



ANALYSIS

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1999, No. 108

An Act to amend the Local Government Act 1974

[9 September 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act (No. 4) 1999, and is part of the Local Government Act 1974 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

2. Term of office—Section 37Z of the principal Act is amended by adding the following subsection:

“(3) A member of the Commission who is in office at the end of his or her term of appointment continues to hold office until—

- “(a) The member is reappointed; or
- “(b) The member’s successor is appointed; or
- “(c) The member is informed in writing by the Minister that he or she is not to be reappointed; or
- “(d) The member resigns his or her office by writing addressed to the Minister.”

3. Provisions relating to sinking funds—(1) Section 122ZR (1) of the principal Act is amended by omitting the words “repays any loan”, and substituting the words “repays in part any loan”.

(2) Section 122ZR (2) of the principal Act is amended by omitting the words “with the consent in writing of the Commissioners for the sinking fund and the creditor, or person acting on behalf of the creditor, of the relevant loan”, and substituting the words “if consent is given in accordance with subsection (2A)”.

(3) Section 122ZR of the principal Act is amended by inserting, after subsection (2), the following subsection:

- “(2A) Consent is given in accordance with this subsection if—
 - “(a) Consent is given in writing; and
 - “(b) Consent is given by the Commissioners of the sinking fund; and
 - “(c) Consent is given by—
 - “(i) The creditor of the relevant loan; or
 - “(ii) Where there are 2 or more creditors of the relevant loan,—
 - “(A) All creditors of the relevant loan; or
 - “(B) Some creditors of the relevant loan, if the sinking fund is sufficient to repay the balance of the loan on maturity in respect of amounts owed to creditors who do not consent.”

4. Annual report—Section 223E (3) (h) of the principal Act is amended by omitting the words “by maturity showing, in respect of each financial year in which term liabilities are repayable, the amounts repayable in that year together with a summary of the interest costs and other expenses incurred in connection with those amounts and arrangements for that year”.

5. Council may require owners of land in certain cases to provide private drains—Section 459 (6) of the principal

Act is amended by omitting the words “pursuant to section 221 of this Act”.

6. Council may make advances to owners—Section 514 (3) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

7. Repayment of advances and purchase money—Section 558 (1) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

8. Definition of local authority trading enterprise—Section 594B (2) of the principal Act is amended by omitting the words “subparagraphs (iii) and (iv) of subsection (1) (a) of this section”, and substituting the expression “subsection (1) (a) (ii)”.

9. Advances by council to land owners to meet emergency expenditure—Section 674 (3) of the principal Act is amended by omitting the words “pursuant to section 221 of this Act”, and substituting the words “by the council”.

10. Prohibition of vehicles and consumption or possession of intoxicating liquor in public place—(1) Section 709A (1) of the principal Act is amended by omitting from paragraphs (b) and (e) the words “or empty liquor containers” in each place where they occur.

(2) Section 709A (7) (c) of the principal Act is amended by omitting the words “or liquor containers”.

(3) Section 709A (8) (b) and (c) of the principal Act is amended by omitting the words “or any empty liquor container” in each place where they occur.

(4) Section 709A (10) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) But subject to subsections (11) and (12), search any—

“(i) Vehicle in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the vehicle contains any liquor:

“(ii) Parcel, package, bag, case, or other container in the possession of any person in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the parcel, package, bag, case, or container contains any liquor.”

(5) Section 709A of the principal Act is amended by repealing subsections (11) and (12), and substituting the following subsections:

“(11) Before exercising the power of search conferred by subsection (10) (c), the constable must inform the person in possession of the vehicle or parcel, package, bag, case, or other container of the provisions of subsection (12), and in any case where the person is in possession of the vehicle or item in the specified public place, give the person a reasonable opportunity of removing the vehicle or item from the specified public place.

