

Western Australia

Local Government Amendment Act 2007

As at 25 Jun 2007

No. 9 of 2007

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Local Government Amendment Act 2007

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Western Australia

Local Government Amendment Act 2007

No. 9 of 2007

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

[Assented to 25 June 2007]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Local Government Amendment Act 2007*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Local Government Act 1995**.

[* *Reprint 3 as at 5 August 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1 and Acts Nos. 38 of 2005 and 28 of 2006.]

4. Section 4.69 amended

(1) Section 4.69(1) is amended by inserting after “election” —

“ and only 2 candidates are named on the ballot paper ”.

(2) Section 4.69(2) is repealed and the following subsections are inserted instead —

“

(2) In any other case, an elector is to cast his or her vote by marking the ballot paper in accordance with regulations so as to indicate the sequence in which all the candidates named on the ballot paper rank in the order of the elector’s preference for them.

(3) If preferences are indicated for all but one of the candidates, that candidate is taken to rank lowest in the order of the elector’s preference for the candidates.

”.

5. Schedule 4.1 replaced

Schedule 4.1 is repealed and the following Schedule is inserted instead —

“

Schedule 4.1 — How to count votes and ascertain the result of an election

[s. 4.74]

Division 1 — Preliminary

1. Terms used in this Schedule

(1) In this Schedule —

“**continuing candidate**” means a candidate who has not already been elected or excluded from the count;

“**first preference vote**” received by a candidate means a vote cast by an elector that indicates that the candidate ranks highest in the order of the elector’s preference for the candidates;

“**one office election**” means an election to fill the office of mayor or president or to fill one office of councillor;

“**quota**” means the quota determined under clause 10(1);

“**total vote**” means the total number of all the first preference votes received by candidates.

(2) A reference in this Schedule to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under this Schedule.

Division 2 — One office elections

2. One office election: 2 candidates

(1) If there are only 2 candidates in a one office election —

(a) the number of votes received by each candidate is to be ascertained; and

(b) the candidate who has the greater number of votes is elected.

- (2) If the candidates have an equal number of votes, the returning officer is to draw lots in accordance with regulations to determine which candidate is elected.

3. One office election: 3 or more candidates

Clauses 4 to 8 apply if there are 3 or more candidates in a one office election.

4. Count of first preference votes

- (1) The number of first preference votes received by each candidate and the total vote are to be ascertained.
- (2) If the number of first preference votes received by a candidate is more than half of the total vote, the candidate is elected.

5. Exclusion of candidate and transfer of votes if vacancy remains

- (1) If the office has not been filled, the candidate who has the fewest first preference votes is excluded and all of that candidate's votes are to be transferred to the continuing candidates as follows —
 - (a) any ballot papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred to the continuing candidate;
 - (b) the total number of ballot papers that are transferred to a continuing candidate under paragraph (a) is to be added to the number of votes of the continuing candidate.
- (2) If the number of votes that a continuing candidate has received on the completion of the transfer under subclause (1) is more than half of the total vote, the candidate is elected.

6. Further exclusions if necessary

- (1) If, after the transfer of all the votes of an excluded candidate, the office has not been filled, the candidate who has the fewest votes is excluded and all of that candidate's votes are to be transferred to the continuing candidates as follows —
 - (a) any ballot papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred to the continuing candidate;
 - (b) the total number of ballot papers that are transferred to a continuing candidate under paragraph (a) is to be added to the number of votes of the continuing candidate;
 - (c) any ballot papers previously transferred to the excluded candidate under this Division that express the next available preference for a particular continuing candidate are to be transferred to the continuing candidate;
 - (d) the total number of ballot papers that are transferred to a continuing candidate under paragraph (c) is to be added to the number of votes of the continuing candidate.
- (2) If the number of votes that a continuing candidate has received on the completion of the transfer under subclause (1) is more than half of the total vote, the candidate is elected.

7. Filling vacancy if 2 candidates have equal votes after a transfer

If there are only 2 continuing candidates and they have received the same number of votes on the completion of a transfer under clause 5(1) or 6(1), the returning officer is to draw lots in accordance with regulations to determine which candidate is elected.

8. Procedure to determine excluded candidate if votes equal

If the candidate who has the fewest votes is required to be excluded under clause 5(1) or 6(1), and 2 or more candidates (the “**tied candidates**”) have an equal number of votes (no other candidate having fewer votes) the returning officer is to draw lots in accordance with regulations to determine which of the tied candidates is excluded.

Division 3 — Elections for 2 or more councillors

9. Application of Division

This Division applies to an election other than a one office election.

10. Count of first preference votes and determination of quota

- (1) The number of first preference votes received by each candidate and the total vote are to be ascertained and a quota is to be determined by dividing the total vote by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one.
- (2) Any candidate who has received a number of first preference votes equal to or greater than the quota is elected.

11. Transfer of surplus votes if any vacancy remains

- (1) Unless all the offices have been filled, the votes (if any) that each elected candidate has received in excess of the quota (“**surplus votes**”) are to be transferred to the continuing candidates as follows —
 - (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the “**transfer value**”;

- (b) the total number of ballot papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
 - (c) the number so obtained (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate;
 - (d) all those ballot papers are to be transferred to the continuing candidate.
- (2) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under subclause (1) is elected.

