

LOCAL GOVERNMENT (AMENDMENT) ACT.

Act No. 11, 1961.

An Act to make further provisions relating to the election of mayors and presidents; to extend councils' powers with respect to the recovery of the cost of repairing extraordinary damage to public roads; for these and other purposes to amend the Local Government Act, 1919, as amended by subsequent Acts, and the Local Government (Regulation of Flats) Act, 1955; and for purposes connected therewith. [Assented to, 18th March, 1961.]

Elizabeth II,
No. 11, 1961

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:—

1. (1) This Act may be cited as the "Local Government (Amendment) Act, 1961".

Short title.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

2. (1) The Principal Act is amended—

(a) (i) by omitting subsections (1A), (1B) and (1C) of section twenty-three and by inserting in lieu thereof the following subsections:—

Amendment
of Act No.
41, 1919.

Sec. 23.

(Composi-
tion of

city and
municipal
councils.)

(1A) On and from the general election next following the commencement of the Local Government (Amendment) Act, 1961—

(a) the Council of the City of Sydney shall be reconstituted and shall consist—

(i) where the Lord Mayor is an alderman of that council by reason only of the provisions of subsection

No. 11, 1961

- subsection two of section 25A of this Act, of the Lord Mayor and twenty other aldermen; or
- (ii) where the Lord Mayor is elected, or deemed to be elected, as an alderman of that council, of the Lord Mayor and nineteen other aldermen;
- (b) the Council of the City of Newcastle shall be reconstituted and shall consist—
- (i) where the Lord Mayor is an alderman of that council by reason only of the provisions of subsection two of section 25A of this Act, of the Lord Mayor and twenty-one other aldermen; or
- (ii) where the Lord Mayor is elected, or deemed to be elected, as an alderman of that council, of the Lord Mayor and twenty other aldermen;
- (c) the Council of the City of Greater Wollongong shall be reconstituted and shall consist—
- (i) where the mayor is an alderman of that council by reason only of the provisions of subsection two of section 25A of this Act, of the mayor and fifteen other aldermen; or
- (ii) where the mayor is elected, or deemed to be elected, as an alderman of that council, of the mayor and fourteen other aldermen;
- (d) each council of a municipality to which section 25A of this Act applied immediately before the commencement of
- of

of the said Act, and applies at such No. 11, 1961
general election shall be reconstituted
and shall consist—

- (i) where the mayor is an alderman of that council by reason only of the provisions of subsection two of the said section 25A—of the mayor and the number of other aldermen for the time being fixed by the Governor pursuant to this Act in respect of that council; or
- (ii) where the mayor is elected, or deemed to be elected, as an alderman of that council—of the mayor and one less than the number of other aldermen for the time being fixed by the Governor pursuant to this Act in respect of that council.

(1B) This subsection shall apply to a municipality to which section 25A of this Act is, after the commencement of the Local Government (Amendment) Act, 1961, applied pursuant to paragraph (b) of subsection one of the said section.

On and from the general election of the council of a municipality to which this subsection applies next following the application of the said section 25A to the said municipality the council shall be reconstituted and shall consist—

- (a) where the mayor is an alderman of that council by reason only of the provisions of subsection two of the said section 25A—of the mayor and the number of other aldermen for the time being fixed by the Governor pursuant to this Act in respect of that council; or
- (b) where the mayor is elected, or deemed to be elected, as an alderman of that council—of the mayor and one less than the
the

(4 **Local Government (Amendment) Act.**

No. 11, 1961

the number of other aldermen for the time being fixed by the Governor pursuant to this Act in respect of that council.

(ii) by inserting in subsection six of the same section after the words "vacant office" where firstly occurring the words "and any person so appointed shall be deemed to have been elected to such office on and from the date of his appointment thereto";

(iii) by inserting at the end of the same section the following new subsection :—

(7) In this section, "general election" means any election referred to in paragraph (b) or (c) of subsection one of section thirty-nine of this Act.

Sec. 24.
(Composi-
tion of
shire
councils.)