“(12) No constable may exercise the power of search conferred by subsection (10) (c) if the person in possession of the vehicle or parcel, package, bag, case, or other container removes it from or, as the case may be, refrains from taking it into the specified public place and leaves it outside the public place until the period of the prohibition ceases.”

(6) Section 709A (13) of the principal Act is amended by omitting the words “other liquor container”, and substituting the words “other container”

11. New sections inserted—The principal Act is amended by inserting, after section 709A, the following sections:

“709B. **Interpretation**—In sections 709C to 709H, unless the context otherwise requires,—

“‘Liquor’ has the same meaning as in the Sale of Liquor Act 1989:

“‘Prohibition’ means a prohibition under section 709C:

“‘Public place’—

“(a) Means a place that is—

“(i) Under the control of a council; and

“(ii) Open to or being used by the public, whether admission is free or on payment of a charge; and

“(b) Includes—

“(i) A road, whether or not the road is under the control of a council; and

- “(ii) One or more parts of a public place:
- “ ‘Specified day’ means any of the following days:
 - “(a) Waitangi Day:
 - “(b) The seventh of February:
 - “(c) A day in the period beginning on Good Friday and ending on the close of the following Easter Monday:
 - “(d) A day in the period comprising the Sovereign’s birthday and the Saturday and Sunday immediately before it:
 - “(e) A day in the period comprising Labour Day and the Saturday and Sunday immediately before it:
 - “(f) The fifth of November:
 - “(g) The sixth of November:
 - “(h) A day in the period beginning on 24 December and ending on the close of 2 January in the following year:
- “ ‘Vehicle’—

- “(a) Has the same meaning as in section 2 of the Land Transport Act 1998; but

- “(b) Does not include an ambulance, fire engine, or police vehicle.

709C. Further power to prohibit vehicles and liquor in public places—(1) A council may exercise the power in subsection (2), if the council—

- “(a) Is satisfied on reasonable grounds that—

- “(i) Liquor will be present in a public place on a specified day; and

- “(ii) The presence of liquor in the public place on the specified day is likely to lead to the commission in the public place of a number of offences against 1 or more of the following sections of the Summary Offences Act 1981:

- “(A) Section 3 (disorderly behaviour):

- “(B) Section 4 (offensive behaviour or language):

- “(C) Section 5A (disorderly assembly):

- “(D) Section 7 (fighting in a public place):

- “(E) Section 9 (common assault); and

- “(b) Has used the special consultative procedure in section 716A.

- “(2) A council may prohibit 1 or more of the following:

- “(a) The use of vehicles in a public place during a specified day:

“(b) The consumption of liquor in a public place during a specified day:

“(c) The bringing of liquor into a public place during a specified day:

“(d) The possession of liquor in a public place during a specified day.

“(3) The power in subsection (2) may be exercised—

“(a) In respect of 1 or more periods of time in a specified day:

“(b) In respect of the whole of a specified day.

“(4) The power in subsection (2) may be exercised in respect of 2 or more specified days, whether consecutive or not.

“(5) A council must not delegate its power in subsection (2) to—

“(a) A committee of the council under section 114Q unless all the members of the committee are members of the council; or

“(b) A member or officer of the council under section 715.

“(6) The power in subsection (2) is in addition to the powers conferred on a council under—

“(a) Sections 319 and 342:

“(b) Regulations made under section 167 of the Land Transport Act 1998.

“709D. Exceptions to prohibition for residents and their visitors—A prohibition does not apply to—

“(a) The use of a vehicle by a person residing in premises on land having a frontage to the public place concerned or by genuine visitors of the person:

“(b) The transport of liquor from premises on land having a frontage to the public place concerned if—

“(i) The liquor is being delivered by a person residing on the premises or by the person’s genuine visitors to a place outside the public place; and

“(ii) The liquor is promptly removed from the public place:

“(c) The transport of liquor from outside the public place concerned if—

“(i) The liquor is being delivered to a person residing on premises having a frontage to the public place or to the person’s genuine visitors; and

“(ii) The liquor is promptly removed from the public place.

