdivision works if there has been a failure to carry out those works in accordance with a development consent.

35 (2) The consent authority may recover the cost of carrying out the works from the person required to carry them out, whether or not any penalty may be imposed by or under this Act.

(3) If the Minister or the Director is the consent authority, the functions of the consent authority under this section may be exercised by the corporation.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

Appeals

109K. If a council fails to give a registration certificate within 40 days after a request is made to it for the certificate to be given, the person making the request may appeal to the Court within 12 months after the expiration of the 40-day period.

5

Agreements entered into before granting of development consent

109L. (1) Nothing in this Division or an environmental planning instrument renders an agreement to sell, let or otherwise dispose of land illegal or void just because it is entered into before development consent for subdivision is granted.

10

(2) Such an agreement is taken to be made subject to development consent being granted.

15

Environmental Planning and Assessment Regulation 1980

Clause 41F (Structure and subject-matter of plan):

At the end of clause 41F, insert:

(2) In determining the contribution rates for different types of development, the council must take into consideration:

20

(a) conditions that may be imposed under section 94 (1) (b) of the Local Government Act 1992; and

(b) the amount and purpose of any payment that may be required to be made by a developer under section 27 (1) (b) of the Water Supply Authorities Act 1987 (or that provision as applied by section 59 of the Local Government Act 1992).

25

Freedom of Information Act 1989 No. 5

(1) Section 6 (**Definitions**):

30

From paragraph (d) of the definition of "principal officer" in section 6 (1), omit "Mayor, President or Chairman, as the case may be," insert instead "General Manager".

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(2) Section 13 (**Application of Part**):

Omit the section.

(3) Section 16 (**Right of access to agencies' documents**):

5 Omit section 16 (2).

Hunter Water Board (Corporatisation) Act 1991 No. 53

(1) Section 28 (**Corporation not liable to pay annual charge on pipes etc.**):

10 Omit "Section 171 of the Local Government Act 1919",
insert instead "Section 578 of the Local Government Act
1992".

(2) Section 48 (**Definitions**):

(a) Omit the definition of "approval" in section 48 (1), insert
instead:

15 "approval" means:

(a) an approval under Part 1 of Chapter 6 of the Local
Government Act 1992 for the erection of a
building; or

20 (b) a development consent under Part 4 of the
Environmental Planning and Assessment Act
1979;

(b) Omit section 48 (2) (d), omit insert instead:

25 (d) the subdivision of land is a reference to subdivision
within the meaning of the Environmental Planning and
Assessment Act 1979; and

(3) Section 51 (**Consent authority to notify Corporation of certain applications etc.**):

30 From section 51 (1), omit "a building application under
section 311 of the Local Government Act 1919", insert
instead "an application for approval to erect a building under
Part 1 of Chapter 6 of the Local Government Act 1992".

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(4) Section 70 (**Regulations**):

Omit section 70 (5) (d), insert instead:

- (d) charges on land and the recovery of amounts charged on land, including applying the provisions (with or without modification) of Divisions 4 and 5 of Part 2 of Chapter 16 of the Local Government Act 1992.

5

Justices Act 1902 No. 27

(1) Section 63 (**Manner of service of summons**):

Omit section 63 (2A) (c), insert instead:

- (c) as a councillor or employee of a council within the meaning of the Local Government Act 1992;

10

(2) Section 75B (**Ex parte procedure for certain offences**):

From section 75B (1) (c), omit "Local Government Act 1919", insert instead "Local Government Act 1992".

15

(3) Section 100I (**Definitions**):

From the definition of "penalty notice" in section 100I (1), omit the matter relating to the Local Government Act 1919, insert instead:

Local Government Act 1992, section 641;

20

National Parks and Wildlife Act 1974 No. 80

(1) Sections 11, 155:

Omit "Local Government Act 1919" wherever occurring, insert instead "Local Government Act 1992".

(2) Section 69A (**Definitions**):

25

Omit section 69A (3) (c), insert instead:

- (c) to the subdivision of land is a reference to the subdivision of land within the meaning of the Environmental Planning and Assessment Act 1979.

(3) Section 144 (**Exemption from rates**):

30

Omit the section.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(4) Section 155A (**Kosciusko National Park**):

5 From section 155A, omit “by or under the Local Government Act 1919”, insert instead “constituted by the Local Government Act 1992”.

(5) Sections 163A, 163B:

 Omit section 163A, insert instead:

Application of Local Government Act 1992

10 163A. Chapter 6 (What are the regulatory functions of councils?) of the Local Government Act 1992 does not apply to lands reserved or dedicated under this Act.

Application of Environmental Planning and Assessment Act 1979

15 163B. Division 3 (Subdivision) of Part 4 of the Environmental Planning and Assessment Act 1979 does not apply to lands reserved or dedicated under this Act.

