

Western Australia

Local Government Amendment Act 2009

As at 16 Sep 2009

No. 17 of 2009

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Local Government Amendment Act 2009

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Western Australia

Local Government Amendment Act 2009

No. 17 of 2009

An Act to amend the *Local Government Act 1995*.

[Assented to 16 September 2009]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Local Government Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act amends the *Local Government Act 1995*.

**Part 2 — Amendments about introductory matters and
the constitution of local government**

4. Section 2.7 amended

In section 2.7(1)(a) delete “directs and controls” and insert:

governs

5. Section 2.25 amended

(1) In section 2.25(2) delete “Minister.” and insert:

Minister, unless all of the meetings are within a period
of 3 months.

(2) After section 2.25(2) insert:

(3A) Leave is not to be granted in respect of —

- (a) a meeting that has concluded; or
- (b) the part of a meeting before the granting of
leave.

(3) In section 2.25(4):

- (a) delete “first”;
- (b) delete “council.” and insert:

council, unless all of the meetings are within a 2 month
period.

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- (4) After section 2.25(4) insert:
- (5A) If a council holds 3 or more ordinary meetings within a 2 month period, and a member is absent without leave throughout each of those meetings, the member is disqualified if he or she is absent without leave throughout the ordinary meeting of the council immediately following the end of that period.
- (5) In section 2.25(5)(b):
- (a) delete “while” (first occurrence);
- (b) at the beginning of subparagraph (i) insert:
- while
- (c) after subparagraph (ii) insert:
- (iiia) while the member is suspended under section 5.117(1)(a)(iv); or
- (d) after subparagraph (i) insert:
- or
- (6) After section 2.25(5) insert:
- (6) A member who before the commencement of the *Local Government Amendment Act 2009* section 5 was granted leave during an ordinary meeting of the council from which the member was absent is to be taken to have first obtained leave for the remainder of that meeting.

6. Section 2.27 amended

- (1) In section 2.27(4)(a) delete “28” and insert:

14

- (2) In section 2.27(6) delete paragraph (b) and all of the subsection after it and insert:

(b) applies to the State Administrative Tribunal asking for a declaration as to whether or not the member is disqualified and gives a copy of the application to the CEO,

the member is taken to have been disqualified for the reasons indicated in the CEO’s notice.

- (3) After section 2.27(6) insert:

(7A) If subsection (6) applies to a member the CEO is to give the member a written notice to that effect.

- (4) In section 2.27(7) delete “A person other than the CEO” and insert:

The CEO or any other person

- (5) After section 2.27(9) insert:

(10) This section as in force immediately before the commencement of the *Local Government Amendment Act 2009* section 6 applies to and in respect of a notice given under section 2.27(3) before that commencement.

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local government

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7. Section 2.39 amended

(1) In section 2.39 delete “A commissioner” and insert:

(1) A commissioner

(2) At the end of section 2.39 insert:

(2) Subsection (1) does not prevent the appointment of a person under Schedule 2.4 clause 4 to fill a vacancy in the office of commissioner.

Part 3 — Amendments about functions of local governments

8. Section 3.27 amended

(1) After section 3.27(1) insert:

(2A) In subsection (1) land includes Crown land the subject of a pastoral lease within the meaning of the *Land Administration Act 1997* section 3.

(2) After section 3.27(3) insert:

(4A) For the purposes of subsection (3), planting pasture on land for grazing does not amount to cultivating the land.

9. Section 3.47 amended

In section 3.47(2b):

- (a) after paragraph (b) delete “and”;
- (b) after paragraph (b) insert:
 - (ca) for prescribed non-perishable goods —
one month;

10. Section 3.58 amended

(1) After section 3.58(3)(a)(i) insert:

and

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(2) In section 3.58(4):

(a) delete paragraph (c) and insert:

(c) the market value of the disposition —

(i) as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or

(ii) as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.

(b) after paragraph (a) insert:

and

(3) In section 3.58(5):

(a) delete paragraph (a) and insert:

(a) a disposition of an interest in land under the *Land Administration Act 1997* section 189 or 190; or

(b) after paragraph (b) insert:

or

11. Section 3.64 amended

In section 3.64(d) after “members” insert:

and deputy members

Part 4 — Amendments about elections and other polls

12. Section 4.17 amended

- (1) In section 4.17(3) delete all the words before “the council may,” and insert:

If a councillor’s office becomes vacant under section 2.32 and under subsection (4A) this subsection applies,

- (2) After section 4.17(3) insert:

- (4A) Subsection (3) applies —

- (a) if —

- (i) the office is for a district that has no wards; and
- (ii) at least 80% of the number of offices of member of the council in the district are still filled;

or

- (b) if —

- (i) the office is for a ward for which there are 5 or more offices of councillor; and
- (ii) at least 80% of the number of offices of councillor for the ward are still filled.

