Local Government (General Amendment) Bill

NOTES ON THE CLAUSES

The Principal Act amended by the Bill is the *Local Government Act* 1958.

Clause 2. This clause corrects a previous omission by inserting the word "application" in sub-section (4) of section 24. The section originally concerned only matters dealt with elsewhere by petitions or requests. Matters which can be raised under applications were included in 1977 and the amendment now proposed should have been effected then.

Clause 3. This repeals an obsolete provision relating to the enrolment of spouses.

Clause 4. Owners of rateable property whose usual place of residence is outside the municipal district or subdivision where an election is being held are not bound by the compulsory voting regulations. It is now proposed to extend this exemption to occupiers of rateable property whose usual places of residence are outside the municipality or subdivision concerned.

In addition, the clause doubles the present penalties for breaches of the regulations.

Clause 5. The provisions relating to penalties for electoral offences include the obsolete expression "with or without hard labour" and this is to be repealed.

Clause 6. The Local Government Act makes provision for a council to appoint a person to act as municipal clerk if the clerk is absent, incapable of acting or refuses to act. There is no similar provision in the Acts relating to Melbourne and Geelong and it is now proposed that the Local Government Act provisions shall be applied to those cities.

A further provision is also to be added to the Local Government Act to enable the chairman, or in his absence, any two councillors, to make such an appointment if a vacancy occurs between council meetings. Such an appointment will be effective only until the next council meeting.

Clause 7. The expression "or Division 5 of Part IV. of the *Health Act* 1958" in section 166 (3) is to be repealed. Division 5 was repealed in 1968 and re-enacted in a revised form as section 651A of the Local Government Act.

Clauses 8 *and* 9. These clauses concern the portability of the long service leave to which municipal employees are entitled.

When an employé has served with more than one council, his service with his current employer is not taken into account in computing the period of service which entitles him to long service leave or pay in lieu unless (amongst other things) he has been employed by the council for at least three years.

It is now proposed to repeal this requirement for three years' service and to permit the employé to take credit for all service with his current employer.

A similar provision applies if an employer leaves one council and, within two months, enters the service of another. The first council (if the employé has been employed for three years or more) must make an appropriate payment to the new employer for each completed year of service.

10—[201]—1000/14.12.1979—14741/79

It is now proposed in clause 10 that the requirement for three years' service before a council is liable to make a long service leave payment in respect of a former employé shall be repealed. In addition, instead of calculating the payment on the basis of each completed year of service the council must calculate it on the basis of each completed month of service.

Clauses 10 *and* 11. These clauses concern the period of notice of certain proposals which must be given to councillors.

Section 185 of the Principal Act requires notice of intention to propose the revocation or alteration of a resolution adopted at a meeting of the council to be given to each councillor, seven clear days at least before the subsequent meeting. It is now proposed that the period of "seven clear days" shall be reduced to "two clear days".

Section 186 provides for the holding of special meetings and requires two clear days' notice to be given to councillors in the case of a borough and four clear days in the case of a shire. It is now proposed that the period of notice required in the case of a shire shall be reduced from four to two clear days.

Clause 12. The present maximum penalty which may be imposed under a by-law is $100. This amount was fixed in 1970 and is to be increased to $200.

Clause 13. Subject to the consent of the Governor in Council councils may sell any land no longer required for the purpose for which it was acquired. To enable councils to dispose of land to the best advantage it is proposed that, in appropriate cases, councils shall be authorized by the Governor in Council to carry out any works on the land before it is sold. Generally this will involve the subdivision of the land, construction of streets and the provision of services. At present councils may carry out such works only for the purpose of attracting or assisting decentralized industry.

Any such works will be deemed to be permanent works or undertakings for the purpose of borrowing.

Clause 14. Municipal councils may be appointed trustees of cemeteries under the *Cemeteries Act* 1958. This Act requires the accounts of cemeteries to be made up to 31 December in each year and to be transmitted to the Health Commission.

Where a council is the trustee it is preferable that the accounts be made up to the end of the municipal year—30 September—and incorporated in the municipality's annual statement of accounts. As well, the accounts should be audited by the person appointed by the Minister to audit the accounts of the municipality. The amendments proposed provide accordingly.

The Health Commission has been consulted and has no objection.

Clause 15. Section 242 of the Principal Act provides that, when the Governor in Council or the council of a municipality appoints a municipal councillor to represent his council as a trustee of a public trust or as a member of any board or committee for public purposes, the appointment is effective only so long as that person continues to be a councillor. Appointments of councillors under some Acts of Parliament are not subject to any such limitation and it is now proposed that the words "Notwithstanding anything in any Act" shall be inserted at the beginning of section 242 to ensure that the object of the section is achieved.

