Western Australia

Local Government (Miscellaneous Provisions) Act 1960

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THE TEXT OF THE LEGISLATION FOLLOWS

Western Australia

Local Government (Miscellaneous Provisions) Act 1960

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Western Australia

Local Government (Miscellaneous Provisions) Act 1960

An Act to deal with certain matters concerning local government.

[Long title inserted by No. 74 of 1995 s. 9.70.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Local Government (Miscellaneous Provisions) Act 1960* [1].

[Section 1 amended by No. 74 of 1995 s. 9.70.]

2. Construction and administration of this Act

The *Local Government Act 1995* applies as if the provisions of this Act were in that Act but in construing the provisions of this Act account is to be taken of the meanings they had before the *Local Government Act 1995* commenced.

[Section 2 inserted by No. 74 of 1995 s. 9.70.]

*[**3.** Repealed by No. 60 of 1981 s. 4.]*

*[**4-6.** Repealed by No. 74 of 1995 s. 9.70.]*

*[**7.** Repealed by No. 27 of 1981 s. 5.]*

*[**8.** Repealed by No. 74 of 1995 s. 9.70.]*

[Part II (s. 9-11) repealed by No. 74 of 1995 s. 9.70.]

*[Part III: s. 12-22, 23-34 repealed by No. 74 of 1995 s. 9.70;
s. 22A repealed by No. 68 of 1980 s. 10.]*

*[Part IV: s. 35-55, 65, 67-154N repealed by No. 74 of 1995 s. 9.70;
s. 56-64 repealed by No. 42 of 1984 s. 8;
s. 66 repealed by No. 99 of 1985 s. 5.]*

[Part V (s. 155, 156) repealed by No. 74 of 1995 s. 9.70.]

*[Part VI: s. 157-168, 170 repealed by No. 74 of 1995 s. 9.70;
s. 169, 169AA, 169A repealed by No. 60 of 1994 s. 4.]*

[Part VIA (s. 170A-170E) repealed by No. 74 of 1995 s. 9.70.]

[Part VIB (s. 170F-170J) repealed by No. 74 of 1995 s. 9.70.]

[Part VII (s. 171-189) repealed by No. 74 of 1995 s. 9.70.]

Part VIII — Private swimming pools

[Heading inserted by No. 74 of 1995 s. 9.70.]

[Division 1: s. 190-206, 208-212, 214-245 repealed by No. 74 of 1995 s. 9.70;
s. 207 repealed by No. 46 of 1976 s. 4;
s. 213 repealed by No. 61 of 1979 s. 3.]

245A. Private swimming pools

(1) In this section —

"authorised person" means a person with appropriate experience or qualifications authorised by the local government for the purposes of this section;

"swimming pool" means a place or premises provided for the purpose of swimming, wading or like activities which the public are not entitled to use.

(2) Local laws may be made under the *Local Government Act 1995* —

(a) for requiring the owner or occupier of land on which there is a swimming pool to install or provide such structures or devices as are prescribed for the protection of the safety of persons who may, with or without the knowledge or consent of the owner, enter upon that land;

(aa) to require the owner or occupier of land on which there is a swimming pool to annually provide the local government with a signed statement that the person has checked such structures or devices as are prescribed for the protection of the safety of persons who may, with or without the knowledge or consent of the owner, enter upon that land;

(b) imposing a penalty not exceeding $5 000 for a breach of any of the local laws so made, with or without provision of a daily penalty not exceeding $250 for each day during which the offence continues.

(3) Regulations under section 9.60 of the *Local Government Act 1995* may deal with a matter specified in subsection (2) as if that matter were specified in Schedule 9.1 to that Act.

(3a) The prescribing of structures or devices referred to in subsection (2)(a) may be by reference to regulations made under Part XV or any code or standard as adopted by or referred to in regulations so made.

[(4) repealed]

(5) Where local laws, or regulations, made under this section require the owner or occupier of land on which there is a swimming pool to install or provide such structures or devices as are prescribed for the protection of the safety of persons who may enter upon the land —

(aa) for the purpose of ascertaining whether that requirement has been complied with, the local government shall cause an authorised person to inspect the land and the swimming pool at least once before 1 July 1992 and periodically thereafter so that a period of not more than 4 years elapses between inspections;

(a) an authorised person may enter upon the land and inspect the land and the swimming pool for the purpose of ascertaining whether that requirement has been complied with;

(b) if an authorised person is of the opinion that, as a result of non-compliance with that requirement, the swimming pool constitutes a danger to the public he may, by notice served on the owner and the occupier of the land, direct that the requirement be complied with within such period as the authorised person considers reasonable in the circumstances and specifies in the notice;

(c) if, at the expiration of the period specified in a notice served pursuant to paragraph (b), neither the owner nor the occupier of the land has complied with the direction contained in the notice, an authorised person may enter

upon the land, with or without assistants, and, subject to subsection (7), take such measures as he considers necessary in order to prevent the swimming pool from being a danger to the public, and the costs of taking those measures may be recovered by the local government from the owner or occupier by action in a court of competent jurisdiction.

(6) An authorised person, or person assisting an authorised person, may enter occupied premises in the exercise of the powers conferred by subsection (5) irrespective of whether or not notice of his intention to do so has been given to the occupier.

(7) The local government may impose limitations and conditions on the measures that may be taken by authorised persons pursuant to subsection 5(c) and an authorised person shall not take any measure that is not in accordance with the conditions and limitations so imposed unless the local government, after receipt and consideration of a report by the authorised person, directs that measure to be taken in the particular case.

(8) A local government may, for a financial year, fix the charge to be imposed on each owner or occupier of land on which there is a swimming pool, to meet the estimated cost in that financial year of carrying out the inspections required by subsection (5)(aa), but the charge fixed —

(a) shall not exceed the estimated average cost of carrying out inspections in that year; and

(b) shall not exceed the maximum charge, if any, prescribed by regulation.

(9) In imposing the charge under subsection (8) a local government may provide for concessions in specified classes of cases.

(10) A local government shall —

(a) cause notice of the charge fixed under subsection (8) to be published in the *Gazette*;

(b) cause to be served upon each person on whom a charge is imposed under subsection (8) notice of the imposition of the charge specifying when the charge is due and payable; and

(c) where local laws or regulations under subsection (2)(aa) require the owner or occupier of land on which there is a swimming pool to provide a signed statement, cause such a person to be given a prescribed form for making the statement.

(11) A local government may recover the amount of a charge imposed under subsection (8) in a court of competent jurisdiction.

(12) Notice of the imposition of a charge as required by subsection (10)(b) may be included in the rate notice required by section 6.41 of the *Local Government Act 1995*.

(13) The penalty for falsely making a statement required under local laws or regulations made under subsection (2)(aa) is the same as if the statement was a statutory declaration.

[Section 245A inserted by No. 107 of 1969 s. 13; amended by No. 66 of 1971 s. 2; No. 65 of 1974 s. 12; No. 97 of 1976 s. 16; No. 57 of 1979 s. 8; No. 39 of 1988 s. 11; No. 100 of 1990 s. 11; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 1 of 1998 s. 29.]

*[**246.** Repealed by No. 74 of 1995 s. 9.70.]*

*[**247.** Repealed by No. 17 of 1984 s. 9.]*

*[**248-256.** Repealed by No. 74 of 1995 s. 9.70.]*

[Division 2 (s. 257, 258) repealed by No. 74 of 1995 s. 9.70.]

[Division 3 (s. 259, 259A) repealed by No. 74 of 1995 s. 9.70.]

[Division 4 (s. 260-262) repealed by No. 74 of 1995 s. 9.70.]

[Division 5 (s. 263, 264) repealed by No. 74 of 1995 s. 9.70.]

[Part IX: s. 265-267, 268-271 repealed by No. 74 of 1995 s. 9.70; s. 267A repealed by No. 99 of 1985 s. 23.]

[Part X (s. 272-277) repealed by No. 74 of 1995 s. 9.70.]

[Part XI (s. 277A, 278-284) repealed by No. 74 of 1995 s. 9.70.]

Part XII — Streets

[Heading inserted by No. 74 of 1995 s. 9.70.]

Division 1 — General

[285-294, 294A. *Repealed by No. 31 of 1997 s. 66(1).]*

295. Provisions of streets in subdivisions under the *Town Planning and Development Act 1928*

(1) Where a person who is the owner of land in a district proposes to subdivide the land into lots for disposal, if the proposal is to include in the subdivision a street or streets for use by the public, he shall not commence to put the proposal into effect until he has notified the local government of the proposal in writing and delivered to the local government with the notification a plan of the subdivision, and received the approval prescribed by the *Town Planning and Development Act 1928* to do so.

(2) A person shall not, without the consent in writing of the Minister for Planning or his delegate under subsection (2a), as the case requires, set out or construct, or cause to be set out or constructed, any street unless the width thereof, to be ascertained by measuring at right angles to the course of the street from front to front of the boundary line on either side of it, is 20 metres, but any way shown on a subdivisional plan duly approved under this or any repealed Act shall be deemed to be lawfully set out and constructed.

(2a) The Minister for Planning may, subject to subsection (2b), by writing signed by him delegate generally to the Western Australian Planning Commission the power to give or withhold consent conferred on him by subsection (2).

(2b) If the Minister for Planning has under subsection (2a) delegated the power referred to in that subsection to the Western Australian Planning Commission and a local government to which a plan of subdivision has been delivered under subsection (1) objects to the exercise by the Western Australian

Planning Commission of that power in relation to the relevant subdivision, the Minister for Planning shall, and the Western Australian Planning Commission shall not, exercise that power in relation to that subdivision.

(2c) In subsections (2), (2a) and (2b) —

"the Minister for Planning" means the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor;

"the Western Australian Planning Commission" means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*.

(3)(a) Where a person so delivers a plan of a subdivision of land in a city, town, or townsite, and the proposed subdivision includes the provision of a street for use by the public, he shall also deliver to the local government —

(i) drawings showing longitudinal and cross sections of the proposed street;

(ii) specifications of the proposed street;

(iii) the name proposed to be given to the street; and

(iv) such other information including information relating to levels, drainage, nature of soil, and physical features, as the local government requires.

(b) The local government may require the person so subdividing the land —

(i) to amend the drawings or specifications or both;

(ii) to assign a name to the proposed street or, if a name has already been assigned, to alter or change that name;

(iii) to assign a name to the area the subject of the proposed subdivision, or if a name has already been assigned, to alter or change that name; and

(iv) to comply with such further conditions as the local government thinks fit to impose in respect of the proposed street.

(c) A person shall not —

(i) assign a name to the area or the street, unless the name is first approved by the Minister for Lands;

(ii) alter or change a name that has been so assigned, whether initially or from time to time, to the area or the street unless the Minister for Lands first approves of the alteration or change of that name.

(ca) A person who contravenes the provisions of paragraph (c) commits an offence and is liable to a penalty not exceeding $100 and in the case of a continuing offence to a further penalty not exceeding $10 for each day during which the offence continues.

(d) Where a person is aggrieved by any requirement of the local government made under paragraph (b), he may apply to the State Administrative Tribunal for a review of the requirement.

(3a) For the purposes of this section the Minister may from time to time by notice published in the *Gazette* —

(a) fix minimum standards of construction with respect to streets to be constructed pursuant to this section within the district or districts, or part or parts thereof, specified in the notice for the purpose; and

(b) vary or revoke any notice published pursuant to this subsection.

(3b) Any notice published pursuant to subsection (3a) may set out particulars relating to the width, kerbing, thickness, surfacing and foundation of streets, and the materials to be used in the construction thereof.

(3c) Without limiting the powers conferred on a local government by subsection (3)(b), where —

(a) a person delivers drawings and specifications of a proposed street to a local government pursuant to paragraph (a) of that subsection; and

(b) the proposed street, if constructed in accordance with those plans and specifications, would not satisfy the minimum standards for the time being fixed by the Minister pursuant to subsections (3a) and (3b) applicable to the proposed street,

the local government shall, pursuant to subsection (3)(b), require the person to so amend the drawings or specifications, or both, as to cause the proposed street to satisfy those minimum standards.

(4)(a) Where proposals for the subdivision of land in a district include the provision of streets for use by the public, and the proposals have been approved, on or after 11 February 1933, whether under this or another Act, the owner of the land shall not, unless under paragraph (b) or (c), dispose of the land, or part of it, or an estate or interest in it, except to an authority which under an Act has power to take or resume it, until he has caused those streets to be constructed and drained to the satisfaction of the local government.

(b) Notwithstanding that he has not caused those streets or some of them to be so constructed and drained, the owner of the land may, with the consent of the Governor, dispose of the land as one piece, with the exception of such, if any, of the parts of it, or estates or interests in it, as have been dedicated to public use, or have been disposed of to, or acquired by, an authority, which under an Act has power to take or resume it, and the Governor may grant his consent —

(i) if of opinion that the owner is, for a good reason unable to carry out the proposals;

(ii) if satisfied that the owner has not disposed of part of the land or an estate or interest in it, except as already mentioned in this paragraph; and

(iii) if satisfied that the consent is sought in good faith and not for the purpose of evading or avoiding the prohibition imposed by paragraph (a).

(c) Notwithstanding that he has not caused all of those streets to be so constructed or drained, if he has caused one or more of them to be so constructed and drained, and there is access from the latter to lots in the subdivision as approved, the owner of the land may, with the consent of the local government, dispose of those lots having that access, but the local government shall not refuse its consent arbitrarily or capriciously, nor where drawings and specifications submitted with the proposals for the subdivision have been approved, if the streets constructed have been constructed and drained substantially in accordance with those drawings and specifications.

(d) A person may apply to the State Administrative Tribunal for a review of the refusal of a local government to grant a consent mentioned in paragraph (c).

(4a) A person to whom the land is disposed of under subsection (4)(b) and any person who subsequently acquires the land, is subject to the provisions of that subsection, as though he were the owner referred to therein and shall comply therewith, in so far as those provisions have not been complied with, and has the right conferred by subsection (4)(d) to apply for a review.

(5) Where a plan of the subdivision is deposited in the Department within the meaning of the *Transfer of Land Act 1893* and approved by any officer appointed to approve it then as from the date of that approval, any land delineated and shown on the plan as a new street shall become dedicated as a street and thereupon the local government has the care, control and management of it; but no way not exceeding 6 metres in width shall be

dedicated or be deemed to have become dedicated as a street by virtue of this subsection.

(6)(a) Where a person who is subdividing land is by the provisions of this Part required to construct and drain streets shown in the plan of subdivision he may —

(i) carry out or cause to be carried out the construction and drainage at his own cost and expense; or

(ii) arrange for the local government to carry out the work on his behalf and at his cost and expense.

(b) Where the person does not make the arrangement with the local government, he shall pay to it, on demand, an amount to cover the reasonable costs of the local government in supervising the construction and drainage which amount shall be reckoned as follows:

(i) where the person has not engaged a consulting engineer and clerk of works to design and supervise the construction and drainage the amount shall be 3% of the cost of the construction and drainage as estimated by the local government;

(ii) where the person has employed a consulting engineer and clerk of works to design and supervise the construction and drainage the amount shall be 1½% of the cost of the construction and drainage as estimated by the local government.

(c) The local government may require the person to employ a consulting engineer and clerk of works to design and supervise the construction and drainage and that person shall, when required to do so by the local government, carry out the requirement.

[Section 295 amended by No. 68 of 1963 s. 15; No. 96 of 1966 s. 9; No. 32 of 1967 s. 16; No. 83 of 1969 s. 11; No. 94 of 1972 s. 6; No. 65 of 1974 s. 15; No. 26 of 1986 s. 13; No. 84 of 1994 s. 46; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(2); No. 57 of 1997 s. 83(1); No. 55 of 2004 s. 661.]

Division 2 — Private streets

*[**296, 297.** Repealed by No. 74 of 1995 s. 9.70.]*

*[**297A.** Repealed by No. 31 of 1997 s. 67(1).]*

*[**297B.** Repealed by No. 74 of 1995 s. 9.70.]*

[Division 3 (s. 298, 299) repealed by No. 74 of 1995 s. 9.70.]

[Division 4 (s. 300-315) repealed by No. 74 of 1995 s. 9.70.]

[Division 5: s. 316-328 repealed by No. 74 of 1995 s. 9.70; s. 329 repealed by No. 60 of 1981 s. 18(1).]

[Division 6 (s. 330-345) repealed by No. 74 of 1995 s. 9.70.]

[Division 7 (s. 346-353) repealed by No. 74 of 1995 s. 9.70.]

[Division 8 (s. 354-360) repealed by No. 74 of 1995 s. 9.70.]

Division 9 — New street alignments

[Heading amended by No. 90 of 1964 s. 26.]

*[**361-363.** Repealed by No. 74 of 1995 s. 9.70.]*

364. Power to prescribe new street alignments

(1) A local law made under the *Local Government Act 1995* may prescribe a new street alignment for a street or part of a street for the purpose of extending the width of the street or part of the street to the new street alignment.

(2) Where the local government by local law so prescribes a new street alignment, it shall immediately the local law is no longer liable to be disallowed by Parliament, cause written notice of the new street alignment to be served on the owners of land affected thereby and cause notice of the local law to be served on the Registrar of Titles and Registrar of Deeds.

(3)(a) In this subsection **"building operation"** means constructing, building, placing, reconstructing, rebuilding, replacing, extending, enlarging, adding to or otherwise altering or repairing, a building or work or portion of a building or work, but does not include any such building operation that is carried out with the permission of a local government on any land acquired by that local government for or in relation to the provision of, or widening of, a street.

(b) Except with the approval mentioned in paragraph (c), a person shall not in relation to any land, building or work affected by the new street alignment, commence to carry out a building operation upon the land, except for the purpose of completing a building operation already commenced at the time of the prescribing of the new street alignment.

(c) The building surveyor, subject to directions which the local government may give, may approve the execution of minor but not substantial repairs, in order to permit of the reasonable preservation of an existing building or work.

(4) The Governor may, by order specify any street or part thereof in any district to which the provisions of subsection (5) apply.

(5)(a) This subsection applies to any street or part thereof specified in an order made pursuant to subsection (4).

(b) Land that is affected by the new street alignment and which lies between that alignment and the old street alignment is, subject to rights, if any, reserved to the previous owners of the land at the time it was acquired by the local government, by virtue of this subsection —

(i) dedicated to use as part of the street so specified; and

(ii) revested in the Crown under section 55 of the *Land Administration Act 1997*,

if the land —

(iii) has no buildings thereon on the date the new street alignment is prescribed; or

(iv) is on or after that date cleared of buildings and other obstructions.

(6) Notwithstanding land is dedicated and revested as provided in subsection (5), the local government may, subject to rights, if any, reserved to the previous owners of the land at the time it was acquired by the local government, lease that land or a portion of it to the owner of the land upon which it abuts as if the land or the portion had been acquired by the local government.

(7) The local government shall pay compensation to the owner of the land, portion of which is dedicated and revested under subsection (5), but the compensation payable by the local government is limited to the amount by which the remainder of the land is depreciated in value by the portion being so dedicated and revested.

(8) If a question arises as to the amount of the compensation or the day on which the buildings, works, and other obstructions, have been cleared from the land, the question is determinable only on a reference to arbitration.

(9) Immediately land has been revested under subsection (5), the local government shall cause written notice of the revesting to be served —

on the Registrar of Titles, if the land is subject to the provisions of the *Transfer of Land Act 1893*; or

on the Registrar of Deeds if the land is not subject to the provisions of that Act;

and the Registrar of Titles or the Registrar of Deeds, as the case may be, shall record the revesting in appropriate manner.

(10) In this section the term **"building"** does not include a fence.

(11) When the provisions of subsection (5) do not apply to a street or portion thereof, with respect to land that is affected by the new

street alignment and which lies between that alignment and the old street alignment the following provisions apply —

(a) the land remains under the control of the owner thereof unless and until the local government purchases or otherwise acquires the land or the land is acquired under Part 9 of the *Land Administration Act 1997*, for the purpose of widening the street;

(b) no compensation or purchase money may be claimed or is payable in respect of the land until the land is so acquired or purchased.

[Section 364 inserted by No. 90 of 1964 s. 27; amended by No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 31 of 1997 s. 142; No. 24 of 2000 s. 23.]

[Part XIII (s. 365-370) repealed by No. 74 of 1995 s. 9.70.]

[Part XIV (s. 371, 372) repealed by No. 74 of 1995 s. 9.70.]

Part XV — Buildings

Division 1 — Application of this Part

373. Application of this Part

(1) Subject to subsections (2), (3) and (3a) the provisions of this Part apply throughout each district in the State.

(2) The Governor may, by Order —

(a) declare that all or any of the provisions of this Part do not apply to the whole or any part or parts of any district or districts; and

(b) vary or revoke any Order made under paragraph (a).

(3) The provisions of this Part shall not apply to buildings owned or occupied by, or under the control or management of the Crown in right of the State, or a department, agency, or instrumentality of the Crown in right of the State.

(3a) This Part does not apply to a park home or an annexe, as those terms are defined in the *Caravan Parks and Camping Grounds Act 1995*.

(4) Subject to subsections (2), (3) and (3a), the provisions of this Part, including any local laws, regulations or other subsidiary legislation apply to a building notwithstanding that its roof or covering has been removed or has fallen in, that the building has not been completed, or, having been completed part of the building has wholly or in part been demolished, removed, or become ruinous or that the building is a building of a type that has not a roof or covering.

[Section 373 inserted by No. 74 of 1973 s. 3; amended by No. 39 of 1988 s. 11; No. 34 of 1995 s. 33; No. 74 of 1995 s. 9.70.]

Division 2 — Submission of plans, installation of electricity for lighting, depositing of materials, protective hoardings

374. Plans of buildings to be approved by local government

(1) No person shall —

(a) lay out for building, or commence or proceed with a building on, land in a district; or

(b) in respect of the structure of a building already erected on land in a district, amend, alter, extend, or enlarge, or commence or proceed with the amendment, alteration, extension, or enlargement of the structure of the building,

until he has caused to be submitted to the local government, and the local government has approved by the issue to the person of a building licence in the prescribed form and on payment of the prescribed fee, a copy of the specifications of, and a plan showing clearly, the building or the buildings proposed to be built, or the amendment, alteration, extension, or enlargement proposed to be made, as the case may be, and the area of land to be occupied by each building, or by the amendment, alteration, extension or enlargement of the existing buildings, as the case may be, and the position of the privies and drains and unless he complies with the conditions, if any, that are specified in the licence.

Penalty: Maximum penalty of $5 000 and in addition a maximum daily penalty of $100 for each day during which the offence continues; minimum penalty of $200 and in addition a minimum daily penalty of $20 for each day during which the offence continues.

(1a) A building licence referred to in subsection (1) may be issued subject to such conditions as are specified in it including any condition limiting the time within which the licence is valid.

