

WESTERN AUSTRALIA

**LOCAL GOVERNMENT
AMENDMENT ACT 1998**

No. 1 of 1998

**AN ACT to amend the *Local Government Act 1995* and the
Local Government (Miscellaneous Provisions) Act 1960
and for related purposes.**

[Assented to 26 March 1998.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Local Government Amendment Act 1998*.

Commencement

2. (1) This Act, other than section 21, comes into operation on the day on which it receives the Royal Assent.
- (2) Section 21 comes into operation on 1 July 1998.

Principal Act

3. In this Act the *Local Government Act 1995** is referred to as the principal Act.

[* Act No. 74 of 1995.

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 136 and Gazette 29 April 1997.]

Section 1.4 amended

4. Section 1.4 of the principal Act is amended by inserting in the appropriate alphabetical position the following definition —

“**“electoral requirements”** has the meaning given by section 4.1;”

Section 2.19 amended and saving

5. (1) Section 2.19 (2) of the principal Act is repealed and the following subsection is substituted —

“ (2) A person is not qualified under subsection (1) (b) if he or she is only eligible for enrolment under section 4.30 (1) (a) and (b) —

(a) as the nominee of a body corporate under section 4.31; or

(b) because of Schedule 9.3, clause 12 (2).

”

(2) Section 2.19 (2) (b) does not affect the qualification of a person who is a member of a council when this section commences to continue to hold office as a member for the remainder of his or her term.

(3) Section 2.19 (2) (b) does not affect the qualification of a person —

(a) to be elected as a member of a council at an election for which nominations were called before the commencement of this section; and

(b) to hold office as a member of a council for the term for which he or she is elected at such an election.

(4) An expression used in subsection (2) or (3) has the same meaning as it would have if used in the principal Act.

Section 2.37A inserted and consequential amendments

6. (1) After section 2.37 of the principal Act the following section is inserted —

“

Vacancies in all offices for any other reason

2.37A. (1) If all the offices of members of a council have become vacant, or are going to become vacant, for any reason other than an order under section 2.37 (4) or 8.25, the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.

(2) An order under subsection (1) is to fix a day for any poll needed for the election of members to fill the vacant offices again.

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(3) The day fixed is to be a day that is as soon as practicable after the appointment takes effect and allows enough time for the electoral requirements to be complied with, but is not to be later than one year after the day on which the appointment takes effect.

”.

(2) Section 1.4 of the principal Act is amended in the definition of “commissioner” by inserting before “8.30” the following —

“ 2.37A (1), ”.

(3) Section 2.39 of the principal Act is amended by inserting before “8.30” the following —

“ 2.37A (1), ”.

(4) Schedule 2.4 to the principal Act is amended in clause 2 by inserting before “8.30” the following —

“ 2.37A (1), ”.

Section 3.10 amended

7. Section 3.10 (5) of the principal Act is repealed.

Section 3.12 amended

8. Section 3.12 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) At a council meeting the person presiding is to read aloud, or cause to be read aloud, a summary of the purpose and effect of the proposed local law.

”.

Section 3.14 amended

9. (1) Section 3.14 of the principal Act is amended by deleting “A local” and substituting the following —

“ (1) Unless it is made under section 3.17, a local ”.

(2) Section 3.14 of the principal Act is amended by inserting the following subsection —

“

(2) A local law made under section 3.17 comes into operation on the day on which it is published in the *Gazette* or on such later day as may be specified in the local law.

”.

Section 3.26 amended

10. (1) Section 3.26 (2) of the principal Act is amended by inserting before “fails” the following —

“ (“**notice recipient**”) ”.

(2) Section 3.26 (4) of the principal Act is amended —

(a) by deleting “an occupier of land” and substituting the following —

“ a notice recipient ”; and

(b) by deleting all the words from “the occupier may” to the end of the subsection and substituting the following —

“

the notice recipient may apply to a court for an order under subsection (6).

”.

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(3) After section 3.26 (4) of the principal Act the following subsections are inserted —

“

(5) In subsection (4) —

“**court**” means a court that would have jurisdiction to hear an action to recover a debt of the amount of the expense, fine or cost sought to be recovered by the notice recipient.

(6) On an application under subsection (4) the court may order —

(a) if the notice recipient is the owner, the occupier;
or

(b) if the notice recipient is the occupier, the owner,

to pay to the notice recipient so much of that expense, fine or cost as the court considers fair and reasonable in the circumstances.

