

LOCAL GOVERNMENT.

No. 35 of 1985.

AN ACT to amend the Local Government Act 1960 and for related purposes.

[Assented to 6 May 1985.]

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:—

1. (1) This Act may be cited as the *Local Government Amendment Act 1985*.

Short
title and
principal
Act.

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

Reprinted as
approved
24 June 1983
and amended
by Acts
Nos. 6 and 84
of 1983 and
17, 25, 42 and
79 of 1984.

Commence-
ment.

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

Section 67
amended.

3. Section 67 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after paragraph (b) the following paragraphs—

“ (ba) has, within the last-preceding period of 5 years, been convicted of an offence against section 174;

(bb) is disqualified under section 632 (11) or (14) from being a member of a council; ”;

and

(ii) by deleting “or (5) of this section” and substituting the following—

“ , (5) or (5a) ”; and

(b) by inserting after subsection (5) the following subsection—

“ (5a) A person is not disqualified under subsection (1) (ba) on the ground of his having been convicted of an offence against section 174 if the offence was committed before the day on which section 3 of the Local Government Amendment Act 1985 came into operation and a court convicting a person of an offence against section 174 committed on or after that day may, if it is satisfied that in the circumstances of the case it is appropriate to do so—

(a) order that the person be not disqualified from being elected or acting as mayor, president

or councillor of a municipality on the ground of that conviction; or

- (b) order that after such period, being a period that is less than 5 years, as is specified in the order the person be not disqualified from being elected or acting as mayor, president or councillor of a municipality on the ground of that conviction,

and that order shall have effect according to its tenor. ”.

4. Sections 174 and 174A of the principal Act are repealed and the following sections are substituted—

Sections 174 and 174A repealed and sections 174, 174A and 174B substituted.

“ 174. (1) For the purposes of this section, a person shall be regarded as having an interest in a matter if he or a person with whom he is closely associated has a direct or indirect pecuniary interest in that matter.

Disclosure of interests by members of councils and committees.

(2) Subject to any exemption granted pursuant to subsection (10), this section applies to all meetings of the council or of a committee of the council, to all persons who are members of the council, and to all persons who are members of a committee of the council pursuant to section 180 or 181.

(3) Subject to section 174B (4), a person to whom this section applies who has an interest in a matter which is to be considered or discussed or to be voted upon at a meeting to which this section applies shall disclose the fact that he has the interest either—

- (a) by written notice given to the clerk prior to the meeting; or

- (b) at the meeting as soon as is practicable after the commencement of the meeting,

and, where the interest is disclosed by written notice given to the clerk prior to the meeting, the clerk shall, at the meeting, give particulars of the disclosure as soon as is practicable after the commencement of the meeting.

(4) A person who is liable to disclose the fact that he has an interest in a matter shall not take part in the consideration or discussion of the matter at the meeting if a majority of the persons who are present at the meeting and who are entitled to vote on the matter determine by motion, which may be moved without notice, that he be not permitted to speak on the matter.

(5) A person who is liable to disclose the fact that he has an interest in a matter shall not vote on the matter at the meeting unless a majority of the persons present at the meeting who are entitled to vote on the matter determine by motion, which may be moved without notice, that the interest the person has—

- (a) is so trivial or insignificant that if he were to vote on the matter he could not reasonably be regarded as likely to be influenced by the interest; or
- (b) is shared in common with such a significant group of the electors or the ratepayers of the municipality or the inhabitants of the district of the municipality that he could not reasonably be regarded as likely, by

reason of the interest, to vote differently from the way in which he would have voted but for the interest.

(6) Where a motion that a person be not permitted to speak on a matter has been passed in accordance with subsection (4), there shall be recorded in the minutes of the meeting particulars of the motion and of the moving and carrying of the motion and the fact that the person not permitted to speak did not take part in the consideration or discussion of the matter at the meeting.

(7) Where a determination is made in accordance with subsection (5), there shall be recorded in the minutes of the meeting particulars of the motion by the passing of which the determination was made.