(1b) The authority to approve or refuse to approve plans and specifications submitted under this section may be delegated by

a local government to a person appointed to the office of building surveyor, but where a plan and specifications so submitted conform to —

(a) all local laws in force in the relevant district or part of a district in respect of building matters, and the local government's pre-determined policy in respect of building matters; and

(b) all local laws and schemes in force in the relevant district or part of a district in respect of town and regional planning matters, and the local government's pre-determined policy in respect of town and regional planning matters,

the building surveyor shall not refuse to approve that plan or those specifications without first obtaining the consent of the local government.

(1ba) The local government may vary or revoke a delegation made under subsection (1b).

(1c) A delegation under subsection (1b) does not prevent the exercise of a power or the performance of a function by the local government.

(1d) A power or function delegated by the local government and exercised or performed by the delegate shall be taken to have been exercised by the local government.

(2)(a) A person who is dissatisfied with the refusal of the local government to approve the plan and specifications may apply to the State Administrative Tribunal for a review of the refusal.

(b) For the purpose of enabling effect to be given to an order it makes upon an application under paragraph (a), the State Administrative Tribunal may, where in its opinion the circumstances of a particular case warrant its so doing, order that any provision of a local law made by a local government under this Part or of a regulation made under this Part does not apply in that particular case or shall apply as modified by the

order in that particular case and thereupon that order has effect according to its tenor, notwithstanding any provision to the contrary in, or in force under, this Act.

(2a) Where a person has in accordance with subsection (1), caused to be submitted to the local government, a copy of the specifications and a plan of the kind therein referred to, if the local government has not, within 35 days, or in the case to which subsection (6) applies 60 days, of the specifications and plan being so submitted to it, advised the person whether or not it has approved the specifications and plan, the person may serve on the chief executive officer a written notice requiring the local government within 14 days of the service of the notice, to notify him of the approval or otherwise of the specifications and plan.

(2b) If within 14 days after the notice referred to in subsection (2a) has been served on him, the chief executive officer fails to notify the person that the local government has or has not approved of the specifications and plan, the local government shall be deemed to have refused to approve them.

(3) A person who, having contravened any of the provisions of subsection (1), occupies or uses or permits a person to occupy or use a building or part of a building before the plans and specifications mentioned in that subsection relating to the building or to an amendment, alteration, extension or enlargement of the building, have been approved by the local government, commits an offence.

Penalty: Maximum penalty, $400 and in addition a maximum daily penalty of $16 for each day during which the offence continues.

[(4) repealed]

(5) Without prejudice to the operation of section 411, if a person without the prior approval in writing of the building surveyor, does or causes to be done any work in connection with the construction, amendment, alteration, extension or enlargement

of a building not in conformity with the specifications and plans relating thereto and which have been approved by the local government under this section, the person commits an offence.

Penalty: $5 000.

(6) In the case of land to which the *Heritage of Western Australia Act 1990* applies, this section and the operation of any licence issued under this section is subject to the requirements of section 78 of that Act.

[Section 374 amended by No. 68 of 1963 s. 19; No. 90 of 1964 s. 28; No. 113 of 1965 s. 4(1); No. 35 of 1969 s. 2; No. 81 of 1972 s. 8 and 20; No. 74 of 1973 s. 4; No. 105 of 1973 s. 13; No. 65 of 1974 s. 17; No. 57 of 1979 s. 12; No. 39 of 1988 s. 11; No. 97 of 1990 s. 7; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 10 of 1998 s. 46(1); No. 55 of 2004 s. 662.]

374A. Demolition licences

(1) No person shall commence to take down a building or part of a building until he has submitted to the local government an application in prescribed form and the local government has approved the application and issued a licence for the work.

(2) Subject to subsection (2a), the local government shall not refuse an application made under subsection (1), but may include in the licence issued by it for the work, such conditions as it considers necessary for the safe and proper execution of the work.

(2a) Where the *Heritage of Western Australia Act 1990* applies to any land —

(a) if the land is subject to —

(i) an Order under Part 6 of that Act; or

(ii) an Order in Council made under section 80 of that Act,

the local government shall refuse an application made under subsection (1); and

(b) in any other case, the local government shall, in accordance with section 11 and section 78 of that Act, refer the application to the Heritage Council and have regard to any advice furnished by the Heritage Council.

(3) Except where the condition was by reason of the operation of section 78(4) of the *Heritage of Western Australia Act 1990* imposed so as to be consistent with conditions imposed under that Act in relation to a related or similar matter that affects all or part of the same land, any person who is dissatisfied with the conditions included by a local government in a licence issued under this section may apply to the State Administrative Tribunal for a review of the decision of the local government as to the conditions of the licence.

[Section 374A inserted by No. 83 of 1969 s. 14; amended by No. 97 of 1990 s. 8; No. 14 of 1996 s. 4; No. 55 of 2004 s. 663.]

374AA. Local government not to issue licence under section 374 or 374A unless levy due on work is paid

A local government shall not issue to a person a building licence under section 374 or a licence under section 374A to take down a building or part of a building unless satisfied that the person —

(a) has paid the levy imposed in respect of the work under the *Building and Construction Industry Training Levy Act 1990*; or

(b) is not liable to pay a levy referred to in paragraph (a) in respect of the work.

[Section 374AA inserted by No. 76 of 1990 s. 33; amended by No. 14 of 1996 s. 4.]

374AAA. Local government not to issue building licence unless home indemnity insurance held

A local government shall not issue to a person a building licence under section 374 unless satisfied that —

(a) a policy of insurance is in force in respect of the work under Division 2 of Part 3A of the *Home Building Contracts Act 1991*;

(b) corresponding cover, as defined in section 25A of that Act, is provided in respect of the work; or

(c) the policy of insurance referred to in paragraph (a) or the cover referred to in paragraph (b) is not required in respect of the work.

[Section 374AAA inserted by No. 72 of 1996 s. 7; amended by No. 10 of 1998 s. 46(2); No. 37 of 2002 s. 21.]

374B. Performance of building work in emergency

(1) Where by reason of an emergency endangering any person, building or structure any building work must be performed without approval as required by this Act, it shall, notwithstanding any other provision of this Act, be lawful to perform the building work subject to the condition that as soon as practicable after its commencement written notice of the building work is served upon the local government.

(2) If the condition referred to in subsection (1) is not complied with the owner of the land on which the building work is performed shall be guilty of an offence and liable to a penalty not exceeding $5 000.

[Section 374B inserted by No. 74 of 1973 s. 5; amended by No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

374C. Classification of buildings

(1) A building erected after the commencement of the *Local Government Act Amendment Act (No. 3) 1973* shall have a classification determined in accordance with the local laws.

(2) The local government may assign to any building erected before the commencement of the *Local Government Act Amendment Act (No. 3) 1973* a classification that conforms with the local laws.

(3) Where the local government assigns a classification under subsection (2), the local government shall give notice in writing

to the owner of the building to which the classification has been assigned, of the classification assigned to the building.

(4) A classification shall not be assigned to a building erected before the commencement of the *Local Government Act Amendment Act (No. 3) 1973* if as a result of the classification being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

(5) The owner of a building shall not use the building, or permit it to be used, otherwise than for purposes appropriate to its classification (if any).

Penalty: $5 000 and in addition a daily penalty of $100 for each day during which the offence continues.

(6) If as a result of any building work, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of this Act for a building of that classification, the local government may refuse to approve the building work.

[Section 374C inserted by No. 74 of 1973 s. 6; amended by No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

375. Notice to be given before commencing to build or alter a building

(1) No person shall commence to build, take down, amend, alter, extend, enlarge, add to, or repair a building, or in connection with doing any of those things commence to make an excavation, or to do anything by which a street, way or other public place in a district may be obstructed or rendered dangerous or inconvenient to persons passing over or near it, unless he has given 3 days' previous notice in writing to the local government of his intention to commence the building or work or do the thing, and has put up a proper hoarding or fence, to the satisfaction of the local government or the building surveyor of the local government, as a protection to those

persons, and also a platform and handrail to serve as a footway for those persons, if required to do so by the local government or building surveyor, in such place and in such manner as the local government or the building surveyor directs.

Penalty: Maximum penalty, $5 000 and in addition a maximum daily penalty of $100 for each day during which the offence continues.

(2) Where in a city, town, or townsite, a person intends to take down a building in the course of demolishing or removing it, under such circumstances that a notice under subsection (1) is not required, or intends to remove the building without taking it down, he shall before commencing the demolition or removal give to the local government 7 days' notice of his intention to do so.

[Section 375 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

376. Local government may compel installation of electricity where available

(1) Where a building used or intended to be used for the purpose of human habitation is within 100 metres of an electricity main supplying electric current capable of being used for lighting purposes, and electricity supply from the main is available from the supply authority, the local government may, if requested by an occupier of the building or a part of it, cause written notice to be served on the owner of the building requiring him within 105 days to install in, and equip, the building with proper wiring and apparatus so that lighting by electricity will, upon the wiring and apparatus being connected to the electricity main, become available in all of the rooms or other parts of the building which rooms or parts in the opinion of the local government are being or are likely to be used for the purpose of habitation.

(2) A person who does not comply with the requirements of the notice commits an offence.

Penalty: $5 000 and in addition a penalty not exceeding $100 for each day the offence continues.

[Section 376 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 94 of 1972 s. 4; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

377. No materials to be deposited on streets without licence

(1) No person shall deposit stones, bricks, lime, rubbish, timber, iron, or other materials on a street, way, or other public place, nor make an excavation on land abutting or adjoining a street, way, or other public place, unless authorised to do so by an Act or unless he has first obtained from the local government in whose district the street, way, public place, or land is situated a licence in writing for that purpose, nor unless, in the case of an excavation he has securely fenced off the place where it is to be made from the street, way, or other public place, nor unless he complies with the conditions, if any, of the licence.

Penalty: Maximum penalty, $5 000 and in addition a maximum daily penalty of $100 for each day during which the offence continues.

(2) The local government shall state in the licence the purpose for which and the conditions upon which it is granted, and may grant the licence subject to the condition that the licensee shall erect, for the safety and convenience of the public, such hoardings or fences at such places, and of such form, character, and dimensions as the local government or building surveyor thinks fit.

(3) The local government may fix, charge, and recover the fees to be paid for the licence.

(4) The local government may, before granting the licence, require the applicant to deposit with the local government a sum sufficient in the opinion of the building surveyor to cover the cost of repairing damage caused by the licensee to the street, footpath or kerb, to be retained by the local government until the

damage, if any, is made good by the licensee, and if the work of repair is not done within such time as the local government thinks reasonable, the local government may do the work and deduct the cost from the deposit, or if the deposit is insufficient to meet the cost apply the deposit in part payment of the cost, and recover the balance in a court of competent jurisdiction.

(5) If the local government refuses to grant the licence or in granting the licence imposes conditions, a person dissatisfied with the refusal or the conditions may apply to the State Administrative Tribunal for a review of the decision with which the person is dissatisfied.

(6) A person who so erects a hoarding or fence shall keep and maintain it with the platform and handrail, if any, standing and in good condition, to the satisfaction of the local government, during such time as the local government thinks necessary for the public safety and convenience.

Penalty: Maximum penalty, $5 000 and in addition a maximum daily penalty of $100 for each day during which the offence continues.

(7) A person erecting, or causing to be erected, a hoarding, fence, or other obstruction in a street, way, or other public place, or in connection with an excavation —

(a) shall cause it to be well and sufficiently lighted every night from sunset to sunrise to prevent mishaps; and

(b) shall remove it and if he has made an excavation shall fill in the excavation and shall repair damage he has done to the street, footpath, or kerb, within a reasonable time after being required in writing to do so by the local government.

Penalty: Maximum penalty, $5 000 and in addition a maximum daily penalty of $100 for each day during which the offence continues.

[Section 377 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 57 of 1997 s. 83(2); No. 55 of 2004 s. 664.]

Division 3 — Removal of hoardings and filling of excavations

378. Hoardings erected and materials deposited otherwise than as permitted by licence may be removed and sold

(1) If a person —

(a) erects or sets up in or on a street, way, or other public place in a district, a hoarding, fence, or scaffold, or an enclosure;

(b) makes an excavation on land abutting or adjoining a street, way, or other public place except where the excavation is securely fenced off from the street, way, or other public place;

(c) deposits stone, bricks, lime, rubbish, timber, iron, or other materials in or on a street, way, or other public place —

(i) without a licence from the local government; or

(ii) having obtained a licence does so otherwise than in accordance with the licence,

or permits any of those things to remain beyond the time stated in the licence; or

(d) fails to keep a hoarding, fence, platform, or handrail in good repair,

the local government may cause the excavation to be filled in, and the local government may order the amount of the expenses of doing so to be paid by the person and may cause the hoarding, fence, scaffold, or enclosure to be pulled down, and the materials comprising it and also stone, bricks, mortar, lime, or other building materials, and other matters and things contained within the enclosure to be removed and deposited in such place as the local government thinks fit, and to be kept until the amount of the expenses of the pulling down and removal are paid to the local government.

(2) If the materials, matters, and things are not claimed and the amount of those expenses are not paid within 8 days next after

being so removed and deposited, the local government may direct them to be sold, and by and out of the net proceeds of the sale pay those expenses and account for and pay the surplus, if any, to the owner or other person by law entitled to it; but if the proceeds of the sale are insufficient to meet the amount of those expenses and the expenses of and incidental to the sale, the deficiency shall be repaid by the owner of the materials, matters, or things, to the local government on demand, and may be recovered from him by the local government in a court of competent jurisdiction.

(3) There is no right of appeal against a direction so made but a person who is dissatisfied with the amount realised as the proceeds of the sale or the amount of the surplus paid or payable to him, may apply to the State Administrative Tribunal for an order under subsection (4) or (5).

(4) If satisfied that the amount realised as the net proceeds of a sale under subsection (2) is less than the amount that could reasonably have been expected to be realised by sale on the open market, the State Administrative Tribunal may order the local government to calculate the surplus or deficiency under subsection (2) using the greater amount.

(5) If satisfied in relation to a sale under subsection (2) that the total amount of expenses (under subsection (1) and of and incidental to the sale) is greater than the total amount of expenses that the local government could reasonably have been expected to incur, the State Administrative Tribunal may order the local government to calculate the surplus or deficiency under subsection (2) using the lesser amount.

[Section 378 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 665.]

379. Damage done to footpaths, drains, etc., to be made good

(1) A person who in erecting or setting up in a street, way, or other public place in a district, a hoarding, fence, or scaffolding, injures or destroys a footpath or roadway of the street, way, or other public place, or a kerb, water-table, or drain, shall make

good the injury or destruction to the satisfaction of the building surveyor for that district.

(2) If the person who owns or erects the hoarding, fence, or scaffold does not, to the satisfaction of the building surveyor, make good and repair the footpath, roadway, kerb, water-table, or drain, the local government may cause the repairs and reinstatement to be done, and by written notice served on him require the person to pay to the local government the expenses of doing so, together with such further costs, charges, and expenses, if any, as are incurred by reason of the omission, and may recover them from him in a court of competent jurisdiction.

[Section 379 amended by No. 14 of 1996 s. 4 (as amended by No. 57 of 1997 s. 82).]

Division 4 — Protective covering of footpaths

380. While building is in progress footpath to be covered

(1) Where a builder or other person erects in a district the ground floor of a building abutting a footpath of a street, way, or other public place, or where plastering, painting, or decorating operations are in progress above the ground floor of a building abutting a footpath of a street, way, or other public place, the builder or other person, or the plasterer, painter, or decorator shall, if required by the building surveyor for that district to do so, by notice in writing served upon him, cause the footpath to be so covered, and kept so covered to the satisfaction of the building surveyor, until the completion of the work then in progress, that there is no danger from falling materials, or inconvenience to the public.

(2) A builder, plasterer, painter or decorator, or other person who does not comply with the notice, commits an offence.

(3) A person who is dissatisfied with the requisition of the building surveyor may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

[Section 380 amended by No. 14 of 1996 s. 4 (as amended by No. 57 of 1997 s. 82); No. 55 of 2004 s. 666.]

[Division 5 heading repealed by No. 17 of 1984 s. 14.]

*[**381, 382.** Repealed by No. 74 of 1973 s. 7.]*

Division 6 — Party walls and underpinning

383. Rights of owners of adjoining land in respect of erection of walls on line of junction

(1) Where lands of different owners adjoin and are unbuilt on at the line of junction, and either owner is about to build on the line of junction or a part of it, the provisions of this Division apply.

(2) If the building owner desires to build a party wall on the line of junction, he may serve notice of his desire on the adjoining owner, describing the intended wall.

(3) If the adjoining owner consents to the building of a party wall, the building owner may build the wall half on the land of each of the 2 owners, or in such other position as is agreed between them.

(4) The building owner shall defray the expense of building the party wall, and from time to time, as and when the adjoining owner makes use of the wall, he shall pay to the building owner such portion of that expense as is proportionate to the use which he makes of the wall.

(5) If the adjoining owner does not consent to the building partly on his land of a party wall, the building owner shall not build a party wall, but may build an external wall placed wholly on his own land.

(6) Where a party wall is built in pursuance of the provisions of this Division, the owner of land upon which it is built shall grant an easement of support in respect of the wall over that land and appurtenant to the other land upon which the party wall is built, and shall cause the easement to be registered upon the certificate of title relating to his land, if the land is subject to the provisions of the *Transfer of Land Act 1893*, or shall cause the easement to be registered in the Register of Deeds, if the land is not subject

to the provisions of that Act and the building owner shall bear the expenses of and incidental to the preparation, stamping and registration of the necessary documents.

384. Right to acquire easement for party wall

When lands of different owners adjoin and a party wall is at the time of the coming into operation of this Act on the line of junction or a part of it and either owner is about to build and use the wall, the owner of the land upon which the party wall is erected, shall grant an easement of support in respect of the wall over the land and appurtenant to the other land upon which the party wall is built, and shall cause the easement to be registered upon the certificate of title relating to the land, if the land is subject to the provisions of the *Transfer of Land Act 1893*, or shall cause the easement to be registered in the Register of Deeds, if the land is not subject to the provisions of that Act, and the building owner shall bear the expenses of and incidental to the preparation, stamping and registration of the necessary documents.

385. Rights of building owner

(1) The building owner, in addition to and without prejudice to rights, if any, which he has irrespective of this Division, has —

(a) the right to make good, underpin, or repair a party wall which is defective or out of repair;

(b) a right to pull down and rebuild a party wall which is so far defective or out of repair as to make it necessary or desirable to pull it down;

(c) a right to pull down a timber or other partition which divides buildings and which does not conform with the provisions of this Act, and to build instead a party wall conforming with those provisions;

(d) a right to raise and underpin a party wall permitted by this Act to be raised or underpinned, upon condition of making good the damage occasioned by doing so to the

adjoining premises or to the finishings and decorations of the adjoining premises, and of carrying up to the requisite height the flues and chimney stacks belonging to the adjoining owner on or against the party wall;

(e) a right to pull down a party wall which is of insufficient strength for a building intended to be built and to rebuild it of sufficient strength for that purpose, upon condition of making good the damage occasioned by doing so, to the adjoining premises or to the finishings and decorations of the adjoining premises;

(f) a right to cut into a party wall upon condition of making good the damage occasioned to the adjoining premises by doing so;

(g) a right to cut away a footing or chimney breasts, jambs, or flues projecting, or other projections, from a party wall in order to erect an external wall against the party wall or for any other purpose, upon condition of making good the damage occasioned to the adjoining premises by doing so;

(h) a right to perform any other necessary works incident to the connection of a party wall with the premises adjoining it; and

(i) a right to raise a party fence wall or to pull it down and rebuild it as a party wall.

(2) The rights mentioned in paragraphs (a) to (h) both inclusive of subsection (1) are subject to this qualification, that a building which was built previously to the coming into operation of this Act is to be regarded as conforming with the provisions of this Act, if it conformed with the provisions of Acts regulating buildings at the time the building was erected.

386. Rights of adjoining owner

Where a building owner proposes to exercise any of the rights mentioned in paragraphs (a) to (i) both inclusive of section 385(1), the adjoining owner may by notice require the

building owner to build on the party wall such chimney copings, jambs, or breasts, or flues, or such piers or recesses, or other similar works, as may fairly be required for the convenience of the adjoining owner, and are specified in the notice, and the building owner shall comply with the requisition unless the execution of the required works will be injurious to the building owner, or cause him unnecessary inconvenience or unnecessary delay in the exercise of his right.

387. Rules as to exercise of rights by building and adjoining owners

(1) A building owner shall not, except with the consent in writing of the adjoining owner and of the adjoining occupiers, or, in cases where a party wall is dangerous, in which case the provisions of this Part relating to dangerous buildings apply, exercise any of his rights under this Division in relation to a party wall, or party fence wall, unless at least 42 days before doing so he has served on the adjoining owner a party wall notice stating the nature and particulars of the proposed work, and the time at which he proposes to commence the work.

(2) When a building owner in the exercise of any of his rights under this Division lays open a part of the adjoining land or building, he shall, at his own expense, make and maintain for a proper time a proper hoarding and shoring of temporary construction for the protection of the adjoining land or building and the security of the adjoining occupier.

(3) A building owner shall not exercise a right given to him by this Division in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner or to the adjoining occupier.

(4) A party wall notice is not available for the exercise of a right unless the work to which the notice relates is begun within 6 months after it has been served and the work is prosecuted with due diligence.

(5) Within 14 days after the receipt of the notice or at any time before building operations are commenced, the adjoining owner

may serve on the building owner a notice requiring him to build on the party structure works to the construction of which he is entitled under section 386.

(6) The adjoining owner shall specify in his notice the works required by him for his convenience, and shall, if necessary, serve with it explanatory plans and drawings.

(7) If either owner does not within 14 days after the service on him of notice express his agreement to comply with the requirements of the notice, he is regarded as having disputed the necessity of the requirements and a difference is to be regarded as having arisen between the building owner and the adjoining owner.

388. Right of building owner to cut away or take down overhanging or encroaching wall

The building owner, in addition to and without prejudice to rights, if any, which he has irrespective of this Division, has a right to cut away or take down such parts of a wall or building of an adjoining owner, as is necessary, in consequence of that wall or building overhanging or encroaching upon the ground of the building owner, in order to erect an upright wall against it, on condition of making good damage sustained by the wall or building by reason of the cutting away or taking down.

389. Settlement of difference between building and adjoining owners

Where between a building owner and an adjoining owner a difference arises in relation to a work in respect of which notice has been given under this Division, either owner may apply to the State Administrative Tribunal for a determination in relation to that difference and the State Administrative Tribunal, in making the determination, may determine the right to execute, and the time and manner of executing the work, and generally to determine such other matters as arise out of, or are incidental to the difference; but the State Administrative Tribunal shall not, unless the parties agree otherwise, appoint for the

commencement of the work, a time before the expiration of the period which by this Division is prescribed for the notice in the particular case.

