

# Local Government (Amendment) Bill 1979

## EXPLANATORY MEMORANDUM

This Bill, which makes general amendments to the *Local Government Act* 1958, was submitted to Parliament at the 1978 spring sitting and held over for further consideration.

It has since been reviewed by a representative Working Party. Two clauses have been omitted, two new clauses have been included and minor changes have been made.

*Clause 2* makes three amendments to the Principal Act. The first of these concerns the allowance which may be granted to the Chairman of a municipality during his term of office. If the amount which can be granted under the conditions of the section is less than \$100, then \$100 may be granted. This amount was fixed in 1944 and is to be increased to \$500.

The second and third amendments complement a provision in the *Constitution (Local Government) Bill* 1979 which permits both a husband and wife to be enrolled on the municipal roll as joint occupiers of their matrimonial home. The present provision, which permits the spouse of a person entitled to be enrolled in respect of the matrimonial home of the couple to apply for enrolment also, is to be repealed. This clause was not included in the original Bill.

*Clause 3* makes provision for the municipal valuer to be represented by some person at the Revision Court. It is not always possible for the valuer to attend personally particularly in the case of a contract valuer or a valuation group.

*Clause 4* will apply to a number of cities named in the Principal Act as municipalities in which the present hour for closing the poll at elections is 8 p.m.

The hour for closing the poll at State Parliamentary elections was recently altered to 6.00 p.m. and councils of several of the named cities have asked that they be permitted to adopt 6.00 p.m. closing. Two metropolitan cities, however, wish to retain 8.00 p.m.

The amendment will accordingly permit the councils of the named cities to fix an hour not earlier than 6.00 p.m. and not later than 8.00 p.m. as the hour for closing the poll.

This clause was not included in the original Bill.

*Clause 5* provides a revised version of Division 2 of Part V. of the Principal Act which deals with municipal examining Boards. These Boards were established at various times to hold examinations of and issue certificates to persons seeking to hold certain statutory offices with municipal councils. These offices are—

Municipal Clerk, Municipal Engineer, Municipal Building Surveyor, Municipal Building Inspector, Municipal Electrical Engineer, Municipal Auditor and Inspector of Municipal Administration.

The principal changes now proposed are—

- (a) to eliminate repetition one set of provisions has been applied to the five Boards including the Auditors' Board which, at present, is dealt with in Part XVI.;
- (b) the provisions for granting certificates without examination to Building Surveyors, Building Inspectors and Electrical Engineers who held office when the relevant legislation came into force are being omitted. The legislation relating to Building Surveyors commenced in 1944, that affecting Electrical Engineers, in 1949 and that dealing with Building Inspectors in 1965;
- (c) the name of the Building Surveyors Board is to be changed to the Building Qualifications Board as suggested by the Building and Development Approvals Committee;
- (d) provision has been made for the removal of Board members from office;
- (e) advice from the Crown Solicitor on the holding by Boards, of inquiries into the conduct, character or ability of certificate holders has been incorporated;
- (f) sub-clause (4) will preserve the validity of certificates issued under previous legislation and sub-clause (5) will insure that existing regulations made by the various Boards continue in operation until repealed or amended.

*Clause 6* will authorize councils to appoint advisory committees of appropriately qualified persons to advise it on any of the functions of the municipality. In this way the participation of ratepayers in municipal affairs can be encouraged.

*Clause 7* will authorize councils to make by-laws for the management of municipal libraries and to regulate the conduct of persons using or being on the premises of a library.

*Clause 8* will amend a section of the Principal Act which enables councils to vary the use of land acquired for a particular purpose. At present objections to any such change of use must be heard by the council but it is now proposed that the task of hearing objections may be delegated to a committee of the council.

*Clause 9* increases from \$200 to \$1000 the minimum amount which, after providing for the chairman's allowance, may be provided for purposes not expressly authorized or prohibited.