(6) Schedule 9A (**Management of State Recreation Areas by Trustees**):

20 From clause 5 (1) (h), omit “the office of member of a council within the meaning of the Local Government Act 1919 or mayor, Lord Mayor or president of an area within the meaning of that Act, and who ceases to hold that office otherwise than in circumstances giving rise to an extraordinary vacancy under section 35 of that Act and otherwise than by reason of the removal of the members of a council under section 86 of that Act”, insert instead “the office of councillor or mayor under the Local Government Act 1992 and who ceases to hold that office otherwise than in circumstances giving rise to a vacancy under section 222 of that Act and otherwise than because of the removal of the councillors of a council under Division 6 of Part 2 of Chapter 8 of that Act”.

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Public Health Act 1991 No. 10

Section 51 (**Registration of mortuaries**):

35 Omit the section.

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued***Public Works Act 1912 No. 45**(1) Section 3 (**Definitions**):

After the definition of “Constructing Authority” in section 3 (1), insert:

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“**Council**” means the council of an area under the Local Government Act 1992;

(2) Parts 9 and 10:

After Part 8, insert:

PART 9—NATIONAL WORKS

10

Declaration of national works

151. (1) The Governor may, by proclamation, declare any road, bridge, ferry, wharf, public reserve or public work of any kind in any area to be a national work.

(2) A national work is, for the purposes of this Act, taken to be an authorised work and the Minister is taken to be the Constructing Authority.

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(3) A work may be a national work whether or not it is a new work or an existing work.

Functions of Minister

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152. (1) The Minister is to maintain, manage and administer national works.

(2) The Minister has, and may exercise and enjoy, the powers and immunities of a council under the Local Government Act 1992 for the purpose of the construction, control, protection, maintenance and management of national works.

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National works may be handed over to councils

153. (1) The Minister, with the agreement of a council, may, by notice published in the Gazette, declare that a national work is handed over, either temporarily or permanently, to a council.

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(2) A work which is handed over to a council is to be maintained, managed and administered by the council and ceases to be a national work while it is so maintained, managed and administered.

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SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued***National works etc. may be handed over to Roads and Traffic Authority**

5 154. (1) The Minister, with the agreement of the Roads and Traffic Authority, may, by notice published in the Gazette, declare that:

- (a) a road, bridge, ferry or tunnel that is a national work;
or
10 (b) any other road, bridge, ferry or tunnel that is maintained, managed and administered by the Minister, is handed over, either temporarily or permanently, to the Roads and Traffic Authority.

15 (2) A road, bridge, ferry or tunnel which is handed over to the Roads and Traffic Authority is to be maintained managed and administered by the Authority and (in the case of a national work) ceases to be a national work while it is so maintained, managed and administered.

20 (3) The Roads and Traffic Authority has, and may exercise and enjoy, the powers and immunities of a council under the Local Government Act 1992 for the purpose of the control, protection, maintenance, and management of any road, bridge, ferry or tunnel maintained, managed and administered by it.

25 (4) The Roads and Traffic Authority, with the agreement of a council, may, by notice published in the Gazette, declare that a road, bridge, ferry or tunnel:

- (a) that is maintained, managed and administered by the Authority pursuant to this section; and
30 (b) that was, immediately before it was handed over to the Authority, a national work,

is handed over, either temporarily or permanently, to a council.

(5) A work which is handed over to a council is to be maintained, managed and administered by the council.

35 **Closure of national works**

155. The Minister may temporarily or permanently close a national work to the public and may dismantle any structure and dispose of its materials.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

Appointment of councils as agents

156. (1) The Minister may appoint a council as the Minister's agent for the care, control and management of a national work.

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(2) The council may act as the Minister's agent even if the national work concerned is partly outside the council's area.

(3) A council acting as the Minister's agent may take legal proceedings in its own name to recover penalties for offences relating to a national work.

10

Regulations

157. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to:

- (a) the construction, control, management, maintenance and protection of national works; and
- (b) the regulation, restriction or suspension of the use by the public of national works; and
- (c) the collection of fees and charges for the use of any national work other than a road or bridge.

15

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

20

Proceedings for offences

158. Proceedings for an offence against a regulation made under this Part are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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PART 10—OTHER MATTERS RELATING TO COUNCILS ETC.

Minister to have certain functions

159. The Minister has, and may exercise and enjoy, the powers and immunities of a council under the Local Government Act 1992, for the following purposes:

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- (a) the construction, control, protection, maintenance and management of roads, bridges, ferries, wharves or public works of any kind in the Western Division;
- (b) the construction, and protection during construction, of any works carried out by the Minister for a council.

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Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

Minister may construct works etc. on behalf of councils

- 5 160. The Minister may, at the request of the Minister for Local Government, erect, construct or carry out for a council, any works necessary or convenient in connection with any works or undertakings that the council might lawfully erect, construct or carry out.

Returned Sailors and Soldiers' Imperial League of Australia (New South Wales Branch) Incorporation Act 1935 No. 39

10 Section 4A:

After section 4, insert:

The Cenotaph

- 15 4A. (1) The League is to be taken to be the guardian of the Cenotaph in Martin Place in the City of Sydney.
- (2) The Sydney City Council is required to appoint, as custodian of the Cenotaph, a person nominated by the League.
- 20 (3) An information or complaint in respect of any offence concerning the Cenotaph may be laid or made by the custodian of the Cenotaph.