[Section 389 amended by No. 55 of 2004 s. 667.]

390. Power of building owner to enter premises

A building owner, his agents, servants, and workmen, may, at the usual times of working, enter and remain on premises of another person for the purpose of executing, and may execute work which he has become entitled to execute or is required under this Division to execute, and may remove furniture or do such other things as are necessary for the purpose; and if the premises are closed, may, if accompanied by a member of the Police Force of the State, break open fences or doors in order to effect entry; but before so entering on premises the building owner shall, except in the case of emergency, give 14 days' notice of his intention to do so to the occupier and owner, and in case of emergency shall give such, if any, notice as is practicable.

391. Building owner to underpin adjoining owner's building

(1) Where a building owner intends to erect within 3 metres of a building belonging to an adjoining owner a building or structure any part of which within the 3 metres extends to a lower level than the foundations of the building belonging to the adjoining owner, he may, and, if required by the adjoining owner, shall, underpin or otherwise strengthen the foundations of the building of the adjoining owner to such extent as is necessary.

(2) The building owner shall give at least 35 days' notice in writing to the adjoining owner, stating his intention to build within the 3 metres and whether he proposes to underpin or otherwise strengthen the foundations of the adjoining owner's building and with the notice shall serve a plan and sections showing the site of the proposed building and the depth to which he proposes to excavate.

(3) If the adjoining owner within 14 days after being served with the notice gives a counter notice in writing that he disputes the necessity of, or that he requires the underpinning or strengthening, a difference is to be regarded as having arisen between the building owner and the adjoining owner.

(4) The building owner is liable to compensate the adjoining owner and occupier for inconvenience, loss, or damage, if any, which results to them by reason of the exercise of the powers conferred by this section.

(5) This section does not relieve the building owner from liability to which he would otherwise be subject in case of injury caused by his building operations to the adjoining owner.

[Section 391 amended by No. 94 of 1972 s. 4.]

392. Security to be given by building and adjoining owners

(1) An adjoining owner may if he thinks fit serve notice in writing on the building owner requiring him before commencing work which he is authorised by this Division to execute, to give such security as is agreed upon, or in case of difference, such security as the State Administrative Tribunal on the application of either of the owners directs be given, for the payment of such expenses, costs, and compensation, in respect of the work as may be payable by the building owner.

(2) The building owner may, if he thinks fit, after service on him of a party wall requisition by the adjoining owner and before beginning a work to which the requisition relates but not afterwards, serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses, costs and compensation for which he is or will be liable as may be agreed upon, or in the case of difference, may be settled as mentioned in subsection (1).

(3) If the adjoining owner does not within 35 days after service of the counter requisition give security accordingly he ceases to be entitled to compliance with his party wall requisition and the

building owner may proceed as if no party wall requisition had been served on him by the adjoining owner.

[Section 392 amended by No. 55 of 2004 s. 668.]

393. Rules as to party expenses

(1) As to expenses to be borne jointly by the building owner and the adjoining owner —

(a) if a party wall is defective or out of repair the building owner and the adjoining owner shall bear the expense of making it good, underpinning, or repairing it, proportionately, regard being had to the use that each owner may make of the structure;

(b) if a party wall is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull it down the building owner and the adjoining owner shall bear the expense of the pulling down and rebuilding proportionately, regard being had to the use that each owner may make of the structure;

(c) if a timber or other party wall dividing a building is pulled down in the exercise of the right conferred by this Division upon a building owner and a party wall is built in its stead the building owner and the adjoining owner shall bear the expense of the pulling down and of building the party wall and also of building additional party walls, if any, that may be required by reason of the partition having been pulled down, proportionately, regard being had to the use that each owner may make of the party wall and to the thickness required for support of the respective buildings parted by it.

(2) As to expenses to be borne by the building owner —

(a) if a party wall or an external wall built against another external wall is raised or underpinned in pursuance of the power by this Division conferred on a building owner, the building owner shall bear the expense of raising or underpinning it, and of making good damage

occasioned by doing so, and of carrying up to the requisite height flues and chimney stacks belonging to the adjoining owner on or against the party wall or external wall as are required by this Division to be made good and carried up;

(b) if a party wall which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull it down, is pulled down and rebuilt by the building owner, the building owner shall bear the expense of pulling it down and rebuilding it, and of making good damage required by this Division to be made good, and the building owner shall also make a fair allowance in respect of the disturbance and inconvenience caused to the adjoining owner;

(c) if a party wall is cut into by the building owner, the building owner shall bear the expense of cutting into it and of making good damage required by this Division to be made good;

(d) if a footing, chimney breast, jamb, or floor, or a projection, is cut away under powers conferred by this Division upon a building owner, the building owner shall bear the expense of the cutting away and of making good damage required by this Division to be made good;

(e) if a party fence wall is raised for a building, the building owner shall bear the expense of raising it; or

(f) if a party fence wall is pulled down and built as a party wall the building owner shall bear the expense of pulling down the party fence wall and building it as a party wall;

but if at any time the adjoining owner makes use of a party wall, so raised or underpinned, or a part of it, or of a party fence wall so pulled down and built as a party wall, or a part of it, beyond the use made of it by him before the alteration, the adjoining owner shall from time to time bear a proportion, regard being

had to the use that the adjoining owner makes of it from time to time, of the expense of —

(i) raising or underpinning the party wall or external wall, and of making good such damage occasioned by doing so to the adjoining owner, and of carrying up to the requisite height such flues and chimney stacks belonging to the adjoining owner on or against a party wall or external wall, as are required by this Division to be made good and carried up; and

(ii) pulling down and building the party fence wall as a party wall.

394. Building owner to render account to adjoining owner

Within 35 days after the completion of work which a building owner is by this Division authorised or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, the building owner shall deliver to the adjoining owner an account in writing of the particulars and expense of the work, specifying deductions, if any, to which the adjoining owner is entitled in respect of old materials, or in other respects, estimating and valuing the work at fair average rates and prices, according to the nature of the work and the locality and the market price of materials and labour at the time.

395. Disputed account

(1) Within 35 days of the delivery of the account, the adjoining owner, if dissatisfied with it, may declare his dissatisfaction to the building owner by notice in writing, specifying his objection to it, and unless the parties settle the account by agreement, the account is to be settled, on the application of either of the parties, by the State Administrative Tribunal.

(2) If within the period of the 35 days of the delivery of the account to him the adjoining owner does not so declare his dissatisfaction with the account, he is to be regarded as having accepted it, and shall on demand by the building owner pay to

him the amount shown due by the adjoining owner, and if he does not do so, the building owner may recover from him the amount shown as due in a court of competent jurisdiction.

[Section 395 amended by No. 55 of 2004 s. 669.]

396. Structure belongs to building owner until contribution paid

Where the adjoining owner is liable to contribute to the expenses of building a party wall, until the contribution is paid, the building owner at whose expense it was built stands possessed of the sole property in the structure.

397. Adjoining owner liable to expenses incurred on his requisition

The adjoining owner is liable for expenses incurred on his requisition by the building owner, and if he does not pay them, the building owner may recover the amount of them from him in a court of competent jurisdiction.

398. Saving easements of light, etc., in party walls

This Division does not authorise interference with an easement of light or other easement in or relating to a party wall, or take away, abridge, or prejudicially affect a right of a person to preserve or restore a light or other thing in or connected with a party wall in case of the party wall being pulled down or rebuilt.

Division 7 — Prohibition, except in certain circumstances, of use of inflammable materials in walls, partitions, ceilings, verandahs and balconies

399. Buildings, partitions, ceilings and verandahs of inflammable materials prohibited except under certain conditions

(1) Except where authorised to do so by a licence under paragraph (a), or a consent under paragraph (b), of subsection (4) or under a local law of the local government, no

person shall erect on land within the district, a building having external walls wholly or in part of wood, canvas, thatch, or other inflammable material, or having internal partitions or ceilings consisting either wholly or in part of calico, canvas, paper, or other inflammable material, nor roof a verandah or balcony of a building with canvas or other inflammable material.

(2) If a building, partition, ceiling, verandah, or balcony is erected or constructed of material contrary to the provisions of this section, the local government may at any time cause written notice to be served upon the owner or occupier of the building, requiring the removal of it or such part of it as is erected or constructed of material contrary to the provisions of this section, within such time as the local government thinks fit, and specifies in the notice.

(3)(a) Upon proof of the service of, and non-compliance with, the notice, the Magistrates Court may order the building, roof, verandah, or balcony, ceiling, or partition to be forthwith removed, either wholly or in part, as the case requires, under the superintendence of the building surveyor and at the expense of the owner, and make such order as to the costs of and incidental to the proceedings as the court thinks fit, and an order so made is not subject to appeal.

(b) Where the Magistrates Court orders payment of the amount of the expenses by the owner, the local government may sue on the order in a court of competent jurisdiction for recovery of the amount.

(4) Notwithstanding anything to the contrary contained in this or another Act or in local laws made by a local government under this or another Act, the local government may —

(a) by a written licence permit the erection of a building under such restrictions or for such time as the local government specifies in the licence; and

(b) give its consent to the erection of a building if the external walls of the building are to be constructed

wholly of wood, or partly of wood and partly of a fire-resisting material, if the local government is of opinion that the standard of the design of the building when erected, will be in conformity with the general standard of design of buildings in the locality, in which it is proposed to be erected.

(5) A person who is dissatisfied with the refusal of the local government to give a licence or consent mentioned in subsection (4) may apply to the State Administrative Tribunal for a review of the refusal.

[Section 399 amended by No. 74 of 1995 s. 9.70; No. 78 of 1995 s. 68; No. 14 of 1996 s. 4; No. 55 of 2004 s. 670; No. 59 of 2004 s. 141.]

Division 8 — Prohibition, except in certain circumstances, of encroachments

400. Encroachment over, on, or under street

(1)(a) Except to the extent permitted, and in the manner prescribed, by any regulations made under this Part, a person shall not, without the permission of the local government granted only with the approval of the Minister —

(i) erect a building so as to encroach on, over, or under a street, way, or other public place, in its district;

(ii) rebuild an existing building which encroaches on, over, or under a street, way, or other public place in the district, so as to encroach on, over, or under a street, way, or other public place in the district.

(b) The local government shall not grant its permission and the Minister shall not give his approval unless each is of opinion that having regard to the size of the building, and the circumstances of the case it is necessary for the stability of the building that the permission should be granted and the approval should be given.

(c) The local government with the approval of the Minister may grant the permission subject to such conditions as the local government and the Minister think fit.

(d) A person who so erects or rebuilds a building in purported pursuance of permission so granted but does not observe the conditions, if any, on which it is granted, is to be regarded as having erected or rebuilt the building without the permission of the local government.

(1a) For the purposes of subsection (1), a building that has thereon string courses, cornices, copings, eaves or window sills that project not more than 230 millimetres on or over a street way or public place in a district, shall be held not to encroach on or over the street way or public place by reason of that fact only.

(1b) Where a local government is of opinion that for the purpose of making more effective use of any land within its district that is a pedestrian way, of not more than 10 metres in width, or in the interest of attractive development of the area where that land is situated, it is desirable so to do, the local government may, with the consent of the Minister, grant permission to a person to erect a building above or over that pedestrian way at such height as the local government may specify and upon and subject to such conditions as the local government may impose.

(2) Notwithstanding the provisions of subsection (1), a person with the permission of the local government and in accordance with plans and specifications settled and approved by the local government may —

(a) place in front of his building, an awning or verandah, at least 2.75 metres above the footpath in a street, way, or other public place, in its district, and unless prohibited from so doing by local laws of the local government, may use posts for the support of the awning or verandah provided the posts are placed in such positions close to the outer edge of the footpath as the local government directs;

(b) place in front of his building a balcony of cantilever type having a framework constructed of iron securely fixed with iron brackets or other supports to the satisfaction of the building surveyor of the local government, at least 2.75 metres above the footpath in a street, way, or other public place in its district and so that it does not encroach over the street, way, or public place to a greater distance than —

(i) 750 millimetres if the street is in a city; or

(ii) the outer edge of the footpath or such lesser distance as is prescribed from time to time by local laws in operation in the district if the street is in a shire or a town;

but permission granted under this subsection does not relieve a person from complying with local laws operating in the district and relating to awnings, verandahs, or balconies, generally or to their removal in particular.

(3) If, within 35 days after written notice by the local government to remove a building or part of a building or an awning, verandah, or balcony which is not erected, rebuilt, placed, or provided in conformity with the requirements of this section, or to alter it so that as altered it will conform with those requirements, has been served on the owner or occupier of the building, it is not removed or so altered, the Magistrates Court may grant a warrant to the local government, authorising the local government forthwith to cause the building or the awning, verandah, or balcony, to the extent to which it so encroaches, to be taken down or altered to comply with those requirements and may make such order as to the costs of and incidental to the proceedings as the court thinks fit, and the local government, by its agents, servants and workmen may by authority of a warrant so granted lawfully enter the land on which it stands and take down, and remove it, accordingly at the expense of the owner or occupier, and the local government may recover the amount of the expense of doing so from the owner or occupier in a court of

competent jurisdiction, and a warrant so granted or an order so made is not subject to appeal.

(4) An occupier of property upon whom, under the provisions of this section, a penalty is imposed, or who is put to the expense, may sue for and recover the amount of the penalty and expense and costs ordered against him in connection with the penalty or expense from the owner of the property in a court of competent jurisdiction but if the owner proves an agreement by the occupier to carry out the work in respect of which the penalty or expense has been incurred, the agreement is a good defence to the owner in the proceedings brought against him by the occupier.

[Section 400 amended by No. 68 of 1963 s. 20; No. 70 of 1965 s. 12; No. 94 of 1972 s. 4; No. 39 of 1988 s. 11; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

Division 9 — Notice of required alteration

401. Notice of required alterations

(1) A local government may, during or after the erection of a building in its district, give to the builder or owner of the building, written notice of anything, in the construction of the building —

(a) which tends to render the building unsafe or prejudicial to the public interest;

(b) which is not in compliance with, or is a departure from, the plans and specifications for the building, of which plans and specifications the approval of the local government has been obtained as required by this Act, or which is a contravention of this Act; or

(c) which, where permission of the local government is required for carrying it out, has been carried out without that permission;

and requiring him to pull down or so alter the building as to remove the cause of the objection and on being served with the notice the builder or owner shall comply with the requisition, unless he applies to the State Administrative Tribunal under subsection (3) for a review of the decision to make the requisition and the State Administrative Tribunal sets aside the decision.

[(2) repealed]

(3) Where a person is given notice under this section to pull down or alter a building in order to remove a ground of objection mentioned in subsection (1), he may, if dissatisfied with the requisition in the notice, apply to the State Administrative Tribunal for a review of the decision to make the requisition.

(4) When a building has been constructed, amended, altered, extended, enlarged or added to, whether pursuant to a notice from the local government or not, the builder or owner of the building shall on completion of the construction, amendment, extension, enlargement, addition, or alteration serve written notice of the completion upon the building surveyor of the local government.

(5) If, after inspection and survey, the building surveyor is satisfied that the building has been constructed, amended, extended, enlarged, added to or altered, in conformity with the notice, the surveyor shall, on payment of the fee prescribed by the local laws of the local government give in the form so prescribed a certificate in writing signed by him to that effect to the builder or owner from whom he has received the notice mentioned in subsection (4).

(6) The certificate given by the building surveyor under subsection (5) is admissible in evidence and is *prima facie* proof of the particulars contained in it.

(7) If the builder or owner on whom a notice mentioned in subsection (1) has been served does not —

(a) within 35 days of that on which the notice is served upon him, unless the requisitions in the notice are the subject of an application for review as described in this section; or

(b) if an application for review is made but is dismissed, within 14 days of the dismissal,

comply with the requisitions in the notice, the Magistrates Court, on an application by the local government and on being satisfied that he has not so complied with all or any of the requisitions in the notice and that the requisitions in respect of which the application is made are not the subject of an application for review as described in this section, may order the person on whom the notice has been served to comply with the requisitions within a time to be fixed by the order, and the court may make such order as to the costs of and incidental to the proceedings relating to the order as the court thinks fit.

(8) If an order made under subsection (7) is not complied with by the person to whom it is directed within the time so fixed, the local government may lawfully enter upon the land on which the building is erected or is in course of being erected and give effect to the requisitions and may, in a court of competent jurisdiction, recover the expense of so doing from the builder or owner on whom the notice was served.

(9) An order made under subsection (7) is not subject to appeal.

[Section 401 amended by No. 17 of 1984 s. 15; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 55 of 2004 s. 671; No. 59 of 2004 s. 141.]

Division 9A — Unlawful works

[Heading inserted by No. 32 of 1967 s. 20.]

401A. Stopping unlawful work

(1) Where, in contravention of this Act, a building is being constructed, erected, adapted, amended, enlarged, added to, repaired or taken down, the local government may, by notice in writing served on the builder, order the builder to stop all work specified in the notice as being done in contravention of this Act.

(2) For the purposes of this section, a notice is deemed to have been served on a builder if it is served upon a person apparently in control of men working on the site of the building referred to in the notice.

(3) Where the person on whom a notice is served pursuant to this section is not the owner of the building to which the notice relates, the local government shall, as soon as practicable after the service of the notice on the first-mentioned person, cause a copy of the notice to be served on the owner of the building.

(4) A notice under this section remains in force until —

(a) it is withdrawn by further notice in writing given by the local government; or

(b) it is set aside by the State Administrative Tribunal on an application for review as provided in this section.

(5) A person who —

(a) has been served with a notice under this section or knows that a notice under this section is in force; and

(b) causes or suffers work to be done in contravention of the notice,

commits an offence.

Penalty: $5 000.

(6) A person aggrieved by a notice under this section may apply to the State Administrative Tribunal for a review of the notice.

(7) In this section —

"builder" means the person who is employed to build, or to execute work on, a building, or, where no person is so employed, the owner of the building.

[Section 401A inserted by No. 32 of 1967 s. 20; amended by No. 81 of 1972 s. 20; No. 42 of 1987 s. 16; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 55 of 2004 s. 672.]

Division 10 — Chimneys of factories

402. Industrial chimneys to be so constructed and used so as not to be a nuisance

(1) No person shall construct a chimney shaft of a building which is a mill, manufactory, refuse destructor, incinerator, or other similar building unless to such height, and in such a manner, as not to cause a nuisance or annoyance to persons dwelling in the neighbourhood of the building.

(2) No person shall so use a chimney shaft of a building which is a mill, manufactory, refuse destructor, incinerator, or other similar building as to cause a nuisance or annoyance to those persons.

[Section 402 amended by No. 38 of 1962 s. 13.]

Division 11 — Dangerous buildings

403. Survey to be made of dangerous buildings

(1) Where a local government has reason to suspect that a building in its district is in a dangerous state, the local government may direct a survey of the building to be made by the building surveyor of the local government, or by another competent person.

(2) Where the building surveyor receives information that a building is in a dangerous state, whether as the result of a survey

mentioned in subsection (1) or otherwise, he shall report the information to the local government.

(3) Upon the completion of his survey, the building surveyor, or other competent person, who carried out the survey, shall certify to the local government his opinion as to the state of the building.

(4) If the certificate is to the effect that the building is not in a dangerous state, the local government shall not take further proceedings in respect of it; but if the certificate is to the effect that the building is in a dangerous state, the local government may cause it to be shored up or otherwise secured and a proper hoarding or fence to be put up for the protection of the public from danger, and shall cause written notice to be served on the owner or occupier of the building requiring him forthwith to take it down, secure, or repair it as the case requires.

(5) If the owner or occupier, on whom the local government has caused written notice to be served pursuant to subsection (4), does not comply with the requisitions in the notice, the local government shall cause a copy of the notice, to be served on the owner and the occupier by sending it by registered post addressed to him at his last known place of residence, and shall cause as soon as practicable thereafter a copy of the notice to be affixed in a conspicuous position on the outside of the building.

(6) A person who is dissatisfied with the requisition of the local government may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

[Section 403 amended by No. 72 of 1961 s. 20; No. 68 of 1963 s. 21; No. 14 of 1996 s. 4; No. 55 of 2004 s. 673.]

404. Notice to owner, etc., in case of danger

If the owner or occupier

on whom notice mentioned in section 403(4) has been served

does not

within 35 days of that on which the notice is served upon him,

comply

with the notice,

the Magistrates Court, on an application by the local government and on being satisfied that he has not so complied with all or any of the requisitions in the notice and that none of the requisitions in the notice is the subject of an application for review as described in section 403(6),

may

unless all or any of the requisitions in the notice are the subject of an application for review as described in section 403(6),

order the person

on whom the notice has been served to take down, repair, or otherwise secure to the satisfaction of the building surveyor of the local government, the building or such part of it as appears to the court to be in a dangerous state, within a time to be fixed by the order,

and the court may

make such order as to the costs of and incidental to the proceedings relating to the order as the court thinks fit,

and if the order is not complied with

by the person to whom it is directed, within the time so fixed,

the local government may cause the building, or so much of it as is in a dangerous condition, to be taken down, repaired or otherwise secured in such manner as is necessary, and an order so made is not subject to appeal.

[Section 404 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 674; No. 59 of 2004 s. 141.]

405. Recovery of expenses of local government

(1) The owner of the building shall on demand by the local government pay the costs and expenses incurred by the local government in, and incidental to, the obtaining of the order under section 404, in respect of the dangerous building, and in carrying the order into effect, but this section does not prejudice the right, if any of the owner to recover them from a person liable to pay to him the expense of repairs of the building.

(2) If the owner does not pay the costs and expenses on demand, the local government, after serving on him 35 days' notice of its intention so to do, may sell the building; but shall, after deducting from the proceeds of the sale the costs and expenses so incurred and the expenses of and incidental to the sale and the amount of rates then due in respect of the premises, account for and pay the surplus, if any, to the owner on demand.

(3) When a dangerous building is so sold for payment of the costs and expenses so incurred in respect of it by the local government, the purchaser, his agents, and servants, may enter upon the land on which the building is situated for the purpose of taking down the building and of removing the materials of which it is constructed.

(4) If the materials are not sold by the local government, or if the proceeds of the sale are insufficient to defray the costs and expenses, the local government may recover the costs and expenses or the unsatisfied balance of them and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction.

[Section 405 amended by No. 14 of 1996 s. 4.]

406. Power to remove occupants from dangerous building

When a building has been certified by the building surveyor or other competent person carrying out a survey of it to be dangerous to occupants of it, the Magistrates Court may, on an application by the local government, if satisfied of the

correctness of the certificate, by order direct the occupants of the building to quit the building and may issue a warrant directed to a member of the Police Force of the State authorising and commanding him to remove them from the building if the order of the court is not obeyed and he shall execute the warrant according to its tenor, and an order so made or a warrant so issued is not subject to appeal.