*Clause 10* provides for the Minister (instead of the Governor in Council) to appoint auditors to audit the accounts of committees of valuation groups. The Minister already appoints auditors for municipalities.

*Clause 11* will provide new grounds for a supplementary valuation of rateable property where there has been a material change in the value of the property. These grounds are—

- (i) the approval or amendment of a planning scheme or the refusal, revocation or granting of a permit under a planning scheme; and

- (ii) the adoption of or a change in any code or policy or practice of a responsible authority under a planning scheme under which the nature or extent of the permitted use of the property may be determined by the responsible authority.

This is an expanded form of the clause in the original Bill.

*Clause 12* repeals words in section 416 which were inadvertently left in the section when references to debentures were repealed.

*Clause 13* concerns borrowing by mortgage over "income", separate rate or special improvement charge. The expression "on the credit of the municipality" is to be replaced by the expression "a charge on the general rates of the municipality" which is the present-day form of security for ordinary borrowing. The second part of the amendment adopts certain of the provisions (now repealed) relating to borrowing by debentures upon separate rates or special improvement charges. These have always been deemed to apply to borrowing by mortgage over "income", separate rate or special improvement charge.

*Clause 14* provides that the purchase or compulsory taking of land for the purpose of any work or undertaking authorized by any Act shall be a permanent work or undertaking for borrowing purposes.

*Clause 15* concerns the establishment of shopping malls under section 539B of the Principal Act.

The first amendment modifies the requirements of the section for the preparation of a list of owners and occupiers of properties in order to include only those materially affected by the proposal.

The second amendment authorizes the Minister, in the case of a proposal adopted with modifications, to require the council to prepare for submission to the Governor in Council a proposal incorporating the modifications.

The third amendment will authorize a council to improve the amenities of a shopping mall by paving, landscaping or otherwise improving the area in any manner considered appropriate.

The final amendment will ensure that, although a shopping mall is no longer a public highway, the council will retain its rights and obligations with respect to the care and management of the area as though it were a street or road and, further, that for the purposes of any proceedings under the *Road Traffic Act 1958*, the *Motor Car Act 1958* or any regulations thereunder the mall shall be deemed to be a street or road.

*Clause 16* will amend the provisions of the Principal Act which permit the closing of streets to through traffic.

The first amendment will enable a council to close a street to through traffic over part of its width; i.e., "one way" traffic will still be permitted.

The second proposal concerns the service of notices on owners and occupiers of property in the street. In the case of a long street many of the properties may

not be affected by the closure. Accordingly it is proposed that notices shall be given only in respect of properties which, in the opinion of the council, will be affected by the closure.

The final proposal is that a council shall have the same powers to improve and beautify any portion of a closed street not required for traffic as it has in respect of shopping malls.

*Clause 17* increases the penalties which may be imposed on persons abandoning vehicles in streets, roads, parking areas and other places under council control. The maximum release fee is increased from \$10 to \$100 and the daily fee for retaining the vehicle in custody from \$2 to \$4. A maximum penalty of \$200 is also proposed for leaving a vehicle standing in the circumstances described in the section.

*Clause 18* provides firstly that an appeal against an Order determining levels of a street shall be heard by a Local Government Arbitrator instead of a Magistrates' Court.

Secondly it is provided that an arbitrator shall not be bound by the rules of evidence. The same provision applies to Town Planning Appeals Tribunals.

*Clause 19.* Where a person intends to subdivide land into not more than two parts and to dispose of one part to the owner of land which touches on that part he may apply to the council for a declaration that the provisions of the Local Government Act relating to subdivisions shall not apply. It is now proposed that in making his application the person shall give details of the intended disposition of the relevant part. Further the council shall give at least 21 days' notice of the proposal to any water trust or sewerage authority within whose district the land is located. This will enable these authorities to check whether any of their services are located in the area to be severed.

*Clause 20* repeals section 569F, a transitory provision, now exhausted, relating to the sale of allotments in a building subdivision.