Stamp Duties Act 1920 No. 47

Second Schedule—General Exemptions from Stamp Duty under Part 3:

- 25 (a) From paragraph (14), omit "a council, county council or urban committee within the meaning of the Local Government Act 1919", insert instead "a council or county council under the Local Government Act 1992".
- 30 (b) From paragraph (19), omit "a council, county council or urban committee within the meaning of the Local Government Act 1919, as amended", insert instead "a council or county council under the Local Government Act 1992".
- (c) From paragraph (19), omit "or committee" wherever occurring.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (d) From paragraph (19), omit “within the meaning of the Local Government Act 1919, as amended” where secondly occurring, insert instead:

, being:

- (i) the supply of electricity, gas, liquefied petroleum gas or hydraulic power and the supply and installation of associated fittings and appliances; or
- (ii) the operation of a coal mine and the supply and distribution of coal; or
- (iii) the operation of a public transport service; or
- (iv) the supply of building materials.

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)

Section 6 (Statutory and Other Offices Remuneration Tribunal):

From section 6 (3), omit “and the Parliamentary Remuneration Tribunal”, insert instead “, the Parliamentary Remuneration Tribunal and the Local Government Remuneration Tribunal”.

Teacher Housing Authority Act 1975 No. 27

(1) **Section 4 (Definitions):**

From the definition of “council” in section 4, omit “Local Government Act 1919”, insert instead “Local Government Act 1992”.

(2) **Section 37 (Liability of Authority for rates):**

- (a) In section 37 (1) (b), after “rate” where first occurring, insert “(other than an ordinary rate made under the Local Government Act 1992)”.

- (b) Omit section 37 (2) and (3).

Traffic Act 1909 No. 5

Section 18B (Penalty notices for certain offences):

- (a) Omit section 18B (1) (bb), insert instead:

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- 5 (bb) has committed, or by virtue of section 640 of the Local Government Act 1992, is guilty of, any prescribed offence against a provision of that Act in relation to the use (including the parking) of a vehicle;
- (b) From section 18B (2) (b), omit “section 270O or 270R of the Local Government Act 1919”, insert instead “section 640 of the Local Government Act 1992”.

Valuation of Land Act 1916 No. 2

- 10 (1) Sections 7I, 7J, 7K:

After section 7H, insert:

Mine in 2 or more areas

- 15 7I. (1) If a mine is situated partly in one area and partly in another, the mine is to be valued as a whole, and the land value, improved value and assessed annual value are to be apportioned between the areas as the Valuer-General may direct.

(2) Objection may be made under this Act against any such apportionment.

- 20 **Mine under sea**

7J. If any part of a mine is under the sea or under the tidal waters of an estuary or harbour, the part is to be valued with and as part of the mine, even though the overlying land and water are not within the boundaries of any area.

- 25 **Surface of a mine**

7K. If any part of a mine is separately occupied by a person for a purpose other than mining, the part is taken to be distinct from the mine, and is to be valued and rated accordingly.

- 30 (2) Section 48 (**Furnishing valuation lists to authorities**):

- (a) From section 48 (2), omit “six years after a valuation list is first furnished hereunder”, insert instead “4 years”.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (b) After section 48 (2), insert:
 - (3) Despite subsection (2), the Valuer-General may furnish a valuation list for an area within 6 years if the Valuer-General is of the opinion that there has been so little movement in values in the area that a valuation within 4 years is not warranted. 5
- (3) Section 58C (**Definitions**):
 - (a) From the definition of “mixed development land” in section 58C (1), omit “one building”, insert instead “one or more buildings”. 10
 - (b) From section 58C (2), omit “a single building”, insert instead “one or more buildings”.
 - (c) In section 58C (2), after “the building”, insert “or buildings”. 15
 - (d) From section 58C (3), omit “one building” wherever occurring, insert instead “one or more buildings”.
 - (e) In section 58C (3), after “building” where lastly occurring, insert “or buildings”.
- (4) Section 58F: 20
 - Before section 59, insert:

Land rating factors—certain classes of lease from the Crown
 - 58F. (1) This section applies to land (not being land in the Western Division): 25
 - (a) held under an annual lease, occupation licence, preferential occupation licence, permissive occupancy, special lease (not being a special lease in perpetuity) or permit to enclose a road or watercourse granted under the Crown Lands Consolidation Act 1913; 30
 - (b) held under a permissive occupancy or permit to enclose a road granted under the Closer Settlement Acts;
 - (c) held under any lease under the Forestry Act 1916;
 - (d) held under a lease or licence, or permit to enclose a road or watercourse, granted under Part 4 of the Crown Lands Act 1989; 35

