

## LOCAL GOVERNMENT (No. 3).

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No. 82 of 1978.

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AN ACT to amend the Local Government Act,  
1960-1978.

[Assented to 27th October, 1978.]

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 Act Amendment Act (No. 3), 1978.*

Short title  
and citation.

(2) In this Act the Local Government Act, 1960-1978 is referred to as the principal Act.

Approved  
for reprint  
21st November,  
1977  
and  
amended by  
Acts Nos.  
46 of 1976,  
5, 7 and 56 of  
1977, and 31  
of 1978.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1978.

Commence-  
ment.

2. (1) Subject to subsection (2) of this section the provisions of this Act shall come into operation on the date on which this Act receives the Royal Assent.

(2) Section 12 of this Act shall come into operation on a date to be fixed by proclamation.

Section 12  
amended.

3. Section 12 of the principal Act is amended—

(a) by deleting paragraph (i) of subsection (2); and

(b) as to subsection (3a)—

(i) by deleting the passage “district.” in the last line and substituting the passage “district;”; and

(ii) by adding a paragraph as follows—

(d) re-describe the boundaries of a district or of a ward of a district as existing for the time being, and for that purpose may correct any error in the original description thereof. .

Section 266  
amended.

4. Section 266 of the principal Act is amended by adding after subsection (1) a subsection as follows—

(1a) Unless the Governor otherwise directs, land that a council may sell under this section may, if the council thinks fit, be subdivided by the council under and in accordance with the Town Planning and Development Act, 1928 and sold as so subdivided. .

Section 278A  
added

5. The principal Act is amended by adding after section 278 a section as follows—

Limit on  
area that  
may be  
acquired.

278A. (1) In exercising the power conferred by section two hundred and seventy-eight to purchase or otherwise acquire land for the purpose of carrying out a work or undertaking,

a council may acquire land having an area that exceeds the area estimated by the council to be required for that purpose if, and only if, in the opinion of the council—

- (a) the area of that land does not exceed the area estimated to be required for that purpose by an unreasonable amount; and
- (b) the acquisition of that land is desirable having regard to—
  - (i) the unavailability of any smaller parcel of land suitable for that purpose; or
  - (ii) the particular suitability of that land for that purpose.

(2) The provisions of section five hundred and fourteen A do not apply to the acquisition of land by a council if that land is acquired under the authority of subsection (1) of this section.

6. The principal Act is amended by adding after section 279 a section as follows— Section 279A added

279A. Where a council resolves to purchase or otherwise acquire land for the purpose of carrying out a work or undertaking the resolution shall specify that purpose. Purpose of acquisition to be specified.

7. Section 513 of the principal Act is amended— Section 513 amended.

- (a) by adding after the section designation “513.” the subsection designation “(1)”;
- (b) by adding before the word “pay” in line one of paragraph (g) the passage “subject to subsection (2) of this section,”; and

(c) by adding subsections as follows—

(2) Nothing in this Act authorises a council to pay expenses incurred by a member in carrying out a duty or performing an act outside the State unless—

(a) a resolution expressly authorising the member to carry out the duty or perform the act has been passed by an absolute majority of the members of the Council; and

(b) in the case of a duty or act carried out or performed outside the Commonwealth, such a payment has been approved by the Minister.

(3) Nothing in subsection (2) of this section applies to or in relation to reasonable expenses incurred by a member in carrying out a duty or performing an act under express authority of the council if that express authority was given before the coming into operation of section seven of the Local Government Act Amendment Act (No. 3), 1978. .

Section 514A  
added.

8. The principal Act is amended by adding after section 514 a section as follows—

Power to  
acquire land  
for re-sale.