[Section 406 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

Division 12 — Neglected, dilapidated and uncompleted buildings

[Heading inserted by No. 96 of 1966 s. 13.]

407. Interpretation

In this Division —

"neglected building" means a building which is ruinous, or so dilapidated as to be unfit for use or occupation, or which is from neglect or otherwise in a structural condition prejudicial to property in, or to inhabitants of, the neighbourhood in which it is situated.

408. Removal of neglected buildings

(1) Where a local government is of opinion that a building in its district is a neglected building it may cause written notice to be served on the owner or occupier of the building requiring him immediately —

(a) to put the building or part into such state of repair and good condition as is to the satisfaction of the local government;

[(b) deleted]

or

(c) to take the building down.

(2) If the owner or occupier, on whom the local government has caused written notice to be served pursuant to subsection (1),

does not comply with the requisitions in the notice within 14 days after the service of the notice on him, the local government shall cause a copy of the notice to be served on the owner and the occupier by sending it by registered post addressed to him at his last known place of residence and shall cause, as soon as practicable thereafter, a copy of the notice to be affixed in a conspicuous position on the outside of the building.

(3) A person who is dissatisfied with the requisition of the local government may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

(4) If the owner or occupier

on whom the notice is served

does not

within 35 days of the service of the notice upon him, unless the requisitions in the notice are the subject of an application for review under subsection (3),

comply

with the requisitions in the notice,

the Magistrates Court, on an application by the local government and on being satisfied that he has not so complied with the requisitions and that the requisitions in respect of which the application is made are not the subject of an application for review under subsection (3),

may order

the owner or occupier on whom the notice is served to do such of the things mentioned in subsection (1)(a) and (c), as the court thinks fit within a time to be fixed in the order,

and the court may make such order as to the costs of and incidental to the proceedings relating to the order as the court thinks fit, and an order so made is not subject to appeal.

(5) If the order is not obeyed, the local government may by its agents, servants, and workmen enter upon the neglected building or land on which it stands and execute the order.

(6) When the order directs the taking down of a neglected building, or a part of it, the local government in executing the order may cause the materials to be removed to a convenient place, and, unless the expenses of the local government in relation to the building are paid to the local government within 14 days after the removal, cause the materials to be sold.

(7) The local government shall deduct from the proceeds of the sale, the costs and expenses incurred by the local government in relation to a neglected building, and also the amount of rates then due in respect of the premises, and shall account for and pay the surplus, if any, to the owner of the building on demand.

(8) If the neglected building, or part of it, is not taken down, and the materials are not sold by the local government, or if the proceeds of the sale are insufficient to defray the costs and expenses, the local government may recover the costs and expenses, or that insufficiency, and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction but this subsection does not prejudice the right, if any, of the owner to recover them from a person liable to pay to him the expenses of repairs of the building.

[Section 408 amended by No. 72 of 1961 s. 21; No. 68 of 1963 s. 22; No. 17 of 1984 s. 16; No. 14 of 1996 s. 4; No. 55 of 2004 s. 675; No. 59 of 2004 s. 141.]

409. Power to compel renovation of dilapidated buildings

(1) Where the local government is of opinion that a building in its district is so dilapidated in appearance as to be out of conformity with the general standard of appearance of the other buildings in the district or in the locality in which it is situated, it may cause written notice to be served on the owner or occupier of the building requiring him immediately to cause the appearance of the building

to be brought into conformity with the general standard of appearance of the buildings either in the district or that locality.

(2) If the owner or occupier, on whom the local government has caused written notice to be served pursuant to subsection (1), does not comply with the requisitions in the notice within 14 days after the service of the notice on him, the local government shall cause a copy of the notice to be served on the owner and the occupier by sending it by registered post addressed to him at his last known place of residence and shall cause, as soon as practicable thereafter, a copy of the notice to be affixed in a conspicuous place on the outside of the building.

(3) A person who is dissatisfied with the requisition of the local government may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

(4) If the owner or occupier on whom the notice is served does not within 35 days of the service of the notice upon him, unless the requisition in the notice is the subject of an application for review under subsection (3), comply with the requisition in the notice, the Magistrates Court, on an application by the local government and on being satisfied that he has not so complied and that the requisition is not the subject of an application for review under subsection (3), may order the owner or occupier on whom the notice is served to comply with the requisition within a time to be fixed in the order, and if the order is not complied with by the owner or occupier to whom it is directed within the time so fixed the local government may do what he is directed by the order to do, and an order so made is not subject to appeal.

(5) The owner of the building shall on demand by the local government pay the costs and expenses incurred by the local government in relation to the obtaining of an order under subsection (4) relating to the dilapidated building and in the carrying of the order into effect, but this section does not prejudice the right, if any, of the owner to recover them from a person liable to pay to him the expense of repairs of the building.

(6) If the owner does not pay the costs and expenses to the local government on demand, the local government, after serving on him 35 days' notice of its intention so to do, may cause the building to be sold; but shall, after deducting from the proceeds of the sale the costs and expenses so incurred and the expenses of and incidental to the sale and the amount of rates then due in respect of the premises, account for and pay the surplus, if any, to the owner on demand.

(7) If the proceeds of the sale are insufficient to defray the costs and expenses, the local government may recover the costs and expenses or the balance of them and the costs of and incidental to the proceedings for recovery from the owner of the building in a court of competent jurisdiction.

[Section 409 amended by No. 72 of 1961 s. 22; No. 68 of 1963 s. 23; No. 14 of 1996 s. 4; No. 10 of 1998 s. 46; No. 55 of 2004 s. 676; No. 59 of 2004 s. 141.]

409A. Uncompleted buildings

(1) Where the erection of a building has been commenced but not completed within the time prescribed by the local laws, if any, made under section 433(39), that are applicable to the building, the local government may, by notice served on the owner of the building, require him to show cause, within 60 days of the service of the notice, why the building should not be demolished and removed.

(2) Where an owner on whom a notice has been served pursuant to subsection (1) fails, within 60 days of the service of the notice, or within such further time as the local government allows for the purpose, to satisfy the local government that there are good and sufficient reasons for the failure to complete the erection of the building within the time referred to in subsection (1), the local government may —

(a) by order served on the owner require him to have the building demolished and removed within such reasonable time as the local government specifies in the order; and

(b) subject to subsection (3), where the owner fails to comply with the terms of the order referred to in paragraph (a), demolish and remove the building, and recover the costs incurred on account of the demolition and removal as a debt due to it.

(3) An owner on whom an order is served pursuant to subsection (2)(a) may, within 15 days of the service upon him of the order, apply to the State Administrative Tribunal for a review of the order.

[Section 409A inserted by No. 96 of 1966 s. 14; amended by No. 56 of 1977 s. 13; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4; No. 55 of 2004 s. 677.]

Division 13 — Recovery of expenses incurred by local government

[Heading amended by No. 57 of 1997 s. 83(3).]

410. Provision for enforcing repayment of expenses incurred by local government

(1) Where a local government has incurred costs or expenses in respect of a dangerous, neglected or dilapidated building, otherwise than in pursuance of section 410A, and has not been paid or has not recovered them, the Magistrates Court, on an application by the local government, may make an order fixing the amount of the costs and expenses and the cost of the proceedings before the court, and declaring the amount already paid or recovered, if any, and directing that no part of the land upon which the building stands or stood shall be built upon, until after payment to the local government of the amount or the balance of the amount so fixed, as the case may be; and thereupon and until payment to the local government of that amount or balance no person shall build upon the land or part of the land, and an order so made is not subject to appeal.

(2) The local government shall keep a register of orders made under the provisions of this section, and shall keep it open for inspection.

[Section 410 amended by No. 96 of 1966 s. 15; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

410A. Undertakings by local governments in certain cases

(1) Where a local government has served an order under section 408 or 409, and the person in actual occupation as owner of the building to which the notice relates —

(a) satisfies the local government that he has insufficient means to carry out the work required to be done in order to comply with the order; and

(b) requests the local government in writing to carry out the work on his behalf,

the local government may carry out the work and recover the costs thereof in the manner referred to in subsection (2) or subsection (3).

(2) For the purposes of recovering the costs incurred by it pursuant to subsection (1) on behalf of an owner, the local government and the owner shall enter into an agreement in writing under which the local government shall receive the sum of those costs by half-yearly or monthly instalments of principal over a period not exceeding 10 years, together with interest on the amount from time to time outstanding at a rate —

(a) not exceeding by more than 1% per annum the rate charged to the local government at the time the costs were incurred —

(i) on the loan raised by the local government; or

(ii) the moneys borrowed on overdraft by the local government,

from which those costs were met, as the case may be; or

(b) where the costs were paid out of the Municipal Fund of the local government, not exceeding by more than 1%

per annum the lowest rate at which the local government could, at the time the costs were incurred, have borrowed the money.

(3) Where an owner on whose behalf a local government has incurred costs pursuant to subsection (1) is a person entitled under the *Rates and Charges (Rebates and Deferments) Act 1992* to claim to be exempt from liability for the payment of rates or charges under the *Local Government Act 1995*, the local government may agree in writing to postpone payment of those costs by the owner until the sale or transfer of the land on which the building stands, or the death of that owner, whichever first occurs.

(4) Where a local government has deferred payment of costs under subsection (3), nothing contained in the *Limitation Act 2005* prevents the local government from recovering the amount of any of those costs which but for this subsection it would have been prevented from so doing by that Act.

(5) Where a local government has entered into an agreement pursuant to subsection (2) or has postponed the payment of costs pursuant to subsection (3) —

(a) the amount from time to time owing under the agreement or the amount of the costs so postponed that is from time to time unpaid, as the case may be, is a charge on the land on which the building stands, ranking equally with any other charge created by this or any other Act and before any other charge on that land; and

(b) the right of the local government to receive moneys under the agreement or to receive payment of the costs so postponed, as the case may be, is an interest in that land for the purposes of section 137 of the *Transfer of Land Act 1893*.

[Section 410A inserted by No. 96 of 1966 s. 16; amended by No. 31 of 1992 s. 52(1); No. 14 of 1996 s. 4; No. 20 of 2005 s. 23.]

411. When local government may demolish buildings and sell materials and recover expenses

(1) When a person has been convicted of an offence of commencing to build, or of constructing, erecting, adapting, extending, raising, amending, altering, enlarging, adding to, uniting, or separating a building, or part of a building, in contravention of the provisions of this Act, the local government may serve written notice on the person requiring him to bring the building into conformity with those provisions.

(2) If the owner or occupier, on whom the local government has caused written notice to be served pursuant to subsection (1), does not comply with the requisitions in the notice within 14 days after the service of the notice on him, the local government shall cause a copy of the notice to be served on the owner and the occupier by sending it by registered post to his last known address and shall cause, as soon as practicable thereafter, a copy of the notice to be affixed in a conspicuous position on the outside of the building.

(3) A person who is dissatisfied with the requisition of the local government may apply to the State Administrative Tribunal for a review of the decision to make the requisition.

(4) If the person

> on whom the notice is served

does not

> within 14 days of that on which the notice is served upon him

comply

> with the requisition in the notice,

the Magistrates Court, on an application by the local government and on being satisfied that he has not complied with the requisitions in the notice and that the requisitions in respect of which the application is made

are not the subject of an application for review under subsection (3),

may,

unless the requisitions are the subject of an application for review,

make an order

authorising the local government by its agents, servants, and workmen to enter upon the building and the land on which it stands, and to demolish or alter the building or part of it, so far as it has been adjudged to be in contravention of this Act, and to do whatever is necessary for the purpose of bringing it into conformity with those provisions, and to remove the materials resulting from the demolition or alteration to a convenient place, and if the local government thinks fit, sell the materials in such manner as the local government thinks fit, and an order so made is not subject to appeal.

(5) Expenses incurred by the local government in demolishing or altering the building or the part of it, and in doing whatever is necessary for the purpose of bringing it into conformity with the provisions of this Act, together with the costs, or the balance of those expenses and costs, after deducting the proceeds of sale of the materials, if the local government thinks fit to sell them, may be recovered from the person committing the offence in a court of competent jurisdiction.

(6) If the proceeds of the sale are more than sufficient to defray those expenses and costs, the local government shall, on demand, account for and pay the surplus of the proceeds, after deducting the amount of those expenses and costs, and also the amount of rates then due by the owner of the building, to him.

[Section 411 amended by No. 72 of 1961 s. 23; No. 32 of 1967 s. 21; No. 14 of 1996 s. 4; No. 55 of 2004 s. 678; No. 59 of 2004 s. 141.]

412. Payment of surplus proceeds into court

Where by this Act the surplus of the proceeds of the sale of buildings or materials is made payable to the owner and no demand is made by a person entitled to the payment within one year after the receipt of the proceeds by the local government, the local government shall pay the amount of the proceeds into the Supreme Court, and the amount of the proceeds shall then be subject to the control of the Supreme Court, and may be paid out to the person who proves he is entitled to them.

[Section 412 amended by No. 14 of 1996 s. 4.]

412A. Prohibition on dealings in the land

(1) When the local government serves a written notice under section 411(1), the local government shall, in or with a memorial in the prescribed form, deliver a copy of the written notice to the Registrar of Titles, or to the Registrar of Deeds, as the case requires, who, without payment of a fee, shall register the memorial and endorse or note the title and land register or record, in respect of the land on which the building stands.

(2) When the memorial is registered the Registrar of Titles, or the Registrar of Deeds, as the case requires, is prohibited from registering and from accepting for registration an instrument affecting the land without the consent of the local government, until the land ceases under subsection (3) to be bound by this subsection.

(3) When the contravention, in respect of which the written notice was served, ceases, the local government shall deliver to the Registrar of Titles, or to the Registrar of Deeds, as the case requires, a certificate signed and dated by the chief executive officer, certifying that the contravention has ceased and the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall endorse the title and land register or record to that effect and when the certificate is so noted, the land ceases to be bound by subsection (2).

[Section 412A inserted by No. 81 of 1972 s. 9; amended by No. 14 of 1996 s. 4.]

Division 14 — Fire escapes

413. Fire escapes

(1) If a local government is of opinion that a building is so constructed that there would in case of fire be a danger to persons using it because of the lack of adequate provision of fire escapes, it may serve upon the owner of the building a written requisition to install or erect in or on the building fire escapes to the number and specification set out in the requisition.

(2) A person so served with a requisition to install or erect fire escapes, if dissatisfied with the requisition, may apply to the State Administrative Tribunal for a review of the requisition.

(3) If the person so served with the requisition does not apply to the State Administrative Tribunal for a review of the requisition, or if the State Administrative Tribunal confirms the requisition, the person shall, within 12 months after the service upon him of the requisition, install or erect in or on the building fire escapes to the number and specification set out in the requisition.

(4) Before commencing the installation or erection of fire escapes under this section, the owner of the building shall submit to the local government plans and specifications in accordance with the provisions of this Part.

[Section 413 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 679.]

Division 15 — Public buildings

414. Interpretation

In this Division —

"public building" means a hospital, benevolent or other asylum; theatre, opera house, concert rooms, music or assembly hall, whether forming part of or appurtenant to premises licensed under the *Liquor Licensing Act 1988*, for sale of intoxicating liquor or not; a school, church, chapel, and meeting house;

and includes any other building, structure, tent, gallery, enclosure or platform in or upon which numbers of persons are usually or occasionally assembled or which is provided for the assembly of numbers of persons.

[Section 414 amended by No. 10 of 1998 s. 46(6).]

415. No public building to be used unless it is fit for use

(1) If the Minister is of opinion, whether as the result of a report by the building surveyor or another person, or otherwise, that a public building in a district, is improperly constructed so as not to afford rapid and easy exit from the building, or that it is not of sufficient stability as to its floors, galleries, staircases, or other parts the Minister may cause a notice to be served upon the owner or occupier of the building, to the effect that it is not fit to be used as a public building and stating in what particulars the building is not fit to be so used, and when a notice is so served it is the absolute duty of both the owner and the occupier to ensure that the building is not used by the public or for public purposes until it has been made fit to be so used nor until the Minister has granted a certificate to that effect.

(2) On each occasion that a public building is used by the public or for a public purpose after a notice mentioned in subsection (1) has been served upon the owner or occupier of the building, and before a certificate that the building is fit for use as a public building has been so granted, the owner and the occupier severally commit an offence, to which absence of criminal intention is not a defence.

Penalty: $5 000.

(3) If the Minister causes a notice to be served or grants a certificate under the provisions of this section he shall cause a copy of the notice and a copy of the certificate to be published in the *Gazette* and in a newspaper circulating in the district.

[Section 415 amended by No. 113 of 1965 s. 4; No. 81 of 1972 s. 20; No. 74 of 1995 s. 9.70.]

Division 16 — Removal of inflammable buildings

416. Inflammable buildings in public or other places rendered liable to removal

(1) Where a local government is of opinion

that, for the protection of the public from the danger of fire,

a public or other place

within its district

should be brought under the operation of this Division, the local government,

with a view to the removal of buildings having external walls wholly or partially of wood, or roof coverings wholly or partially of thatch, canvas, or other inflammable material,

may,

either separately or in conjunction with insurance companies or other persons,

cause the public or other place to be surveyed by 3 competent surveyors or architects, of whom

one shall be the building surveyor of the local government;

one shall be nominated by the Minister; and

the third shall be nominated by all or any of the fire insurance companies established within or nearest to the district;

but if the nomination of the third person is not so made within 7 days after the Minister has so nominated a surveyor or architect, the third shall be a person appointed by the local government.

(2) If the surveyors and architects unanimously report that it is desirable for the public safety that the public or other place, or a part or parts of it should be brought under the operation of this

Division, the Governor, at the request of the local government, made on the application of 3 or more electors, being persons who reside in, or own or occupy land in, the public or other place, may by Order, declare the whole or a part or parts of the public or other place to be under the operation of this Division.

[Section 416 amended by No. 42 of 1987 s. 17; No. 14 of 1996 s. 4.]

417. Inflammable buildings may be ordered to be removed and compensation assessed

(1) If a building within a district is constructed wholly, or the external walls or roof of it are constructed wholly or partially of wood, thatch, canvas, or other inflammable material, and the building is either internally or externally in such a state as to be readily ignitable in the event of contact with fire, the local government may cause immediate written notice to be served on the owner or occupier of the building notifying him that the building is dangerous by reason of its liability to ignite, requiring him to remove the building or the portion specified in the notice as dangerous, within such time as the local government specifies in the notice and stating the monetary amount the local government will agree to pay as compensation for the injury which the owner or occupier will sustain by that removal.

(2) If the owner or occupier, on whom the local government has caused written notice to be served pursuant to subsection (1), does not comply with the requisitions in the notice within 14 days after the service of the notice on him, the local government shall cause a copy of the notice to be published once in the *Gazette* and once in a newspaper circulating in the district.

(3) A person who is dissatisfied with the requisition of the local government, or the amount of compensation stated in the notice, may apply to the State Administrative Tribunal for a review of

the decision to make the requisition, the decision as to the amount of compensation, or each of those decisions.

[Section 417 amended by No. 72 of 1961 s. 24; No. 14 of 1996 s. 4; No. 55 of 2004 s. 680.]

418. In default of compliance with notice, justices may order removal

On the application of the local government that the requisition in a notice served under section 417 has not been carried out and that the requisition in the notice is not the subject of an application for review under section 417(3), and on proof of the service of the notice and requisition, the Magistrates Court may make an order authorising and directing the local government to cause the building or the portion of it specified by the order to be removed immediately, and the local government shall immediately carry out the direction, and an order so made is not subject to appeal.

[Section 418 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 681; No. 59 of 2004 s. 141.]

419. Compensation to be paid from general revenue

After the removal, the persons entitled shall be paid by the local government, out of its municipal fund, the compensation agreed with the local government or, in the absence of agreement, the compensation stated in the notice under section 417 or determined following an application under section 417(3) for a review of the amount of compensation by the State Administrative Tribunal, and, if it is not paid by the local government, they may recover the amount of the compensation and costs from the local government in a court of competent jurisdiction.

[Section 419 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 682.]

Division 17 — Power of entry and inspection

420. Buildings may be entered and inspected

(1) The Minister or the building surveyor or a person authorised in writing by either of them, may at reasonable times enter and inspect buildings, (whether completed or not) and land mentioned in this Part, and as to which a duty is imposed by this Act upon them or either of them.

(2) A person, other than the Minister, entering a building or land under the provisions of this section, shall on demand by the builder, owner or person apparently in charge thereof, produce his authority to so enter to the person demanding it.

Division 18 — Safety of platforms and viewpoints on public occasions

421. Safety of platforms, etc., entered or used on public occasions

No person shall use, or let for use, or permit, whether for reward or not, the use of, the roof of a building, a platform, balcony, or other structure, for the purpose of affording sitting or standing accommodation for a number of persons on the occasion of a show, entertainment, public procession, open-air meeting, or other similar event, unless the roof, platform, balcony or structure is safely constructed or secured to the satisfaction of the local government.

[Section 421 amended by No. 14 of 1996 s. 4.]

[Divisions 18A and 19 (s. 421A-432) repealed by No. 55 of 2004 s. 683.]

Division 20 — Local laws relating to building and buildings

[Heading amended by No. 57 of 1997 s. 83(4).]

