

LOCAL GOVERNMENT (No. 2).

12° Elizabeth II., No. LXVIII.

No. 68 of 1963.

**AN ACT to amend the Local Government Act,
1960-1962.**

[Assented to 17th December, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

**Short title
and citation.**

1. (1) This Act may be cited as the *Local Government Act Amendment Act, (No. 2) 1963.*

(2) In this Act the Local Government Act, 1960, 1962, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1963.

2. Section three of the principal Act is amended ^{S. 3} by substituting for the figures, "532" in lines one and two of the paragraph commencing, "PART XXV—RATES, ss. 532 to 597", the figures and letter, "531A".

3. The principal Act is amended by adding after section twenty-two a section as follows— ^{S. 22A added.}

22A. Where under section twelve the Governor has, whether before or after the commencement of this section, by order declared— ^{Right to retain prior mode of election of mayor or president when change in status of municipality.}

- (a) a municipality to be a city;
- (b) a shire to be a town; or
- (c) a town to be a shire,

the municipality of the city, town or shire declared to be such pursuant to the order, may continue to use the mode of election to the office of the mayor of the city or town or president of the shire, as the case may be, that applied to the municipality immediately before the date on which the order became effective.

4. Section sixty-one of the principal Act is amended— ^{S. 61 amended.}

(a) by adding after the section number "61" the subsection designation "(1)"; and

(b) by adding a subsection as follows—

(2) The clerk shall supply free of charge to—

(a) each member of the council a copy of the roll for the district of the council, or at the option of a councillor, a copy of the roll for the ward that he represents;

(b) each candidate to fill a vacancy in an office of member of the council, a copy of the roll for the district of the council, or at the option of the candidate, a copy of the roll for the ward in respect of which he is a candidate for election.

S. 113
amended.

5. Paragraph (j) of section one hundred and thirteen of the principal Act is amended by deleting the passage commencing with the word, "who" in line two and ending with the word, "applies" in line seven.

6. Section one hundred and twenty-seven of the principal Act is amended by—

(a) repealing and re-enacting subsection (5) as follows—

(5) (a) Where the election is to fill more vacancies than one, and there are more candidates than vacancies, the Returning Officer shall count the votes in accordance with the provisions of this subsection.

(b) The figure written against the name of a candidate on each unrejected ballot paper shall be deemed to represent so many votes cast against that candidate.

(c) The returning officer shall count the numbers written against the name of each candidate on each unrejected ballot paper, and thereby ascertain the total number of votes cast against each candidate.

(d) Having ascertained the total number of votes cast against each candidate, the returning officer shall declare elected, firstly, the candidate against whom the smallest number of votes has been cast, secondly, the candidate against whom the next smallest number of votes has been cast, and shall then continue so to declare elected the candidate against whom the next smallest number of votes has been cast until he has declared sufficient candidates to fill the vacancies.

- (e) If two or more candidates should have had cast against them the same number of votes, the provisions of subsections (6) and (7) shall apply *mutatis mutandis*, to determine which candidate or candidates shall be declared elected. ;
- (b) substituting for the passage, "subsection (3), (4) or (5)" in line two the passage, "subsection (3) or (4)."

7. Subsection (4) of section one hundred and fifty-eight of the principal Act is amended by adding after the word, "treasurer" in line three, the passage, ", traffic inspector".

S. 158
amended.

8. Subsection (8) of section one hundred and seventy-three of the principal Act is repealed and re-enacted as follows—

Subsection
(8) of s. 173
repealed and
re-enacted.

(8) (a) The mayor or president, if elected by the electors, shall not vote unless there is an equal division of votes, in which case he has and may exercise a casting vote but if the mayor or president is elected by the council, he has and may exercise a deliberative vote only.

(b) Subject to this section, a question arising at a meeting of a council shall be determined by a majority of the valid votes of the members of the council present at the meeting, but where there is an equal division of votes the question shall be determined in the negative.

9. Section one hundred and seventy-nine of the principal Act is amended by adding after subsection (1) the following subsections—

S. 179
amended.

(1a) A council may appoint a member thereof to be a deputy to act on behalf of a member of an occasional or standing committee whenever that member is unable to be present at a meeting thereof, and if the deputy is requested by the member for whom he is a deputy or the council to attend any such meeting in place of the member—

- (a) he is entitled to so attend and act for the member thereat; and
- (b) while so acting has all the powers of that member.

(1b) A person who is a member of an occasional or standing committee is not eligible to be appointed a deputy for a member of that occasional or standing committee.