514A. (1) With the approval of the Governor given on the recommendation of the Minister, a council may purchase or otherwise acquire land within its district from a person who is willing to sell it—

(a) for the purpose of re-selling the whole of the land after subdividing it under and in accordance with the Town Planning and Development Act, 1928;

- (b) for the purpose of retaining a portion of the land for the carrying out of a work or undertaking which the council is authorised by law to carry out and—
  - (i) re-selling the balance of the land after subdividing it under and in accordance with the Town Planning and Development Act, 1928;
  - or
  - (ii) re-selling the balance of the land without subdivision;
- (c) for the purpose of re-selling the whole of the land without subdivision.

(2) This section does not apply to or in relation to land that a council acquires under the authority of any other law.

(3) A council that proposes to exercise a power conferred by subsection (1) of this section shall in the first instance set out its proposal with material particulars in writing and submit them to the Minister for his consideration.

(4) After consideration of the proposal the Minister may—

- (a) decline to recommend it to the Governor for approval;
- (b) request the council to amend its proposal in such manner as the Minister indicates; or
- (c) subject to subsections (5) and (6) of this section, recommend the proposal or the amended proposal, as the case may be, to the Governor for approval.

(5) Where the proposal is one to which paragraph (a) or (b) of subsection (1) of this section applies the Minister may recommend it to the Governor for approval if, and only if, the Minister is satisfied—

- (a) that there is, in the area in which the subject land is situated, a demand for land in the form in which the subject land is proposed to be re-sold;
- (b) that there is no reasonable prospect of the demand being met if the proposal is not carried out; and
- (c) that—
  - (i) the estimated yield from the re-sale of the subject land by the council will equal or exceed the estimated outlay by the council in respect of the subject land; or
  - (ii) the proposal will be of such special benefit to the district that it should be carried out.

(6) Where the proposal is one to which paragraph (c) of subsection (1) of this section applies the Minister may recommend it to the Governor for approval if, and only if, the Minister is satisfied—

- (a) that the estimated yield from the re-sale of the subject land by the council will equal or exceed the estimated outlay by the council in respect of the subject land; and
- (b) that the proposal will be of benefit to the district.

(7) In estimating the outlay of the council in respect of the subject land for the purposes of subsection (5) or (6) of this section the following costs shall be taken into account, that is to say—

- (a) the cost of the acquisition of the subject land together with fees and expenses in connection therewith;

- (b) costs of subdivision (if any) and the provision of subdivisional works (if any);
- (c) fees and expenses in connection with the re-sale of the subject land;
- (d) interest on any borrowings that may be required for the purpose of carrying out the proposal; and
- (e) any other costs of carrying out the proposal in relation to the subject land whether those costs are of the same kind as, or a different kind from, those specified in the preceding paragraphs of this subsection.

(8) If the Minister recommends the proposal to the Governor for approval and the Governor approves of the proposal the Minister shall cause notice of the approval to be notified to the council and published in the *Gazette*.

(9) In carrying out the proposal the council may re-sell land—

- (a) to the highest bidder at public auction;
- (b) to the person who at public tender called by the council makes what is, in the opinion of the council, the most acceptable tender, whether his tender is or is not the highest; or
- (c) with the approval of the Governor, by private treaty.

(10) A proposal approved by the Governor under this section shall be deemed to be—

- (a) an undertaking approved by the Governor for the purposes of paragraph (c) of subsection (1) of section six hundred;
- (b) an undertaking that may be approved in writing by the Governor for the purposes of paragraph (26) of the

interpretation “works and undertakings” in section five hundred and ninety-eight.

(11) Notwithstanding anything contained in this Act money for carrying out a proposal approved by the Governor under this section shall not be expended by a council out of its municipal fund without the approval of the Minister.

(12) The expression “the subject land”, in relation to a proposal submitted by a council pursuant to subsection (3) of this section, means the land that the council proposes to acquire but, in the case of a proposal to which paragraph (b) of subsection (1) of this section applies, does not include the portion of the land that the council proposes to retain.

Section 532  
amended.