13. Section 4.30 amended

- (1) In section 4.30(1):

- (a) delete paragraph (c) and insert:

- (c) has made a successful eligibility claim that still has effect under section 4.33.

(b) after paragraph (a) insert:

and

(2) After section 4.30(2) insert:

(3) For the purposes of subsection (1)(c) an eligibility claim is successful if it is accepted under section 4.32, whether or not the acceptance is before the close of enrolments, as defined in section 4.39(1).

(4) A person who is eligible under subsection (1) to vote at an election held less than 50 days after the commencement of the *Local Government Amendment Act 2009* section 13 is eligible to vote at that election.

14. Section 4.32 amended

(1) In section 4.32(4) delete “Within” and insert:

Except as provided for in subsection (5A), within

(2) After subsection (4) insert:

(5A) If a claim is made before the close of enrolments as defined in section 4.39(1), but less than 14 days before the close of nominations as defined in section 4.49(a), the CEO is to decide whether to accept or reject the claim before the close of nominations.

15. Section 4.33 amended

- (1) Delete section 4.33(1a) and (2) and insert:
- (2A) Unless subsection (2B) or (3) applies, if an enrolment eligibility claim made by a person on the basis of occupation of rateable property within the electorate is accepted under section 4.32(4) or (8), the claim expires on the day 6 months after the holding of the second ordinary elections of the local government after the claim is accepted.
- (2B) If an enrolment eligibility claim on the basis of occupation of rateable property within the electorate is —
- (a) made within the period of 49 days before the election day for ordinary elections of the local government; and
- (b) accepted under section 4.32(4) or (8) before the election day,
- the claim expires on the day 6 months after the holding of the third ordinary elections of the local government after the claim is accepted.
- (2) For the purpose of subsection (2A) or (2B), an election that would have been held on a particular day but for the suspension of the council of the local government is to be regarded as having been held on that day.
- (2) In section 4.33(3) delete “subclause (1a)” and insert:
- subsection (2A) or (2B)

16. Section 4.43 amended

In section 4.43(3b) after “altered” insert:

under this section or section 4.44A

17. Section 4.44A inserted

After section 4.43 insert:

4.44A. Alteration of rolls

- (1) The returning officer may alter the owners and occupiers roll by including the name of an elector whose enrolment eligibility claim was made under section 4.32(1) before the close of enrolments, as defined in section 4.39(1), but accepted after that time.
- (2) If the returning officer is not the CEO, the returning officer may direct the CEO to make an alteration to the roll described in subsection (1) and the CEO is to comply with that direction.

18. Section 4.48 amended

Delete section 4.48(2) and insert:

- (2) If the election is to fill the office of elector mayor or president, a person can only be a candidate if the person was an elector of the district who, as at the close of enrolments and at the time of nomination, was qualified under section 2.19 to be elected as a member of the council.

19. Section 4.59 amended

In section 4.59:

- (a) in paragraph (b) delete “candidates.” and insert:

candidates; and
- (b) after paragraph (b) insert:
- (c) the provision of information as to expenditure incurred in relation to an election by or for the benefit of candidates.

Part 5 — Amendments about administration

20. Section 5.11A inserted

After section 5.10 insert:

5.11A. Deputy committee members

- (1) The local government may appoint* a person to be a deputy of a member of a committee and may terminate such an appointment* at any time.

* Absolute majority required.
- (2) A person who is appointed as a deputy of a member of a committee is to be —
 - (a) if the member of the committee is a council member — a council member; or
 - (b) if the member of the committee is an employee — an employee; or
 - (c) if the member of the committee is not a council member or an employee — a person who is not a council member or an employee; or
 - (d) if the member of the committee is a person appointed under section 5.10(5) — a person nominated by the CEO.
- (3) A deputy of a member of a committee may perform the functions of the member when the member is unable to do so by reason of illness, absence or other cause.
- (4) A deputy of a member of a committee, while acting as a member, has all the functions of and all the protection given to a member.

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21. Section 5.36 amended

- (1) In section 5.36(4) delete “If” and insert:

Unless subsection (5A) applies, if

- (2) After section 5.36(4) insert:

- (5A) Subsection (4) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.

22. Section 5.37 amended

- (1) In section 5.37(3) delete “If” and insert:

Unless subsection (4A) applies, if

- (2) After section 5.37(3) insert:

- (4A) Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.