12. Further transfer of votes if any vacancy remains

- (1) Unless all the offices have been filled, the surplus votes (if any) of any candidate elected under clause 11(2), or elected subsequently under subclause (2), are to be transferred to the continuing candidates as follows —
- (a) the number of surplus votes of the elected candidate is to be divided by the number of votes received by the elected candidate and the resulting fraction is the “**surplus fraction**”;
 - (b) in relation to any particular ballot papers for surplus votes of the elected candidate, the surplus fraction is to be multiplied by the transfer value at which those ballot papers were transferred to the elected candidate, or by one if they expressed first preference votes for the elected candidate, and the product is the “**continued transfer value**” of those particular ballot papers;
 - (c) the total number of ballot papers for surplus votes of the elected candidate that each —
 - (i) express the next available preference for a particular continuing candidate; and
 - (ii) have a particular continued transfer value,

are to be multiplied by that transfer value, the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate and all those ballot papers are to be transferred to the continuing candidate.

- (2) If on the completion of the transfer of the surplus votes of the elected candidate to a particular continuing candidate that candidate has received a number of votes equal to or greater than the quota, that candidate is elected.

13. Votes of other candidates not to be transferred to a candidate who has obtained a quota

If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 11 or 12 of the surplus votes of a particular elected candidate, no votes of any other candidate are to be transferred to the continuing candidate.

14. Exclusion of candidate and transfer of votes if any vacancy remains

If, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is excluded and all of that candidate's votes are to be transferred to the continuing candidates as follows —

- (a) any ballot papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred to the continuing candidate (each ballot paper at a transfer value of one);
- (b) the total number of ballot papers that are transferred to a continuing candidate under paragraph (a) is to be added to the number of votes of the continuing candidate;

- (c) the total number (if any) of other votes obtained by the excluded candidate on transfers under this Division are to be transferred from the excluded candidate in the order of the transfers on which the excluded candidate obtained them, the votes obtained on the earliest transfer being transferred first, as follows —
- (i) the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate are to be multiplied by the transfer value at which the ballot papers were so transferred to the excluded candidate;
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate;
 - (iii) all those ballot papers are to be transferred to the continuing candidate.

15. Further transfer of surplus votes if necessary

Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under clause 14 or 16 of votes of an excluded candidate is elected, and, unless all the offices have been filled, the surplus votes (if any) of the candidate so elected are to be transferred in accordance with clause 12, except that, if the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance with clause 14 to continuing candidates.

16. Further exclusions if necessary

Subject to clause 18, if, after the transfer of all the votes of an excluded candidate, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes is excluded and that candidate's votes are to be transferred in accordance with clause 14.

17. Transfer of votes to a candidate to cease as soon as quota has been obtained

If a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate are to be transferred to the candidate so elected.

18. Filling final vacancy

In respect of the last office to be filled for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is elected even if that number is below the quota, and if they have an equal number of votes the returning officer is to draw lots in accordance with regulations to determine which candidate is elected.

19. No need for further count if number of continuing candidates equals number of vacancies

Despite any other provision of this Division, if the number of continuing candidates is equal to the number of remaining unfilled offices, those candidates are elected.

20. Order of transfer of surpluses

Subject to clauses 21 and 22, if, after any count or transfer under this Division, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative sizes of the surpluses, the larger or largest surplus being transferred first.

21. Procedure in case of equal surpluses

Subject to clause 22, if, after any count or transfer under this Division, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the larger or largest number of votes at that count or transfer being transferred first, but if there has been no such count or transfer the returning officer is to draw lots in accordance with regulations to determine which candidate is, as between those candidates, taken to have had the larger or largest surplus.

22. Surplus from earlier count or transfer to be transferred before later surplus

If, after any count or transfer under this Division, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.

23. Procedure to determine excluded candidate if votes equal

If the candidate who has the fewest votes is required to be excluded under clause 14 or 16 and 2 or more candidates (the “**tied candidates**”) have an equal number of votes (no other candidate having fewer votes), whichever of the tied candidates had the fewer or fewest votes at the last count or transfer at which each of the tied candidates had a different number of votes is excluded, but if there has been no such count or transfer the returning officer is to draw lots in accordance with regulations to determine which of the tied candidates is excluded.

24. When votes are to be set aside as finally dealt with

If a candidate is elected by reason that the number of first preference votes received by the candidate, or the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers under this Division, is equal to the quota, all the ballot papers expressing those votes are to be set aside as finally dealt with.

25. Transfers to be treated separately

Each of the following constitutes a separate transfer for the purposes of this Division —

- (a) a transfer under clause 11, 12 or 15 of all the surplus votes of an elected candidate;
- (b) a transfer in accordance with clause 14(a) and (b) of all first preference votes of an excluded candidate;
- (c) a transfer in accordance with clause 14(c) of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate.

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6. Schedule 4.2 amended

- (1) Schedule 4.2 clause 8 is amended by inserting before “votes” in each place where it occurs —

“ primary ”.

- (2) After Schedule 4.2 clause 8 the following clause is inserted —

“

8A. In clause 8 —

“**primary vote**” received by a person on his or her election means —

- (a) in relation to an election in which there are only 2 candidates to fill one office of councillor, a vote cast by an elector that indicates the person whom the elector wishes to be elected; or

- (b) in any other case, a vote cast by an elector that indicates that the person ranks highest in the order of the elector's preference for the candidates.

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