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (e) held under a lease granted under the Prickly Pear Act 1987;
- 5 (f) held under a lease under section 6 of the Irrigation Act 1912; or
- (g) owned by or vested in the Crown or any person on behalf of the Crown and which is the subject of a lease of a prescribed class or description.
- 10 (2) The Valuer-General must, when furnishing a general valuation list in which is included a valuation of any land to which this section applies or a supplementary valuation list in which is included a valuation of any such land, furnish:
- (a) a statement of a land rating factor; and
- 15 (b) if the valuation includes a valuation of the improved capital value, an improved rating factor determined in respect of any such land in accordance with subsection (3).
- (3) The rating factor in respect of any land to which this section applies is to be determined as follows:
- 20 (a) in the case of the land rating factor, that factor is an amount equal to the land value of the land to which this section applies reduced in accordance with paragraph (c);
- 25 (b) in the case of the improved rating factor, that factor is an amount equal to the improved capital value of the land to which this section applies reduced in accordance with paragraph (c);
- 30 (c) the amounts referred to in paragraphs (a) and (b) are to be reduced by an amount, as determined by the Valuer-General, that would, had the restrictions on the disposition or manner of use that apply to that land by reason of its being the subject of a lease referred to in subsection (1) applied to the land at the time when the valuation was made or to which it relates, have been
- 35 attributable to those restrictions.
- (4) Any rating factor determined under this section is to be shown on the notice of valuation and objection may be made to a rating factor as if it were a valuation.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(5) Without limiting the generality of subsection (4), an objection may be made by a ratable person (within the meaning of the Local Government Act 1992) on the ground that no rating factor has been determined for the land in respect of which the person is ratable.

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Water Board Act 1987 No. 141

(1) Section 3 (**Definitions**):

From section 3 (2) (d) (i), omit "Local Government Act 1919", insert instead "Environmental Planning and Assessment Act 1979".

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(2) Section 24 (**Definitions**):

Omit the definition of "approval to which this Division applies", insert instead:

"approval to which this Division applies" means:

15

(a) an approval under Part 1 of Chapter 6 of the Local Government Act 1992 for the erection of a building; or

(b) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979;

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(3) Section 40 (**Sale of land for unpaid amounts**):

(a) From section 40 (1) and (2), omit "sections 602–613 of the Local Government Act 1919" wherever occurring, insert instead "Division 5 of Part 2 of Chapter 16 of the Local Government Act 1992".

25

(b) From section 40 (2) (b), omit "town or shire clerk", insert instead "general manager or public officer".

(c) Omit section 40 (2) (c).

(d) From section 40 (2) (d), omit "an officer of a council", insert instead "a member of staff of a council".

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(4) Section 56 (**Council rates**):

Omit the section.

(5) Schedule 3:

From clause 10 in Part 1, omit "Local Government Act 1919", insert instead "Local Government Act 1992".

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Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(6) Schedule 5 (**Provisions relating to the members of the Forum**):

- (a) From clause 1 (1) (a) (i), omit “cities, municipalities and shires”, insert instead “local government areas”.
- 5 (b) Omit clause 1 (1) (a) (ii) insert instead:
 - (ii) is a councillor of a council (within the meaning of the Local Government Act 1992) within the region represented; and
- (c) Omit clause 6 (1) (d), insert instead:
- 10 (d) being a member of the Forum because he or she was chosen by the Minister as a councillor of a council (within the meaning of the Local Government Act 1992), ceases to be a councillor; or

Water Supply Authorities Act 1987 No. 140

15 (1) Section 3 (**Definitions**):

Omit section 3 (2) (d), insert instead:

- (d) the subdivision of land is a reference to subdivision within the meaning of the Environmental Planning and Assessment Act 1979; and

20 (2) Section 24 (**Definitions**):

Omit the definition of “approval to which this Division applies”, insert instead:

“approval to which this Division applies” means:

- 25 (a) an approval under Part 1 of Chapter 6 of the Local Government Act 1992; or
- (b) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979;

(3) Section 27 (**Issue of compliance certificate**):

30 After section 27 (1), insert:

(1A) The Authority, in the exercise of a function under subsection (1) (b), must have regard to the amount and purpose of any payment required to be made by the developer as a condition of an approval to which this

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Division applies.

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

(4) Section 27A:

After section 27, insert:

Payment of amounts under s. 27 by the Crown

27A. (1) If, under section 27, an Authority requires the Crown to pay an amount or enter into an additional works agreement, or both, and the Crown disputes the requirement, the Crown may seek a determination from the Minister for Planning as to whether such a requirement should be made and, if so, in what terms.

(2) The Minister for Planning may make a determination concerning the requirement as if the Minister were the Authority.

(3) The determination of the Minister for Planning is final and is taken to be the determination of the Authority.

(5) Section 40 (**Sale of land for unpaid amounts**):

(a) From section 40 (1) and (2), omit "sections 602–613 of the Local Government Act 1919" wherever occurring, insert instead "Division 5 of Part 2 of Chapter 16 of the Local Government Act 1992".

(b) From section 40 (2) (b), omit "town or shire clerk", insert instead "general manager or public officer".

(c) Omit section 40 (2) (c).