23. Section 5.43 amended

In section 5.43:

- (a) after paragraph (g) insert:

- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;

- (b) after paragraph (h) delete “or”.

24. Section 5.47 replaced

Delete section 5.47 and insert:

5.47. Superannuation regulations

The Governor may make regulations about any matter relating to the provision of superannuation by a local government.

25. Section 5.48 amended

In section 5.48(1) delete the definition of *employee* and insert:

employee includes an employee of WALGA;

26. Section 5.62 amended

In section 5.62(1):

(a) after paragraph (ea) insert:

(eb) the relevant person is a council member and since the relevant person was last elected the person —

(i) gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or

(ii) made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose;

or

(b) after each of paragraphs (a) to (e) insert:

or

27. Section 5.63 amended

In section 5.63(1)(b) delete “arising from” and insert:

in

28. Section 5.78 amended

Delete section 5.78(2)(b) and insert:

- (b) disclose the actual value, amount or extent of any asset, income, interest, debt or disposition referred to in section 5.79, 5.80, 5.81, 5.84, 5.85 or 5.86.

29. Section 5.82 amended

In section 5.82(1) after “description” insert:

and the amount

30. Section 5.83 amended

Delete section 5.83(1) and insert:

- (1) A relevant person is to disclose in an annual return —
 - (a) the description and the amount of each financial or other contribution that has been made to any travel undertaken by the person at any time during the return period; and
 - (b) the name and address of the person who made each contribution to which paragraph (a) applies.

31. Section 5.96 amended

In section 5.96 delete “information and” and insert:

information and, unless regulations prescribe otherwise,

32. Part 5 Division 8 heading replaced

Delete the heading to Part 5 Division 8 and insert:

**Division 8 — Local government payments and gifts to
its members**

33. Section 5.98 amended

After section 5.98(1) insert:

- (2A) A council member who attends a meeting of a prescribed type at the request of the council is entitled to be paid —
- (a) the prescribed minimum fee for attending a meeting of that type; or
 - (b) where the local government has set a fee within the prescribed range for meetings of that type, that fee.

34. Section 5.100A inserted

After section 5.99A insert:

5.100A. Gifts to council members

A local government cannot give a gift to a council member unless —

- (a) the gift is given in prescribed circumstances; and

- (b) the value of the gift is less than a prescribed amount.

35. Section 5.101A inserted

After section 5.101 insert:

5.101A. Regulations about payment of expenses

Regulations may be made about the method of payment of an expense for which a person can be reimbursed.

Part 6 — Amendments about financial management

36. Section 6.14 amended

In section 6.14(2):

- (a) delete paragraphs (a) and (b);
- (b) after paragraph (c) insert:

and

37. Section 6.25 amended

In section 6.25 insert in alphabetical order:

owner —

- (a) in relation to land in a retirement village as defined in the *Retirement Villages Act 1992* means —
 - (i) the owner, as defined in that Act section 3(1); or
 - (ii) a mortgagee in possession of the land; or
 - (iii) a trustee, executor, administrator, attorney or agent of a person mentioned in this paragraph who is in possession of the land;
- (b) otherwise has the meaning given in section 1.4;

38. Section 6.29 replaced

Delete section 6.29 and insert:

6.29. Valuation and rates on mining and petroleum interests

- (1) In this section —
relevant interest means —
 - (a) a mining tenement held under the *Mining Act 1978* (whether within the meaning given to that term by that Act or by the *Mining Act 1904*); or
 - (b) a permit, drilling reservation, lease or licence held under the *Petroleum and Geothermal Energy Resources Act 1967*.
- (2) Regardless of any determination made under section 6.28(1), the basis for a rate on a relevant interest is to be the unimproved value of the land, except as provided for in subsection (3).
- (3) Subsection (2) does not apply to a relevant interest in a portion of land on which capital improvements are located if —
 - (a) the Minister has determined under section 6.28(1) that the gross rental value of the land is to be used as the basis for a rate on that interest; and
 - (b) the determination expressly excludes the application of subsection (2).
- (4) The Minister cannot determine under section 6.28(1) that the gross rental value of the land is to be used as the basis for a rate on a relevant interest in a portion of land if another estate in that portion of land is rateable on the basis of the gross rental value of the land.

- (5) For the purpose of subsection (3)(b) a determination is to be taken to expressly exclude the application of subsection (2) if the determination —
- (a) was made before the commencement of the *Local Government Amendment Act 2009* section 38; and
 - (b) specifically applies to the particular relevant interest.