(b) (i) by omitting subsection (1A) of section twenty-four and by inserting in lieu thereof the following subsections :—

(1A) On and from the general election next following the commencement of the Local Government (Amendment) Act, 1961, each council of a shire to which section 25A of this Act applied immediately before such commencement shall be reconstituted and shall consist—

(a) where the president is a councillor of that council by reason only of the provisions of subsection two of the said section 25A—of the president and the number of other councillors for the time being fixed by the Governor pursuant to this Act in respect of that council; or

(b) where the president is elected, or deemed to be elected, as a councillor of that council—of the president and one less than the number of other councillors for the time being fixed by the Governor pursuant to this Act in respect of that council.

(1B)

(1B) This subsection shall apply to a shire No. 11, 1961 to which section 25A of this Act is, after the commencement of the Local Government (Amendment) Act, 1961, applied pursuant to paragraph (b) of subsection one of the said section.

On and from the general election of the council of a shire to which this subsection applies next following the application of the said section 25A to the said shire the council shall be reconstituted and shall consist—

- (a) where the president is a councillor of that council by reason only of the provisions of subsection two of the said section 25A—of the president and the number of other councillors for the time being fixed by the Governor pursuant to this Act in respect of that council; or
 - (b) where the president is elected, or deemed to be elected, as a councillor of that council—of the president and one less than the number of other councillors for the time being fixed by the Governor pursuant to this Act in respect of that council.
- (ii) by inserting in subsection six of the same section after the words “vacant office” where firstly occurring the words “and any person so appointed shall be deemed to have been elected to such office on and from the date of his appointment thereto”;
- (iii) by inserting at the end of the same section the following new subsection :—

(7) In this section, “general election” means any election referred to in paragraph (b) or (c) of subsection one of section thirty-nine of this Act.

66 **Local Government (Amendment) Act.**

No. 11, 1961
Sec. 25A.
(Election
of Lord
Mayors,
Mayors and
Presidents
by electors.)

(c) (i) by omitting from subsection two of section 25A the words "triennial ordinary election" wherever occurring and by inserting in lieu thereof the words "general election";

(ii) by omitting from the same subsection the words "and shall be an alderman or councillor, as the case may be, of that area by virtue of his office." and by inserting in lieu thereof the following new paragraphs :—

Where an extraordinary vacancy occurs in the office of mayor or president of an area to which this section applies after any such general election, his successor shall be elected by the electors of that area on the appointed day for the extraordinary election to fill the vacancy.

Any person elected, or deemed to be elected, as mayor or president, as the case may be, of an area to which this section applies, shall, if he is not elected, or deemed to be elected, as an alderman or councillor, as the case may be, of that area, be an alderman or councillor, as the case may be, of that area, by virtue of his office.

In this subsection, "general election" means any election referred to in paragraph (b) or (c) of subsection one of section thirty-nine of this Act.

(iii) by inserting at the end of subsection three of the same section the words "and any person so appointed shall be deemed to have been elected to such office in accordance with the provisions of this section on and from the date of his appointment thereto";

(iv) by inserting at the end of subsection four of the same section the words "and any person so appointed shall be deemed to have been elected to such office in accordance with the provisions of this section on and from the date of his appointment thereto";

(d)

(d) (i) by omitting from subsection two of section thirty-three the words "the Lord Mayor" and by inserting in lieu thereof the words "any Lord Mayor, not elected, or in the case of an uncontested election, not declared elected, as an alderman";

No. 11, 1961
Sec. 33.
(Office of alderman or councillor.)

(ii) by omitting from the same subsection the words "the mayor or president thereof, as the case may be" and by inserting in lieu thereof the words "any mayor or president of that city or any such other area, not elected, or in the case of an uncontested election, not declared elected, as an alderman or councillor, as the case may be";

(e) by omitting paragraph (b) of subsection three of section seventy-one;

Sec. 71.
(Nominations.)

(f) by inserting at the end of subsection four of section eighty-seven the following new paragraph:—

Sec. 87.
(Powers of mayor or president.)