9. Section 532 of the principal Act is amended—

- (a) by deleting the word “Land” in line one of subsection (3) and substituting the passage “Subject to subsection (3f) of this section, land”; and
- (b) by adding after subsection (3c) subsections as follows—

(3d) A council may, with the consent in writing of the owner of land in its district that is used and occupied, or proposed to be used and occupied, exclusively for charitable purposes relating to the provision of accommodation for aged persons, publish a notice in the *Gazette*—

- (a) declaring that paragraph (c) of subsection (3) of this section shall not apply to that land; and
- (b) specifying the extent to which rates shall be payable in respect of that land.

(3e) Where a notice is published under subsection (3d) of this section in respect of any land the notice—

- (a) shall have effect only while that land is used and occupied exclusively for charitable purposes relating to the provision of accommodation for aged persons;
- (b) continues in effect notwithstanding any change in the ownership of that land; and
- (c) shall remain in effect until—
  - (i) that land ceases to be used and occupied exclusively for charitable purposes of that nature; or
  - (ii) it is cancelled by the council by a subsequent notice published in the *Gazette*.

(3f) While a notice under subsection (3d) of this section is in effect in respect of any land—

- (a) paragraph (c) of subsection (3) of this section shall not apply to that land;
- (b) that land shall be rateable property under this Act; and
- (c) rates shall be payable in respect of that land to the extent specified in the notice. .

10. Subsection (3) of section 542 of the principal Act is amended by adding after paragraph (d) a paragraph as follows—

Section 542  
amended.

- (da) if a penalty may be added to the amount payable in respect of the rate (or any other rate mentioned in the notice), the circum-

stances under which the penalty will be added and the percentage of arrears that will be added by way of penalty; .

Section 550A  
added.

11. The principal Act is amended by adding after section 550 a section as follows—

Penalties  
may be  
added to  
certain  
rates.

550A. (1) In this section “penalty” means a penalty added by force of subsection (4) of this section.

(2) This section applies to an amount payable by a person in respect of a rate if and only if—

- (a) that amount was due and payable on the thirty-first day of October in a financial year (whether that rate was imposed in that financial year or in any preceding financial year);
- (b) the council has by resolution, when imposing the general rate for that financial year, specified a percentage to be used in calculating penalties pursuant to this section (in this section called “the specified percentage”); and
- (c) payment of that amount is in arrear on—
  - (i) the thirty-first day of January in that financial year; or
  - (ii) the date of the expiration of the period of three months from the service on that person of the notice of valuation and rate in respect of the general rate for that financial year,

whichever is the later date (in this section called the “relevant date”).

(3) The council shall not specify a percentage pursuant to paragraph (b) of subsection (2) of this section that exceeds the percentage for the time being prescribed as the maximum percentage that may be specified pursuant to that paragraph.

(4) Subject to subsection (5) of this section, where this section applies to an amount payable in respect of a rate a penalty equal to the specified percentage of that amount shall, on the relevant date, be added to that amount by force of this subsection.

(5) No penalty shall be added to an amount payable in respect of a rate if a person who is registered as an entitled pensioner pursuant to the Pensioners (Rates Rebates and Deferments) Act, 1966, is entitled under that Act to a rebate or deferment in respect of that amount.

(6) Any penalty added to an amount payable in respect of a rate shall, for the purpose of the addition of any subsequent penalty and for all other purposes of this Act, be deemed to be part of that amount and shall be payable by the person or persons liable to pay that amount and shall be recoverable from any person liable to pay that amount and in such manner as if it were part of that amount.

(7) Where a penalty is added to an amount payable in respect of a rate (in this subsection called "the rate liability") and, subsequently, the rate liability is reduced in consequence of the allowance, wholly or in part, of an appeal under this Act or any other Act, that penalty shall be reduced by the amount that bears the same proportion to that penalty as the amount by which the rate liability is so reduced bears to the rate liability.

(8) The Governor may make any regulations which are contemplated by this section or which he considers to be convenient for giving effect to this section. .

12. The principal Act as amended by section 11 of this Act is amended by inserting before the word "appeal" in subsection (7) of section 550A the words "objection or".