S. 180
amended.

10. Section one hundred and eighty of the principal Act is amended by adding after subsection (2) the following subsection—

(3) The provisions of subsection (1a) and (1b) of section one hundred and seventy-nine apply to an advisory committee constituted under this section and in so applying those subsections any reference therein to an occasional or standing committee shall be read as a reference to an advisory committee established under this section, except that a person appointed by virtue of this subsection as deputy of a member of an advisory committee may or may not be a member of the council that appointed the members of the committee.

S. 181
amended.

11. Section one hundred and eighty-one of the principal Act is amended by adding after subsection (3) a subsection as follows—

(3a) The provisions of subsections (1a) and (1b) of section one hundred and seventy-nine apply to a committee constituted under this section and in so applying that section any reference therein to an occasional or standing committee shall be read as a reference to a committee established under this section, except that a person appointed by virtue of this section as a deputy of a member of the committee may or may not be a member of the council that appointed the members of the committee.

S. 266
amended.

12. Subsection (2) of section two hundred and sixty-six of the principal Act is amended by substituting for the word, "subsection" in line two the word, "section".

S. 281
amended.

13. Subsection (5) of section two hundred and eighty-one of the principal Act is amended by deleting the passage, "except that taken for use in the construction or repair of that section of the road which abuts the land of the owner or occupier" in the last three lines of the subsection.

14. Subsection (1) of section two hundred and eighty-eight of the principal Act is amended by adding after the word, "so" being the last word in subparagraph (ii) of paragraph (b) the following passage—

S. 288
amended.

; or

- (c) land comprises a private street of which the public has had uninterrupted use for a period of not less than ten years.

15. Section two hundred and ninety-five of the principal Act is amended by adding after subsection (4) a subsection as follows—

S. 295
amended.

(4a) A person to whom the land is disposed of under paragraph (b) of subsection (4) of this section 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 of appeal conferred by that subsection.

16. Paragraph (c) of subsection (2) of section two hundred and ninety-six of the principal Act is amended by substituting for, "paragarph" the word, "paragraph".

S. 296
amended.

17. Subsection (1) of section three hundred and six of the principal Act is amended by deleting the passage, ", but so as not unduly to obstruct the thoroughfares" in lines two and three.

S. 306
amended.

18. Section three hundred and sixty-four of the principal Act is amended by adding after subsection (4) the following subsections—

S. 364
amended.

(4a) The Governor may, by order, specify areas in which any land which but for the order would be dedicated and revested as provided in subsection (4) of this section shall not be so dedicated and revested unless and until the council that has prescribed a new building line that affects the land, has given written notice to the owner of the land pursuant to subsection (3a) of this section.

(4b) Notwithstanding land is dedicated and vested as provided in subsection (4) of this section, the council may, subject to rights if any reserved under subsection (4) of section three hundred and sixty-three, lease that land or a portion of it pursuant to paragraph (h) of section three hundred and sixty-two, as if the land or the portion had been acquired by it.

S. 374
amended.

19. Section three hundred and seventy-four of the principal Act is amended by adding after subsection (2) the following subsections—

(2a) Where a person has in accordance with subsection (1) of this section, caused to be submitted to the council, a copy of the specifications and a plan of the kind therein referred to, if the council has not, within thirty-five 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 clerk a written notice requiring the council within fourteen days of the service of the notice, to notify him of the approval or otherwise of the specifications and plan.

(2b) If within fourteen days after the notice referred to in subsection (2a) of this section has been served on him, the clerk fails to notify the person that the council has or has not approved of the specifications and plan, the council shall be deemed to have refused to approve them.

S. 400
amended.

20. Section four hundred of the principal Act is amended—

(a) by substituting for the passage, "Without permission of the council granted only with the approval of the Minister, no person" in lines one, two and three of subsection (1) the passage, "Except to the extent permitted, and in the manner prescribed, by any uniform general by-law made under this Part, a person shall not, without the permission of the council granted only with the approval of the Minister";

- (b) by deleting the word, "shall" being the first word in subparagraphs (i) and (ii) of paragraph (a) of subsection (1); and
- (c) by adding after subsection (1) a subsection as follows—

(1a) For the purposes of subsection (1) of this section, a building that has thereon string courses, cornices, copings, eaves or window sills that project not more than nine inches 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.

21. Section four hundred and three of the principal Act is amended— S. 403
amended.

- (a) by substituting for the words, "to be published once in the *Gazette* and once in a newspaper circulating in the district" in the last three lines of subsection (5) the passage, "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"; and
- (b) by substituting for the words, "last published" in line three of subsection (6) the words, "posted to him in accordance with subsection (5) of this section."

22. Section four hundred and eight of the principal Act is amended— S. 408
amended.

- (a) by deleting paragraph (b) of subsection (1);
- (b) by substituting for the words, "to be published once in the *Gazette* and once in a newspaper circulating in the district" in lines seven, eight and nine of subsection (2) the passage, "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"; and

- (c) by substituting for the words, "last published" in line three of subsection (3) the passage "posted to him in accordance with subsection (2) of this section".