39. Section 6.33 amended

- (1) In section 6.33(1):
- (a) in paragraph (a) delete “zoned” and insert:

zoned, whether or not
 - (b) in paragraph (b) delete “the predominant” and insert:

a
- (2) After section 6.33(4) insert:
- (5) A differential general rate that a local government purported to impose under this Act before the *Local Government Amendment Act 2009* section 39(1)(a) came into operation is to be taken to have been as valid as if the amendment made by that paragraph had been made before the purported imposition of that rate.

40. Section 6.68 amended

Delete section 6.68(2) and insert:

- (2) A local government is not required to attempt under section 6.56 to recover money due to it before exercising the power of sale where the local government —
 - (a) has a reasonable belief that the cost of the proceedings under that section will equal or exceed the value of the land; or
 - (b) having made reasonable efforts to locate the owner of the property is unable to do so.
- (3A) A local government is to ensure that a decision to exercise a power of sale without having, within the period of 3 years prior to the exercise of the power of sale, attempted under section 6.56 to recover the money due to it and the reasons for the decision are recorded in the minutes of the meeting at which the decision was made.

Part 7 — Other amendments

41. Section 8.2 amended

- (1) In section 8.2(1) delete “local government” (first occurrence) and insert:

local government, a member of a council, a CEO or an employee

- (2) Delete section 8.2(2) and insert:

- (2) A person who fails to comply with a notice under subsection (1) commits an offence.

42. Section 9.16 amended

- (1) After section 9.16(1) insert:

- (2A) If a person who is given a notice under section 9.13 about an alleged offence involving a vehicle gives information in accordance with section 9.13(6) about another person who was the driver or person in charge of the vehicle at the time of the alleged offence, the period of 28 days for giving that other person an infringement notice runs from the time the information was given.

- (2) After section 9.16(2) insert:

- (3) An infringement notice given before the commencement of the *Local Government Amendment Act 2009* section 42(1) and purporting to be under this section is to be taken to have been as valid as if the amendment made by that subsection had been made before the notice was given.

43. Sections 9.49A and 9.49B inserted

At the beginning of Part 9 Division 3 insert:

9.49A. Execution of documents

- (1) A document is duly executed by a local government if —
 - (a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.
- (2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.
- (3) The common seal of the local government is to be affixed to a document in the presence of —
 - (a) the mayor or president; and
 - (b) the chief executive officer or a senior employee authorised by the chief executive officer,each of whom is to sign the document to attest that the common seal was so affixed.
- (4) A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.
- (5) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.

- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.

9.49B. Contract formalities

- (1) Insofar as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a local government may make, vary or discharge a contract in the name of or on behalf of the local government in the same manner as if that contract was made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the local government concerned and other parties to the contract.
- (3) Subsection (1) does not prevent a local government from making, varying or discharging a contract under its common seal.

44. Various references to “Executive Director” amended

In the provisions listed in the Table delete “Executive Director” (each occurrence) and insert:

Departmental CEO

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Table

s. 5.108(1), (2)(a) and (3)	s. 5.110(2)(b)
s. 5.111(1) and (2)	s. 5.112(1), (2), (3), (4) and (5)
s. 5.114(1) and (2)	s. 5.115(1) and (2)
s. 5.116(1), (2), (3), (4), (5) and (6)	s. 5.117(4) and (5)
s. 5.118(2)	s. 5.119(1)
s. 9.69A	

45. Schedule 2.5 amended

In Schedule 2.5 clause 7(10) delete “procedure.” and insert:

procedure, and other procedure and practice.

46. Schedule 3.1 amended

In Schedule 3.1 Division 1:

(a) after item 5A insert:

5B. Ensure that graffiti that is —

- (a) applied with the consent of the owner or occupier; and
- (b) visible from a public place; and
- (c) considered by the local government to be unsightly or offensive,

is obliterated in a manner acceptable to the local government.

(b) delete item 6 and insert:

6. Take specified measures for preventing or minimising the movement of sand, silt, clay or rocks on or from the land if, in

the opinion of the local government, that movement would be likely to adversely affect other land.

47. Schedule 3.2 amended

In Schedule 3.2:

- (a) in item 7 delete “(The cost cannot then be recovered from the owner.)”;
 - (b) after item 7 insert:
8. Obliterate graffiti that is visible from a public place and that has been applied without the consent of the owner or occupier.

Part 8 — Consequential amendments

48. *Local Government Amendment Act 2004* amended

- (1) This section amends the *Local Government Amendment Act 2004*.
- (2) Delete section 19(2).
- (3) Delete section 20.
- (4) Delete section 38(3).

