

Circular No. 5
October 1999

By-laws Chapter 12

“The transition from by-laws made under the 1934 Act to new by-law and order making powers under the *Local Government Act 1999* will be a staged process from the planned date of commencement of 1 January 2000. To ensure that by-laws which are actively enforced by councils are transitionally preserved for a limited period, councils need to quickly respond to the request for information in this circular.”

Chapter 12 of the *Local Government Act 1999* (“the Act”) sets out the provisions under which councils can make by-laws and orders.

This circular summarises the future legislative setting for by-law making powers and the transitional arrangements for the preservation of some specific by-laws.

By-law Making Provisions

The 1999 Act provides that councils will only be able to make a by-law:

- that is within the contemplation of the 1999 Act (sections 238, 239 and 240), or another Act (for example, the *Local Government Act 1934*, *Harbors and Navigation Act 1993*, *Dog and Cat Management Act 1995*); or
- that relates to a matter in relation to which the making of a by-law is authorised by a regulation made under the 1999 Act (sections 239(1)(g) and 246(1)(b)). At this stage no regulations adding to the powers available under the 1999 Act are proposed for commencement.

On commencement, most of the narrow and archaic by-law making powers in the 1934 Act (refer to Groups A, B and C on the attachment) will be repealed. **If your Council has any specific by laws relying on powers in Group A, immediate action is required – refer overleaf.**

Some by-law making powers and associated provisions are temporarily preserved in the remnant *Local Government Act 1934* pending reviews of regulatory schemes for the functional areas to which those powers relate (refer to Group D on the attachment). Reviews of the powers listed in Group D and any subsequent repeal or replacement with revised provisions in other State Acts will continue throughout 2000, in consultation with Local Government.

Some by-law making powers (Group B) will be repealed by the *Road Traffic (Road Rules) Amendment Act 1999* (planned to come into operation on 1.12.1999). No capacity exists to preserve council by-laws that cease to operate as a result of the repeal of these powers by that Act.

Transitional Arrangements

The *Local Government (Implementation) Bill 1999* (which was introduced into Parliament on 29 September 1999), includes the following transitional provisions:

- the continuation of a by-law made under the 1934 Act if provision is made under the 1999 Act, another Act or by regulation:
 - for the making of a by-law concerning the same or substantially the same subject matter to which the by-law relates; or
 - for the preservation of the by-law.

- the continuation to completion under the 1934 Act of any proceedings to make a by-law if provision is made under the 1999 Act, another Act or by regulation:
 - for the making of a by-law concerning the same or substantially the same subject matter to which the by-law relates; or
 - for the preservation of the by-law.
- the expiry of any by-law (and any subsequent alterations to a by-law) made under the 1934 Act on 1 January following the 7th anniversary of the year on which the by-law is made.

It is proposed to make transitional Regulations to preserve for a limited period, some existing by-law making provisions (Group C), and as a result, the by-laws made pursuant to them.

The preservation of the associated by-laws will allow councils sufficient time in which to develop alternative operational arrangements for these regulatory areas.

Under Chapter 12 councils will have expanded powers to make specified orders that can target particular cases of local nuisance or hazard on private land, when they arise. These powers are designed to replace relevant existing by-law and order making powers. Councils will have at least 6 months from commencement to make this change.

Councils **will not** be able to make any new by-laws under the powers preserved by these transitional regulations after commencement of the 1999 Act, unless proceedings for their making have already commenced.

IMMEDIATE ACTION REQUIRED

If your Council has, or is making, a by-law which relies in whole or in part on any of the powers in Group A, and

- the by-law is actively enforced, and
- there are no equivalent provisions empowering the by-law under the 1999 Act or any other Act

you may want to keep the by-law in force for a transitional period of about 6 months following commencement.

The *Local Government (Implementation) Bill 1999* enables the preservation of a specific by-law by regulation.

Individual councils are therefore invited to advise the Office of Local Government of any specific by-laws in Group A that they wish to be preserved in a Regulation. Please provide the following information:

- copies of the relevant by-law
- the date on which it was made
- if the by-law was identified by the Council as restricting competition, details of when it was or will be reviewed.