(7) In determining what is fair and reasonable the court is to have regard to —

(a) the type of land involved;

(b) the terms on which the occupier is occupying the land; and

(c) any other matter the court considers to be relevant.

”.

Section 3.50 amended

11. (1) Section 3.50 (3) of the principal Act is amended by deleting “one year” and substituting the following —

“ 4 years ”.

(2) After section 3.50 (8) of the principal Act the following subsection is inserted —

“

(9) The requirement in subsection (8) ceases to apply if the thoroughfare is reopened.

”.

Section 3.59 amended

12. Section 3.59 (3) (d) of the principal Act is amended by deleting “forward plan” and substituting the following —

“ current plan prepared under section 5.56 ”.

Section 5.42 amended

13. Section 5.42 (1) of the principal Act is amended by deleting “and this power of delegation”.

Section 5.44 amended and validation

14. (1) After section 5.44 (2) of the principal Act the following subsections are inserted —

“

(3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —

- (a) the CEO’s power under this section to delegate the exercise of that power or the discharge of that duty; and

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- (b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions imposed by the local government on its delegation to the CEO.

(4) Subsection (3) (b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.

- (5) In subsections (3) and (4) —

“conditions” includes qualifications, limitations or exceptions.

”.

(2) If before the commencement of this section the chief executive officer (“CEO”) of a local government purported to delegate to any person the performance or discharge of any power or duty delegated to the CEO under section 5.42 of the principal Act, that delegation and anything done in reliance on it are to be regarded as having always been as valid and effective as they would have been if this section had commenced before they occurred.

Section 5.63 amended

15. (1) Section 5.63 (1) (e) of the principal Act is deleted.

(2) After section 5.63 (4) of the principal Act the following subsection is inserted —

“

(5) A reference in subsection (2), (3) or (4) to the development of land is a reference to the development, maintenance or management of the land or of services or facilities on the land.

”.

Section 5.66 amended

16. Section 5.66 of the principal Act is amended —

- (a) by deleting “before the meeting”;
- (b) in paragraph (a) by inserting before “the CEO” the following —
“ before the meeting ”; and
- (c) by deleting paragraph (b) and substituting the following paragraph —
“
(b) at the meeting the person presiding is to bring the notice to the attention of the persons present immediately before the matters to which the disclosure relates are discussed.
”.

Section 5.74 amended

17. Section 5.74 (1) of the principal Act is amended in paragraph (a) of the definition of “return period” by deleting “day by which the person was required to lodge the” and substituting the following —

“ start day for the primary ”.

Section 5.76 amended

18. (1) Section 5.76 of the principal Act is amended in the penalty clause by inserting after “Penalty” the following —

“ applicable to subsections (1) and (2) ”.

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(2) After the penalty clause in section 5.76 of the principal Act the following subsection is inserted —

“

(3) This section does not apply so as to require a person to lodge an annual return in the year in which he or she is required to lodge a primary return if the start date in relation to the person is after 31 March in that year.

”.

Section 6.8 amended

19. (1) Section 6.8 (1) of the principal Act is amended by deleting “which is not included in its annual budget” and substituting the following —

“ for an additional purpose ”.

(2) After section 6.8 (1) of the principal Act the following subsection is inserted —

“

(1a) In subsection (1) —

“**additional purpose**” means a purpose for which no expenditure estimate is included in the local government’s annual budget.

”.

Section 6.28 amended

20. Section 6.28 (5) of the principal Act is amended —

(a) after paragraph (a) by deleting “or”;

(b) at the end of paragraph (b) by deleting the comma and substituting the following —

“ ; or ”;

- (c) after paragraph (b) by inserting the following paragraph —

“

- (c) a new valuation is made under the *Valuation of Land Act 1978* in the course of completing a general valuation that has previously come into force, ”;

and

- (d) by deleting “or amended valuation,” and substituting the following —

“ , amended valuation or new valuation, ”.

Section 6.51 amended

21. Section 6.51 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) A local government may at the time of imposing a rate or service charge resolve* to impose interest (at the rate set in its annual budget) on a rate or service charge (or any instalment of a rate or service charge) that remains unpaid after it is due and payable.

* *Absolute majority required.*

”.