433. Building local laws

Local laws may be made under the *Local Government Act 1995* —

(1) for regulating the plans and levels of sites for buildings;

(2) for requiring that buildings generally or a building of any specified class shall not be built nearer to —

(a) a street alignment; or

(b) any boundary of the land on which the building is to be built,

than is prescribed in a local law or local laws;

(3) for limiting, either generally throughout the district or in any particular part thereto, the number of buildings that may be built on a prescribed area of land and the extent to which that area may be built on and local laws may be made under this paragraph so as to apply to buildings generally or to any class thereof and may discriminate according to the size of buildings or class of buildings;

(4) for prescribing the minimum area and the minimum depth and the width and frontage of land upon which buildings of a specified class may be erected;

(5) for requiring that a building of a specified class erected after the coming into operation of this Act has attached to it for the exclusive use of the occupiers of the building a prescribed area of open land and for prescribing the area;

(6) for prescribing building lines in relation to any public place or public reserve;

(7) for prohibiting the erection in the district or a specified part of the district of buildings other than buildings of a specified class, whether classified according to size, design, materials used in construction, or classified otherwise;

(8) for requiring the provision of passenger lifts in buildings used or intended for use for a specified class or specified classes of purpose and having more than 2 floors above the ground floor;

(9) for requiring that a building of a specified class erected after the coming into operation of the *Local Government*

Act Amendment Act 1964[2], has on the land on which the building is built or on land adjacent thereto, such number of parking spaces, as is prescribed in the local law or as is in such proportion to the number of persons likely to reside or work in the building as so prescribed;

(10) for prohibiting the use of buildings or structures for any purpose specified in the local law or otherwise than for purposes specified in the local law, but any such local law shall not prevent —

(a) the use of a building or structure existing at the commencement of the local law for any purpose for which it was lawfully used before the commencement of the local law; or

(b) the alteration of or addition to any such existing building or structure for any such purpose;

(11) for providing that the local government may with the approval of the Minister, declare any portion of the area to be a fire zone;

(12) for providing that a register of fire zones be kept by the local government and made accessible for public inspection;

(13) for prescribing any requirements with which any building or building work within a fire zone must conform;

(14) providing for the classification of buildings and the manner in which a dispute as to the classification may be resolved;

(15) providing for the issue of certificates of classification;

(16) for prescribing the circumstances in which a number of buildings may or shall be treated, for the purposes of this Part, as constituting a single united building;

(17) for prescribing that where a building or structure erected or constructed before the commencement of this local law is demolished, destroyed, or taken down to a

prescribed extent it must be rebuilt or reconstructed in complete accordance with the provisions of this Act;

(18) for prescribing and providing for the payment and recovery of fees and expenses, in connection with any matter arising under this Part;

(19) for regulating, restricting or prohibiting the use of specified materials for the purpose of building work, and for investing a prescribed person or authority with discretionary power to regulate, restrict or prohibit the use of any materials for the purpose of building work;

(20) for prescribing and providing for the making of tests of, or relating to, buildings, structures, building work or materials to be used for the purposes of building work;

(21) for regulating, restricting or prohibiting the performance of building work or the erection or construction of a building or structure within a prescribed distance from a street or other public place and investing the local government with discretion to dispense with compliance with any such local law and otherwise for regulating the position of any building or structure;

(22) for prescribing precautions to be taken during the construction or demolition of a building or the performance of any other building work;

(23) for prescribing the height to which a building may be erected, which height may vary according to the position of the building, the width of any road upon which it abuts, or any other matter;

(24) for regulating, restricting or prohibiting the erection or construction of buildings or structures, or the performance of building work on, over or under a public place and prescribing standards to which any such building, structure or building work must conform;

(25) for making any provision, restriction or prohibition that may reduce the likelihood of fire in, or the spread of fire from, any building or structure or conduce to the safety

of the building or structure or its occupants in the event of fire;

(25a) for making any provision, restriction or prohibition that may reduce the likelihood of damage being caused, or abate any damage that may be caused, to any building or structure by earthquake activity or conduce to the safety of the building or structure or its occupants in the event of earthquake activity;

(26) for prescribing the maximum loadings, stresses, load factors and deformations permissible in respect of any building or structure or any class of building or structure and investing the building surveyor with discretionary power to prohibit the erection or construction of buildings or structures that may be or become unsafe by reason of excessive loading, stress or deformation;

(27) for making any provision, restriction or prohibition relating to the construction of foundations, footings, piling, caissons, walls, masonry, floors, roofs and ceilings, and for regulating structural concreting and steelwork, timber construction, veneer-on-timber construction and any other kind of construction;

(28) for requiring, and prescribing, the method of storm water drainage from a building or any building site;

(29) for prescribing standards of weather-proofing or damp-proofing with which any building work must conform;

(30) for prescribing measures to be taken for the prevention of damage to buildings or structures by termites, rodents or other pests;

(31) for prescribing the minimum number, and types, of rooms which are required to be provided in a building used for residential purposes;

(32) for prescribing the minimum height or dimensions of rooms or any class of rooms and minimum standards of lighting and ventilation to which they must conform;

(33) for prescribing standards of soundproofing in relation to buildings or building work;

(34) for making such provision as may be necessary or expedient to ensure that the construction of a building will meet prescribed standards of health and amenity;

(35) for regulating, restricting or prohibiting the installation of lifts, escalators, fire extinguishing sprinklers or other apparatus in any building or structure or class of building or structure;

(36) for restricting or prohibiting the use or occupation of a building or structure before all building work contemplated by the plan, drawings and specifications approved in relation thereto has been completed or before the satisfaction of such other conditions as may be prescribed;

(37) for regulating, restricting or prohibiting the affixture or construction of awnings or other attachments to buildings;

(38) for making any special provision, restriction or prohibition in relation to a prescribed building or structure or prescribed class of building or structure;

(39) for limiting the times within which buildings must be erected and completed;

(40) for providing that the local government may approve of the plans and specifications of any building work, which would or does not comply with the local laws, if the local government is satisfied that —

(a) at some time prior to the submission of the plans and specifications the plans and specifications complied with the local laws then in force in its district; and

(b) no undue delay has been occasioned in the submission of those plans and specifications to the local government.

[Section 433 inserted by No. 74 of 1973 s. 8; amended by No. 24 of 1981 s. 2; No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

433A. Building regulations

(1) Regulations under section 9.60 of the *Local Government Act 1995* may deal with a matter about which local laws may, under this Part, be made as if that matter were specified in Schedule 9.1 of that Act.

(2) Regulations adopting a code, standard or requirement (hereinafter referred to as **"the adopted code"**) —

(a) may adopt all or any part of the adopted code;

(b) may adopt the adopted code as amended by the regulations;

(c) may adopt the adopted code as set out in the adopted code as amended from time to time;

(d) may provide that any matter or thing referred to in the adopted code shall conform with any code, standard or requirement referred to in the adopted code as set out in the code, standard or requirement so referred to (hereinafter referred to as **"the referred code"**) as amended from time to time;

(e) may contain such incidental, supplementary, savings and transitional provisions as are necessary or convenient.

(3) The chief executive officer —

(a) shall cause a copy of every adopted code and every referred code to be available for inspection by members of the public at the office of the chief executive officer without charge during normal office hours; and

(b) may cause copies of every adopted code and referred code, or any part thereof to be available for the public on payment of such charge as may be imposed by the chief executive officer.

(4) In any legal proceedings a copy of the adopted code, or the referred code, or any part thereof, certified or purporting to be certified by the chief executive officer or an officer of the department authorised in that behalf by the chief executive

officer to be a true copy of the adopted code or the referred code, as the case may be, shall be evidence of the adopted code or the referred code, as the case requires.

[Section 433A inserted by No. 39 of 1988 s. 7; amended by No. 74 of 1995 s. 9.70; No. 14 of 1996 s. 4.]

433AA. Seismic zones

Regulations made under section 433A may provide for the classification of the State into zones to be known as seismic zones and for the application of provisions, restrictions or prohibitions prescribed pursuant to section 433(25a) to vary according to the seismic zone within which a building or structure is situated.

[Section 433AA inserted by No. 24 of 1981 s. 3; amended by No. 39 of 1988 s. 11.]

434. Penalties

(1) A local law may be made under this Division so as to impose for a breach of the local laws so made —

(a) a maximum penalty of $5 000; with or without provision for

(b) a maximum daily penalty of $100 for each day during which the offence continues.

[(2) repealed]

[Section 434 amended by No. 113 of 1965 s. 4(1); No. 83 of 1969 s. 16; No. 81 of 1972 s. 20; No. 74 of 1995 s. 9.70.]

435. Advisory committee

(1) For the purposes of this Part the Minister may appoint an Advisory Committee to advise him.

(2) The Advisory Committee shall consist of such number of persons having experience in building or who are conversant

with the building trade or with safety in buildings, as the Minister may from time to time appoint.

(3) Any member of the Committee may be removed by the Minister.

(4) Where a vacancy occurs in the office of member the Minister may appoint a person having the necessary qualifications to fill the vacancy.

(5) The Minister may appoint one of the members of the Committee to be chairman of the Committee.

(5a) The Minister may appoint a person who has experience in building or is conversant with the building trade or with safety in buildings to be the deputy of a member of the Committee, and may revoke the appointment of a person as the deputy of a member of the Committee.

(5b) A person who is the deputy of a member of the Committee has, at any meeting of the Committee at which the member is not present, all the powers and duties of the member.

(6) The chief executive officer or an officer nominated in writing by the chief executive officer shall be the secretary of the committee.

(7) The Committee shall meet whenever summoned by the Minister.

(8) The Committee shall conduct its proceedings in such manner as the Minister directs and until so directed as the Committee determines.

(9) The Committee shall as soon as practicable report to the Minister on any matter referred to it by him for its consideration and report.

(10) The members of the Committee and their deputies shall receive such remuneration and allowances as the Governor determines and any costs incurred by the Committee in carrying out its

functions shall be charged to the Consolidated Fund which is hereby appropriated accordingly.

[Section 435 amended by No. 83 of 1969 s. 17; No. 30 of 1976 s. 3; No. 42 of 1987 s. 20; No. 39 of 1988 s. 8; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

[Part XVI (s. 436) repealed by No. 74 of 1995 s. 9.70.]

[Part XVII (s. 437-440, 440A) repealed by No. 74 of 1995 s. 9.70.]

[Part XVIII (s. 441-444) repealed by No. 74 of 1995 s. 9.70.]

[Part XIX (s. 445, 446, 446A) repealed by No. 74 of 1995 s. 9.70.]

Part XX — Cattle trespass, pounds, poundkeepers and rangers

447. Local government regarded as owner of streets, etc., and unfenced land abutting

For the purpose of this Part, a local government is to be regarded as the owner and occupier of streets, ways, reserves, bridges, ferries, foreshores, jetties, wharves, other public places, and unenclosed land abutting them within its district.

[Section 447 amended by No. 14 of 1996 s. 4.]

448. Power to impound cattle grazing on streets

Cattle driven along or on to a street, or way, or place mentioned in section 447, for the purpose of grazing, without the consent of the local government, are to be regarded as trespassing on the street, way, or other place, and may be impounded by the local government.

[Section 448 amended by No. 14 of 1996 s. 4.]

449. Local government may establish pounds, appoint poundkeepers and rangers

A local government may establish and maintain one or more public pounds, and may appoint fit and proper persons to be keepers of those pounds and may appoint a ranger or rangers.

[Section 449 amended by No. 14 of 1996 s. 4.]

450. Gazettal of establishment of pounds or appointment or removal of poundkeeper to be evidence

The local government having the care, control, and management of a public pound shall cause public notice to be given of the establishment of the public pound, and the appointment or removal of poundkeepers and rangers, and a notice so given is *prima facie* evidence that the pound has been lawfully

established, or that a poundkeeper or ranger has been lawfully appointed or removed, as the case may be.

[Section 450 amended by No. 14 of 1996 s. 4.]

451. Local government may close pound or dismiss poundkeeper

(1) The local government having the care, control and management of a public pound may close the pound and dismiss the poundkeeper and rangers.

(2) The local government shall cause public notice of the intended closing of a pound to be given.

[Section 451 amended by No. 14 of 1996 s. 4.]

452. Pound to be properly fenced, kept clean and in repair

(1) The local government having the care, control, and management of a public pound shall cause it to be properly enclosed, and so adapted that provision is made for keeping cattle with contagious or infectious diseases segregated from cattle free from those diseases while impounded.

(2) The keeper of a public pound commits an offence if he —

(a) does not keep the pound clean and in good repair;

(b) knowingly keeps or permits to be kept in the pound cattle infected with a contagious or infectious disease in the same enclosure with cattle not so infected;

(c) does not supply the cattle for the time being impounded with a sufficiency of wholesome food at least twice a day, once before 9 a.m., and once after 4 p.m.; or

(d) accepts cattle into the pound when the holding capacity of the pound is exhausted.

Penalty: $40.

[Section 452 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 14 of 1996 s. 4.]

453. Provision of shelter and water in pounds

The local government having the care, control, and management, of a public pound shall —

(a) cause adequate shelter for cattle impounded in it to be provided and maintained;

(b) cause a constant supply of wholesome water to be provided and maintained in the pound by means of troughs or by other means so as to afford cattle while impounded in it free and constant access to the water.

[Section 453 amended by No. 14 of 1996 s. 4.]

454. Persons using or milking cattle without consent

A person commits an offence, if —

(a) without the authority and consent of the owner of the cattle he works or uses cattle impounded in a public pound; or

(b) not being the keeper of the public pound or the owner of the animal, or a person authorised to do so by the poundkeeper or owner, he milks a cow or goat impounded in a public pound,

and is liable to a minimum penalty of $4, and a maximum penalty of $80 for the offence and shall in addition pay to the owner of the animal such sum as a court of summary jurisdiction, at the hearing of the charge, decides is just and reasonable for the owner's compensation and cost, and orders him to pay to the owner.

[Section 454 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

455. Pound book and Act to be kept by poundkeeper

(1) The local government having the care, control, and management, of a public pound shall supply the keeper of it with a copy of this Act and with a pound book having pages in the form in Part 1 of the Fifteenth Schedule.

(2)(a) The poundkeeper shall make entries, in a legible handwriting, in the pound book, stating with respect to cattle impounded in the pound, the particulars indicated in Part 1 of the Fifteenth Schedule.

(b) A person to whom cattle impounded in the pound are delivered shall sign the pound book in the appropriate place.

(c) On the last day of each month, the poundkeeper shall transmit to the chief executive officer of the local government, a true copy of the entries made in the pound book during the month.

(3) The pound book is the property of the local government.

(4) The poundkeeper shall deliver the book to the chief executive officer of the local government whenever required by the local government to do so, and whether so required or not, immediately prior to ceasing to hold office as poundkeeper.

(5)(a) The poundkeeper shall keep the pound book and a copy of so much of this Act as relates to cattle trespass, pounds and poundkeepers, at or near the pound, and shall make them available for inspection at reasonable times by persons requesting him to do so.

(b) The chief executive officer, if required, shall provide extracts from the pound book and a certificate signed by him that the extracts are from the pound book, upon payment of 20 cents or such other sum as is prescribed by the regulations, for every 100 words or part of 100 words of the extract.

(6) A poundkeeper commits an offence if he —

(a) wilfully delays making an entry in the pound book as required by this Act;

(b) knowingly makes a false entry in the pound book; or

(c) erases or destroys an entry previously made in the pound book.

[Section 455 amended by No. 113 of 1965 s. 4(1); No. 14 of 1996 s. 4.]

456. Notice of fees to be exhibited at pound

The local government having the care, control, and management, of the pound shall cause to be erected and maintained in proper repair, in a conspicuous part of the pound, a board having painted on it, in legible black characters on a white ground, a table of the fees and charges authorised by this Act to be charged, and a table of the rates at which damages may be claimed under this Act for trespass of cattle, and the holding capacity of the pound.

[Section 456 amended by No. 14 of 1996 s. 4.]

457. Unclaimed money

(1) In this section,

"unclaimed money" means money which has been received by the keeper of a public pound in respect of the sale of cattle or the carcasses of cattle and which has not been claimed by the person entitled to it.

(2) Where the keeper of a public pound has held unclaimed money for a period of 35 days, he shall on the last day of the month in which that period of 35 days expires, pay the unclaimed money, and render a true account of it, to the chief executive officer of the local government having the care, control, and management, of the pound.

(3) The local government shall pay the money into the trust fund.

(4) If at the expiration of 2 years from the day on which the local government receives unclaimed money from the poundkeeper, it has not been claimed by the person entitled to it, the local government may pay the money into its municipal fund, and when so paid into the municipal fund, the money becomes the property of the local government.

[Section 457 amended by No. 27 of 1994 s. 9; No. 14 of 1996 s. 4.]

458. Powers of impounding cattle

(1) Cattle found trespassing upon land may be impounded in the nearest suitable public pound by the owner or occupier of the land or by a ranger.

(2)(a) A person who is a ranger appointed to do so by the local government, or an employee of, or other person authorised by, the local government, may impound cattle —

(i) found wandering, straying, or lying upon a street, way, or place mentioned in section 447; or

(ii) found wandering, straying, or lying, upon vacant Crown land.

(b) The ranger, employee, or authorised person so impounding cattle may claim ranger's fees at the rate set out in Part 2 of the Fifteenth Schedule in respect of each animal which belongs to the same owner and which is impounded by him, notwithstanding that more animals than one of the same owner are impounded at the one time, and the sum may be recovered in the same manner as the poundkeeper's fees and charges.

(c) Cattle found on a street which comprises a boundary of the district or which abuts the district may be so impounded by the ranger, employee or authorised person, notwithstanding that the place on which the cattle are so found is outside the district.

(3) The occupier of enclosed land may seize and impound in the nearest suitable pound —

(a) cattle found wandering, straying, or lying, upon a street, abutting the enclosed land of the occupier; or

(b) cattle found feeding off the enclosed land whether through or over a fence or otherwise notwithstanding that the cattle are upon the street.

(4) A person may seize and impound in the nearest suitable pound cattle found straying or at large or unlawfully tethered or depastured in a street, or other public place within a city, town or township.

[Section 458 amended by No. 14 of 1996 s. 4.]

459. Destruction of trespassing cattle in certain cases

Where cattle trespassing are not impounded, and it is proved to the satisfaction of a justice that it is not possible to impound the cattle except at an undue expense, and that the owner of the cattle is unknown or cannot be found, the justice may order the destruction of the cattle in such manner as he thinks fit, and may, if the animal is a horse, mare, filly, foal, gelding, colt, camel, bull, bullock, cow, heifer, steer, calf, ass, or mule, order the production and delivery to a police constable of the hide of the animal and by the order give such direction as to the disposal of the hide as he thinks fit, and an order so made has effect according to its tenor and is not subject to appeal.

460. Owner may impound on his own land cattle found trespassing thereon

(1) Where there is not a public pound situated within 5 kilometres of the land, or where the holding capacity of any such pound is exhausted, the owner or occupier of land on which cattle are found trespassing or in respect of which the provisions of section 458(3) apply may impound the cattle in a convenient and suitable place —

(a) upon his land; or

(b) by arrangement with the owner of any adjacent land, upon that land.

(2) A person impounding cattle under the provisions of subsection (1) shall, within 24 hours of that impounding —

(a) if the owner of the cattle is known to him, give to the owner of the cattle, or leave at his usual or last known place of abode in the State, notice of the impounding, specifying, with respect to the cattle, the same particulars as are, by section 466 required to be specified in the notice given to the keeper by a person impounding cattle in the public pound;

(b) if the owner of the cattle is unknown to him, give to the keeper of the nearest public pound the same notice

specifying the same particulars with respect to the cattle as is, by that section required to be given to the keeper by a person impounding cattle in the public pound.

(3)(a) A person impounding cattle under the provisions of subsection (1) shall cause the cattle to be fed and maintained while they are impounded.

(b) If the owner of the cattle has not at the expiration of the period of 72 hours paid to the owner or occupier causing the cattle to be impounded the amount of damages which he is entitled to claim under this Act in respect of the trespass of the cattle, together with charges for the sustenance of the cattle whilst so impounded, at the same rates as are chargeable by the keeper of the nearest public pound, the person who caused the cattle to be impounded may —

(i) impound the cattle in the nearest suitable public pound; or

(ii) arrange with the local government for a sale of the cattle to be carried out by a person appointed by the local government at the place where the cattle are impounded or at such other place as the local government directs and in the same manner as if the cattle had been impounded under subparagraph (i) in a public pound established and maintained by that local government.

(3a) Where a local government is requested by the owner or occupier of land within its district who has caused cattle to be impounded under this section to arrange for a sale of the cattle to be carried out by a person appointed by the local government, the local government shall make the requisite arrangements accordingly and shall cause a sale to be held and the money received in respect of the sale to be dealt with as though the cattle had been impounded in a public pound which was established and maintained by that local government.

(4) The owner or occupier so impounding cattle or causing cattle to be impounded may claim and recover in respect of the cattle so

impounded sustenance charges in respect of the sustenance of the cattle whilst impounded by him or at his request at the rates chargeable by the keeper of the nearest public pound, in addition to damages recoverable for the trespass of the cattle on his land.

(5) If any entire horse, ass, or bull above the age of one year shall be found trespassing without a keeper on any land, the owner of such land may castrate such cattle if unbranded, and if the owner thereof be unknown.

(a) In every case where any cattle shall have been castrated in accordance with the foregoing provisions, no compensation shall be given to the owner of such cattle for such castration.

(b) The above enactments shall be cumulative, and not be a bar to any claim for any compensation for damage or to any penalty which may have accrued by reason of such trespass, unless such compensation shall have been claimed or determined on the hearing of a charge of trespass.

[Section 460 amended by No. 94 of 1972 s. 4; No. 105 of 1973 s. 14; No. 14 of 1996 s. 4; No. 84 of 2004 s. 80.]

461. Unlawfully impounding

A person who impounds cattle unlawfully or in a place other than one authorised by this Act as place in which cattle may be impounded commits an offence.

462. Fees to be paid to poundkeeper

(1) A poundkeeper may charge, as poundage fees for cattle impounded under the provisions of this Act, the fees specified in Part 3 of the Fifteenth Schedule, and for the sustenance of the cattle while impounded, sustenance charges at the rates specified in that Part of that Schedule, according to the description in that Part of that Schedule of the cattle impounded.

(2) Those fees and charges are chargeable for each day during which the cattle remain impounded, and where they are

impounded for part of a day but not for the whole of the day, the part is to be regarded as a whole day.

463. Rates for damage by trespass

(1) If cattle are found trespassing on land, the owner or occupier of the land may claim damages in respect of the trespass at the rates for damage by trespass specified in Part 4 of the Fifteenth Schedule, according to the description of the cattle, and the description contained in that Part of that Schedule of the land or crop on which the trespass is committed.

(2) If cattle are found trespassing upon unenclosed land —

(a) after 3 days' notice in writing requiring the owner of the cattle to prevent them from continuing to trespass upon the land has been given to the owner of the cattle by the owner or occupier of the land, either by being delivered personally or by being left for him at his usual or last known place of abode in the State; or

(b) after 14 days' notice requiring the owner of the cattle to prevent them from continuing to trespass on the land, describing the land by the names and numbers of the locations or lots or other precise and accurate description has been published in the *Gazette*, or in a newspaper circulating in the locality;

the owner or occupier of the land may lawfully claim damages in respect of the trespass at the same rate which he could lawfully claim if the land upon which the cattle were found trespassing was enclosed.

464. Local government may vary fees

A local government having the care, control, and management of a pound may, from time to time, increase, decrease or otherwise vary the poundage fees, trespass fees, ranger's fees, and sustenance charges specified in the Fifteenth Schedule in respect of the public pound but only on and after the day on

which the local government has caused notice of the increase or variation to be published in the *Gazette*.

[Section 464 amended by No. 42 of 1984 s. 56; No. 14 of 1996 s. 4.]