S. 409
amended.

23. Section four hundred and nine of the principal Act is amended—

- (a) by substituting for the words, "to be published once in the *Gazette* and once in a newspaper circulating in the district" in lines seven, eight and nine of subsection (2) the passage, "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; and
- (b) by substituting for the words, "last published" in line three of subsection (3) the words, "posted to him in accordance with subsection (2) of this section".

S. 433
amended.

24. Section four hundred and thirty-three of the principal Act is amended by adding after paragraph (21) a paragraph as follows—

- (21a) for limiting, either generally throughout the municipal district of the council or in any particular part thereof, 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 by-laws may be made under the 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; .

S. 513
amended.

25. Section five hundred and thirteen of the principal Act is amended by adding after paragraph (e) a paragraph as follows—

- (ea) with the approval of the Governor, contract in writing with a person that where that person has erected in the district

of the council a house for the purpose of letting the house to another person, the council will guarantee to pay to the first mentioned person the amount by which a sum calculated in respect of a year agreed upon by the person and the council as the average amount of rent for that year at which the house may be expected to be let to a tenant is in excess of the gross amount of the rent actually received during that year by the person who erected the house for and in respect of that house and the council may, from its municipal fund, pay any amount required to fulfil the guarantee; .

26. The principal Act is amended by adding before section five hundred and thirty-two a section as follows—

S. 531A
added.

531A. In this Part—

Interpre-
tation.

“occupied” in relation to land means actually occupied by a person. .

27. Paragraph (b) of subsection (4) of section five hundred and thirty-eight of the principal Act is amended by substituting for the subsection designation, “(3)” in line two, the subsection designation, “(2)”.

S. 538
amended.

28. Paragraph (a) of subsection (1) of section five hundred and sixty-one of the principal Act is amended by adding after the word, “in” in the last line, the word, “actual”.

S. 561
amended.

29. Subsection (3) of section five hundred and sixty-three of the principal Act is amended by substituting for the word, “effect” in line one the word, “affect”.

S. 563
amended.

30. Subsection (3) of section six hundred and four of the principal Act is amended by adding after the word, “debentures” in line six the words, “or a form prescribed for the purpose”.

S. 604
amended.

S. 626
amended.

31. Section six hundred and twenty-six of the principal Act is amended by adding after subsection (5) the following subsection—

(5a) Any money standing to the credit of any fund established by a council pursuant to section five hundred and twenty-two, may, until required by the council for the purpose of carrying out any of its powers or functions under this Act, be temporarily invested, as the council thinks fit, in any manner in which a trustee may invest trust funds in his hands, under section sixteen of the Trustees Act, 1962.

S. 660
amended.

32. Section six hundred and sixty of the principal Act is amended—

(a) by adding after the section number “660” the subsection designation “(1)”;

(b) by substituting for the word, “No” in line one the passage, “Subject to subsection (2) of this section, no”;

(c) by deleting the passage commencing with the word, “but” in line twenty of paragraph (c) and ending with the word, “cause” being the last word in the paragraph; and

(d) by adding the following subsection—

(2) Notwithstanding—

(a) that an action has not been commenced within the period prescribed in paragraph (a) of subsection (1) of this section;
or

(b) the failure to serve any notice as required to be served by subsection (1) of this section, within the period prescribed by this section for its service,

application may be made at any time before the expiration of six years from the date on which the cause of action arose to a judge for leave to commence the action and if the judge considers that the failure—

(c) to commence the action within the prescribed period; or

(d) the failure to give the notice within the prescribed period, was occasioned by mistake or by other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise, by the failure, the judge may if he thinks it just to do so, grant leave to bring the action, subject to such conditions as the judge thinks it just to impose.

33. Subsection (1) of section six hundred and sixty-five of the principal Act is amended— S. 665 amended.

- (a) by deleting the word, “or” immediately following paragraph (b); and
- (b) by adding after the word, “council” being the last word in paragraph (c) the following passage—

; or

- (d) to drive a vehicle on any part of a street on or across which street fences and barriers have been placed under the powers conferred by section three hundred and one for the purpose of preventing the passing of vehicles or animals along that part, or to damage in any way the surface of any street or any part of a street; .

34. The Twelfth Schedule to the principal Act is amended— Twelfth Schedule amended.

- (a) by adding before the semi-colon in line two of paragraph (a) the passage, “, and that I am a natural born or naturalised British subject and that I have attained the age of twenty-one years”; and
- (b) by adding after paragraph (2) ending in line fifty-four of the Schedule the following paragraph—

- (3) I am a natural born or naturalised British subject, and that I have attained the age of twenty-one years. .