

Western Australia

Local Government Grants Act 1978

As at 01 Oct 2010

Version 01-e0-02

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Local Government Grants Act 1978

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Western Australia

Local Government Grants Act 1978

An Act to provide for the distribution to local governments in Western Australia of certain financial assistance provided by the Commonwealth and the establishment of a Western Australian Local Government Grants Commission and for incidental and other purposes.

[Long title amended by No. 14 of 1996 s. 4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Local Government Grants Act 1978*¹.

[2. Deleted by No. 12 of 1988 s. 4.]

3. Definitions

In this Act, unless the contrary intention appears —

Chairman means the chairman of the Commission;

Commonwealth funds means the funds made available to the State by the Commonwealth under the Commonwealth Act;

Department has the meaning given by section 1.4 of the *Local Government Act 1995*;

Deputy Chairman means the deputy chairman of the Commission appointed under section 5(1)(b);

financial year means a year ending on 30 June;

member means a member of the Commission and includes the Chairman and the Deputy Chairman;

the Commission means the Western Australian Local Government Grants Commission established under section 4;

the Commonwealth Act means the *Local Government (Financial Assistance) Act 1986* of the Commonwealth;

the Commonwealth Minister means the Minister who is for the time being responsible for the administration of the Commonwealth Act.

[Section 3 amended by No. 56 of 1985 s. 3; No. 12 of 1988 s. 5; No. 14 of 1996 s. 4; No. 28 of 2006 s. 366.]

Part II — The Western Australian Local Government Grants Commission

4. Establishment of Commission

A commission shall be established under the name of the “Western Australian Local Government Grants Commission”.

5. Membership of Commission

(1) The members of the Commission shall be appointed by the Governor and shall consist of —

- (a) a Chairman appointed on the nomination of the Minister;
- (b) one person appointed as a member and Deputy Chairman who is an officer of the Department, nominated by the chief executive officer³ of that Department and approved by the Minister; and
- (c) 3 other members appointed on the nomination of the Minister of whom —
 - (i) one shall be a person selected by the Minister from a panel of names submitted by WALGA representing local government districts that are in the metropolitan area;
 - (ii) one shall be a person selected by the Minister from a panel of names submitted by WALGA representing local government districts that are shires and are not in the metropolitan area; and
 - (iii) one shall be a person selected by the Minister from a panel of names submitted by WALGA representing local government districts that are cities or towns and are not in the metropolitan area.

(1a) Terms used in subsection (1)(c) have the same meanings as in the *Local Government Act 1995*.

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- (2) A panel of names referred to in subsection (1)(c) —
 - (a) shall be submitted in writing to the Minister at his request;
 - (b) shall contain the names of at least 3 persons each of whom is willing to accept appointment as a member.
- (2a) If a panel of names is not submitted in writing under paragraph (c)(i), (ii) or (iii) to the Minister in accordance with the invitation of the Minister, the Minister may nominate any eligible person for appointment and that person may be appointed as if selected from a panel as required.
- (3) The Governor may appoint a person as the deputy of a member other than the Chairman.
- (4) The provisions of subsections (1) and (2) that apply to and in relation to the appointment of a member apply, with any necessary modification, to and in relation to the appointment of the deputy of that member.
- (5) Subject to subsection (7) a person appointed pursuant to subsection (3) is, in the event of the absence from a meeting of the Commission of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, is deemed to be a member and has all the powers, functions and duties of a member.
- (6) Subject to subsection (7), if at any time the office of a member becomes vacant before his term of office expires, the person who was at that time the deputy of that member is, until the office of member is filled by the appointment of another member, deemed to be a member and has all the powers, functions and duties of a member.
- (7) A person appointed pursuant to subsection (3) as the deputy of the member appointed under subsection (1)(b) is —
 - (a) in the event of the absence from a meeting of the Commission of that member, entitled to attend that

meeting, and when so attending is deemed to be a member; and

- (b) in the event that the office of that member becomes vacant before his term of office expires until the office of the member is filled by the appointment of another member, deemed to be a member,

and while so attending or acting has all the powers, functions and duties of that member other than his powers, functions and duties as Deputy Chairman.