(8) Where a person gives written notice of an interest to the clerk or where an interest is disclosed by a person at a meeting—

- (a) there shall be recorded in the minutes of the meeting the fact that, as the case may be, the person did or did not vote at the meeting on the matter in which he has disclosed an interest; and
- (b) the clerk shall record in a book to be kept for the purpose particulars of the disclosures so made in accordance with the requirements of this section,

and the book referred to in paragraph (b) shall be made available by the clerk for inspection by electors and ratepayers of the municipality at reasonable times.

(9) A council or a committee of a council may by motion, which may be moved without notice—

- (a) exclude any person who, by reason of a determination under subsection (4), is precluded from taking part in the consideration or discussion of a matter at a meeting, from the meeting for the time during which that matter is being considered, discussed, or voted upon; or
- (b) exclude any person who, by reason of subsection (5), is not permitted to vote on a matter at a meeting, from the meeting for the time during which that matter is being voted upon,

and the person shall not attend the meeting during the time for which he is so excluded.

(10) Where—

- (a) the number of persons recorded as having an interest in a matter is at any one time so great as to impede the transaction of business at that meeting; or
- (b) the Minister for any other reason is of the opinion that it is in the interest of electors, ratepayers or inhabitants of the district,

the Minister may, on the application of the council or of the clerk, exempt a person or persons from the provisions of this section either unconditionally or subject to specified conditions or restrictions, and an exemption so granted takes effect according to its tenor.

(11) A person who—

- (a) contravenes the provisions of this section; or
- (b) contravenes any condition or restriction specified in relation to any exemption granted by the Minister,

commits an offence unless he did not know, and proves that he did not know—

- (c) that a matter in which, at the material time, he had an interest was the subject for consideration, discussion or voting; or
- (d) that, at the material time, he had an interest in the matter the subject for consideration, discussion or voting.

Penalty: \$5 000 or imprisonment for 3 months or both.

174A. (1) For the purposes of this section, an officer of the council shall be regarded as having an interest in a matter if he or a person with whom he is closely associated has a direct or indirect pecuniary interest in that matter.

Disclosure of interests by officers.

(2) This section applies to all meetings of the council or of a committee of the council and to all officers of the council.

(3) Subject to section 174B (4), an officer of the council who has an interest in a matter in respect of which he is providing any advice or report, whether in writing or not, directly to the council or a committee of the council shall, when giving such advice or report, disclose the fact that he has the interest.

(4) Where an interest is disclosed under subsection (3) the clerk shall record in a book to be kept for the purpose particulars of the disclosure, and the book shall be made available by the clerk for inspection by electors and ratepayers of the municipality at reasonable times.

(5) An officer of the council who contravenes this section commits an offence unless he did not know, and proves that he did not know, that, at the material time, he had an interest in the matter in respect of which he provided any advice or report.

Penalty: \$2 000.

(6) In this section "officer of the council" includes a consultant or other person whose services have been engaged by a council.

Application
of sections
174 and
174A.

174B. (1) In the application of sections 174 and 174A, a person shall be regarded as being closely associated with a person to whom section 174 or 174A applies (in this section referred to as "the relevant person") if that person—

- (a) is a partner of the relevant person and his interest is in any way connected with the partnership;
- (b) is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee;
- (c) is a body corporate of which the relevant person is a director or a member of the governing body;

- (d) is a body corporate in which the relevant person holds shares having a total nominal value exceeding—
- (i) \$2 000; or
 - (ii) 1% of the total nominal value of the issued share capital of the company,
- whichever is less;
- (e) is the employer of the relevant person;
- (f) is the spouse or *de facto* spouse or a child of, and is living with, the relevant person; or
- (g) although not bearing any of the relationships to the relevant person that are specified in paragraphs (a) to (f), bears such a relationship to a person who is the spouse or *de facto* spouse of, and is living with, the relevant person.