465. Cattle to be restored to owner on payment or tender of amount claimed

(1) If cattle found trespassing upon land have been seized for the purpose of being impounded, the owner of the cattle, or a person authorised by him to do so, may pay or tender to the person having charge of the cattle before the cattle have been actually impounded sums claimed and payable under this Act in respect of the cattle, whether for damage by trespass, sustenance, or ranger's fees, or in respect of the impounding, and upon the payment or tender being made to the person having charge of the cattle he shall deliver them up to the owner or the authorised person paying or tendering the sums so claimed.

(2) If the person who has charge of the cattle is a person mentioned in section 458(2)(a), and the sums claimed are paid to him, he shall pay the money to the keeper of the public pound in which he intended to impound the cattle when he delivered them to the person paying the sums, and shall give to the poundkeeper such information relating to the cattle and the payment as is necessary to enable the poundkeeper to record in the pound book entries relating to the cattle and the payment, and the poundkeeper shall make those entries and issue his receipt acknowledging receipt of the payment and stating the particulars in respect of which it is made.

466. Person impounding to give notice to poundkeeper

A person impounding cattle in a public pound shall give notice to the keeper of the pound specifying —

(a) the number and kinds of the cattle impounded;

(b) the name of the owner, if known, or of the supposed owner of the cattle, or stating the fact that he is unknown;

(c) the place where the cattle were found trespassing;

(d) the sum, if any, claimed for damage by trespass of the cattle and for their sustenance, if any, while impounded on the land of the person by whom the cattle were impounded; and

(e) the sum, if any, paid as ranger's fees in respect of the cattle.

467. Duty and responsibility of poundkeeper

(1) The keeper of a public pound shall receive into his custody cattle impounded in the pound and shall detain them in his custody, whether in the pound or elsewhere, until they are released, sold, or otherwise disposed of, in accordance with the provisions of this Act.

(2) The poundkeeper is responsible to the owner of cattle impounded for loss or damage sustained by the poundkeeper's wilful act or neglect, or the wilful act or neglect of any of his servants, but not otherwise, until the cattle are released, sold, or otherwise disposed of, in accordance with the provisions of this Act.

468. Notice of cattle impounded to be posted up

(1) The keeper of a public pound, when and as soon as cattle are impounded in the pound, shall post a written notice on a board in a conspicuous part of the pound, setting forth a description of the cattle.

(2) The poundkeeper shall keep the notice so posted until the cattle have been released, sold, or otherwise disposed of, according to the provisions of this Act.

469. Notice of impounding

(1) If cattle impounded in a public pound are not claimed by the owner or by a person on his behalf within 24 hours after they were impounded, the poundkeeper shall give notice in accordance with the requirements of this section of the impounding.

(2) If the owner of cattle so impounded is known to the poundkeeper, he shall give written notice of the impounding to the owner by causing it to be delivered to the owner personally, or by causing it to be left for or posted to him at his usual or last known place of residence in the State.

(3) Where the poundkeeper gives the notice of impounding by causing it to be delivered to the owner personally, or by causing it to be left at the owner's usual or last known place of residence, the poundkeeper shall cause notice to be so delivered or left within 48 hours of the time when the cattle were impounded, and where the poundkeeper causes the notice to be given by posting it, the poundkeeper shall cause the notice to be sent not later than by the earliest post after the expiration of 24 hours from the time of the impounding.

(4) In the notice the poundkeeper shall state —

(a) the same particulars as are by section 466 required to be given to the poundkeeper by the person impounding cattle;

(b) the sums claimed in respect of the cattle as trespass fees, ranger's fees, poundage fees, sustenance charges, and other expenses incurred up to the time of giving the notice; and

(c) that if the cattle are not claimed by the person entitled to them, they will be sold or otherwise disposed of in accordance with this Act.

(5) If the owner of cattle impounded is unknown to the poundkeeper, the poundkeeper shall, as soon as possible after the expiration of 24 hours from the time of impounding the cattle cause a notice of the impounding in the form in Part 5 of

the Fifteenth Schedule to be published in the *Gazette* or in a newspaper circulating in the locality in which the public pound is situated.

(6) If a poundkeeper knowingly and wilfully incorrectly, or in an insufficient manner, describes impounded cattle in a notice or advertisement required or permitted by this Part to be given or published, or in the notice or advertisement knowingly and wilfully fixes a time for the sale of cattle earlier than provided by this Act, the poundkeeper commits an offence.

Penalty: $40.

[Section 469 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20.]

470. Poundkeeper may charge for service of notice

(1) A poundkeeper may charge —

(a) the sum of 10 cents or such other sum as is prescribed by the regulations for delivering or sending by post the notice of impounding;

(b) the sum of 75 cents or such other sum as is prescribed by the regulations for publishing the notice of impounding in the *Gazette*, or the newspaper; and

(c) expenses paid by him in respect of the publication of the notice.

(2) A poundkeeper may also charge for the delivery of the notice, by himself or by a person employed or engaged by him for that purpose, the sum of 20 cents or such sum as is prescribed by the regulations for every kilometre of the distance to the place at which the notice is delivered or left from the pound in which the cattle to which the notice relates are impounded, but where notice of impounding is, by section 469, permitted to be sent by post, and is sent by post, the poundkeeper may charge for the delivery to the place of posting of the notice 20 cents or such other sum as is prescribed by the regulations for every kilometre

or part thereof of the distance from the pound to the nearest place available for posting it.

[Section 470 amended by No. 113 of 1965 s. 4(1); No. 94 of 1972 s. 4; No. 65 of 1974 s. 18.]

471. Cattle to be released on payment of damages and poundkeeper's fees and charges

The keeper of a public pound —

(a) upon payment being made to him in respect of cattle impounded, of his lawful fees and charges, and the sums, if any, claimed for damage by trespass, or payable as ranger's fees; or

(b) upon receipt of a statutory declaration sworn by a person entitled to claim a sum mentioned in section 466(d) that he has been paid or withdraws his claim for that sum, and on payment being made to the poundkeeper of the lawful fees and charges payable to the poundkeeper, and on payment of ranger's fees, if any, in respect of cattle impounded;

shall release the cattle from, and deliver them at, the pound to the owner of them or to a person authorised by the owner to receive them; but no poundkeeper is required so to release and deliver cattle except between the hours of sunrise and sunset, nor until payment is so made or waived.

472. Payment under protest where amount claimed deemed excessive

(1) If the owner of cattle impounded is of opinion that the sum claimed by the person impounding them is excessive, the owner may under protest in writing pay to the poundkeeper the sum so claimed, and also the fees and charges due to the poundkeeper in respect of the cattle and immediately upon the payment being so made the poundkeeper shall release from, and deliver at the pound, the cattle to the owner or person authorised by him to receive them.

(2) If the owner brings an action against the poundkeeper or the person impounding the cattle for the recovery of so much of the amount so paid as is claimed to be excessive, the Court before which the action is brought may, if of opinion that the action has been brought as soon after the release of the cattle as reasonably practicable, order the poundkeeper or the person impounding the cattle to return to the owner so much of money paid by him as exceeds the damages or fees and charges lawfully due in respect of the cattle, and an order so made is not subject to appeal.

473. Poundkeeper to pay, upon receipt, money due to person impounding

Where the keeper of a public pound has received on account of a person ranger's fees or trespass fees, he shall on demand made by the person pay the fees to him, but to the extent only that they are lawfully chargeable.

474. Sale of unclaimed cattle

(1) If impounded cattle are not released from the pound —

(a) where notice of the impounding has been given to or left for the owner, within 3 days of the notice being so given or left;

(b) where the notice has been given by post, within 7 days of the time when the notice was posted; or

(c) where the notice has been given by being published in the *Gazette* or a newspaper circulating in the locality in which the pound is situated, within 7 days of the publication;

the poundkeeper may sell the cattle by public auction, but not until he has given 3 days' notice specifying the time and place of the sale and the cattle to be sold by posting the notice in a conspicuous place at the pound and by publishing it once in a newspaper circulating in that locality.

(2)(a) Where it appears to a justice that giving notice and advertising the sale of cattle impounded under the provisions of this Act would involve greater expense than the value of the cattle impounded, or that by reason of the condition or health of the cattle, they should be sold as quickly as possible, he may make an order directing that the giving of notice, other than that required by section 468, and that the advertising be dispensed with, and directing that the cattle be sold at such time and in such manner and under such conditions as he thinks fit.

(b) The provisions of paragraph (a) do not prejudice enforcement of liability against the owner of the cattle in respect of a penalty or payment of lawful fees, charges, and damages under this Part, and they may be recovered in a court of competent jurisdiction.

(3)(a) Where it appears to a justice, after inspection of impounded cattle that —

(i) if the cattle were held for the period and notice of sale advertised in manner prescribed by this Part the cattle would not be likely to realise on sale sufficient to pay the poundage fees, expenses of sale, and other lawful charges payable under this Act in connection with the impounding of the cattle; and

(ii) that an immediate sale under subsection (2) would not be likely to realise those fees and charges,

and the owner of the cattle does not appear and pay those fees and charges or give security to the satisfaction of the justice for the payment of such further fees, charges, and expenses as may be awarded in subsequent proceedings under this Act, the justice may make an order dispensing with the giving of notice, other than that required by section 468, and authorising the immediate destruction or disposal of the cattle and the disposal of the carcasses in such manner as the justice thinks fit.

(b) Destruction or disposal of the cattle or carcasses pursuant to an order so made does not prejudice enforcement of liability against the owner of the cattle in respect of a penalty or payment

of lawful fees, charges, and damages under this Part and they may be recovered in a court of competent jurisdiction.

(4) Where a sale is authorised by or under this section, unless an order made by a justice directs otherwise —

(a) only the poundkeeper or a person appointed for that purpose by the local government may conduct the sale;

(b) the poundkeeper or other person so appointed shall conduct the sale only at the public pound where the cattle are impounded or at another place nominated by the mayor or president;

(c) the poundkeeper or other person so appointed shall sell the cattle to the highest bidder at auction unless where a reserve price is fixed, his bid is less than the reserve price; and

(d) the poundkeeper or other person so appointed shall commence the sale at the time fixed by the poundkeeper in the notice so published and posted.

(5) If the poundkeeper or person so appointed is of opinion that the cattle to be offered for sale are of a value greater in amount than that of the total of the fees, charges, costs, and expenses, chargeable under the Act in respect of the cattle, he may fix a reserve price on the cattle not exceeding that total.

(6) The person who impounded the cattle, the keeper of the pound, or a member of the council of the local government or the chief executive officer of the local government shall not either personally or by another person purchase cattle impounded in the pound.

(7) The keeper of a public pound shall, on the sale of an animal which has been impounded in the pound, brand it with the brands, on the portions, and in the order, prescribed by the *Brands Act 1904* [3], in such manner as to show that the brand is the last brand at the time imprinted on the beast.

Penalty: $200.

(8) In selling or offering cattle or carcasses for sale under this Part a poundkeeper or person appointed by the local government to sell them does not require a licence under the *Auctioneers Act 1921* [4], and the provisions of that Act do not apply to him in so selling or offering for sale.

(9) An order made under this section by a justice has effect according to its tenor, and is not subject to appeal.

[Section 474 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 14 of 1996 s. 4; No. 57 of 1997 s. 83(5); No. 50 of 2003 s. 77(2); No. 84 of 2004 s. 80.]

475. Justice may order unsold cattle to be destroyed

(1) If impounded cattle offered for sale are not sold, a justice may certify that he does not consider the cattle of sufficient value to pay the cost of further maintaining them, and may order that the cattle forthwith be killed and the carcasses sold or otherwise disposed of in such manner as he thinks fit and specified in the order.

(2) The justice shall issue the order in writing, and the person obtaining the order shall deliver it to the poundkeeper of the pound in which the cattle are impounded.

(3) An order made under this section by a justice has effect according to its tenor, and is not subject to appeal.

476. Purchaser not bound to prove regularity of sale

A purchaser of cattle or of a carcass sold under the provisions of this Part is not bound to prove that the sale was regular or that the provisions of this Part were complied with, and is not affected by default or irregularity in respect of the sale.

477. Poundkeeper may recover fees from owner of cattle or from the local government

(1) If impounded cattle offered for sale are not sold, or if the sale of the cattle or of the carcasses of the cattle does not realise a

sufficient sum to pay his lawful fees and charges, the poundkeeper may recover the fees and charges or such portion of them as remains unpaid, from the owner of the cattle by action in a court of competent jurisdiction, and if the owner cannot be found or the poundkeeper cannot recover the fees and charges or the portion remaining unpaid from the owner, he may in the same manner recover the fees and charges or the portion remaining unpaid from the local government having the care, control, and management of the pound.

(2) It is defence to an action so brought to show that a notice required by this Part to be given by the poundkeeper with respect to the cattle has not been given.

[Section 477 amended by No. 14 of 1996 s. 4.]

478. Authority for destruction of injured, diseased, or dying cattle impounded

(1) If the mayor, president, or chief executive officer, of the local government having the care, control, and management of the pound or a justice, after inspecting cattle impounded in a pound, or found on a street, way, or place mentioned in section 447, is of opinion that the cattle are in a dying state, or are injured, diseased, or so weak as not to be likely to recover, he may order the cattle, if not claimed within 24 hours of the time of issuing the order, which time he shall specify in the order, to be killed, and the carcasses sold or otherwise disposed of in such manner as he thinks fit and specifies in the order.

(2) The person issuing the order shall issue the order in writing, and the person obtaining the order shall deliver it

(a) if the cattle are impounded, to the poundkeeper of the pound in which the cattle are impounded; or

(b) if the cattle are found on a street, way, or place mentioned in section 447, to the chief executive officer of the local government.

(3) An order made under this section has effect according to its tenor, and is not subject to appeal.

[Section 478 amended by No. 14 of 1996 s. 4.]

479. Application of proceeds arising from sale of cattle

The price of cattle, or the carcass of cattle, sold under the provisions of this Part shall be paid by the person purchasing them to the poundkeeper and shall be applied by the poundkeeper —

firstly, in payment to the auctioneer at the sale, if he is not the poundkeeper, of a commission of 5% or such other per centum as is prescribed by the regulations of the gross amount realised;

secondly, in payment to himself of the lawful fees and charges payable to him under this Part in respect of the cattle or carcass;

thirdly, in payment of the sum due to the ranger or other person by whom the cattle were impounded; and

fourthly, as to the balance then remaining

(a) in payment to the owner of the cattle where he is known and demands payment of it to him; or

(b) where the owner is not known in payment as directed by section 457.

480. Goats, pigs, poultry may be destroyed if found on enclosed land

[(1) repealed]

(2) Where the owner or a person in charge of enclosed land —

(a) has given notice in writing to the owner of goats, pigs, birds, or poultry, of his intention to destroy goats, pigs, birds or poultry found trespassing on the land, he may kill by any means, except by the use of poison, goats, pigs, birds or poultry, which are the property of the owner to whom he has given the notice and which he finds trespassing on the land; or

(b) has advertised twice in 2 or more newspapers published in the State and circulating in the locality his intention to destroy goats, pigs, birds or poultry found trespassing on the land, he may kill by any means except by the use of poison, goats, pigs, birds or poultry found trespassing on the land;

and, if not sooner claimed by the owner of the animal or bird, may 6 hours after killing it remove, bury, or destroy its carcass.

[Section 480 amended by No. 99 of 1985 s. 26.]

481. Stray cattle not to be taken away without notice to owner of land where they are

(1) No person shall drive cattle from the land, or out of the herds, of another person without first giving notice to him or his agent, overseer, or bailiff, of the time he intends to drive the cattle away.

(2) A person —

(a) who has not so given notice of his intention to drive away cattle and who —

(i) drives cattle from the land, or out of the herds, of another person; or

(ii) enters upon the land of another person for the purpose of driving cattle from the land;

or

(b) who having so given the notice drives from the land, or out of the herds of another person without that other person's authority, cattle other than his own,

commits an offence.

Penalty: $800.

[Section 481 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20.]

482. Pound rescues or breaches

(1) A person who —

(a) unlawfully rescues or releases or attempts to rescue or release cattle lawfully impounded or seized for the purpose of being impounded;

(b) damages a pound lawfully established, whether cattle are or are not impounded in it; or

(c) commits pound-breach by reason of which cattle may escape from a pound;

commits an offence and is liable to a penalty not exceeding $400, together with charges and expenses incurred in respect of the impounding.

(2) In proceedings in respect of an offence mentioned in this section, proof that cattle so rescued, released, or escaping, were within 48 hours of the time of the rescue, release, or escape, found in the possession or on the lands, or with a herd of a person, is *prima facie* evidence that the rescue, release, or pound-breach, was made or committed by that person.

(3) A person who does or threatens to do an injury, or causes or threatens to cause a detriment, to a poundkeeper or ranger with the intention of preventing him from, or hindering him in, doing an act which, as such, he is lawfully entitled to do, or because he has, as such, done an act which he is lawfully entitled to do, or with the intention of compelling him to do an act which, as such, he is lawfully entitled to abstain from doing, or because, as such, he has abstained from doing an act which, as such, he is lawfully entitled to abstain from doing, commits an offence.

Penalty: $400.

[Section 482 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 50 of 2003 s. 77(3).]

483. Penalty for removing fences, gates, etc.

A person who unlawfully removes or takes down a fence, rail, or slip-panel, or opens a gate, for the purpose of allowing cattle to trespass upon or escape from enclosed land, commits an offence.

Penalty: $400.

[Section 483 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20.]

484. Liability of owner of straying cattle

(1) If the owner of cattle —

(a) permits the cattle to stray;

(b) permits the cattle to be at large;

(c) tethers the cattle; or

(d) depastures the cattle;

in a street or other public place, he commits an offence.

Penalty: $200.

(2) If cattle are found straying, or at large, or tethered, or depastured, in a street, or other public place, the owner of the cattle is to be regarded for the purposes of this section as having permitted the cattle to so stray or be at large or to have so tethered or depastured the cattle.

(3) If the owner of the cattle cannot be found, the person in charge or apparently in charge of the cattle is regarded for the purposes of this section as the owner.

(4) In proceedings relating to an offence mentioned in this section, an averment in the charge that a person is the owner, or person in charge or apparently in charge, of the cattle concerned, is regarded as proved in the absence of proof to the contrary.

(5) If,

whilst on a street, or other public place, which street or public place is in a city, town, or townsite,

cattle

in charge of a person

do not travel

at the rate of at least 8 kilometres a day in a direct line,

the cattle are,

for the purpose of this section

to be regarded as being at large, unless

the day is that on which a market is held for the sale of cattle or the preceding day, and the cattle are travelling to the market in charge of a person at a less rate,

but the provisions of this subsection do not affect the decision of the question as to whether cattle are at large in a street or other public place elsewhere than in a city, town or townsite, or in circumstances other than those mentioned in this subsection.

[Section 484 amended by No. 113 of 1965 s. 4(1); No. 81 of 1972 s. 20; No. 94 of 1972 s. 4; No. 84 of 2004 s. 80.]

485. Actions for full compensation for trespass

The provisions of this Part do not affect the right of the owner of land from suing in a court of competent jurisdiction for damages, at the rates specified in Part 4 of the Fifteenth Schedule, or at the rates in force for the time being at the public pound nearest to the land, or for any other damages, in respect of trespass by cattle on the land.

[Part XXI (s. 486-501) repealed by No. 74 of 1995 s. 9.70.]

[Part XXII: s. 502-505, 508-511 repealed by No. 74 of 1995 s. 9.70; s. 506, 507 repealed by No. 27 of 1994 s. 11.]

[Part XXIII (s. 512-521A) repealed by No. 74 of 1995 s. 9.70.]

[Part XXIV: s. 522-525, 526-531AA repealed by No. 74 of 1995 s. 9.70;
s. 525A repealed by No. 42 of 1987 s. 25.]

[Part XXV: s. 531A-534, 535, 537-544, 545A, 546-560, 562-597 repealed by No. 74 of 1995 s. 9.70;
s. 534A, 536 repealed by No. 76 of 1978 s. 91;
s. 545 repealed by No. 76 of 1978 s. 96;
s. 561 repealed by No. 5 of 1977 s. 5.]

[Part XXVI (s. 598-624A) repealed by No. 74 of 1995 s. 9.70.]

[Part XXVII: s. 625-637, 639-641 repealed by No. 74 of 1995 s. 9.70;
s. 638 repealed by No. 103 of 1982 s. 11.]

Part XXVIII — Miscellaneous

[Division 1 (s. 642-660) repealed by No. 74 of 1995 s. 9.70.]

[Division 2: s. 661, 663-665B repealed by No. 74 of 1995 s. 9.70; s. 662 repealed by No. 126 of 1987 s. 118.]

666. Occupier may act in certain cases of default by owner

When default is made by the owner of a building or land in the execution of a work which, under this Act he is required to carry out, the occupier of the building or land may, with the approval of the local government, cause the work to be carried out, and the expense of doing so shall, unless there is an agreement between them to the contrary, be repaid to the occupier by the owner of the building or land, and the occupier may deduct the amount of the expense out of rent or other money due or from time to time becoming due from him to the owner.

[Section 666 amended by No. 14 of 1996 s. 4.]

667. Occupier obstructing owner in carrying Act into effect

(1) Where the occupier of a building or land within a district prevents the owner from complying with the requirements of this Act in respect of the building or land after notice of his intention so to do has been given by the owner to the occupier, the Magistrates Court, upon proof that the owner has been so prevented by, and has so given notice to, the occupier, may make an order in writing directing the occupier to permit the owner to do what is necessary in order to comply with those requirements, and an order so made is not subject to appeal.

(2) If, after the expiration of 10 days from the date of the order, the occupier continues to prevent the owner from complying with those requirements, the occupier commits an offence, and for every day during which he continues to prevent the owner from so complying is liable to a penalty not exceeding $10, and the owner is not liable for an offence of non-compliance with those

requirements while he is so prevented from complying with them.

[Section 667 amended by No. 113 of 1965 s. 4(1); No. 59 of 2004 s. 141.]

*[**668-669F.** Repealed by No. 74 of 1995 s. 9.70.]*

670. Penalty for non-performance of provisions of this Act or for doing of acts prohibited by this Act

A person who does not do a thing, which by or under this Act, he is required or directed to do, and a person who does a thing which by or under this Act he is prohibited from doing, commits an offence.

*[**671-677.** Repealed by No. 74 of 1995 s. 9.70.]*

[Divisions 3 and 3A (s. 677A-678B) repealed by No. 74 of 1995 s. 9.70.]

[Division 4 (s. 679-681) repealed by No. 74 of 1995 s. 9.70.]

682. Act not to affect right of Crown

Anything which, if this Act were not in operation, might be done in the exercise of a right reserved to the Crown or a person representing the Crown and relating to or affecting land alienated from the Crown, may still be done in the exercise of the right, notwithstanding that authority to do it is conferred by this Act upon a local government or other authority.

[Section 682 amended by No. 14 of 1996 s. 4.]