Clause 16. Makes two amendments to section 246 of the Principal Act. The first of these repeals an obsolete sub-section which provides for payment of expenses incurred by the municipal clerk in supplying information for the compilation of the Legislative Council electoral rolls under the old franchise.

The second amendment concerns sub-section (7) of section 246 which authorizes councils to expend portion of the revenue received from general and extra rates in any year for purposes for which application of the municipal fund is not expressly authorized or prohibited. It is now proposed that when a council incurs expenditure under this provision it shall include in the annual statement of accounts a statement showing the nature and extent of that expenditure.

Clause 17. Section 247 (1) of the Principal Act requires that all council moneys of $40 or more shall be paid into a bank within 72 hours after receipt. It is proposed that the amount of $40 shall be increased to $200.

Clause 18. Some municipal councils also operate water trusts and/or sewerage authorities but banks will not permit such a council to offset a credit for one body against an overdraft for another because each is a separate entity constituted under a separate Act of Parliament.

This clause will permit a council to advance any part of its municipal fund to an authority under the *Water Act* 1958 or the *Sewerage Districts Act* 1958. This will provide a partial answer to this problem.

Clause 19. Section 249 of the Principal Act requires that in subdivided municipalities at least one-half of the net income of the municipality (as defined in the section) shall be apportioned to and expended by the subdivisions in proportion to the amount of general rates received from them.

The keeping of subdivisional accounts has been discouraged by the Local Government Department for many years on the basis that it is outdated and impedes the efficient management and development of a municipality. With the concurrence of the Municipal Association of Victoria it is now proposed that the section shall be repealed.

Clause 20. Properties used exclusively for the purposes of any sub-branch of the R.S.L. were given an unqualified exemption from municipal rates by a recent amendment of the Principal Act. The Air Force Association (Victoria Division) subsequently asked for a similar exemption for the Air Force Memorial Centre in South Yarra.

This is held by trustees and occupied (on the ground floor) by the Air Force Association (Victoria Division) and a Memorial Library and (on the first floor) by the licensed premises of the Air Force Club.

The members of both these organizations include persons who did not serve in the wars and other hostilities specified in section 251 (1) (*e*) (ii) of the Principal Act. (Land used exclusively for the purposes of a club all of whose members served in those wars and hostilities would *not* be rateable.)

The Air Force Association is a company limited by guarantee and the Memorial Centre is its only property. The amendment proposed will provide the exemption requested.

Clause 21. Section 255 (6) of the Principal Act provides for the separate valuation and rating of part of a parcel of land (on which part a building is erected) if that part is occupied or adapted to being occupied separately.

Section 254 (3) provides the method for determining the capital improved value and site value of rateable property which forms part of a larger property. These values bear the same proportion to the C.I.V. and site value of the whole property as the estimated annual value of the part bears to the estimated annual value of the whole.

To avoid confusion between these two provisions it is proposed to insert in section 255 (6) the expression "not being any rateable property referred to in section 254 (3)".

Clause 22. Section 258 of the Principal Act sets out the grounds on which supplementary valuations of rateable property must be made. Paragraph (*a*) of sub-section (3) specifies the supplementary valuations which have effect from the day after the valuation is returned. Paragraph (*b*) provides that when a supplementary valuation is made because of an arithmetical error in the original valuation, the rate payable may be adjusted retrospectively.

Several new grounds on which supplementary valuations may be made have been added to the section in recent years and these should have been specified in paragraph (*a*). The amendment proposed corrects this omission.

Clause 23. Under section 266 of the Principal Act a council, in making a general rate in any year, may fix the minimum amount payable in respect of every rateable property in that year. When a property first becomes rateable during a rating year some councils have followed the practice of requiring payment of the minimum amount even though only a small part of the rating year remained.

The amendment now proposed will require councils, in those circumstances, to charge only so much of the minimum amount as is proportionate to the part of the year for which the property is rateable.

Clause 24. Section 266 (5) and (5A) of the Principal Act provides for the classification of rateable property as farm land and for appeals by owners aggrieved by council decisions. An amendment is proposed to provide for an appeal against a *failure* to classify land and, because the provisions have been much amended, it is proposed that they be completely re-drafted.

Section 266 (6) provides for appeals with respect to the inclusion of properties in the lists of those declared by the valuer to be urban farm land or residential use land. Because it has been much amended it is also to be re-drafted.

Clauses 25 *and* 26. These clauses correct errors made when the *Local Government (Rating Exemptions) Act* 1969 amended sections 267 and 273. The amendment to section 273 should have specified (in the preamble to paragraph (*b*)) the rateable property "within the subdivision or such portion or portions thereof of the municipal district" instead of "the municipal district". Section 276 (3) (*b*) applies to the repealed sub-section 273 (2) and should itself be repealed. Amendments are being made accordingly. The extra rate provisions affected are now rarely used.