(d) From section 40 (2) (d), omit "an officer of a council", insert instead "a member of staff of a council".

(6) Section 56 (**Council rates**):

Omit the section.

(7) Schedule 4 (**Cobar Water Board**):

Omit clause 6, insert instead:

Catchment district

6. The catchment district for the Board is that proclaimed (or taken to have been proclaimed) under section 125 of the Local Government Act 1992.

(8) Schedule 6, Part 1 (**Land exempt from service charges**):

(a) From paragraph 10, omit "Local Government Act 1919", insert instead "Local Government Act 1992".

Local Government (Consequential Provisions) 1992

SCHEDULE 2—AMENDMENT OF INSTRUMENTS—*continued*

- (b) From paragraph 11 (c), omit “the council of the city, municipality or shire”, insert instead “the council of the local government area”.
- 5 (c) Omit paragraph 14, insert instead:
14. Sports grounds, gardens or children’s playgrounds provided by a council under the Local Government Act 1992.

10 SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 6)

Part 1—Preliminary

Definitions

1. In this Schedule:
- 15 “new Act” means the Local Government Act 1992;
 “old Act” means the Local Government Act 1919.

Regulations—general

2. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act and
- 20 the following Acts:
 Local Government Act 1992;
 Impounding Act 1992;
 Roads Act 1992;
 Traffic (Parking Regulation) Amendment Act 1992.
- 25 (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- 30 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 5

Construction of references to the old Act and its provisions

3. (1) Except as provided by this clause, a reference in any instrument to the old Act (or a provision of the old Act) is to be read as a reference to that instrument of the following instruments (or that provision of such an instrument) that, having regard to the reference and the context in which the reference occurs, most nearly corresponds to the old Act (or the provision of the old Act): 10

- the new Act
- the Environmental Planning and Assessment Act 1979
- the Roads Act 1992 15
- the Traffic Act 1909
- the Impounding Act 1992.

(2) The regulations may provide that a reference in any instrument or a specified instrument to the old Act (or a specified provision of the old Act) is to be read as a reference to another specified instrument (or a specified provision of such an instrument). 20

Part 2—Provisions arising out of this Act

Lodgment and registration of certain plans of subdivision

4. Sections 195B and 195D of the Conveyancing Act 1919, as in force immediately before their amendment by this Act, continue to apply to a plan of subdivision certified in accordance with Part 12 of the old Act before the repeal of that Part as if those sections had not been amended by this Act. 25

Lapsing of development consents

5. Section 99 of the Environmental Planning and Assessment Act 1979, as in force immediately before the date of its amendment by this Act, continues to apply to a development consent granted under the Environmental Planning and Assessment Act 1979 before that date as if it had not been amended by this Act. 30

Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

**Future amendment or repeal of Environmental Planning and
Assessment Regulation 1980**

- 5 6. The amendment made by this Act to the Environmental Planning and Assessment Regulation 1980 does not affect the future amendment or repeal of that Regulation.

Regulations relating to Kosciusko National Park

- 10 7. A regulation made for the purposes of section 155A of the National Parks and Wildlife Act 1974 and in force immediately before the amendment of that section by this Act is taken to be made for the purposes of that section, as amended by this Act.

Period within which the Valuer-General must furnish a valuation list

- 15 8. If a valuation list for an area was last furnished by the Valuer-General 4 or more years before the commencement of the amendment made to section 48 of the Valuation of Land Act 1916 by this Act, the Valuer-General may, in furnishing the first valuation list for the area after that commencement, comply with that section as if it had not been amended by this Act.

- 20 **Part 3—Provisions arising out of Chapter 5 of the new Act
(What are the service functions of councils?)**

Classification of existing public land

- 25 9. (1) This clause applies to all public land within a council's area as at the commencement of Division 1 of Part 2 of Chapter 5 of the new Act (the **relevant commencement**).

(2) On the relevant commencement, the following land that is vested in or under the control of a council is taken to have been classified as community land:

- 30 (a) land comprising a public reserve;
(b) land subject to a trust for a public purpose;
(c) land dedicated as a condition of a development consent under section 94 of the Environmental Planning and Assessment Act 1979;

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

- (d) land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space;
- (e) land controlled by a council that is vested in the corporation constituted by section 8 (1) of the Environmental Planning and Assessment Act 1979. 5
- (3) Within 1 year after the relevant commencement, a council may, by resolution, classify, as community land or operational land, any public land that is vested in it or under its control and that is not classified by subclause (2). 10
- (4) The classification of public land by resolution under subclause (3) may be changed only by a local environmental plan.
- (5) Any public land that may be classified by resolution under subclause (3) and that is not classified within 1 year after the relevant commencement is taken to have been classified as community land. 15

Land to which s. 31 of the new Act applies

- 10. Section 31 of the new Act applies to land whether acquired before or after the commencement of Division 1 of Part 2 of Chapter 5 of the new Act. 20

Preparation of plans of management for community land

- 11. A council must, in accordance with Division 1 of Part 2 of Chapter 5 of the new Act, adopt a plan of management by 1 July 1996 for community land vested in it or under its control.