Notwithstanding any other provision of this Act, a mayor or president who is an alderman or councillor, as the case may be, of an area by reason only of the provisions of subsection two of section 25A of this Act shall not, at any meeting of the council, have an original vote but shall, in the case of equality of voting at any such meeting, have a casting vote.

(2) (a) Notwithstanding the amendment made by paragraph (e) of subsection one of this section, the provisions of paragraph (b) of subsection three of section seventy-one of the Principal Act shall continue to apply to and in respect of nominations for election as an alderman or councillor, as the case may be, of an area and nominations for election as Lord Mayor, mayor, or president, as the case may be, of the same area where such elections are to be held on the same day and that day is earlier than the day appointed for the general election of aldermen or councillors, as the case may be, of such area next following the commencement of this Act.

(b)

No. 11, 1961

(b) The amendment made by paragraph (f) of subsection one of this section shall only apply to or in respect of the mayor or president of any area to which section 25A of the Principal Act applies at the commencement of this Act on and from the general election of aldermen or councillors, as the case may be, of such area next following such commencement.

(c) In this subsection, "general election" means any election referred to in paragraph (b) or (c) of subsection one of section thirty-nine of the Principal Act.

3. The Principal Act is further amended—

Further amendment of Act No. 41, 1919.

Sec. 28.
(Travelling expenses.)

(a) by inserting at the end of subsection one of section twenty-eight the following new paragraph:—

(f) to and from the annual regular meeting of the Electricity Supply Association of Australia and to and from any conference of any section of such Association.

Sec. 28A.
(Insurance of members.)

(b) (i) by inserting next after subsection one of section 28A the following new subsection:—

(1A) The council may insure or may itself provide for the insurance of any person who is not the holder of a civic office and who has been elected or appointed as a member of any committee constituted under this Act and as such member is authorised to exercise or perform, or is otherwise authorised under this Act to exercise or perform, otherwise than as a servant, any power, authority, duty or function of the council, against any personal injury, whether fatal or not, arising out of or in the course of his—

(a) attendance at any meeting of any such committee of which he is a member;

(b) travelling to or from any meeting of any such committee of which he is a member;

(c)

- (c) travelling upon inspections within the area, where such inspections are undertaken in compliance with a resolution of the council; and
- (d) travelling upon business of the council outside the area in compliance with a resolution of the council.
- (ii) by omitting from subsection three of the same section the words "its members" and by inserting in lieu thereof the words "any person insured under the provisions of this section";
- (iii) by omitting from the same subsection the word "member" and by inserting in lieu thereof the word "person";
- (iv) by omitting from subsection four of the same section the words "member of the Council" and by inserting in lieu thereof the word "person";
- (c) by omitting from paragraphs (a) and (c) of section fifty-four the words "three months" wherever occurring and by inserting in lieu thereof the word "month"; Sec. 54. (Qualification of an occupier.)
- (d) by inserting in subsection one of section ninety-six after the words "shall not" the words ", except with the permission of the council,"; Sec. 96. (Private work by public officials.)
- (e) by omitting subsection eight of section ninety-nine and by inserting in lieu thereof the following subsection :— Sec. 99. (Inquiry before dismissal of certain servants.)
- (8) For the purposes of any inquiry under this section any person appointed to hold such inquiry shall have the powers, authorities, protections and immunities conferred on a commissioner, and—
- (a) where such person is the only person appointed to hold the inquiry—on a sole commissioner; or
- (b) where such person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry—on a chairman of a commission,
- by

No. 11, 1961

by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of section one hundred and fifty-two of the Justices Act, 1902, as amended by subsequent Acts, shall mutatis mutandis apply to any witness or person summoned by or appearing before such person.

The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, (section thirteen and Division 2 of Part II excepted) shall, mutatis mutandis, apply to and in respect of any such inquiry and to and in respect of any witness or person summoned by or appearing before the person or persons holding any such inquiry.

Sec. 118.
(General
rates in
municipali-
ties and
shires.)