(2) In any proceedings, a person who is the spouse of the relevant person shall, for the purposes of subsection (1) (f) and (g), be regarded as living with the relevant person unless the contrary is proved.

(3) In the application of sections 174 and 174A—

- (a) any contract, proposed contract, application, proposal, scheme, town or regional planning zoning or use, or other thing in relation to which the municipality is to supply or receive goods or services, or has a direct or indirect pecuniary interest, or in relation to which the council has the power of approval or refusal, shall be regarded as a matter in which a person may have an interest;

(b) in relation to the adoption, modification or revocation of a town or regional planning scheme for any area comprised in the district of the municipality, or to the rezoning of a lot or lots, a person shall be regarded as not likely to be influenced by any interest other than—

(i) an interest in a lot to be rezoned or an adjoining or adjacent lot to be affected by the rezoning; or

(ii) an interest in another lot which although neither adjoining nor adjacent is a lot which a majority of the persons present at the meeting who are entitled to vote on the matter under consideration determine by motion, which may be moved without notice, to be likely to be advantaged or disadvantaged by the rezoning.

(4) Sections 174 (3) and 174A (3) do not apply to an interest that a person has—

(a) that is shared in common with the electors or the ratepayers of the municipality, or a ward of the district of the municipality, or the inhabitants of the district or a ward of the district of the municipality, or a substantial proportion of them;

(b) as or through a ratepayer, in a matter arising under Division 1, 2, 3 or 4 of Part XXV;

- (c) in a question relating to allowances, expenses, or benefits that a council is empowered to pay to, or confer on, persons;
- (d) in a question relating to the remuneration, terms or conditions that are to apply to persons who are officers of the council within the meaning given to that expression by section 174A (6);
- (e) in a matter by reason only of his being a member of, or otherwise concerned in, an association within the meaning given to that expression by section 67 (6);
- (f) in a matter of a class prescribed by regulation for the purposes of this paragraph. ”.

5. Section 523 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

Section 523
amended.

“ (3) Money received on the sale or disposal of assets of a capital nature, or the sale of plant which is to be replaced, is not ordinary revenue but the council shall pay money so received into its municipal fund and may thereafter by resolution direct that all or any of the money be transferred to such of the council’s other funds as the council considers appropriate. ”.

6. Section 528 of the principal Act is amended in subsection (5) by deleting paragraph (a) and substituting the following paragraph—

Section 528
amended.

“ (a) transfer the proceeds of the sale of capital assets and, subject to subsection (6), pay contributions from its ordinary revenue, into a particular reserve fund or several particular reserve funds; ”.

Section 529
amended.

7. Section 529 of the principal Act is amended in paragraph (c) by deleting “regulations, by-laws or other delegated legislation” and substituting the following—

“ subsidiary legislation ”.

Section
531AA
inserted.

8. After section 531 of the principal Act the following section is inserted—

Expenditure
on town
planning
schemes.

“ 531AA. Without limiting the generality of sections 529 and 530, a council may transfer money from its municipal fund to a separate account established and maintained for the purposes of a town planning scheme in force under the Town Planning and Development Act 1928 within the council’s district, but such a transfer may only be made where the transfer is made upon terms and conditions providing for the payment of interest thereon—

(a) where a rate is prescribed by regulation for the purpose of this section, at that rate; or

(b) where a rate is not prescribed pursuant to paragraph (a), at a rate fixed by the council. ”.

Validation.

9. (1) Every transfer of money made by a council from its municipal fund to a separate account established and maintained for the purposes of a town planning scheme in force under the Town Planning and Development Act 1928 within the council’s district before the coming into operation of section 8 of this Act, whether or not interest is payable thereon, is hereby validated and declared to have been lawfully made by the council.

(2) Nothing in subsection (1) affects a term or condition purporting to impose interest on a transfer referred to in that subsection.