Water, sewerage and drainage works 25

- 12. The Minister or the Governor may charge a council with the care and management of any water, sewerage and drainage works constructed or commenced by the Minister or Governor before the commencement of Division 3 of Part 2 of Chapter 5 of the new Act, or vest any such works in a council, as if those works had been constructed after that commencement. 30

Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

**Part 4—Provisions arising out of Chapter 6 of the new Act
(What are the regulatory functions of councils?)**

5 Existing approvals

13. An approval given by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Division 1 of Part 1 of Chapter 6 of the new Act, if it is an approval or an approval of a kind that may be given under the new Act, continues in force and is taken to have been given, and may be revoked or modified, under the new Act.

Pending applications for approvals

14. (1) An application for an approval made under the old Act or an ordinance under the old Act to a council, being an application that has not, immediately before the commencement of Division 3 of Part 1 of Chapter 6 of the new Act, been determined by the council, is to be dealt with as if the old Act and any relevant ordinances under the old Act were still in force.

- (2) A person may appeal against a decision made about any such application as if this Act and the new Act were in force.

Notice of applications to erect buildings—validation

15. (1) An approval to erect a building given by a council on or before 12 December 1990 is not invalid merely because written notice of the building application was not given to any one or more affected persons unless a court, in proceedings commenced on or before that date, determines or has determined that the approval is invalid for that reason.

- (2) For the purposes of any such proceedings, the council is taken to have given written notice of the building application to an affected person if it is established that the person knew, or could reasonably be expected to have known, of the existence of the building application within a reasonable time before the council gave its approval to the application.

- (3) An approval to erect a building given by a council after 12 December 1990 but before the commencement of Division 4 of Part 1 of Chapter 6 of the new Act is not invalid merely because written notice of the building application was not given to any one or more affected persons, as long as the notice was given to the persons to whom the

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

notice would have been required to be given had the provisions of that Division (section 112 excepted) been in force when the approval was given.

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(4) In this clause, **affected person** means a person who, when the building application was made, owned land:

(a) that adjoined the land in respect of which the application was made; or

(b) the enjoyment of which might have been detrimentally affected by the erection of a building on the land in respect of which the application was made.

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Draft criteria concerning notice of building applications

16. A council continued in existence by this Schedule must prepare draft criteria concerning the giving of notice of applications to erect buildings to persons in accordance with section 112 of the new Act within 3 months after the commencement of that section.

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Orders

17. An order made by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Part 2 of Chapter 6 of the new Act, if it is an order or an order of a kind that may be given under the new Act, continues in force, and is taken to have been given, and may be revoked, modified or appealed against, under the new Act.

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Catchment districts

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18. A proclaimed Catchment District for the purposes of Part 8 of Ordinance No. 45 made under the old Act is taken to be a catchment district proclaimed under section 125 of the new Act.

Building certificates

19. A building certificate, in relation to the whole or a part of a building, issued by a council under Part 11 of the old Act, and in force immediately before the commencement of Part 4 of Chapter 6 of the new Act, continues in force and is taken to have been issued under the new Act.

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Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

**Part 5—Provisions arising out of Chapter 8 of the new Act
(How are councils established?)**

5 Continuation of existing areas

20. (1) An area constituted as a municipality or shire immediately before the commencement of Division 1 of Part 1 of Chapter 8 of the new Act continues as an area under the new Act and is taken to be constituted under the new Act.

- 10 (2) An area constituted as a city immediately before the commencement of Division 1 of Part 1 of Chapter 8 of the new Act continues as that city and is taken to be constituted under the new Act.

Continuation of existing councils

- 15 21. A council constituted immediately before the commencement of Division 1 of Part 2 of Chapter 8 of the new Act continues as that council and is taken to be constituted under the new Act.

Continuance in office of existing members of councils

- 20 22. A person holding civic office before the commencement of Divisions 2 and 3 of Part 2 of Chapter 8 of the new Act continues in that office for the balance of the person's term of office, subject to the new Act.

References to councils, areas and council members etc.

- 25 23. (1) On and from the commencement of the relevant provision of the new Act, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind:

- (a) to a municipality or a shire—is to be read as a reference to an area under the new Act; or
- 30 (b) to the council of a municipality or shire, or a municipal council or shire council, is to be read as a reference to the council of the area concerned; or
- (c) to a riding of a council is to be read as a reference to a ward of the council; or
- 35 (d) to the President of a council is to be read as a reference to the mayor of the council; or

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

- (e) to an alderman is to be read as a reference to a councillor; or
- (f) to a town clerk or shire clerk of a council is to be read as a reference to the general manager of a council.

5

(2) Without limiting the operation of clause 2, the regulations may contain provisions with respect to the interpretation of references to the old Act or any provision of that Act, councils constituted under that Act or any member or employee of a council.

Election of mayors

10

24. (1) An area whose mayor was, immediately before the commencement of Division 2 of Part 2 of Chapter 8 of the new Act, elected by the electors is, for the purposes of the new Act, taken to be an area for which there is a decision in force under the new Act that the mayor is to be elected by the electors.