“709E. Exceptions to prohibition for licensed premises—A prohibition does not apply to—

“(a) The transport of liquor from premises on land having a frontage to the public place concerned if—

“(i) The liquor has, under the Sale of Liquor Act 1989, been sold on the premises for consumption off the premises; and

“(ii) The liquor is promptly removed from the public place:

“(b) The transport of liquor from outside the public place concerned for delivery to premises on land having a frontage to the public place concerned if—

“(i) The liquor may, under the Sale of Liquor Act 1989, be sold on the premises; and

“(ii) The liquor is promptly removed from the public place.

“709F. **Public notice**—(1) A prohibition has no effect unless public notice of the prohibition is given in accordance with this section.

“(2) Public notice of a prohibition must be given—

“(a) By displaying the notice in the public place concerned on the date it comes into force and before the time it comes into force; and

“(b) In a newspaper circulating in the district concerned on at least 3 occasions during the period of 21 days immediately before—

“(i) The specified day on which the prohibition comes into force; or

“(ii) If the prohibition applies to 2 or more consecutive specified days, the first of the specified days on which the prohibition comes into force.

“(3) However, if it is not practicable to give public notice of a prohibition in accordance with subsection (2) (b) because the decision of the council was made in special circumstances within a short period before the date of the prohibition, the council must—

“(a) Comply with subsection (2) (b) so far as is practicable; and

“(b) Ensure that similar notices are given to the public in whole or in part by such other means as the council, after consultation with the police, considers appropriate.

“(4) A notice required to be given or displayed under subsection (2) or subsection (3) must—

- “(a) State the specified day or days on which the prohibition is in force and the hours of the specified day or days during which the prohibition is in force; and
- “(b) Describe clearly the public place concerned; and
- “(c) State whether or not the use of vehicles is prohibited in the public place concerned and, if it is, state the classes of vehicles (if any) the prohibition does not apply to; and
- “(d) State any prohibitions relating to the consumption of liquor and the bringing or possession of liquor that apply; and
- “(e) State the powers conferred on the police by section 709H; and
- “(f) State the maximum penalty for offences against section 709G.

“709G. **Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who, knowing that a prohibition is in force, contravenes the prohibition.

“709H. **Powers of arrest, search, and seizure**—(1) A member of the police may, without a warrant,—

- “(a) Arrest a person whom the member of the police finds committing an offence against section 709G:
 - “(b) While a prohibition is in force, arrest a person whom the member of the police has reasonable cause to suspect of having committed an offence against section 709G.
- “(2) A member of the police may, without a warrant, search—

- “(a) A vehicle in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709c (2) is in force, for the purpose of ascertaining whether or not the vehicle contains liquor:
- “(b) A container (for example, a parcel, package, bag, or case) in the possession of a person who is in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709c (2) is in force, for the purpose of ascertaining whether or not the container contains liquor.

“(3) Before exercising the power of search in subsection (2), a member of the police must—

“(a) Inform the person in possession of the vehicle or container of the provisions of subsection (4); and

“(b) If the person is in possession of the vehicle or container in the public place, give the person a reasonable opportunity to remove the vehicle or container from the public place.

“(4) A member of the police must not exercise the power of search in subsection (2) if the person in possession of the vehicle or container removes it from, or refrains from taking it into, the public place concerned.

“(5) A member of the police may seize and remove liquor and its container or any other container that the member of the police has reasonable cause to believe would be evidence of the commission of an offence against section 709G.

“(6) Liquor or a container seized under subsection (5) is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of an offence against section 709G.”

12. Schedule 3B amended—(1) Schedule 3B of the principal Act is amended by repealing clause 5, and substituting the following clause:

“5. Provisions dealing with the administration of any existing proposed or operative district plan or regional plan under the Resource Management Act 1991.”

(2) Schedule 3B of the principal Act is amended by repealing clause 21.