- (f) (i) by inserting in paragraph (a) of subsection three of section one hundred and eighteen after the word "Governor" where firstly occurring the words ", or the council of any such municipality in which there is situated any urban farm land may apply to the Governor,";
- (ii) by inserting in the same paragraph after the word "petition" where secondly and fourthly occurring the words "or application";
- (iii) by inserting in the same paragraph after the words "request in the petition," the words "or with the application, as the case may be,";
- (iv) by inserting in the same paragraph after the word "thereon" the words "and where any such person is appointed regard shall be had to his report before any proclamation under this paragraph is made or published in respect of the area to which the report relates.

Where a council submits an application to the Governor under this paragraph, the council shall cause to be given such public notice of the application as may be prescribed";

(v)

- (v) by omitting from the same paragraph the words "After considering the report of such person the" and by inserting in lieu thereof the word "The";
- (vi) by omitting from subsection four of the same section the words "five acres" and by inserting in lieu thereof the words "two acres";
- (g) by omitting subsection seven of section one hundred and twenty-four and by inserting in lieu thereof the following subsection :—
- Sec. 124.
(Loan rate when money borrowed.)
- (7) Such permission shall operate for such period as may be specified therein, and may be renewed.
- (h) (i) by omitting the heading to section 178A and by inserting in lieu thereof the following heading :—
- Sec. 178A.
(Advances for works applied for by ratepayer.)
- Advances by ratepayers and occupiers.*
- (ii) by inserting in subsection one of the same section after the word "ratepayer" where firstly occurring the words "or the occupier of any land within the council's area";
- (iii) by inserting at the end of the same subsection the words "or the occupier, as the case may be";
- (i) (i) by omitting from subsection one of section 241A the words "repair or drainage" and by inserting in lieu thereof the words "repair, drainage, or cleansing";
- Sec. 241A.
(Private thoroughfare.)
- (ii) by inserting at the end of the same subsection the following new proviso :—
- Provided that where the council, having regard to all the circumstances of the case, is of opinion that such owner or owners ought fairly to be excused from payment of expenses incurred by the council in the cleansing of any such private thoroughfare the council may itself bear the cost of such cleansing.
- (j)

No. 11, 1961
Substituted
sec. 245.

- (j) by omitting section two hundred and forty-five and by inserting in lieu thereof the following section :—

Recovery
of cost of
making good
damage to
roads.

245. (1) Where any damage or injury, not being damage or injury caused by ordinary wear and tear and reasonable use, is caused to—

- (a) any public road; or
- (b) any safety fence, barrier, handrail, pipe, traffic sign, treeguard, seat or other thing or device which has been placed in, upon, under or over a public road for or in connection with the regulation or facilitation of pedestrian or vehicular traffic on such road and which is the property of the council,

there shall be paid to the council the cost incurred by it in making good such damage or injury.

(2) Such cost shall be paid to the council—

- (a) in a case where the damage or injury was caused by the use of a vehicle or vessel, by the owner of the vehicle or vessel at the time of the damage or injury, unless at that time the vehicle or vessel was a stolen vehicle or vessel or was a vehicle or vessel illegally taken or used; or
- (b) in a case where the damage or injury was caused by the use of a vehicle or vessel and the owner of the vehicle or vessel is not liable to pay such cost under paragraph (a) of this subsection, by the driver of such vehicle or the person in charge of such vessel, as the case may be; or
- (c) in any other case, by the person by whom the damage or injury was caused.

(3)

(3) If within fourteen days after service of a No. 11, 1961 notice stating—

(a) the amount of the cost incurred by the council in making good any such damage or injury; and

(b) particulars of such amount and cost,

upon the person liable under subsection two of this section to pay such cost such amount is not paid to the council, the council may recover, in any court of competent jurisdiction, such amount as a debt from the person so liable.

(4) Where the damage or injury is caused to any bridge, causeway, road-ferry or ford over, on or under any water or depression crossing the line of any such public road every portion of such bridge, causeway, road-ferry or ford, including any gate, pier, fender, dolphin, platform, boat or appurtenance incidental to the use or protection of the bridge, causeway, road-ferry or ford shall be deemed to be a public road for the purposes of this section.