10. Section 540 of the principal Act is amended— Section 540
amended.

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) Each council shall cause to be recorded particulars relating to the rateable property in its district including—

(a) the full name and postal address of the owner of the land;

(b) a description of the land and its location and—

(i) where, as a result of the application of section 548A a phased in valuation applies to the land, the gross rental value or the unimproved value of the land, as the case may require, and that phased in valuation;

(ii) where as a result of the application of section 548B (1) (a) or (b) a change to rating on the basis of valuations on gross rental value is being phased in in respect of the land, the gross rental value of the land and the original valuation of the land within the meaning of that section; or

(iii) in any other case, the gross rental value or the unimproved value of the land, as the case may require;

- (c) where differentiating general rates are imposed under section 548 (4b)—
 - (i) the purpose for which the land is zoned; and
 - (ii) whether or not the land is improved land;
- (d) full details of—
 - (i) amounts of money levied in respect of rates relating to the land;
 - (ii) any penalties, discounts, amounts received or abandoned in connection with such rates; and
 - (iii) the balance owing in respect of such rates. ”;
- (b) by repealing subsection (1a);
- (c) in subsection (4)—
 - (i) by deleting “after the last entry in the rate book”; and
 - (ii) by deleting “bearing the certificate” and substituting the following—
 - “ in respect of which a certificate has been so given ”; and
- (d) by repealing subsection (8).

Section 542
amended.

11. Section 542 of the principal Act is amended—

- (a) in subsection (1), by deleting “in, or substantially in, the form in the Seventeenth Schedule”; and

(b) in subsection (3)—

- (i) by deleting “540 (1a)” in paragraph (a) and substituting the following—
“ 540 (1) (b) ”;
- (ii) by inserting after paragraph (c) the following paragraph—
“ (ca) the date on which the notice was issued; ”; and
- (iii) by inserting after “payment” in paragraph (f) the following—
“ and of the rights of objection and appeal arising under this Act and the Valuation of Land Act 1978 in relation to the notice ”.

12. Section 543 of the principal Act is amended in subsection (3) by deleting “the clerk marks it with his initials and the date on which it is made” and substituting the following—

Section 543 amended.

“ it is entered up by the clerk or another person authorized in that behalf by the council ”.

13. Section 547 of the principal Act is amended in subsection (1) by deleting “by this Act and the regulations” and substituting the following—

Section 547 amended.

“ under this Act ”.

14. Section 625 of the principal Act is amended in the definition of “books”—

Section 625 amended.

- (a) by deleting “in such manner and form”;
and
- (b) by deleting “papers” and substituting the following—
“ documents ”.

Section 626
amended.

15. Section 626 of the principal Act is amended—

(a) in paragraph (a) of subsection (2)—

(i) by deleting “true and regular accounts of” and inserting after the subparagraph designation “(i)” the following—

“ true and regular accounts of ”;

(ii) by deleting “and” after subparagraph (ii); and

(iii) by inserting after subparagraph (iii) the following—

“ and

(iv) such other matters as may be required to comply with directions under section 677A; ”;

(b) by repealing subsection (3); and

(c) in subsection (5)—

(i) by deleting subparagraph (ii) of paragraph (a) and substituting the following subparagraph—

“ (ii) a person who receives on behalf of the municipality a sum or sums exceeding \$100 shall not personally keep possession thereof for more than such period as the council may, in a particular case, authorize or where no period is so authorized, for more than a period of 7 days, but before the expiration of the relevant period shall pay the sum or sums

into a bank in accordance with subparagraph (i) or hand the sum or sums over to such person in such manner as the council's directions require. ”;

- (ii) by inserting after “treasurer” in subparagraph (i) of paragraph (c) the following—

“ or another officer ”; and

- (iii) by inserting after “treasurer” in paragraph (ca) the following—

“ or as otherwise authorized by the council ”.

16. Section 628 of the principal Act is repealed and the following section is substituted—

Section 628
repealed and
substituted.

- “ 628. (1) The clerk shall, once in every month, prepare a true and correct financial statement in accordance with the directions under section 677A and submit each statement so prepared to the next meeting of the council after the statement was prepared.

Monthly
financial
statements.