Information should be sent to Mr Russell Starr at the Office of Local Government by 5 November 1999 or E-mail to starr.russell@saugov.sa.gov.au. Further information can be obtained from Mr Starr on (08) 8207 0609

Do you have other transitional by-laws issues not covered by this circular or need further information? For advice or assistance in relation to this circular or the new Local Government legislation please contact us at:

Office of Local Government
 Level 1, Riverside Centre, North Tce, Adelaide 5000
 Telephone: (08) 8207 0600
 Freecall (SA Country): 1800 352 224
 Fax: (08) 8207 0679
 Email: localgov@saugov.sa.gov.au
 or visit our Webpage: www.localgovt.sa.gov.au

**Local Government Acts 1999 - In Transition
Circular No 5 (attachment)**

Group A

These by-law making powers in the 1934 Act are repealed by the Local Government (Implementation) Bill 1999 and it is not proposed to make transitional regulations (see Group D) preserving them. The effect will be that, on commencement of the 1999 Act, existing by-laws made under these powers will have no force **unless** there are provisions for making a by-law covering the same or substantially the same subject-matter in the 1999 Act or another Act.

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| <input type="checkbox"/> regulation of specific uses or activities on council property | <input type="checkbox"/> cellars | <input type="checkbox"/> cinematograph pictures in public streets |
| <input type="checkbox"/> storage of gunpowder and other explosive substances | <input type="checkbox"/> places which are in an unwholesome or offensive state | <input type="checkbox"/> throwing any offensive or noxious substance on any footway |
| <input type="checkbox"/> restaurants and fish shops | <input type="checkbox"/> regulation of privies, earth-closets, cesspools and urinals | <input type="checkbox"/> throwing or discharging of handbills or other printed matter in streets |
| <input type="checkbox"/> petrol pumps | <input type="checkbox"/> regulating the disposal of sewage, filth, offal and refuse | <input type="checkbox"/> touting |
| <input type="checkbox"/> street hawkers and street traders | <input type="checkbox"/> infectious or contagious diseases | <input type="checkbox"/> gates across roads |
| <input type="checkbox"/> newsvendors | <input type="checkbox"/> purification of any house or place to minimise risk of disease and injury | <input type="checkbox"/> ladders in public streets |
| <input type="checkbox"/> removal of sewage, or liquid ammonia, or other offensive substances | <input type="checkbox"/> fees payable to medical advisors | <input type="checkbox"/> scaffolding on footways |
| <input type="checkbox"/> burning of offensive substances | <input type="checkbox"/> steam whistles | <input type="checkbox"/> shaking of carpets, rugs or doormats in any street |
| <input type="checkbox"/> chimney-sweeps | <input type="checkbox"/> suppression of smoke caused by factories | <input type="checkbox"/> conserving the banks and bed of any river |
| <input type="checkbox"/> bootblacks | <input type="checkbox"/> cleanliness in public markets, baths and swimming pools | <input type="checkbox"/> removal of sand, shells, or seaweed from any foreshore |
| <input type="checkbox"/> aerodromes | <input type="checkbox"/> removal of waste water | <input type="checkbox"/> bathing |
| <input type="checkbox"/> rubbish tips or the depositing of rubbish on private land | <input type="checkbox"/> destruction of goats | <input type="checkbox"/> public baths |
| <input type="checkbox"/> excavating on private land | <input type="checkbox"/> regulating and securing the entrances of courts and alleys | <input type="checkbox"/> regulation of terminal depots and other motor vehicle facilities |
| <input type="checkbox"/> dipping places for sheep | <input type="checkbox"/> paving, repairing or cleansing of streets and footways | <input type="checkbox"/> regulating evening sales by auction |
| <input type="checkbox"/> dressing of butchers' meat | <input type="checkbox"/> depositing any rubbish or materials or excavating of any street | <input type="checkbox"/> fraudulent device and practice |
| <input type="checkbox"/> pollution of the water supply to fountains | <input type="checkbox"/> playing of music in streets | <input type="checkbox"/> quarrying and blasting operations |
| <input type="checkbox"/> the contamination of any river, stream, well, or fountain by gas | | <input type="checkbox"/> breaking of metal |
| <input type="checkbox"/> wrapping of bread | | <input type="checkbox"/> sale by weight and use of weighbridges |
| <input type="checkbox"/> erection of party walls, external walls, parapets, flues and fireplaces | | <input type="checkbox"/> gas or electricity supply |
| <input type="checkbox"/> deposit and removal of building material on and from streets and footways | | |

Group B

These by-law making powers are repealed by the Road Traffic (Road Rules) Amendment Act 1999 from the commencement of that Act:

Paragraph 7 - Streets, Roads and Footways

- regulating speed of vehicles (other than motor vehicles) and horses along roads and public places (subpara. I)
- regulating horse, cycle, pedestrian and vehicular traffic in roads and public places (subpara IV)
- requiring the weighing of vehicles (subpara. VII)
- regulating processions (subpara. X)
- constructing and regulating traffic on special tracks (subpara. XVI)
- suspending traffic on streets and roads (subpara. XXII)
- regulating the haulage of heavy materials over any road (subpara. XXIII)
- regulating the securing of logs or timber to vehicles (subpara. XXIV)
- determining the weights of loads carried on roads (subpara. XXV)

Group C

These by-law making powers in the 1934 Act are repealed by the Local Government (Implementation) Bill but it is proposed to make transitional regulations preserving these by-law making powers for a limited period. The effect will be that by-laws in existence at the commencement of the 1999 Act which rely on these powers will be preserved for a transitional period of at least 6 months.