Clause 27. Under section 327 (2) of the Prinicpal Act when a rate recovery sale has been arranged and "any person" tenders the amount owing the council may refuse to accept the amount unless expenses incurred in arranging the sale are also paid. The Municipal Association has contended that only the registered proprietor or owner of the land or an agent of those persons should be able to tender the amount owing. An amendment is being made accordingly.

Clause 28. This clause corrects an incorrect reference to a section.

Clause 29. The fee of $3 for a rate certificate (fixed in 1975) is to be increased to $5. This is the amount charged by the Melbourne and Metropolitan Board of Works for a rate certificate.

Clause 30. Municipal Auditors are now appointed by the Minister instead of the Governor in Council. The reference to "Governor in Council" in sub-section 469 (1) is accordingly being changed.

Clause 31. Section 504 requires councils to give preference to Australian goods and, where these are not available to goods from the United Kingdom but the United Kingdom entered the European Common Market in 1973. The provisions for preference to the United Kingdom are accordingly obsolete and are being repealed.

Clause 32. Section 505 (2A) of the Principal Act permits the council of any municipality to contract with any ratepayer for the use of council plant and equipment if the council is of the opinion that it would be uneconomic or impracticable for the ratepayer to employ a private contractor.

It is now proposed that this power should also be exercised by "an officer authorized in that behalf". Decisions as to the use of plant working in a particular area can best be made by someone on the spot. In many cases, plant would have moved from a particular area before the next meeting of council at which a request for the use of the plant could be considered.

Clause 33. Will authorise councils to purchase bulk waste containers and to agree with the owners of blocks of flats and similar buildings for the sale or leasing to them of the containers.

Clause 34. Amends the provisions under which a council may change the name of any street or road. The amendment will require a council to give one month's notice in writing to every occupier of premises in the street or road and to consider any objections before resolving on a change.

Clause 35. The Principal Act at present requires a council to seek permission of the Country Roads Board before consenting to cattle grazing on any portion of a State Highway. This requirement is being extended to Main Roads in conformity with a recent amendment to the Country Roads Act.

Clause 36. Adds to the existing power for councils to plant trees in streets and roads by authorising the use of trees and streets in containers and by enabling councils to permit trees and shrubs to be planted or provided in containers by any person. As well, provision has been made for recreational facilities in streets, where this is practicable.

Clause 37. Provision was recently made for the use of ticket dispensing machines to control parking in streets and roads. Minor discrepancies in the legislation have since been noticed and amendments are proposed to correct these. The amendments will provide for the use of more than two coins in certain circumstances and will make it plain that the designated period for parking in any particular location cannot be exceeded.

Clause 38. The existing provisions under which councils may make garden plots in footways are to be extended to provide also for boxes containing plants growing in pots and also to enable councils to permit any person to provide garden plots or plant boxes in footways.

Clause 39. Provides for a fee of $3 for a certificate showing whether or not a recreational lands contribution has been paid to a council in respect of any land.

Clause 40. Section 573 of the Principal Act provides authority for a council to form, complete or continue a lane through private premises either from one street to another or to form back access to or drainage from any premises.

A right of appeal to an arbitrator appointed under section 569AA (i) of the Principal Act is to be provided for any owner of affected premises who objects to a proposal by a council to exercise these powers.

The arbitrator is to have power to cancel an order made by a council for this purpose or to confirm it.

Clause 41. Provisions were recently added to the Principal Act to enable councils to deal with inappropriate subdivisions. Several suggestions for improvements to the legislation which were subsequently received are now to be adopted. These are as follows:

1. It is considered that the application of the legislation to "any specified subdivision of land the major portion of which is unoccupied" unnecessarily restricts its usefulness. It is therefore proposed that the legislation shall apply to "any specified parcel of land".
2. In lieu of the present criteria on which the Minister of Planning is required to decide whether or not land is an "inappropriate subdivision" it is proposed that the Minister, after receiving a report from the Town and Country Planning Board, shall make his decision "having regard to the size, location and topography of the specified parcel of land, its possible use and any other matter".
3. The most convenient way in which councils can assist in the restructuring of inappropriate subdivisions is to facilitate the consolidation of allotments by lending money to an existing owner to enable him to purchase adjoining land. The amendment proposed will widen councils' power to do this by providing for loans to owners of any land to enable them to purchase adjoining parts of an inappropriate subdivision whether or not council has acquired the land to be purchased.

