

**LOCAL GOVERNMENT
(SUPERANNUATION)
LEGISLATION AMENDMENT
ACT 1994**

No. 60 of 1994

AN ACT to amend the *Local Government Act 1960*, to repeal the *City of Perth Superannuation Fund Act 1934*, and to make consequential amendments to the *City of Perth Restructuring Act 1993* and other Acts.

[Assented to 7 November 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Local Government (Superannuation) Legislation Amendment Act 1994*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2 — LOCAL GOVERNMENT ACT 1960

Principal Act

3. In this Part the *Local Government Act 1960** is referred to as the principal Act.

[* *Reprinted as approved 24 June 1983.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 123-5 and Act No. 6 of 1994.]

Sections 169, 169AA and 169A repealed

4. Sections 169, 169AA and 169A of the principal Act are repealed.

Part VIA inserted

5. After Part VI of the principal Act the following Part is inserted —

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PART VIA — EMPLOYEE SUPERANNUATION

Interpretation

170A. (1) In this Part —

“**City of Perth scheme**” means the superannuation scheme established under section 170C;

“**dependant**” has the same definition as in section 10 of the SIS Act;

“employee” and **“employer”** have the same definitions as in section 10 of the SIS Act;

“industry scheme” means the scheme whereby the W.A. Local Government Occupational Superannuation Fund was established by a deed of trust dated 21 March 1990 made by the 5 trustees of the Fund;

“municipality” includes a regional council;

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth) as amended from time to time.

(2) A reference in this Part to the City of Perth scheme is a reference to the scheme as it is amended from time to time.

(3) A reference in this Part to the industry scheme is a reference to the scheme as it is amended from time to time.

Municipalities to use industry scheme

170B. (1) To provide superannuation and other benefits for its employees and their dependants, a municipality shall participate in and comply with the industry scheme.

(2) A municipality shall exercise such powers and discharge such obligations as are necessary to give effect to the industry scheme.

(3) Subsections (1) and (2) do not apply in respect of an employee if under section 170D, or section 29 of the *City of Perth Restructuring Act 1993*, a municipality has to participate in and comply with the City of Perth scheme in respect of that employee.

(4) Subsections (1) and (2) apply to the City of Perth only in respect of those of its employees who are not members of the City of Perth scheme.

City of Perth scheme

170C. (1) The City of Perth shall establish a scheme that accords with the SIS Act to provide superannuation and other benefits for its employees and their dependants and for those of its former employees (and their dependants) whose employers, by virtue of section 170D or section 29 of the *City of Perth Restructuring Act 1993*, are required to participate in and comply with the scheme.

(2) The City of Perth shall participate in and comply with the City of Perth scheme.

(3) The City of Perth shall exercise such powers and discharge such obligations as are necessary to give effect to the City of Perth scheme.

(4) A person who becomes an employee of the City of Perth shall be a member of and subject to the City of Perth scheme unless he or she elects to be a member of the industry scheme.

City of Perth scheme members who become employed by a regional council

170D. (1) If a person —

- (a) is a member of the City of Perth scheme;
and
- (b) becomes an employee of a regional council of which the City of Perth is a constituent municipality,

then, despite section 170B, the regional council shall, in respect of that person, participate in and comply

with the City of Perth scheme in the same way and to the same extent as the City of Perth would be required to if the person were its employee; unless the person elects to become a member of the industry scheme.

(2) A person referred to in subsection (1) does not cease to be a member of the City of Perth scheme by reason only of ceasing to be an employee of the City of Perth.

Other superannuation schemes

170E. Nothing in this Part prevents a municipality from participating, in respect of an employee of the municipality, in a superannuation scheme in addition to either the industry scheme or the City of Perth scheme (as the case may be) if the municipality and the employee agree to participate in that other scheme.

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PART 3 — REPEAL AND TRANSITIONAL

Division 1 — Repeal and operation of new scheme

City of Perth Superannuation Fund Act 1934 repealed

6. The *City of Perth Superannuation Fund Act 1934* is repealed.

Operation of the new scheme

7. 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

Interpretation

8. 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.

Transfer of assets etc.

9. (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 authorized 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.

Transfer of members etc.

10. 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.

City of Perth Restructuring Act 1993 amended

11. Section 29 of the *City of Perth Restructuring Act 1993** is repealed and the following section is substituted —

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City of Perth superannuation scheme members who become employed by a new town

29. (1) If a person —

(a) immediately before division day is —

(i) an employee of the City of Perth; and

(ii) a member of the City of Perth scheme;

and

(b) on or after division day and before 1 July 1996 is transferred under section 21 or 22 of the principal Act to the service of and becomes an employee of the council of a new town,

then, despite section 170B of the principal Act, the new town shall, in respect of that person, participate in and comply with the City of Perth scheme in the same way and to the same extent as the City of Perth would be required to if the person were its employee; unless the person elects to become a member of the industry scheme.

(2) A person referred to in subsection (1) does not cease to be a member of the City of Perth scheme by reason only of ceasing to be an employee of the City of Perth.

(3) In this section —

“City of Perth scheme” means the superannuation fund or scheme established under the *City of Perth Superannuation*

Fund Act 1934 or under section 170C of the principal Act, as the case may be, as the scheme is amended from time to time;

“**employee**” and “**employer**” have the same definitions as in section 10 of the *Superannuation Industry (Supervision) Act 1993* (Cwlth) as amended from time to time;

“**industry scheme**” has the same definition as in section 170A of the principal Act;

“**member**”, if used in relation to the superannuation fund or scheme established under the *City of Perth Superannuation Fund Act 1934*, includes contributor.

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[* *Act No. 38 of 1993.*]

***Perth Theatre Trust Act 1979* amended**

12. Section 17 of the *Perth Theatre Trust Act 1979** is amended by repealing subsections (6) and (7).

[* *Act No. 79 of 1979.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 158-9.]

***State Energy Commission Act 1979* amended**

13. Section 97 of and the Schedule to the *State Energy Commission Act 1979** are repealed.

[* *Reprinted as at 21 May 1987.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 199.]