Paragraph 2 - Structures

- regulating the flying of flags and the erection of flagpoles (subpara. III)

Paragraph 4 - Nuisances and Health

- regulating garbage bins for household rubbish (subpara. VI)
- regulating the slaughtering of animals (subpara. IX)
- preventing the storage or keeping of bonedust or manure (subpara. XVIII)
- regulating the use of any caravan or other vehicle as a place of habitation (subpara. XXI)
- preventing the keeping or storage of any animal or thing injurious to health, dangerous, offensive or flammable (subpara. XXIII)
- regulating tents or similar structures used for the purpose of habitation (subpara. XXIV)

Paragraph 5 - Animals

- preventing the keeping of animals or birds (subpara. I)
- prohibiting the keeping of bees (subpara. II)

Paragraph 7 - Streets, Roads and Footways

- obstruction of any street, or footway, water-channel, or watercourse in a street (subpara. XV)
- prohibiting the erection of dangerous fences (subpara. XXI)
- regulating fences within six metres of any street or public place (subpara. XXXII)
- regulating the height of fences, hedges and hoardings within six metres of an intersection (subpara. XXXIV)
- regulating verandahs or balconies (subparas. XXXV & XXXVI)
- regulating crossing-places (subpara. XXXVII)
- regulating the effluxion of water onto, into or under any road (subpara. XXXVIII)
- regulating the construction of drains across footways and from roofs (subpara. XXXIX)
- prevention of trees and shrubs overhanging roads or footways (subpara. XLVIII)

Group D

These by-law making powers are not repealed by the Local Government (Implementation) Bill and will be retained for a period in the remnant Local Government Act 1934 (section 667) pending further review:

Paragraph 3 - Uses and Licences

- lodging houses (subpara. XVI)
- licensing and regulation of vehicles and/or their drivers for hire for the conveyance of passengers or goods (usually applied to taxis) (subpara. XX to XLI)
- for the licensing and regulation of porters and their charges, and for appointing any badge or number to be borne by them (subpara. XLII)
- licensing and regulation of bazaars, sale yards and animal markets (subparas. XLVI & XLVII)
- licensing and regulation of premises used for hides and skins (subparas. XLVIII & XLIX)
- regulating the form and conditions of any licence or permit (subpara. LIV)

Paragraph 4 - Nuisances and Health

- for the prevention and suppression of nuisances (commonly used for gas gun and bird scarer by-laws) (subpara. I)
- management of Council cemeteries, crematoria and mortuaries (subpara. XXII)

Paragraph 5 - Animals

- regulating the driving and securing of cattle, sheep or horses (subparas. IV to VII)

Paragraph 7 - Streets, Roads and Footways

- regulating the standing of horses and other animals in streets, roads and public places (subpara II)
- regulation of routes for animals or vehicles of a particular class (subparas. V & VI)
- regulating loading and unloading (subpara. VIII)
- authorizing the erection and maintenance of barriers and other structures (subpara. IX)
- for licensing and regulating parking attendants (subpara. XI)
- prohibiting buses from remaining stationary (subpara. XXVI)
- regulating horse and vehicular traffic (subpara. XLIII)

Paragraph 8 - Council Property

- regulating and fixing of routes to be taken by animals or vehicles of particular kinds (subpara. XII);
- regulating the speed of motor vehicles along foreshores (subpara. XXXII);
- for the general regulation of markets and the maintenance of good order in them (subpara. XLVI);

Paragraph 9 - Miscellaneous

- generally for the good rule and government of the area, and for the convenience, comfort and safety of its inhabitants (subpara. XVI)
- for any purpose in respect of which the council is authorized by this or any other Act to make a by-law (subpara. XVII)
- for fixing penalties not exceeding \$200 for any offence against or breach of any such by-laws, and in the case of a continuing offence for fixing further penalties not exceeding \$50 for every day on which the offence or breach continues (subpara. XVIII)