(2) Directions under section 677A may require that, at least once in each quarter, the financial statement required by subsection (1) shall contain such information, of a more detailed nature than would otherwise be required, as is specified in the directions.

(3) Where, under this section, a statement is submitted to a meeting of the council, the council shall cause the statement or, where provided for in directions under section 677A, a summary of the statement, to be entered in the minutes of the meeting. ”.

Section 629
amended.

17. Section 629 of the principal Act is amended by repealing subsection (3).

Section 631
substituted.

18. Section 631 of the principal Act is repealed and the following section is substituted—

Auditor to
report.

“ 631. (1) The auditor shall examine the accounts and statements submitted to him for audit and shall prepare a report thereon and forward a copy of that report—

(a) to the Minister; and

(b) to the council, by registered post addressed to the mayor or president, as the case may be.

(2) Without limiting the generality of subsection (1), where the auditor considers that—

(a) there is any error or deficiency in an account or statement submitted to him for audit; or

(b) any money paid from, or due to, the municipal fund or any other fund or account of a council has been or may have been misapplied to purposes not authorized by law,

he shall include details of that error, deficiency or misapplication in a report made under that subsection. ”

Section 632
substituted.

19. Section 632 of the principal Act is repealed and the following section is substituted—

Misapplica-
tion of
money and
surcharge.

“ 632. (1) Upon receipt of a report referred to in section 631 (1) or section 635 (3) the Minister may direct an Inspector to inquire into the matters the subject of that report.

(2) After an Inspector has inquired into a matter pursuant to subsection (1) he shall make a report to the Minister on his findings and his reasons therefor.

(3) Where—

- (a) any money paid from, or due to, any fund or account of a council has been misapplied to purposes not authorized by law; and
- (b) any member of the council or officer has wilfully or through culpable negligence misapplied or connived at, or concurred in, the misapplication referred to in paragraph (a),

that member of the council or officer is personally liable to pay to the municipality the amount of money misapplied and persons who, as individual members of the council are so liable, are liable, jointly and severally, whether they have continued or ceased to be members of the council.

(4) Where, pursuant to subsection (3), a person is liable to pay money misapplied, that amount of money may be recovered by action in a court of competent jurisdiction but such action shall not be taken otherwise than in accordance with this section.

(5) Where an Inspector considers that a person may be personally liable under subsection (3) to pay money to a council he may include in his report to the Minister under subsection (2) a recommendation that action should be taken against that person to recover a stated amount of money.

(6) Before making a report under subsection (2) that includes a recommendation under subsection (5), an Inspector shall extend to the person against whom he proposes to recommend that action be taken

to recover money, an opportunity to advance, in writing within 30 days of the service of notice on that person of his opportunity so to do, any reasons why such action should not be taken.

(7) A notice referred to in subsection (6) shall—

- (a) be in writing;
- (b) include details of the grounds upon which an Inspector proposes to make a recommendation under subsection (5); and
- (c) state the amount of money in question.

(8) After receiving a report made by an Inspector under subsection (2) the Minister, having regard to the report, to any reasons advanced by a person to whom notice has been given under subsection (6) and to all the circumstances of the case shall—

- (a) direct an Inspector to bring action against a named person to recover a stated amount of money; or
- (b) take no further action,

and shall serve notice thereof in writing on the person concerned and on the relevant council.

(9) If the Minister directs him to do so an Inspector shall, in the name and on behalf of the municipality, sue for the amount stated in a direction given under subsection (8) in a court of competent jurisdiction.

(10) Where, in any proceedings brought under this section the court before which the proceedings are brought is satisfied that the

person against whom the proceedings have been brought is personally liable, under subsection (3), to pay moneys to a council that court may order that person to pay an amount of money stated in the order of the court, which order is enforceable in all respects as a final judgment of that court.