15

(2) A decision referred to in this clause has effect, and may be changed by a constitutional referendum, in the same way as if the decision had been made under the new Act.

**Part 6—Provisions arising out of Chapter 9 of the new Act
(How are people elected to civic office?)**

20

Disqualification from civic office

25. The reference in section 264 (1) (d) of the new Act to an offence under an ordinance made for the purposes of section 709 (3) of the new Act includes a reference to an electoral offence within the meaning of the old Act.

25

**Part 7—Provisions arising out of Chapter 10 of the new Act
(How are councils staffed?)**

Definitions

26. In this Part:

“**appointed day**” means the date of commencement of Chapter 10 of the new Act;

30

“**organisation structure**” of a council means its organisation structure determined under Part 1 of Chapter 10 of the new Act.

Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

Time within which organisation structure to be determined

27. (1) A council must determine its organisation structure within 2
5 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

Time within which general manager to be appointed

28. (1) A council must, under section 317 of the new Act, appoint a
10 general manager within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) A council is taken to have complied with this clause if:

15 (a) within 3 years before the appointed day, it appointed a person as general manager (or to a position having functions comparable with those of a general manager under the new Act), being an appointment that, if the new Act had been in force at the time of the appointment, would have complied with the provisions of the new Act; and

20 (b) within 12 months after the appointed day, it confirms that appointment by resolution.

(4) For the purposes of subclause (3) (a), an appointment for a term ending within 5 years after the appointed day is taken to satisfy section 322 (2) of the new Act.

25 **Time within which other senior staff to be appointed**

29. (1) If in the organisation structure of a council determined in accordance with clause 27 there are senior staff positions other than that of the general manager, the council must make appointments to those positions within 2 years after the appointed day.

30 (2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) Any such appointment is to be made in accordance with Chapter 10 of the new Act or this Part.

Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

Who exercises the functions of general manager pending an appointment?

30. Until a council appoints a person to be its general manager, the employee of the council specified by resolution of the council has the functions of the general manager. 5

Employment of former employees as senior staff—advertising requirements

31. (1) This clause applies to the appointment to the general manager's position, or to any other senior staff position in a council's organisation structure, of a person who, immediately before the appointed day, held a position on the staff of the council to which the person was appointed within 3 years before the appointed day and continues to hold the position immediately before the appointment. 10

(2) The Minister may extend the application of this clause to a person or class of persons appointed to a position on the staff of the council 3 years or more before the appointed day.

- (3) The requirements of Part 5 of Chapter 10 of the new Act that relate to advertising do not apply to an appointment to which this clause applies, if the council by resolution declares that: 20

- (a) the position is part of an organisation structure that is not, as far as senior management positions are concerned, substantially different from the structure existing before the appointed day; and
- (b) there has been no substantial change in the duties or responsibilities of the position concerned; and 25
- (c) the person appointed held a similar position at the appointed day under an appointment made on a merit basis.

- (4) Subclause (3) does not apply if the cost to the council of the total remuneration for the position exceeds the remuneration for the position referred to in subclause (3) (c). 30

- (5) For the purposes of subclause (4), total remuneration includes:

- wages
- salary
- superannuation 35
- provision or use of a motor vehicle
- any other benefits provided in relation to the position.

Local Government (Consequential Provisions) 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

(6) This clause ceases to have effect 1 year after the appointed day.

Compensation to redundant staff

5 32. (1) Despite any other Act or law, the council may by resolution terminate the employment of a person identified in the resolution on the ground of redundancy arising from the determination by the council of its organisation structure.

10 (2) The Employment Protection Act 1982 does not apply to a termination of employment to which this clause applies.

(3) On a termination of employment to which this clause applies, the employee is entitled to a termination package consisting of the following:

- Four weeks' notice or 4 weeks' pay in lieu of notice
- 15 • Two weeks' pay per year of service to a maximum of 26 weeks' pay
- Annual leave loading on untaken annual leave.

20 (4) This clause does not affect any person's entitlements under the Annual Holidays Act 1944, the Long Service Leave Act 1955 or any other Act or under any superannuation scheme to which the person belongs.

(5) This clause ceases to have effect 3 years after the appointed day.

No contracting out of Part 2 of Chapter 10 of the new Act

33. The reference in section 322 (4) of the new Act to any contract is a reference to any contract made before, on or after the appointed day.

25 **Recognition of study or training**

30 34. (1) This clause applies to persons who have undertaken, but not completed, any course of study or training prescribed, approved or recognised by ordinance under the old Act as necessary or appropriate for obtaining suitable qualifications to hold an office referred to in Part 6 of the old Act.

(2) On application by a person to whom this clause applies, the Director-General may provide the person with a letter of recognition acknowledging the person's stage of completion of and achievements in the course concerned.

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

(3) This clause ceases to have effect 3 years after the appointed day.

Preparation of equal employment opportunity management plan

35. Each council must prepare its first equal employment opportunity management plan under section 329 of the new Act, and commence its implementation, within 12 months after the commencement of that section.