*[**683.** Repealed by No. 74 of 1995 s. 9.70.]*

684. Arbitration

Where under section 287(4)(b), 288(8), 291(5)(b) or 364(8) provision is made for determination of a question or matter only on a reference to arbitration —

(a) the provisions of the *Commercial Arbitration Act 1985*, apply in respect of the reference and the arbitration;

(b) the determination shall be made by 2 arbitrators, one to be appointed by each party, or under that Act in default of appointment, by a party; and

(c) if the parties have not signed or otherwise assented to an agreement to refer the question or matter to arbitration, the question or matter shall nevertheless be deemed the subject of a reference under that Act.

[Section 684 amended by No. 21 of 1968 s. 9; No. 109 of 1985 Schedule 1; No. 14 of 1996 s. 4.]

*[**685, 686.** Repealed by No. 74 of 1995 s. 9.70.]*

687. Power of courts to declare that a structure is not a building

A court having the decision of a case in which the question, as to whether a structure is or is not a building, is material may, having regard to the circumstances of the case, declare that the structure is not a building.

*[**688-694.** Repealed by No. 74 of 1995 s. 9.70.]*

[Part XXIX (s. 695-729) repealed by No. 74 of 1995 s. 9.70.]

[Part XXX (s. 730-737) repealed by No. 74 of 1995 s. 9.70.]

[First-Fourth Schedules repealed by No. 74 of 1995 s. 9.70.]

[Fifth-Eleventh Schedules repealed by No. 27 of 1981 s. 20.]

[Twelfth Schedule repealed by No. 107 of 1969 s. 17.]

[Thirteenth and Fourteenth Schedules repealed by No. 74 of 1995 s. 9.70.]

Fifteenth Schedule

[s. 455(1)]

Western Australia

Local Government (Miscellaneous Provisions) Act 1960 [5]

Part 1 — Form of poundkeeper's book

RELEASED, SOLD OR DESTROYED	Signature and address of person receiving cattle released		
	Loss on Sale		
	Profit on Sale		
	Amount received for —	Total	
		Other charges	
		Trespass	
		Sales	
	To whom delivered or proceeds paid		
	If destroyed, by whose order		
	Whether Released or Sold		
	Date and Time		
IMPOUNDED	Charges Payable	Total	
		Selling charges	
		Advertising, etc.	
		Trespass	
		Sustenance	
		Impounding	
		Ranger	
	Time and mode of giving notice		
	Owner or supposed Owner		
	For what cause		
	By whom impounded		
	Description of Cattle colours and brands		
	Date and Time		

Western Australia

Local Government (Miscellaneous Provisions) Act 1960 [5]

[s. 458(2)(b)]

Part 2

Ranger's fees

Table of Fees Chargeable by Ranger, officer or other authorised person in respect of Cattle Impounded by him

		If impounded after 6 a.m. and before 6 p.m. $	If impounded after 6 p.m. and before 6 a.m. $
(1)	Entire horses, mules, asses, camels, bulls or boars, per head	4.00	8.00
(2)	Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs, per head	2.00	4.00
(3)	Wethers, ewes, lambs, goats, per head	0.40	0.60

No charge is payable in respect of a suckling animal under the age of 6 months running with its mother.

The above fees include driving, leading or otherwise transporting the animal or animals no more than a distance of 3 kilometres. Where the distance is more than 3 kilometres, an additional charge of 10 cents for each 1.5 kilometres or part thereof in excess of 3 kilometres shall be paid to the ranger in respect of each animal impounded other than a suckling animal as provided.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

[Part 2 amended by No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4.]

Western Australia

Local Government (Miscellaneous Provisions) Act 1960 [5]

[s. 462(1)]

Part 3

Table of poundage fees for cattle impounded

		First 24 hours or part $	Subsequently each 24 hours or part $
(1)	Entire horses, mules, asses, camels, bulls or boars above or apparently above the age of 2 years, per head	2.00	0.50
(2)	Entire horses, mules, asses, camels, bull or boars under the age of 2 years	1.00	0.25
(3)	Mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, calves, rams or pigs, per head	0.50	0.10
(4)	Wethers, ewes, lambs, goats, per head	0.20	0.10

No charge is payable in respect of a suckling animal under the age of 6 months running with its mother.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

Table of charges for sustenance of cattle impounded

		For each 24 hours or part
(1)	Entire horses, mules, asses, camels, bulls, mares, geldings, colts, fillies, foals, oxen, cows, steers, heifers, or calves, per head	0.75
(2)	Pigs of any description, per head	0.50
(3)	Rams, wethers, ewes, lambs or goats, per head ...	0.20

No charge is payable in respect of a suckling animal under the age of 6 months running with its mother.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

[Part 3 amended by No. 113 of 1965 s. 8(1).]

Western Australia

Local Government (Miscellaneous Provisions) Act 1960 [5]

[s. 463(1)]

Part 4

Rates for damage by trespass by cattle

	Description of Cattle	Trespass in Enclosed Growing Crop of any kind, or Garden or Enclosure from which the crop has not been removed or in an enclosed public cemetery or sanitary site	Trespass in an Unenclosed Paddock or Meadow of Grass or of Stubble	Trespass in Other Enclosed Land	Trespass in Other Unenclosed Land
		$	$	$	$
1.	Entire horses, mares, geldings, fillies, colts, foals, bulls, oxen, steers, heifers, calves, asses, mules, or camels — per head	2.00	0.40	1.00	0.03
2.	Pigs of any description — per head	2.00	0.40	1.00	0.03
3.	Sheep of any description — per head	0.20	0.10	0.10	0.01
4.	Goats — per head	0.20	0.10	0.10	0.01

No damage is payable in respect of a suckling animal under the age of 6 months running with its mother.

If the amounts are increased, decreased, or otherwise varied under s. 464, the amounts as so increased, decreased, or varied are chargeable.

[Part 4 amended by No. 38 of 1962 s. 29; No. 113 of 1965 s. 4(1).]

Western Australia

Local Government (Miscellaneous Provisions) Act 1960 [5]

[s. 469(5)]

Part 5

Form of advertisement in the G*overnment Gazette* or newspaper circulating in the locality

Impounded at (here state the place), the following (here describe the number and kind of cattle, colours and brands (if any)). If not claimed, will be sold on (here state the date of proposed sale).

Dated the day of , 20 .

.....
Poundkeeper

[Sixteenth and Seventeenth Schedules repealed by No. 35 of 1985 s. 24.]

[Eighteenth Schedule repealed by No. 107 of 1969 s. 17.]

[Nineteenth-Twenty-fifth Schedules repealed by No. 74 of 1995 s. 9.70.]

[Twenty-sixth Schedule repealed by No. 27 of 1981 s. 20.]

[Twenty-seventh Schedule repealed by No. 103 of 1982 s. 13.]

Notes

[1] This is a compilation of the *Local Government (Miscellaneous Provisions) Act 1960* and includes the amendments made by the other written laws referred to in the following table [1a, 6, 7]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Local Government Act 1960 [8]	84 of 1960	20 Dec 1960	1 Jul 1961 (see s. 2 and *Gazette* 10 Feb 1961 p. 385)
Local Government Act Amendment Act 1961	72 of 1961	28 Nov 1961	28 Nov 1961
Local Government Act Amendment Act 1962	38 of 1962	29 Oct 1962	29 Oct 1962
Local Government Act Amendment Act (No. 2) 1963	68 of 1963	17 Dec 1963	17 Dec 1963
Local Government Act Amendment Act (No. 2) 1964 [2]	90 of 1964	14 Dec 1964	1 Feb 1965 (see s. 2 and *Gazette* 15 Jan 1965 p. 289)
Local Government Act Amendment Act 1965	32 of 1965	21 Oct 1965	21 Oct 1965
Local Government Act Amendment Act (No. 3) 1965	63 of 1965	19 Nov 1965	19 Nov 1965
Local Government Act Amendment Act (No. 2) 1965	70 of 1965	25 Nov 1965	25 Nov 1965
Local Government Act Amendment Act (No. 4) 1965	82 of 1965	7 Dec 1965	7 Dec 1965
Decimal Currency Act 1965	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Local Government Act Amendment Act (No. 2) 1966	83 of 1966	12 Dec 1966	12 Dec 1966
Local Government Act Amendment Act 1966	96 of 1966	12 Dec 1966	13 Jan 1967 (see s. 2 and *Gazette* 13 Jan 1967 p. 35)

Short title	Number and year	Assent	Commencement
Local Government Act Amendment Act 1967	32 of 1967	17 Nov 1967	Act other than s. 24 and 26: 22 Dec 1967 (see s. 2 and *Gazette* 22 Dec 1967 p. 3531); s. 24 and 26: 1 Jul 1968 (see s. 2 and *Gazette* 22 Dec 1967 p. 3531)
Reprint of the *Local Government Act 1960* approved 3 May 1968 (not in a Volume) (includes amendments listed above)			
Local Government Act Amendment Act 1968	21 of 1968	16 Oct 1968	16 Oct 1968
Local Government Act Amendment Act 1969	35 of 1969	19 May 1969	19 May 1969
Local Government Act Amendment Act (No. 4) 1969	83 of 1969	17 Nov 1969	12 Dec 1969 (see s. 2 and *Gazette* 12 Dec 1969 p. 4001)
Local Government Act Amendment Act (No. 5) 1969	107 of 1969	25 Nov 1969	23 Jan 1970 (see s. 2 and *Gazette* 23 Jan 1970 p. 138)
Local Government Act Amendment Act 1970	16 of 1970	29 Apr 1970	29 Apr 1970
Acts Amendment (Commissioner of State Taxation) Act 1970 Pt. V	21 of 1970	8 May 1970	1 Jul 1970 (see s. 2 and *Gazette* 26 Jun 1970 p. 1831)
Local Government Act Amendment Act (No. 2) 1970	49 of 1970	8 Oct 1970	8 Oct 1970
Local Government Act Amendment Act (No. 5) 1970	80 of 1970	30 Nov 1970	12 Feb 1971 (see s. 2 and *Gazette* 12 Feb 1971 p. 379)
Local Government Act Amendment Act (No. 6) 1970	120 of 1970	10 Dec 1970	10 Dec 1970
Local Government Act Amendment Act 1971	66 of 1971	22 Dec 1971	22 Dec 1971
Age of Majority Act 1972 s. 6(2)	46 of 1972	18 Sep 1972	1 Nov 1972 (see s. 2 and *Gazette* 13 Oct 1972 p. 4069)
Local Government Act Amendment Act (No. 3) 1972	81 of 1972	20 Nov 1972	2 Mar 1973 (see s. 2 and *Gazette* 2 Mar 1973 p. 573)

Short title	Number and year	Assent	Commencement
Metric Conversion Act 1972	94 of 1972 (as amended by No. 19 and 83 of 1973)	4 Dec 1972	Relevant amendments (see First Sch. [9]) took effect on 1 Jul 1973 (see s. 4(2) and *Gazette* 4 May 1973 p. 1110). Relevant amendments (see Third Sch. [10]) took effect on 8 Feb 1974 (see s. 4(2) and *Gazette* 8 Feb 1974 p. 354)
Acts Amendment (Road Safety and Traffic) Act 1973 Pt. II	12 of 1973	25 May 1973	26 Oct 1973 (see s. 2 and *Gazette* 26 Oct 1973 p. 4049)
Local Government Act Amendment Act (No. 2) 1973	21 of 1973	6 Jun 1973	6 Jun 1973
Reprint of the *Local Government Act 1960* approved 9 Aug 1973 (includes amendments listed above except those in the *Metric Conversion Act 1972* Third Sch.)			
Local Government Act Amendment Act (No. 3) 1973	74 of 1973	17 Dec 1973	1 Apr 1975 (see s. 2 and *Gazette* 20 Dec 1974 p. 5591)
Local Government Act Amendment Act (No. 4) 1973	105 of 1973	4 Jan 1974	5 Apr 1974 (see s. 2 and *Gazette* 5 Apr 1974 p. 1180)
Ministers of the Crown (Statutory Designations) and Acts Amendment Act 1974 Pt. IV	27 of 1974	29 Oct 1974	1 Dec 1974 (see s. 2 and *Gazette* 6 Dec 1974 p. 5204)
Local Government Act Amendment Act 1974	65 of 1974	9 Dec 1974	s. 1, 2 and 26: 9 Dec 1974 (see s. 2(2)); balance: 14 Feb 1975 (see s. 2(1) and *Gazette* 14 Feb 1975 p. 506)
Local Government Act Amendment Act 1975	36 of 1975	16 May 1975	16 May 1975
Local Government Act Amendment Act (No. 2) 1975	65 of 1975	24 Oct 1975	s. 1-8 and 10-17: 12 Dec 1975 (see s. 2 and *Gazette* 12 Dec 1975 p. 4483-4); s. 9: 19 Mar 1976 (see s. 2 and *Gazette* 19 Mar 1976 p. 779)
Local Government Act Amendment Act (No. 3) 1975	78 of 1975	14 Nov 1975	1 Jul 1976 (see s. 2 and *Gazette* 12 Dec 1975 p. 4484)

Short title	Number and year	Assent	Commencement
Local Government Act Amendment Act (No. 4) 1976	30 of 1976	9 Jun 1976	9 Jun 1976
Local Government Act Amendment Act (No. 3) 1976	46 of 1976	10 Sep 1976	24 Dec 1976 (see s. 2 and *Gazette* 24 Dec 1976 p. 5029)
Local Government Act Amendment Act (No. 5) 1976	97 of 1976	12 Nov 1976	Act other than s. 3, 6, 13-15, 22-25 and 29-32: 12 Nov 1976 (see s. 2(1)); s. 3, 6 and 22-25: 25 Mar 1977 (see s. 2(2) and *Gazette* 25 Mar 1977 p. 830); s. 13-15 and 29-32: 1 Aug 1977 (see s. 2(2) and *Gazette* 25 Mar 1977 p. 830)
Local Government Act Amendment Act (No. 6) 1976	124 of 1976	2 Dec 1976	4 Mar 1977 (see s. 2 and *Gazette* 4 Mar 1977 p. 652)
Acts Amendment (Pensioners Rates Rebates and Deferments) Act 1977 Pt. I	5 of 1977	30 Sep 1977	1 Jul 1977 (see s. 2)
Local Government Act Amendment Act 1977	7 of 1977	30 Sep 1977	30 Sep 1977
Reprint of the *Local Government Act 1960* approved 21 Nov 1977 (includes amendments listed above)			
Local Government Act Amendment Act (No. 2) 1977	56 of 1977	23 Nov 1977	Act other than s. 11: 23 Nov 1977 (see s. 2(1)); s. 11: 16 Dec 1977 (see s. 2(2) and *Gazette* 16 Dec 1977 p. 4655)
Local Government Act Amendment Act (No. 2) 1978	31 of 1978	22 May 1978	22 May 1978
Acts Amendment and Repeal (Valuation of Land) Act 1978 Pt. X	76 of 1978	20 Oct 1978	1 Jul 1979 (see s. 2 and *Gazette* 11 May 1979 p. 1211)

Short title	Number and year	Assent	Commencement
Local Government Act Amendment Act (No. 3) 1978	82 of 1978	27 Oct 1978	Act other than s. 12: 27 Oct 1978 (see s. 2(1)); s. 12: 1 Jul 1979 (see s. 2(2) and *Gazette* 22 Jun 1979 p. 1678)
Mining Act 1978 s. 3	107 of 1978	8 Dec 1978	1 Jan 1982 (see s. 2(2) and *Gazette* 11 Dec 1981 p. 5085)
Local Government Act Amendment Act (No. 3) 1979	57 of 1979	12 Nov 1979	12 Nov 1979
Local Government Act Amendment Act 1979 [11]	61 of 1979	12 Nov 1979	3 Apr 1980 (see s. 2 and *Gazette* 3 Apr 1980 p. 1043)
Local Government Act Amendment Act (No. 4) 1979	100 of 1979	21 Dec 1979	21 Dec 1979
Local Government Amendment Act 1980	68 of 1980	26 Nov 1980	Act other than s. 3 and 14-26: 26 Nov 1980 (see s. 2(1)); s. 3 and 14-26: 1 Jan 1981 (see s. 2(2) and *Gazette* 24 Dec 1980 p. 4349)
Local Government Amendment Act (No. 2) 1981	24 of 1981	26 May 1981	26 May 1981
Local Government Amendment Act 1981	27 of 1981 (as amended by No. 60 of 1981 s. 31)	26 May 1981	13 Nov 1981 (see s. 2 and *Gazette* 13 Nov 1981 p. 4677)
Local Government Amendment Act (No. 3) 1981 [12]	60 of 1981	13 Oct 1981	s. 6: 26 May 1981 (see s. 2(2)); Act other than s. 5(b), 6, 7, 17, 18, 23, 25(c), 28 and 29: 13 Oct 1981 (see s. 2(1)); s. 5(b), 7, 17, 18, 23, 25(c), 28 and 29: 16 Apr 1982 (see s. 2(3) and *Gazette* 16 Apr 1982 p. 1277)
Companies (Consequential Amendments) Act 1982 s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and *Gazette* 25 Jun 1982 p. 2079)

Short title	Number and year	Assent	Commencement
Local Government Amendment Act 1982	43 of 1982	27 May 1982	s. 4 and 5: 12 Nov 1979 (see s. 2(2)); Act other than s. 4-6: 27 May 1982 (see s. 2(1)); s. 6: 1 Jul 1983 (see s. 2(3) and *Gazette* 24 Jun 1983 p. 1977)
Local Government Amendment Act (No. 3) 1982	62 of 1982	28 Sep 1982	Act other than s. 6: 28 Sep 1982 (see s. 2(1)); s. 6: 7 Jan 1983 (see s. 2(2) and *Gazette* 7 Jan 1983 p. 3)
Local Government Amendment Act (No. 4) 1982 [13]	103 of 1982	24 Nov 1982	Act other than s. 4-13: 24 Nov 1982 (see s. 2(1)); s. 5 and 6: 17 Dec 1982 (see s. 2(2) and *Gazette* 17 Dec 1982 p. 4826); s. 4, 7-13: 6 May 1983 (see s. 2(3) and *Gazette* 6 May 1983 p. 1426)
Reprint of the *Local Government Act 1960* approved 24 Jun 1983 (includes amendments listed above except those in the *Local Government Amendment Act 1982* s. 6)			
Local Government Amendment Act 1983	6 of 1983	11 Aug 1983	11 Aug 1983
Acts Amendment (Asbestos Related Diseases) Act 1983 Pt. VI	84 of 1983	22 Dec 1983	19 Jan 1984 (see s. 2)
Local Government Amendment Act 1984	17 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and *Gazette* 29 Jun 1984 p. 1754)
Acts Amendment (Mining Tenements) (Rating) Act 1984 Pt. II	25 of 1984	31 May 1984	s. 5(1): 1 Jan 1982 (see s. 2(2)); balance: 31 May 1984 (see s. 2(1))

Local Government Amendment Act (No. 2) 1984 [14]	42 of 1984 (as amended by No. 79 of 1984 Pt. III)	20 Jun 1984	s. 31-62: 20 Jun 1984 (see s. 2(1));
			s. 3, 8-10, 12-19 and 30: 15 Nov 1984 (see s. 2(2));
			s. 4-7, 11, 20-29: 20 Mar 1985 (see s. 2(3))

Acts Amendment (Local Government Electoral Provisions) Act 1984 Pt. II	79 of 1984	14 Nov 1984	20 Mar 1985 (see s. 2(2))

Short title	Number and year	Assent	Commencement
Local Government Amendment Act 1985 [15, 16]	35 of 1985	6 May 1985	Act other than s. 5, 6, 10-16, 20, 23 and 24: 4 May 1985 (see s. 2 and *Gazette* 24 May 1985 p. 1757); s. 5, 6, 10-16, 20, 23 and 24: 1 Jul 1985 (see s. 2 and *Gazette* 24 May 1985 p. 1757)
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
Local Government Amendment Act (No. 2) 1985 [17]	99 of 1985	4 Dec 1985	13 Dec 1985 (see s. 2 and *Gazette* 13 Dec 1985 p. 4758)
Local Government Amendment Act (No. 3) 1985 [18]	105 of 1985	7 Dec 1985	7 Dec 1985 (see s. 2)
Commercial Arbitration Act 1985 s. 3(1)	109 of 1985	7 Dec 1985	1 Apr 1986 (see s. 2 and *Gazette* 28 Feb 1986 p. 605)
Local Government Amendment Act 1986 [19, 20]	9 of 1986	15 Jul 1986	Act other than s. 5: 1 Jul 1986 (see s. 2(1)); s. 5: 15 Jul 1986 (see s. 2(2))
Town Planning and Development Amendment Act 1986 s. 13 [21]	26 of 1986	29 Jul 1986	29 Jul 1986 (see s. 2(1))

Local Government Amendment Act 1987 [22, 23]	42 of 1987	3 Jul 1987	s. 23-25 and 36: 1 Jul 1987 (see s. 2(2));
			s. 1-3 and 32: 3 Jul 1987 (see s. 2(1));
			Act other than s. 1-3, 6-10, 23-25, 32, 33 and 36: 24 Jul 1987 (see s. 2(3) and *Gazette* 24 Jul 1987 p. 2813);
			s. 33: 31 Jul 1987 (see s. 20(2) of the *Interpretation Act 1984*);
			s. 6-10: 31 Dec 1987 (see s. 2(3) and *Gazette* 31 Dec 1987 p. 4567)

Acts Amendment (Land Administration) Act 1987 Pt. XIII	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and *Gazette* 16 Sep 1988 p. 3637)

Short title	Number and year	Assent	Commencement
Local Government Amendment Act 1988 [24]	10 of 1988	6 Jul 1988	Act other than s. 4-7, 9 and 10: 6 Jul 1988 (see s. 2(1)); s. 4-7, 9 and 10: 16 Sep 1988 (see s. 2(2) and *Gazette* 16 Sep 1988 p. 3637)
Local Government Amendment Act (No. 2) 1988	39 of 1988	30 Nov 1988	Act other than s. 6, 7 and 11: 17 Feb 1989 (see s. 2 and *Gazette* 17 Feb 1989 p. 457); s. 6, 7 and 11: 28 Jul 1989 (see s. 2 and *Gazette* 28 Jul 1989 p. 2259)
R & I Bank Act 1990 s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and *Gazette* 28 Dec 1990 p. 6369)
Building and Construction Industry Training Fund and Levy Collection Act 1990 s. 33	76 of 1990	20 Dec 1990	1 Jul 1991 (see s. 2 and *Gazette* 28 Jun 1991 p. 3101)
Acts Amendment (Heritage Council) Act 1990 Pt. 2 Div. 3	97 of 1990	22 Dec 1990	25 Feb 1991 (see s. 2 and *Gazette* 22 Feb 1991 p. 868)
Local Government Amendment Act (No. 2) 1990 [25]	100 of 1990	22 Dec 1990	s. 3, 12, 17 and 18: 22 Dec 1990 (see s. 2(2)); s. 11: 11 Jan 1991 (see s. 2(1) and *Gazette* 11 Jan 1991 p. 43); Act other than s. 3, 4, 11-18: 19 Jan 1991 (see s. 2(3) and *Interpretation Act 1984* s. 20); s. 4: 8 Feb 1991 (see s. 2(1) and *Gazette* 8 Feb 1991 p. 575); s. 13-16: 20 Mar 1992 (see s. 2(1) and *Gazette* 20 Mar 1992 p. 1239)
Reserves and Land Revestment Act 1991 s. 23	57 of 1991	17 Dec 1991	17 Dec 1991 (see s. 2)
Rates and Charges (Rebates and Deferments) Act 1992 s. 52	31 of 1992	19 Jun 1992	1 Jul 1992 (see s. 2 and *Gazette* 26 Jun 1992 p. 2643)