(k) by inserting next after section 251A the following ^{New sec.} new section : — _{251B.}

251B. (1) Where any public road or part thereof is enclosed with land traversed or bounded thereby, ^{enclosed} the occupier for the time being of such land shall ^{public} roads. pay to the council rent as provided by this section and comply with any conditions which the council may, by notice in writing served on such occupier, impose with respect to the use by such occupier of such public road or part.

(2) (a) The rent payable by any occupier pursuant to subsection one of this section shall be such amount not being less than two pounds per annum as may from time to time be determined by the council and specified in a notice in writing served on such occupier by the council.

(b)

Local Government (Amendment) Act.

No. 11, 1961

(b) Any such occupier who is dissatisfied with any determination made by the council and notified to him under paragraph (a) of this subsection may, within twenty-one days after service of the notice on him, appeal to the local land board against the council's determination.

(c) The local land board may hear and determine the matter and the rent fixed by the local land board upon such appeal shall be deemed to be the amount determined by the council pursuant to paragraph (a) of this subsection.

(d) The rent payable by any occupier pursuant to this section shall be due as on and from the date of service of the notice under paragraph (a) of this subsection on such occupier and shall be paid by him to the council—

- (i) where an appeal against the determination by the council of the amount of the rent is not made within the prescribed time, upon the expiration of that time; or
- (ii) where an appeal against the determination by the council of the amount of the rent is made within the prescribed time, within seven days after the decision on the appeal is given by the local land board,

and thereafter shall be due and payable yearly in advance upon each anniversary of the date of service of the notice under paragraph (a) of this subsection on such occupier.

(e) Any rent due to the council and not paid to the council in accordance with this section may be recovered as a debt in any court of competent jurisdiction.

(3)

(3) In this section—

No. 11, 1961

“Local land board” means the local land board constituted under the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, or under the Western Lands Act of 1901, as amended by subsequent Acts, for the land district or administrative district, as the case may be, in which the public road, or part of the public road, concerned is situated.

“Occupier” means any person in lawful occupation of any land or, where no person is in lawful occupation of land, the owner thereof.

(4) Nothing in this section shall affect or in any way derogate from the powers of the council under section two hundred and sixty-seven of this Act.

- (1) by inserting at the end of section three hundred and two the following new subsection :—

Sec. 302.
(Boarding-houses, barbers' shops, etc.)

(2) The council may by notice in writing served on the owner of any holiday premises require such owner to comply with such reasonable requirements as to the equipping and furnishing of such premises as the council may specify in such notice.

In this subsection, “holiday premises” means any premises which, during the period of twelve months immediately before any notification with respect to such premises is given under this subsection, have been let together with goods for holiday purposes for a continuous period not exceeding three months on any one occasion.

- (m) by inserting at the end of section three hundred and thirteen the following new paragraphs :—

Sec. 313.
(Subjects for consideration.)

(m) whether the site is or probably will be subject to subsidence;

(n) whether any trees on the site should be preserved.

(n)

No. 11, 1961

Sec. 319.
(Additional provisions re ordinances.)

(n) by inserting in subsection two of section three hundred and nineteen after the word "Australia" the words ", or any standard rules or specifications approved by the Minister and published in the Gazette,";

Sec. 333.
(Subjects for consideration re subdivisions.)

(o) by inserting next after paragraph (k) of subsection one of section three hundred and thirty-three the following word and new paragraph :—

and

(l) whether any trees on the land should be preserved.

Sec. 379.
(Land supplied with water.)

(p) by omitting from paragraph (b) of subsection one of section three hundred and seventy-nine the words "measured in a direction at right angles to such water pipe";

Sec. 472.
(Notice of proclamation to be published—duty of owners and occupiers of private land.)

(q) by omitting from subsection three of section four hundred and seventy-two the words "not exceeding twenty pounds for the first offence and not exceeding fifty pounds for any subsequent offence" and by inserting in lieu thereof the words "not exceeding fifty pounds for the first offence and not exceeding one hundred pounds for any subsequent offence";

Sec. 473.
(Infested land.)