Clause 42. Will amend the provisions of the Principal Act designed to permit councils to prepare schemes for the drainage of large areas such as a whole catchment. In such schemes it may be necessary to construct or provide pumping stations, drainage retarding basins and like works and specific provision is to be made for such works to be included in a scheme.

A second amendment is necessary because the expression at the beginning of these provisions—"Where in any circumstances other than those referred to in sub-section (1)" has been considered to mean that if any of the drains in a scheme are to be put in easements or reserves such as are specified in sub-section (1)" the provisions designed for catchment drainage schemes are not applicable. The amendment will make it plain that a catchment drainage scheme may be prepared whether or not the drains, or any of them, are to be constructed on or in easements or reserves of the kind specified in sub-section (1).

Clause 43. The word "inflammable" is to be replaced by "flammable" in Victorian legislation generally. It is used in the Principal Act in relation to the power to make Regulations for the storage of petroleum or other inflammable fluids and is now being replaced.

Clause 44. Section 696c of the Principal Act makes it an offence to use land for the storage of old motor vehicles, machinery and like materials without consent of the council. It does not apply, however, to land lawfully used for these purposes when the section came into operation in 1966. Some such storages are established in areas of considerable natural beauty and it is now proposed that councils shall be authorized to require a non-conforming owner to fence his land or screen it with trees.

Provision is also to be made for a maximum penalty of $200 for failure to obtain council consent to a storage or failure to comply with a council order to fence or screen land and, as well, for a continuing penalty of $20 for every day an offence is continued after conviction.

Clause 45. It is at present required that councils shall fix charges for baths and swimming pools by special order. This is to be changed to enable councils to fix charges by a simple resolution.

Clause 46. Weighbridge fees were formerly included amongst the items for which maximum charges were fixed by the Governor in Council under the Market Fees Regulations. They were deleted in 1977 to enable councils to fix their own weighbridge fees without any limit. Subsequently the power of the Governor in Council to fix maximum charges in the Market Fees Regulations was repealed. It is now proposed to restore to the Act the power for councils to fix weighbridge fees in order to provide them with specific authority for this purpose.

Clause 47. The Principal Act provides that when a council establishes a market it is an offence for any person to sell, elsewhere than in the market, any articles or cattle in respect of which tolls or dues may be demanded in the market. This does not apply to sales in the person's own dwelling, shop, place of business or private property.

The maximum penalty of $4 applied in the original Act of 1874 and is now to be increased to $200. However, it will now apply only to sales of cattle.

Clause 48. By-laws imposing charges for entry to places of public resort and recreation provided by a council and regulating the conduct of persons being on those places require the consent of the Governor in Council who may also disallow and annul any such by-law at any time. These powers of the Governor in Council are now to be repealed.

Clause 49. A new provision is to be added to the Principal Act to authorize councils to use the municipal fund or borrow to provide land, buildings or equipment for use by local units of the State Emergency Service with the object of facilitating appropriate action in natural or other disasters or emergencies.

Clause 50. Councils may establish maternity and child welfare centres where amongst other things, parents of children up to six years of age may obtain advice on the physical and mental development of their children and the children may receive dental treatment and physical and mental training.

It is now proposed that the present age limit of six years shall be repealed to enable councils to fix their own limits.

Clauses 51 *and* 52. The general maximum penalty under the Principal Act which applies when no other penalty is imposed was increased to $200 in May 1978. It is now proposed to increase it to $400. A similar increase from $200 to $400 is proposed for the maximum penalty for a breach of the Uniform Building Regulations and, as well, an increase from $50 to $100 in the daily penalty for a breach of the Regulations which continues after a conviction: The present amounts were fixed in 1971.

Clause 53. The final amendment is to be made to the *Melbourne (Widening of Streets) Act* 1940. Land for the widening of Melbourne's "Little" Streets can be acquired under this Act when a building is demolished and cash compensation is then payable to the owner.

The object of the legislation is the provision of two ten feet wide footways in each street and about 30 per cent of the total length of the "Little Streets" has been widened. The average annual cost to the Melbourne City Council in recent years was about $218 000. The council is concerned at the high annual cost to ratepayers and it is proposed that as an alternative to cash compensation the council should be authorized to grant to an owner a bonus plot ratio for the new building to be erected on the balance of his land.

Plot ratio is the ratio between the total floor area of a building and the area of the site of the building. A code adopted by the council provides a base plot ratio which may increase according to circumstances up to a maximum. The bonus factor would be fairly small and would not result in an excess of floor space because the maximum floor space cannot be exceeded.

Some owners have sought bonus plot ratios and the proposed amendment should enable council to reduce its annual outlay on the widening of "Little" Streets without adversely affecting the planning of the Central Business District.

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