



New South Wales

Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Local Government Act 1993 No 30	2
4 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
5 Amendment of other Acts	2
Schedules	
1 Amendment of Local Government Act 1993	3
2 Amendment of Environmental Planning and Assessment Act 1979	7
3 Amendment of other Acts	14



New South Wales

Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93

Act No 93, 2001

*An Act to amend the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* so as to transfer provisions relating to certain local government functions from the one to the other; to make consequential amendments to other Acts; and for other purposes. [Assented to 6 December 2001]*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 3.3, and section 5 in its application to that item, commence on the date of assent to this Act.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

4 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 2.

5 Amendment of other Acts

Each Act listed in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Local Government Act 1993

(Section 3)

[1] Section 4 Does this Act bind the Crown?

Omit the following matter from the note to section 4:

- section 71—concerning the use of places of public entertainment

[2] Section 12 What information is publicly available?

Omit the following matter from section 12 (1):

- applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents

[3] Section 12 (1A)

Omit “, or an application under Part 1 of Chapter 7 for approval to erect a building.”.

[4] Section 68 What activities, generally, require the approval of the council?

Omit items 2 and 3 from Part A, and item 4 from Part F, of the Table to the section.

[5] Section 71 Use by the Crown of places of public entertainment

Omit the section.

[6] Section 92 Approval where an accreditation is in force

Omit “, design or temporary structure” wherever occurring.
Insert instead “or design”.

[7] Section 92

Insert “or under the regulations under the *Environmental Planning and Assessment Act 1979*” after “Division 5”.

[8] Section 99 Notice to applicant of determination of application

Omit “71 or” from section 99 (1).

[9] Chapter 7, Part 1, Division 5, heading

Omit “, designs and temporary structures”. Insert instead “**and designs**”.

[10] Sections 120, 121 and 122

Omit “, design or temporary structure” wherever occurring.
Insert instead “or design”.

[11] Section 124 What orders may be given, in what circumstances and to whom?

Omit paragraph (c) from Column 1 of the matter relating to order No 5 in the Table to the section.

[12] Section 626 Failure to obtain approval

Omit “subsection (1), (2) or (3)” from section 626 (4).
Insert instead “subsection (1) or (3)”.

[13] Schedule 6 Regulations

Omit “and temporary structures” from the matter relating to item 8.

[14] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

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

[15] Schedule 8

Insert at the end of the Schedule, with appropriate numbering:

Part Provisions consequent on enactment of Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001

Definitions

In this Part:

amending Act means the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

Order no 5 (c) under section 124

- (1) Any order of the kind referred to in paragraph (c) of item 5 of the Table to section 124:
 - (a) that, immediately before the commencement of this clause, was in force, or
 - (b) that arises from anything continued or completed as referred to in subclause (2),in relation to a building or temporary structure used as a place of public entertainment continues to have effect, and may be enforced, as if the amending Act had not been enacted.
- (2) Anything done under this Act in connection with the making of an order referred to in subclause (1) may be continued and completed as if the amending Act had not been enacted.

[16] Dictionary

Omit the definitions of *drive-in theatre*, *entertainment*, *licensed premises*, *open-air theatre*, *place of public entertainment*, *public entertainment*, *temporary structure* and *theatre or public hall*.

Insert in appropriate order:

licensed premises means premises the subject of a licence under the *Liquor Act 1982* or a certificate of registration under the *Registered Clubs Act 1976*.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

(Section 4)

[1] Section 4 Definitions

Omit the definition of *building* from section 4 (1).

Insert instead in alphabetical order:

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.

place of public entertainment means:

- (a) any theatre or cinema (including a drive-in or open-air theatre or cinema) that is used or intended to be used for the purpose of providing public entertainment, or
- (b) any premises the subject of a licence under the *Liquor Act 1982* or a certificate of registration under the *Registered Clubs Act 1976*, that are used or intended to be used for the purpose of providing entertainment, including public entertainment, but not including amusement provided by means of an approved amusement device (within the meaning of the *Liquor Act 1982*) or poker machine (within the meaning of the *Registered Clubs Act 1976*), or
- (c) any public hall that is used or intended to be used for the purpose of providing public entertainment.

public entertainment means entertainment to which admission may ordinarily be gained by members of the public on payment of money or other consideration:

- (a) whether or not some (but not all) persons are admitted free of charge, and

- (b) whether or not the money or other consideration is demanded:
 - (i) as a charge for a meal or other refreshment before admission is granted, or
 - (ii) as a charge for the entertainment after admission is granted.

temporary structure includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

[2] Section 4 (2) (b) (v)

Omit “and”. Insert instead “or”.

[3] Section 4 (2) (b) (vi)

Insert after section 4 (2) (b) (v):

- (vi) the installation of a domestic oil or solid fuel heating appliance (other than a portable appliance), and

[4] Section 78A Application

Omit “paragraph 1, 2 or 3 of Part A” from section 78A (3).

Insert instead “paragraph 1 of Part A”.

[5] Section 78A (3)

Omit “paragraph 1–6, 8, 9 or 10 of Part F”.

Insert instead “paragraph 1–3, 5, 6, 8, 9 or 10 of Part F”.

[6] Section 78A Note

Omit the matter relating to **Structures or places of public entertainment**.

Insert instead:

Manufactured homes and moveable dwellings

Installing a manufactured home, moveable dwelling or associated structure on land

[7] Section 108 Regulations respecting existing use

Insert at the end of section 108 (1):

- , and
- (d) in the case of an existing use for the purpose of a place of public entertainment, the conditions to which such a use is to be subject.

[8] Section 109 Continuance of and limitations on other lawful uses

Insert after section 109 (3):

- (4) The regulations may make provision for or with respect to the conditions on which the use of a building for the purpose of a place of public entertainment may be continued pursuant to this section.