Section 8.34 amended

22. Section 8.34 (2) of the principal Act is amended by deleting “as defined in section 4.1”.

Section 9.1 amended

23. Section 9.1 (3) of the principal Act is amended by inserting after “law” the following —

“ , or regulation that is to operate as if it were a local law, ”.

Section 9.17 amended

24. Section 9.17 (3) of the principal Act is repealed and the following subsection is substituted —

“
(3) Unless otherwise prescribed by regulation, the modified penalty that a local law may prescribe for an offence is not to exceed 10% of the maximum fine that could be imposed for that offence by a court.
”.

Schedule 2.4 amended

25. Clause 1 of Schedule 2.4 to the principal Act is amended —

(a) by inserting after the clause designation “1.” the subclause designation “(1)”; and

(b) by inserting the following subclause —

“
(2) Nothing in this Act prevents a person from being a commissioner of more than one local government.
”.

Schedule 2.5 amended

26. (1) Clause 2 (b) of Schedule 2.5 to the principal Act is amended by deleting “councillor” and substituting the following —

“ member of a council ”.

(2) Clause 3 (1) of Schedule 2.5 to the principal Act is deleted and the following subclause is substituted —

“ (1) The Governor may appoint a deputy for any member appointed under clause (2) (b), (c) or (d). ”.

(3) Clause 3 (4) of Schedule 2.5 to the principal Act is amended —

(a) in paragraph (a) —

(i) by deleting “from the meeting” and substituting the following —

“ from a meeting ”; and

(ii) by deleting “attend a meeting” and substituting the following —

“ attend the meeting ”;

(b) by inserting after paragraph (a) the following paragraph —

“ (aa) if the member is the member appointed under clause 2 (d) and is presiding at a meeting under clause 7 (2), entitled to attend the meeting even though the member is also present; ”;

and

(c) by deleting “otherwise” in the second place where it occurs.

(4) Clause 7 (2) and (3) of Schedule 2.5 to the principal Act are amended by deleting “his or her deputy” and substituting the following —

“ the member appointed under clause 2 (d) ”.

(5) Clause 11 (3) of Schedule 2.5 to the principal Act is deleted and the following subclauses are substituted —

- “
- (3) The member appointed under clause 2 (a) is to preside at committee meetings at which he or she is present.
 - (3a) If the member appointed under clause 2 (a) is not present at a committee meeting, the member appointed under subclause (2) (d) is to preside at the meeting.
 - (3b) The quorum at a meeting of a committee is 3, one of whom must be the member appointed under clause 2 (a) or the member appointed under subclause (2) (d).
- ”.

(6) Clause 11 (6) of Schedule 2.5 to the principal Act is deleted.

(7) Clause 11 (7) of Schedule 2.5 to the principal Act is amended by deleting “appoint a deputy for each other member of a committee” and substituting the following —

- “
- , with the approval of the Minister, appoint a deputy for any member of the committee appointed under subclause (2) (b), (c) or (d)
- ”.

Schedule 9.1 amended

27. (1) Clause 11 (3) of Schedule 9.1 to the principal Act is amended by deleting “only if that person, or that person’s representative, is present while the work is being done.” and substituting the following —

- “
- only if that person, or that person’s representative —
 - (a) is present while the work is being done; or
 - (b) has notified the local government that the work may be done without the person, or the person’s representative, being present.
- ”.

(2) Clause 12 (2) of Schedule 9.1 to the principal Act is amended by deleting “a prescribed distance” and substituting the following —

“ such distance as is specified in the notice ”.

Schedule 9.2 amended

28. Clause 4 (2) of Schedule 9.2 to the principal Act is amended by deleting “VII” and substituting the following —

“ VI ”.

Local Government (Miscellaneous Provisions) Act 1960 amended

29. Section 245A of the *Local Government (Miscellaneous Provisions) Act 1960** is amended —

- (a) in subsection (1) by inserting before the definition of “swimming pool” the following definition —

“
 “**authorized person**” means a person with appropriate experience or qualifications authorized by the local government for the purposes of this section;
”;

- (b) by repealing subsection (4);
- (c) in subsections (5), (6), and (7) by deleting “officer” in each place where it occurs and substituting in each place the following —

“ person ”; and

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(d) in subsection (7) by deleting “officers” and substituting the following —

“ persons ”.

[* *Reprinted as at 18 September 1996.*
For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 138 and Acts Nos. 72 and 79 of 1996.]