*Clause 21* will permit the making of an appeal to an arbitrator against the failure of a council to grant a building permit under section 569G or H. At present an appeal may be made only against a refusal. If after 40 days a permit is neither granted nor refused a refusal will be deemed to arise.

(Section 569G enables a council to require the consolidation of titles to a building site. Section 569H enables a council to require payment of a recreational lands contribution.)

Provision is also being made to repeal the present requirement for notice of intention to appeal to be given before an appeal is made.

*Clause 22* provides for an appeal against failure to seal a plan of subdivision to be made within 60 days after the period of 100 days within which a plan must be sealed or a refusal given. No time limit is prescribed at present.

Further amendments repeal the powers of the arbitrator to adjourn proceedings and award costs which are already provided for elsewhere. The requirement for notice of intention to appeal is also being repealed in this instance.

*Clause 23* will permit councils to include vehicular crossings over footways and channels in private street construction schemes. At present a crossing may be included only with consent of the owner of the abutting land and at his expense.

*Clause 24* provides firstly for the Governor in Council to fix fees to be charged for the hearing by the arbitrator of objections to private street construction schemes. Objections were formerly heard by Magistrates' Courts and there is no provision in the Principal Act for the charging of fees.

The second amendment will permit an arbitrator to amend a notice of objection to a private street construction scheme with the consent of the objector. At present the arbitrator may do so on the application of the objector but this apparently presents difficulty to some objectors and the presentation of their cases can be adversely affected.

*Clause 25* is an editorial amendment to the provisions specifying permissible variations from a private street construction scheme when the work is being carried out.

*Clause 26* provides a means by which any council will be able to deal with an inappropriate subdivision of land in its municipal district. The provisions are aimed at relatively small projects which councils may wish to tackle themselves, and will complement the proposals in the Resubdivision of Land Bill. These provisions will be available if the council obtains a certificate from the Minister for Planning declaring the subdivision to be an inappropriate subdivision for the purposes of the section. The powers available to the council will then include power to—

- (a) purchase or compulsorily take any or all of the land;
- (b) lend to any owners of land in the subdivision any sum required to enable them to purchase adjoining allotments;
- (c) retain all the land acquired for municipal purposes;
- (d) sell all the land;
- (e) resubdivide the land and sell allotments;
- (f) borrow money to acquire land or to lend to owners to enable them to acquire adjoining allotments.

Where practicable owners of land on an inappropriate subdivision must be given an opportunity to purchase land on any new subdivision effected by council.

Where it is necessary for a council to close a street or extinguish any easement or restrictive covenant certain provisions of the *Housing Act 1958* will apply.

A separate account must be kept in the books of the municipality of any transactions under this section and the cost of any land retained for municipal purposes must be charged to the municipal fund.

*Clause 27* will enable councils to take action with respect to the leaving of shopping trolleys in streets, council car parks and public places. This will be an offence with a maximum penalty of \$50. Any trolleys left in these places may be collected and stored by an officer of the council and will be restored to the owner on payment of reasonable costs of collection and storage.

If not claimed within one month a trolley may be disposed of by council.

*Clause 28* comprises two amendments. The first of these will replace the present power conferred on the committee of a joint library service to make by-laws for the management of the library. The new provision is the same as that proposed for municipal libraries by clause 7 of the Bill.

The second amendment provides for the Minister instead of the Governor in Council to appoint auditors to audit the accounts of joint library services.

*Clause 29* will authorize councils to agree with the Minister of Education for the establishment of educational facilities, such as libraries, on lands vested in the municipalities.

*Clause 30* will authorize councils to borrow for the purpose of contributing towards the cost of facilities on school properties which will be available for use by the public as well as pupils of the school.

*Clause 31* provides for fees to be fixed by the Governor in Council for the hearing by the Building Regulations Committee of Appeals under Division 3 of Part 49 (Fire Protection in Existing Buildings).

*Clause 32* repeals certain obsolete Acts.