(11) Where an order has been made under subsection (10) the person against whom the order is made is disqualified from being a member of a council for a period of 5 years beginning on the date of the order, but the court making that order may, if it is satisfied that in the circumstances of the case it is appropriate to do so—

- (i) order that the period of disqualification be such period that is less than 5 years as is specified in the order beginning on a date specified in the order; or
- (ii) order that the person not be so disqualified,

and that order shall have effect according to its tenor.

(12) In proceedings brought under this section, a document purporting to be a direction given by the Minister to an Inspector, is *prima facie* evidence of the direction having been given, and of the signature of the Minister, and of authorization for giving effect to the direction.

(13) Where in proceedings under this section an Inspector recovers money, he shall pay it to the council.

(14) Where, at any time after the service of a notice under subsection (6) or subsection (8) but before a court makes an order under subsection (10), the person upon whom the notice is served pays to the council or an Inspector part or all of the amount of money

stated in the notice, the Minister may direct an Inspector to apply to a court before which an action to recover the amount of money so paid has been or could have been brought, and if so directed an Inspector shall, in the name and on behalf of the municipality so apply, for an order that that person be disqualified from being a member of a council and that court may, if it is satisfied that in the circumstances of the case it is appropriate to do so, order that the person be so disqualified for 5 years or such lesser period as is specified in the order beginning on a date specified in the order and that order shall have effect according to its tenor.

Section 634
amended.

20. Section 634 of the principal Act is amended—

(a) by inserting after “auditor” the following—

“ but subject to the Library Board of Western Australia Act 1951 ”; and

(b) by inserting after “years” the following—

“ and the clerk shall cause to be kept a record, certified by him, of any thing destroyed by him under this section ”.

Section 635
amended.

21. Section 635 of the principal Act is amended—

(a) in paragraph (d) of subsection (2), by inserting after “to” the following —

“ make inquiries and reports and to ”;

and

(b) by inserting after subsection (2) the following subsection—

“ (3) Where during the course of an inquiry or inspection regarding any municipality made under this section,

it appears to an Inspector that any money paid from, or due to, a fund or account of a council has been misapplied to purposes not authorized by law he shall report to the Minister that such is the case. ”.

22. Section 640 of the principal Act is amended in subsection (1) by inserting after “audit” the following—

Section 640 amended.

“ , inspection ”.

23. The heading before section 678 of the principal Act is deleted and the following heading and section are substituted—

Heading substituted and section 677A inserted.

“ *Division 3—Directions, Rules and Regulations.*

677A. (1) The Minister may, by notice published in the *Gazette*, give directions as to—

Directions.

- (a) the basis of accounting to be used by councils;
- (b) the annual budget;
- (c) the keeping of accounts, documents and records, whether of a financial nature or not;
- (d) the procedures to be followed by a council or an officer in the carrying out of its or his functions under this Act.

(2) A council shall cause directions given under subsection (1) to be complied with but nothing in those directions prevents a council from keeping such accounts, documents and records in addition to those required by this Act as it considers necessary for effectively carrying out its functions under this Act.

(3) Directions given under subsection (1) have legislative effect for the purposes of the definition of "subsidiary legislation" in section 5 of the Interpretation Act 1984. "

16th and 17th
Schedules
deleted.

24. The principal Act is amended by deleting the Sixteenth and Seventeenth Schedules.

Transitional
provisions.

25. (1) Where a surcharge has been made under section 632 of the principal Act as in force immediately before the coming into operation of section 19 of this Act but the amount of the surcharge has not been paid at the date of coming into operation of section 19 of this Act, the Minister shall review the matter and may confirm, reduce or cancel the surcharge and shall forthwith give notice of his decision to the person the subject of that surcharge and to the relevant council.

(2) Where, under subsection (1), the Minister confirms or reduces a surcharge, the notice of confirmation or reduction given under subsection (1) shall be deemed to be a direction of the Minister under section 632 (8) (a) and the provisions of section 632 (9), (10), (12) and (13) shall apply thereto.

(3) Where, under subsection (1), the Minister cancels a surcharge, that surcharge shall, from the date of the notice of cancellation given under subsection (1), have no further force or effect.