Amendment  
of principal  
Act as  
amended by  
s. 11 of this  
Act. (s. 550A)

Section 610  
repealed and  
re-enacted.

13. The principal Act is amended by repealing section 610 and re-enacting that section as follows—

Notice to be  
published.  
Cf. M.C. Act  
s. 449.

610. Where a council adopts a proposition for borrowing money by the issue of debentures it shall cause notice of the proposition to be published firstly in a newspaper circulating in the district of the municipality and then in the *Gazette*—

- (a) stating the amount proposed to be raised, the times and places at which money due on the debentures is to be payable, and the purposes for which the loan is to be applied;
- (b) where the loan is to be expended in the purchase of works or undertakings, specifying the works or undertakings;
- (c) where the loan is to be expended in the construction of works or undertakings, stating that the plans, specifications, estimates, and statements, mentioned in section six hundred and nine, are open for inspection by ratepayers of the municipality at the office of the council; and
- (d) where the loan is proposed to be raised for works or undertakings and the council is of opinion that the works or undertakings will be of special benefit to a portion only of the district, or that the benefit will be of varying degrees in different parts of the district or of that portion, stating that opinion. .

Cf. s. 614  
post.

Section 610A  
and 610B  
added.

14. The principal Act is amended by adding after section 610 sections as follows—

Council may  
proceed if  
loan is to  
liquidate a  
previous  
loan.

610A. After the expiration of thirty-five days after the publication in the *Gazette* of the notice of a proposition to borrow money to liquidate a loan lawfully incurred under this Act, the money may be borrowed for the purposes mentioned in the notice.

610B. If, after the expiration of thirty-five days after the publication in the *Gazette* of the notice of a proposition to borrow money for a purpose other than the liquidation of a loan lawfully incurred under this Act, it is not necessary for the council to cause the question, whether or not the proposed loan be incurred, to be submitted to a poll of ratepayers pursuant to section six hundred and eleven, the clerk may certify that fact in writing and, upon the certificate being counter-signed by the mayor or president, the money may be borrowed for the purposes mentioned in the notice. .

Council may proceed if no poll necessary.

15. Section 611 of the principal Act is amended by repealing subsection (7) and re-enacting that subsection as follows—

Section 611 amended.

(7) If—

- (a) the number of ratepayers who vote at the poll is less than fifteen per centum of those entitled to vote thereat; or
- (b) a majority of the valid votes cast at the poll are in favour of the loan,

the raising of the loan is approved. .

16. The principal Act is amended by repealing section 612 and re-enacting that section as follows—

Section 612 repealed and re-enacted.

612. Where a poll is taken pursuant to section six hundred and eleven and the raising of the loan is approved the proposition shall be re-submitted to the council and, if the council confirms the proposition, the money may be borrowed for the purposes mentioned in the notice. .

Council may proceed if loan is approved at poll.  
Cf. M.C. Act, s. 452.

17. Section 613 of the principal Act is amended by deleting the words “the raising of the loan is not forbidden” in line one and substituting the passage

Section 613 amended.

“, and only if, the borrowing of the money is authorised pursuant to section six hundred and ten A, six hundred and ten B or six hundred and twelve”.

Section 613A  
added.

18. The principal Act is amended by adding after section 613 a section as follows—

Transitional  
provision.

613A. Where, before the date of the coming into operation of section thirteen of the Local Government Act Amendment Act (No. 3), 1978, a notice of a proposition for borrowing money by the issue of debentures was published under section six hundred and ten as enacted before that date, the provisions of this Act as enacted before that date shall continue to apply to and in relation to that proposition as if that Act had not been enacted. .

Seventeenth  
Schedule  
amended.

19. The Seventeenth Schedule to the principal Act is amended by adding at the end thereof a passage as follows—

Penalty.— (If the case requires, state here the circumstances under which a penalty will be added and the percentage of arrears that will be added by way of penalty). .

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