(r) by omitting from subsection five of section four hundred and seventy-three the words "not exceeding twenty pounds for the first offence and not exceeding fifty pounds for any subsequent offence" and by inserting in lieu thereof the words "not exceeding fifty pounds for the first offence and not exceeding one hundred pounds for any subsequent offence";

New sec. 481A.

(s) by inserting next after section four hundred and eighty-one the following new section :—

Clocks visible from public places.

481A. Where the council is satisfied that, by reason of any clock, which is affixed to any structure or building and is visible from a public place, failing to keep correct time or not being in proper working order, inconvenience is caused to the public, the council may require the owner of the structure or building to cover the face of the clock so that the face is not visible from a public place or to put the clock into proper working order.

(t)

- (t) (i) by omitting from subsection one of section five hundred and seven the words "licensed under this Act" and by inserting in lieu thereof the words "who, where the public vehicle is a public motor vehicle, is licensed under the Motor Traffic Act, 1909, as amended by subsequent Acts, to drive such public motor vehicle, or who, where the public vehicle is not a public motor vehicle, is licensed under this Act to drive such public vehicle";
- (ii) by inserting in subsection ten of the same section after the word "license" where secondly occurring the words ", issued under this Act,";
- (iii) by inserting next after subsection thirteen of the same section the following new subsection :—

(14) Where, upon the demand of a servant of the council concerned, who produces an authority in writing in that behalf issued by such council, the driver of a public vehicle upon a public road fails, without reasonable excuse, to produce for inspection by such servant his license to drive such public vehicle issued under this Act, or the Motor Traffic Act, 1909, as amended by subsequent Acts, as the case may be, such driver shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

- (u) by omitting from section five hundred and fourteen the word, symbols and letter "and (e)" and by inserting in lieu thereof the word, symbols and letters ", (e) and (f)";
- (v) by omitting subsection four of section five hundred and eighteen;
- (w)

No. 11, 1961
Sec. 507.
(Public
vehicles.)

Sec. 514.
(Subscrip-
tions.)

Sec. 518.
(Power to
sell or
exchange
property.)

Local Government (Amendment) Act.

No. 11, 1961

Sec. 649.
(Public
inquiries.)

(w) by omitting subsection two of section six hundred and forty-nine and by inserting in lieu thereof the following subsection :—

(2) For the purposes of any inquiry under this section any person appointed to hold such inquiry shall have the powers, authorities, protections and immunities conferred on a commissioner, and—

(a) where such person is the only person appointed to hold the inquiry—on a sole commissioner; or

(b) where such person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry—on a chairman of a commission,

by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of section one hundred and fifty-two of the Justices Act, 1902, as amended by subsequent Acts, shall mutatis mutandis apply to any witness or person summoned by or appearing before such person.

The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, (section thirteen and Division 2 of Part II excepted) shall, mutatis mutandis, apply to and in respect of any such inquiry and to and in respect of any witness or person summoned by or appearing before the person or persons holding any such inquiry.

Amendment
of Act No.
50, 1955.Sec. 4.
(Cases in
which
approval
not to be
given.)**4.** The Local Government (Regulation of Flats) Act, 1955, is amended—

(a) by omitting paragraph (c) of subsection one of section four and by inserting in lieu thereof the following paragraph :—

(c) will, in the opinion of the council, have adequate natural light and air in all habitable rooms.

(b) by omitting subsection two of the same section.

5.

5. (1) The Local Government (Amendment) Act, 1960, No. 11, 1961 is amended—

(a) by omitting from subparagraph (ii) of paragraph (1) of section two the words “the same subsection” and by inserting in lieu thereof the words “subsection (3C) of the same section”;

(b) by omitting from the same subparagraph the symbols, figure and letter “(3A)” and by inserting in lieu thereof the symbols, figure and letter “(3D)”.

Amendment
of Act No.
26, 1960.

Sec. 2.
(Amend-
ment of Act
No. 41,
1919.)

(2) The amendments made by subsection one of this section shall be deemed to have commenced upon the nineteenth day of April, one thousand nine hundred and sixty.