[9] Section 116GA

Insert after section 116G:

116GA Crown development for public entertainment

- (1) In this section:

Crown development for public entertainment means:

- (a) development (other than exempt development) carried out by the Crown, or
- (b) an activity (within the meaning of Part 5) carried out by the Crown,

that comprises the use of a building as a place of public entertainment.

relevant controls means those provisions of:

- (a) the regulations or an environmental planning instrument, or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by the regulations or an environmental planning instrument,

that are prescribed by the regulations or an environmental planning instrument to be relevant controls for the purposes of this section.

- (2) Crown development for public entertainment cannot be commenced to be carried out unless it is certified by or on behalf of the Crown to comply with all relevant controls in force as at the date on which it commences.
- (3) A Minister, by order in writing, may at any time determine in relation to:
 - (a) Crown development for public entertainment generally, or
 - (b) a specified class of Crown development for public entertainment,that a specified relevant control does not apply, or does apply, but with such exceptions and modifications as may be specified.
- (4) A determination of a Minister applies only to Crown development for public entertainment carried out:
 - (a) by or on behalf of the Minister, or
 - (b) by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.
- (5) A determination of a Minister has effect according to its tenor.

[10] Section 121B What orders may be given by a consent authority?

Insert in appropriate order in Columns 1, 2 and 3 of the Table to section 121B (1):

13A	To take such action as is necessary to bring into compliance with relevant development standards any building that is used as a place of public entertainment	Failure to comply with relevant standards	Owner, occupier or manager
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[11] Section 126 Penalties

Omit section 126 (2). Insert instead:

- (2) A person guilty of an offence against the regulations is, for every such offence, liable to:
- (a) the penalty (not exceeding 1,000 penalty units) expressly imposed by the regulations, or
 - (b) if no such penalty is imposed, to a penalty not exceeding 1,000 penalty units.

[12] Section 127 Proceedings for offences

Insert “or the regulations” after “this Act” in section 127 (7).

[13] Section 127A Penalty notices for certain offences

Insert “or the regulations” after “under this Act” in section 127A (1).

[14] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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

[15] Schedule 6, Part 10

Insert after Part 9:

**Part 10 Local Government and Environmental
Planning and Assessment Amendment
(Transfer of Functions) Act 2001**

38 Definition

In this Part:

amending Act means the *Local Government and
Environmental Planning and Assessment Amendment (Transfer
of Functions) Act 2001*.

39 Pending applications for approvals for places of public entertainment

Any application for an approval under the *Local Government Act 1993*, as in force immediately before the commencement of this clause:

- (a) for use of a building or temporary structure as a place of public entertainment, or
 - (b) for the installation of a temporary structure on land,
- being an application that had been made, but not determined, before the commencement of this clause is to be determined under that Act as if the amending Act had not been enacted.

40 Conditions applying to places of public entertainment

(1) Subject to the regulations under this Act, the conditions applying to the use of a building as a place of public entertainment:

- (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
- (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
- (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
- (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,

continue to apply to the use of a building as a place of public entertainment as if those conditions were contained in regulations under this Act.

(2) The conditions arising from the regulations referred to in subclause (1) (a) are prescribed to be relevant controls for the purposes of section 116GA.

- (3) This clause does not authorise the use of a building as a place of public entertainment if, apart from this clause, the building may not lawfully be used for that purpose under this Act.
- (4) This clause ceases to have effect on 1 July 2003.

41 Conditions applying to installation of temporary structures

- (1) Subject to the regulations under this Act, the conditions applying to the installation of a temporary structure on land:
 - (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
 - (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,continue to apply to the installation of a temporary structure on land as if those conditions were contained in regulations under this Act.
- (2) This clause does not authorise the installation of a temporary structure on land if, apart from this clause, such a structure may not lawfully be installed on the land under this Act.
- (3) This clause ceases to have effect on 1 July 2003.

Schedule 3 Amendment of other Acts

(Section 5)

3.1 Boxing and Wrestling Control Act 1986 No 11

Section 62A Application of Part and definitions

Omit “an approval, in force under Part 1 of Chapter 7 of the Local Government Act 1993,” from paragraph (b) (ii) of the definition of *public entertainment* in section 62A (2).

Insert instead “a development consent in force under the *Environmental Planning and Assessment Act 1979*”.

3.2 Casino Control Act 1992 No 15

Section 90 Casino a place of public entertainment for purposes of Environmental Planning and Assessment Act 1979

Omit “Parts 1 and 2 of Chapter 7 of the *Local Government Act 1993*” from section 90 (1).

Insert instead “the *Environmental Planning and Assessment Act 1979*”.

3.3 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Environmental Planning and Assessment Act 1979, section 127A

3.4 Liquor Act 1982 No 147

[1] Section 4 Definitions

Omit the definitions of *public hall* and *theatre* from section 4 (1).

Insert instead, in alphabetical order:

public hall means a public hall that is used or intended to be used for the purpose of conducting public meetings or providing public entertainment.

theatre means a theatre or cinema that is used or intended to be used for the purpose of providing public entertainment.

[2] Section 54BA Grant of nightclub licence

Omit section 54BA (1) (c). Insert instead:

- (c) a development consent is in force under the *Environmental Planning and Assessment Act 1979* for the use of the premises as a place of public entertainment within the meaning of that Act, and

3.5 Parliamentary Electorates and Elections Act 1912 No 41

Section 151B Exhibition of posters

Omit “an approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*” from section 151B (3) (b).

Insert instead “a development consent in force under the *Environmental Planning and Assessment Act 1979*”.

[Minister's second reading speech made in—
Legislative Assembly on 20 June 2001
Legislative Council on 13 November 2001]

BY AUTHORITY