5

**Part 8—Provisions arising out of Chapter 11 of the new Act
(How do councils operate?)**

10

Adoption of code of meeting practice

36. (1) A council must adopt a code of meeting practice in accordance with Division 1 of Part 2 of Chapter 11 of the new Act within 6 months after the commencement of that Division.

(2) Until the adoption by a council of a code in accordance with this clause, Ordinance No. 1 under the old Act continues to apply to meetings of the council as if it had not been repealed by this Act.

15

Existing delegations

37. Section 362 of the new Act does not apply to a delegation made before the commencement of that section until 12 months after that commencement.

20

Continuation of existing county councils

38. A county council constituted immediately before the commencement of Part 5 of Chapter 11 of the new Act continues as that county council and is taken to be constituted under the new Act.

25

Continuance in office of existing members of county councils

39. A person holding office as a member of a county council before the commencement of Part 5 of Chapter 11 of the new Act continues in that office for the balance of the person's term of office, subject to the new Act.

30

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

**Part 9—Provisions arising out of Chapter 12 of the new Act
(How are councils made accountable for their actions?)**

5 Auditors

40. (1) Any person who was the auditor of a council immediately before the commencement of Division 3 of Part 3 of Chapter 12 of the new Act continues to hold office, subject to the terms of his or her appointment for a maximum period of 3 years following that commencement.

(2) It does not matter that the auditor may not be qualified for an appointment under the new Act.

(3) However, a person does not continue to hold office as auditor if he or she is a disqualified person within the meaning of Part 3 of Chapter 12 of the new Act.

Inquiries and reviews

41. (1) Any investigation being carried out by a person who is a local government inspector under the old Act may continue to be carried out by that person under Part 5 of Chapter 12 of the new Act as if that person were a Departmental representative within the meaning of that Part.

(2) Any surcharge under the old Act is taken to be a surcharge under Part 5 of Chapter 12 of the new Act.

**Part 10—Provisions arising out of Chapter 13 of the new Act
(Honesty and disclosure of interests)**

25 Code of conduct

42. A council must prepare or adopt a code of conduct as required by section 419 of the new Act within 12 months after the commencement of that section.

Returns

30 43. A person need not lodge a return under Chapter 13 of the new Act in a particular year if the person has already lodged a return in that year under Part 4 of the old Act.

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

**Part 11—Provisions arising out of Chapter 14 of the new Act
(How are councils financed?)**

Initial categorisation of land for rating purposes	5
44. (1) Before 1 July 1994, a council must:	
(a) declare, in accordance with Part 3 of Chapter 14 of the new Act, all ratable land in its area to be within one of the categories specified in section 486 of the new Act; and	
(b) give notice to each ratable person of the category so declared for the land for which the person is ratable.	10
(2) A ratable person may request the council to review the categorisation.	
(3) A request for review must be made within 30 days after service of the notice.	15
(4) The council must review a categorisation on receiving a request for review and may, after the review, confirm or change the categorisation.	
(5) The council must give notice to the ratable person of the decision made as a result of the review. The notice may be given in or with the rates and charges notice levying the ordinary rate for the year commencing on 1 July 1994.	20
(6) If the council has not made a decision concerning a request for a review within 30 days after the request is made to it, the council is taken to have decided to confirm the categorisation on the date on which the 30-day period expires.	25
(7) Nothing in subclause (6) prevents the council from making a decision concerning a request for a review after the expiration of the 30-day period.	
(8) A ratable person who is dissatisfied with a decision made by a council as a result of a request for a review may appeal to the Land and Environment Court.	30
(9) An appeal must be made within 30 days after the council's decision.	
(10) Such an appeal is to be heard and disposed of within Class 3 of the Land and Environment Court's jurisdiction.	
(11) Without limiting the jurisdiction of the Land and Environment Court, the Court may, on an appeal, make any decision that could be made by the council on a request for a review.	35

Local Government (Consequential Provisions) 1992

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued***

5 (12) The categorisation of ratable land in accordance with this clause has effect on and from 1 July 1994, subject to Part 3 of Chapter 14 of the new Act.

Regulations—new rating year

10 45. (1) Without limiting clause 2, the Governor may make regulations containing provisions of a savings and transitional nature consequent on the change in the rating year on the commencement of the relevant provisions of the new Act.

(2) Any such regulations may provide for the levying of a rate or charge for a period other than the year specified under the new Act and may adapt the provisions of the new Act for that purpose.

15 (3) Any provision or provisions of any such regulations may, if the regulations so provide, take effect from the date of assent to the new Act or a later day.

(4) Nothing in this clause prevents a regulation that relates to rates or charges or associated matters from being made under clause 2.

20 **Part 12—Provisions arising out of Chapter 16 of the new Act
(Enforcement)**

Exemption from liability—flood liable land and land in coastal zone

46. Section 696 of the new Act applies to advice furnished before the commencement of that section as well as to advice furnished after that commencement.