Short title	Number and year	Assent	Commencement
Local Government (Superannuation) Amendment and Repeal Act 1993 Pt. 2 [26]	2 of 1993	18 Aug 1993	1 Jul 1993 (see s. 2)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Acts Amendment (Annual Valuations and Land Tax) Act 1993 s. 13 [27, 28]	17 of 1993	29 Nov 1993	29 Nov 1993 (see s. 2)
Plant Diseases Amendment Act 1993 s. 20	40 of 1993	20 Dec 1993	24 Jun 1994 (see s. 2 and *Gazette* 24 Jun 1994 p. 2819)
R & I Bank Amendment Act 1994 s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and *Gazette* 26 Apr 1994 p. 1743)
Local Government Amendment Act 1994 [29, 30]	27 of 1994	23 Jun 1994	1 Jul 1994 (see s. 2)
Local Government (Superannuation) Legislation Amendment Act 1994 Pt. 2 [31]	60 of 1994	7 Nov 1994	24 Dec 1994 (see s. 2 and *Gazette* 23 Dec 1994 p. 7070)
Acts Amendment (Local Government and Valuation of Land) Act 1994 Pt. 2 [32]	69 of 1994	9 Dec 1994	s. 3-6: 9 Dec 1994 (see s. 2(1)); s. 12: 1 May 1995 (see s. 2(2) and *Gazette* 21 Apr 1995 p. 1357); s. 7-11 and 13-15: 1 Jul 1995 (see s. 2(2) and *Gazette* 21 Apr 1995 p. 1357)
Local Government Amendment (Elections) Act 1994 Pt. 2	70 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1994 s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
Energy Corporations (Transitional and Consequential Provisions) Act 1994 s. 109	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and *Gazette* 23 Dec 1994 p. 7069)

Short title	Number and year	Assent	Commencement
Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 13	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and *Gazette* 30 Dec 1994 p. 7211)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(1)-(4)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Bank of Western Australia Act 1995 s. 44	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and *Gazette* 29 Nov 1995 p. 5529)
Local Government Amendment Act 1995	18 of 1995	4 Jul 1995	4 Jul 1995 (see s. 2)
Caravan Parks and Camping Grounds Act 1995 s. 33	34 of 1995	29 Sep 1995	1 Jul 1997 (see s. 2 and *Gazette* 20 Jun 1997 p. 2805)
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291)
Local Government Act 1995 s. 9.70 [33]	74 of 1995	9 Jan 1996	1 Jul 1996 (see s. 1.2)
Sentencing (Consequential Provisions) Act 1995 s. 68 (item relating to s. 399(3)) [34]	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)
Local Government (Consequential Amendments) Act 1996 s. 4 [35, 36]	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Reprint of the *Local Government (Miscellaneous Provisions) Act 1960* as at 18 Sep 1996 (includes amendments listed above except those in the *Caravan Parks and Camping Grounds Act 1995* and the *Sentencing (Consequential Provisions) Act 1995*)			
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Home Building Contracts Amendment Act 1996 s. 7	72 of 1996	13 Nov 1996	1 Feb 1997 (see s. 2 and *Gazette* 24 Jan 1997 p. 543)

Short title	Number and year	Assent	Commencement
Transfer of Land Amendment Act 1996 s. 153(1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Acts Amendment (Land Administration) Act 1997 Pt. 40 and s. 142 [37]	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 83	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Local Government Amendment Act 1998 s. 29	1 of 1998	26 Mar 1998	26 Mar 1998 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 46(1), (5) and (6) [38]	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the *Local Government (Miscellaneous Provisions) Act 1960* as at 28 Jul 1999 (includes amendments listed above)			
Statutes (Repeals and Minor Amendments) Act 2000 s. 23	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Home Building Contracts Amendment Act 2002 s. 21	37 of 2002	20 Nov 2002	20 Nov 2002 (see s. 2)
Sentencing Legislation Amendment and Repeal Act 2003 s. 77	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Courts Legislation Amendment and Repeal Act 2004 s. 141 (other than the amendment to s. 430(2)(a))	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 75 [39, 40]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)

Short title	Number and year	Assent	Commencement
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 [41]	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 7: The *Local Government (Miscellaneous Provisions) Act 1960* as at 16 Sep 2005 (includes amendments listed above)			
Limitation Legislation Amendment and Repeal Act 2005 Pt. 10	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 s. 141 [42]	59 of 2004	23 Nov 2004	s. 141 cl. 94, amendment to s. 430(2)(a): to be proclaimed (see s. 2)
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 14 [44]	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

[2] Act No. 90 of 1964 was passed as the *Local Government Act Amendment Act (No. 2) 1964*, but was proclaimed to come into operation as the *Local Government Act Amendment Act 1964*.

[3] Repealed by the *Stock (Brands and Movement) Act 1970*, which is now known as the *Stock (Identification and Movement) Act 1970*.

[4] Repealed by the *Auction Sales Act 1973* s. 3(1).

[5] Formerly referred to the *Local Government Act 1960* the short title of which was changed to the *Local Government (Miscellaneous Provisions) Act 1960* by the *Local Government Act 1995* s. 9.70. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

[6] Marginal notes in the *Local Government (Miscellaneous Provisions) Act 1960* referring to legislation of this State and of other jurisdictions have been omitted from this reprint.

[7] The *Licensed Surveyors Amendment Act 1996* s. 28 does not have effect because the relevant provision was repealed by the *Local Government Act 1995* s. 9.70.

[8] Now known as the *Local Government (Miscellaneous Provisions) Act 1960*; short title changed (see note under s. 1).

[9] The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973*.

[10] The Third Schedule was inserted by the *Metric Conversion Act Amendment Act (No. 2) 1973*.

[11] The *Local Government Amendment Act 1979* s. 3(2) is a transitional provision that is of no further effect.

[12] The *Local Government Amendment Act (No. 3) 1981* s. 18(2) is a savings provision that is of no further effect.

[13] The *Local Government Amendment Act (No. 4) 1982* s. 14 is a transitional provision that is of no further effect.

[14] The *Local Government Amendment Act (No. 2) 1984* s. 40(2), (3), (4) and (5), 44(2) and 53(2) are transitional provisions that are of no further effect.

[15] The *Local Government Amendment Act 1985* s. 9 is a validation provision that is of no further effect.

[16] The *Local Government Amendment Act 1985* s. 25 is a transitional provision that is of no further effect.

[17] The *Local Government Amendment Act (No. 2) 1985* s. 23(2) is a validation provision that is of no further effect.

[18] The *Local Government Amendment Act (No. 3) 1985* s. 4 is a validation provision that is of no further effect.

[19] The *Local Government Amendment Act 1986* s. 4 is an application provision that is of no further effect.

[20] The *Local Government Amendment Act 1986* s. 21 is a validation provision that is of no further effect.

[21] The *Town Planning and Development Amendment Act 1986* s. 8(2) is a validation provision that is of no further effect.

[22] The *Local Government Amendment Act 1987* s. 32(2) reads as follows:

“

> (2) No Order made before the coming into operation of subsection (1) for the purposes of the principal Act as in force before the coming into operation of this section and no act or omission done or made, or purporting to have been done or made, thereunder shall be, or ever have been, invalid or unlawful by reason only that a land description contained therein was made by reference to a plan or diagram.

”.

[23] The *Local Government Amendment Act 1987* s. 35 and 36 are transitional provisions that are of no further effect.

[24] The *Local Government Amendment Act 1988* s. 12(2) is a validation provision that is of no further effect.

[25] The *Local Government Amendment Act (No. 2) 1990* s. 18 is a transitional provision that is of no further effect.

[26] The *Local Government (Superannuation) Amendment and Repeal Act 1993* Pt. 4 reads as follows:

“

Part 4 — Transitional

7. Interpretation

In this Part —

“former Board” means the Board as defined in the repealed Act;

“former scheme” means the scheme that was established under the repealed Act;

“repealed Act” means the Act repealed by Part 3;

“the scheme” means the scheme defined in section 169(1) of the *Local Government Act 1960* (as enacted by section 4 of this Act) as “the scheme”;

“variation Deed” means the Deed of Trust dated 17 June 1993 that amends the Deed of Trust referred to in the definition of “the scheme” in section 169(1) of the *Local Government Act 1960* (as enacted by section 4 of this Act).

8. Transfer of assets and liabilities

With effect on and from the commencement of this Act —

(a) assets of the former scheme held by the former Board, by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance, become assets of the scheme held by the trustees of the scheme;

(b) persons who immediately before the commencement of this Act were members of the former scheme, by virtue of this clause, become members of the scheme and the rights, entitlements and obligations of persons as members of the former scheme are taken to be replaced by rights, entitlements and obligations (from time to time) as members of the scheme;

(c) except as provided in paragraph (b), all rights and liabilities of the former Board under the former scheme,

by virtue of this clause, become rights and liabilities of the Trustees of the scheme under the scheme;

(d) all proceedings commenced before the commencement of this Act by or against the former Board and pending immediately before the commencement of this Act are taken to be proceedings pending by or against the Trustees of the scheme;

(e) all proceedings that could have been taken by or against the former Board if this Act had not come into operation may be taken by or against the Trustees of the scheme.

9. Transfer of books, etc.

The Trustees of the scheme shall take delivery of all books, documents and other records, however compiled or stored, relating to the operations of the former Board.

10. Exemption from *Stamp Act 1921*

Notwithstanding anything in the *Stamp Act 1921*, no duty is payable under that Act in respect of the passing of any assets under this Part.

11. Other members may continue in the scheme

A member of the former scheme who on the commencement of this Act is employed by a department or other body, other than a municipality, that was a corporation under the repealed Act, may continue to be a member under the scheme and the department or other body shall make the contributions required of an employer under the scheme in respect of such a person.

12. Report

Notwithstanding Part 3, the former Board shall report in respect of the former scheme under section 66 of the *Financial Administration and Audit Act 1985* in respect of the financial year ending 30 June 1993, and the former Board is continued in existence for that purpose.

13. Condition precedent satisfied

The condition precedent specified in recital E to the variation Deed shall be taken to have been satisfied by the coming into operation of section 4 and the Deed shall be taken to have operated accordingly with effect on and from 1 July 1993.

14. Savings

Anything done on or after 1 July 1993 but before the day on which this Act receives the Royal Assent that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

".

27 The *Acts Amendment (Annual Valuations and Land Tax) Act 1993* s. 3 is an application provision that is of no further effect.

28 The *Acts Amendment (Annual Valuations and Land Tax) Act 1993* s. 7 is a transitional and savings provision that is of no further effect.

29 The *Local Government Amendment Act 1994* s. 3 is a transitional provision that is of no further effect.

30 The *Local Government Amendment Act 1994* s. 39, 40 and 41 are transitional provisions that are of no further effect.

31 The *Local Government (Superannuation) Legislation Amendment Act 1994* s. 7, 8, 9 and 10 read as follows:

"

7. Operation of the new scheme

On the commencement of this Division, the City of Perth superannuation scheme established under section 170C of the *Local Government Act 1960* (as amended by this Act) comes into operation.

Division 2 — Transitional provisions and consequential amendments

8. Interpretation

In this Division —

"commencement day" means the day on which Division 1 comes into operation;

"former board" means the board or any other person appointed under section 3 of the repealed Act;

"former fund" means the superannuation fund established under the repealed Act and governed by the former scheme;

"former scheme" means the superannuation scheme established under the repealed Act;

"new fund" means the fund governed by the new scheme;

"new scheme" means the City of Perth superannuation scheme established under section 170C of the *Local Government*

Act 1960 (as amended by this Act) as the scheme is amended from time to time;

"repealed Act" means the *City of Perth Superannuation Fund Act 1934*;

"trustee" means the trustee appointed under the new scheme.

9. Transfer of assets etc.

(1) On commencement day, by virtue of this section —

(a) assets of the former fund become assets of the new fund without the need for any conveyance, transfer, or other document;

(b) the rights and liabilities of the former board under the former scheme, or of the City of Perth to the extent that under the repealed Act it controlled, managed or administered the former fund, become rights and liabilities of the trustee;

(c) in any deed or other legal document relating to the control, management or administration of the former fund to which the former board or the City of Perth is a party, references to the former board or to the City of Perth are to be taken as references to the trustee;

(d) a claim for any benefits from the former fund that had not been finally dealt with immediately before commencement day may be dealt with as if it were a claim for benefits under the new scheme;

(e) legal proceedings relating to the control, management or administration of the former fund by or against the former board or the City of Perth and pending immediately before commencement day are to be taken to be proceedings by or against the trustee;

(f) legal proceedings relating to the control, management or administration of the former fund that could have been taken by or against the former board or the City of Perth immediately before commencement day may be taken by or against the trustee.

(2) If the former board or the City of Perth is liable for any matter in respect of the former scheme and that liability is not one in respect of which the former board or the City of Perth could be indemnified from the former fund, then subsection (1) does not operate to transfer that liability to the trustee or to the new scheme or to allow any proceedings in respect of that liability to be taken to be, or to be taken, against the trustee.

(3) On commencement day the trustee is entitled to possession of all books, documents and other records, however compiled or stored, relating to the former scheme.

(4) The Registrar of Titles and any other person who under a written law is authorised to record or register documents or transactions relating to or affecting the ownership of or other interests in real or personal property, are to take notice of this section and are empowered to do such as is necessary to give effect to this section.

10. Transfer of members etc.

On commencement day, by virtue of this section —

(a) a person's rights, entitlements and obligations under the former scheme are replaced by the rights, entitlements and obligations under the new scheme;

(b) a person who immediately before commencement day was a member of or contributor to the former scheme becomes a member of and subject to the new scheme.

".

[32] The *Acts Amendment (Local Government and Valuation of Land) Act 1994* s. 5 is a validation provision that is of no further effect.

[33] The *Local Government Act 1995* Sch. 9.2 cl. 4 reads as follows:

"

4. Parts II to VII repealed

(1) Parts II to VII are repealed.

(2) Despite the repeal of Part VII by subclause (1) —

(a) sections 157(2)(b), 159 and 160; and

(b) regulations made under section 159,

continue to have effect so far as they relate to building surveyors and Part XV.

".

The repealed provisions, as in force immediately before being repealed, read as follows:

"

Section 157(2)(b) —

157. Duty and power to appoint officers

(2) From time to time as occasion required, a council [36], having regard to the provisions of section 160 —

(a) .....

(b) shall, where Part XV which relates to buildings applies to the district or portion of the district, and may, where that Part does not so apply, appoint a person to the office of building surveyor;

(c) .....

Sections 159 and 160 —

159. Regulations relating to qualifications of officers

The Governor may make regulations —

(a) prescribing the respective educational and professional qualifications necessary to be held by persons occupying the respective offices of clerk, engineer, town planner, building surveyor, and treasurer of councils [36] generally or by a class or classes of council [36], whether classification is determined by the amount of revenue of a municipality [36], the location of the district of a municipality [36], or otherwise;

(b) constituting committees for the purpose of examining those persons, or a class or classes of those persons, and granting certifications of qualification to persons who pass the examination, or who are otherwise qualified to receive certificates;

(c) prescribing the mode of determining and obtaining recognition for those qualifications in other States of the Commonwealth;

(d) providing for the cancellation of those certificates by the committees, and the grounds upon which, and the manner in which, the cancellation may be effected; and

(e) prescribing fees payable in respect of examinations and certificates.

160. Appointments

(1) Where the occupant of the office of clerk, engineer, town planner, building surveyor or treasurer is not required to be qualified, a council [36] may appoint a person to the office notwithstanding that he is not qualified.

(2) Where regulations made under section 159 require the occupant of the office of clerk, engineer, town planner, building surveyor or treasurer to be qualified the council [36] shall not appoint a person to the office —

(a) unless he holds the appropriate certificate of qualification issued under the regulations; and

(b) if he does not hold that certificate, unless the Minister approves the appointment.

(2aa) Subsection (2) does not apply to a person acting temporarily, for a period not exceeding 3 months, in an office referred to in that subsection.

(2a) In giving his approval pursuant to subsection (2)(b) the Minister may, after consultation with the council [36], impose on the approval a condition that the person in respect of whom the approval is given shall obtain the appropriate certificate of qualification under the regulations with such period after his appointment as is fixed by the Minister when giving the approval.

(2b) The Minister may from time to time grant an extension of the period fixed pursuant to subsection (2a) if he considers that the circumstances justify such an extension.

(2c) Where approval is given by the Minister under subsection (2)(b) subject to a condition imposed under subsection (2a) and, at the completion of the period fixed pursuant to the latter subsection or of any extension of that period granted under subsection (2b), —

(a) the officer appointed by the council [36] pursuant to that approval still does not hold the certificate of qualification required by the regulations to be held by the occupant of his office; and

(b) the Minister does not consider that the circumstances justify an extension or further extension of that period,

the Minister may after consultation with the council [36] direct the council [36] to remove the officer from the office and, notwithstanding section 158(2), the council [36] shall comply with that direction.

(2d) The provisions of section 158(5) to (12) both inclusive do not apply to or in relation to an officer who is removed from office pursuant to subsection (2c) of this section.

(3) A council [36] shall not remove from the office an officer holding an office when regulations so made come into operation, because he is not the holder of a certificate of qualification required by the regulations to be held by the occupant of the office.

(4) No such regulation shall have application to or affect the appointment to any such office of a person holding office as a clerk, engineer, town planner, building surveyor or treasurer at time of the making of the regulations.

".

[34] The amendments in the *Sentencing (Consequential Provisions) Act 1995* s. 68 (items relating to s. 523(1) and 672) do not have effect because those provisions were repealed by the *Local Government Act 1995* s. 9.70.

[35] The *Local Government (Consequential Amendments) Act 1996* s. 7 and 8 are transitional provisions that are of no further effect.

[36] The *Local Government (Consequential Amendments) Act 1996* Sch. 1 contains the following item:

"

Sections 157, 159 and 160 amended

To the extent that they continue to have effect under clause 4(2) of Schedule 9.2 of the *Local Government Act 1995* —

(a) in each section "council" is deleted in each place where it occurs and the following is substituted —

" local government "; and

(b) in section 159(a) —

(i) "councils" is deleted and the following is substituted —

" local governments ";

(ii) "municipality" is deleted in the first place where it occurs and the following is substituted —

" local government "; and

(iii) "of a municipality" is deleted in the second place where it occurs.

".

[37] The *Acts Amendment (Land Administration) Act 1997* s. 66(2), (3) and (4) and 67(2), (3) and (4) are transitional provisions that are of no further effect.

[38] Balance of section 46 of the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* is inoperative because of previous amendments effected as follows:
Section 46(2) and (4) were repealed by the *Local Government Act 1995* s. 70;
Section 46(3) and (9) were amended by the *Local Government (Consequential Amendments) Act 1996* Sch. 1 (as amended by the *Statutes (Repeals and Minor Amendments) Act 1997*);
Section 46(7) and (8) were amended by the *Statutes (Repeals and Minor Amendments) Act 1997* s. 83(3) and (4).

[39] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[40] The *State Administrative Tribunal Regulations 2004* r. 34 and 55 read as follows:

“

34. ***Local Government (Miscellaneous Provisions) Act 1960***

(1) In this regulation —

“commencement day” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 75 comes into operation.

(2) If a matter has been partly or fully heard, but not determined, under the *Local Government (Miscellaneous Provisions) Act 1960* Part XV Division 19 immediately before the commencement day —

(a) the Act section 167(4)(b) does not apply; and

(b) the matter is to continue to be dealt with as if the *Local Government (Miscellaneous Provisions) Act 1960* Part XV Division 19 as in force immediately before the commencement day continued to apply.

55. ***Local Government (Miscellaneous Provisions) Act 1960***

(1) In this regulation —

“commencement day” means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* section 683 comes into operation;

(2) If a local law made under the *Local Government (Miscellaneous Provisions) Act 1960* section 433 and the *Local Government Act 1995* is expressed as conferring on a person a right to appeal under the *Local Government (Miscellaneous Provisions) Act 1960* Part XV Division 19 against a decision, that local law is to be taken to give a right on or after the commencement day to apply to the State Administrative Tribunal for a review of that decision.

”.

[41] The amendments in the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82 are not included because the subsection it sought to amend was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 662.

[42] On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 141, which gives effect to Sch. 1 (the amendment to s. 430(2)(a)) had not come into operation. It reads as follows:

“

141. Various Acts amended

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 1 cl. 94 reads as follows:

“

Schedule 1 — Amendments to various Acts

94. ***Local Government (Miscellaneous Provisions) Act 1960***

s. 430(2)(a) [43]	Delete the paragraph and “and” after it and insert instead — “ (a) may by leave of the Supreme Court be enforced in that court as if the award were a monetary judgment (within the meaning of section 3 of the *Civil Judgments Enforcement Act 2004*) of that court; and ”.

”.

[43] The amendment to s. 430(2)(a) in the *Local Government (Miscellaneous Provisions) Act 1960* Sch. 1 cl. 94 would not be included because the section it seeks to amend was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 683.

[44] On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 14 had not come into operation. It reads as follows:

“

14. ***Local Government (Miscellaneous Provisions) Act 1960* amended and transitional**

(1) The amendment in this section is to the *Local Government (Miscellaneous Provisions) Act 1960*.

(2) Section 295 is repealed.

(3) Despite the repeal of section 295 of the *Local Government (Miscellaneous Provisions) Act 1960*, section 295(4) and (4a) of that Act continue to apply in relation to the disposal of land where the subdivision of the land was approved before the coming into operation of this section.

(4) Until minimum standards of construction and drainage are fixed under section 169 of the *Planning and Development Act 2005*, the minimum standards fixed under section 295(3a) of the *Local Government (Miscellaneous Provisions) Act 1960* apply for the purposes of the *Planning and Development Act 2005* as if they had been fixed under that Act.

".