[Section 5 amended by No. 56 of 1985 s. 4; No. 49 of 2004 s. 13; No. 28 of 2006 s. 367.]

6. Conditions of membership

- (1) Subject to this Act, each member shall hold office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.
- (2) The office of a member shall become vacant if —
 - (a) his term of office expires; or
 - (b) he becomes permanently incapable of performing his duties as a member; or
 - (c) he resigns his office by written notice addressed to the Minister; or
 - (d) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (e) he is removed from office by the Governor for any cause that appears to the Governor to be sufficient; or
 - (f) in the case of a member holding the office referred to in section 5(1)(b), he ceases to be an officer of the Department.
- (3) Acceptance of or acting in the office of a member by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to

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persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

- (4) Each member shall in the exercise of his powers under this Act have regard to the general interests of local government in the State.

[Section 6 amended by No. 56 of 1985 s. 5; No. 32 of 1994 s. 3(2); No. 28 of 2006 s. 368; No. 18 of 2009 s. 53.]

7. Remuneration

- (1) Subject to subsection (2) members and their deputies shall be paid such remuneration and travelling and other allowances as are approved by the Minister.
- (2) The Minister shall not approve of the payment of remuneration or allowances to a person to whom Part 3 of the *Public Sector Management Act 1994* applies except with the prior approval in writing of the Minister for Public Sector Management.

[Section 7 amended by No. 56 of 1985 s. 6; No. 32 of 1994 s. 3(2) and 4.]

8. Meetings

- (1) The Commission shall hold such meetings as are necessary for the performance of its functions.
- (2) At a meeting of the Commission a quorum is constituted by the Chairman or Deputy Chairman and 2 other members.
- (3) The Chairman shall preside at all meetings of the Commission at which he is present.
- (4) At a meeting of the Commission where the Chairman is not present, the Deputy Chairman shall preside.
- (5) Questions arising at a meeting shall be determined by a majority of votes of the members present and voting.

- (6) The member presiding at a meeting of the Commission has a deliberative vote only.
- (7) To the extent that it is not prescribed the Commission shall determine its own procedure.

[Section 8 amended by No. 56 of 1985 s. 7; No. 10 of 1998 s. 45.]

Part III — Allocation and distribution of Commonwealth funds

[Heading inserted by No. 12 of 1988 s. 6.]

9. Funds available to be notified to Commission by Minister

As soon as the State is advised by the Commonwealth of the amount of Commonwealth funds to which the State is entitled in respect of a financial year, the Minister shall advise the Commission of the amount.

[Section 9 inserted by No. 12 of 1988 s. 6.]

10. Recommendations of Commission

The Commission shall, as soon as practicable in respect of each financial year, make recommendations to the Minister with respect to the amount of Commonwealth funds that should be allocated to each local government in respect of that financial year.

[Section 10 inserted by No. 12 of 1988 s. 6; amended by No. 14 of 1996 s. 4.]

11. Principles of allocation

The recommendations of the Commission shall be made in accordance with the requirements of the Commonwealth Act and any relevant principles of allocation approved under that Act.

[Section 11 inserted by No. 12 of 1988 s. 6.]

12. Powers of the Commission

- (1) The Commission, or any member of the Commission, may carry out such inspections, conduct such hearings, take such evidence and generally make such investigations as the Commission thinks necessary for the purpose of properly carrying out its functions under this Act.

- (2) Where a member who has been authorised by the Commission to exercise any power under subsection (1) is, for any reason, unable to exercise that power the deputy of that member may exercise that power.
- (3) Hearings conducted under subsection (1) shall ordinarily be held in public.
- (4) The Commission may require a local government to supply to the Commission such financial and other information as to the affairs of the local government as the Commission specifies and the local government shall comply with that requirement.

[Section 12 inserted by No. 12 of 1988 s. 6; amended by No. 14 of 1996 s. 4.]

13. Submissions to be received

The Commission shall give each local government, the body known as the Western Australian Local Government Association and such other persons or bodies as the Commission thinks fit, the opportunity of making written submissions to the Commission in connection with the allocation amongst local governments of Commonwealth funds in respect of a financial year.

[Section 13 inserted by No. 12 of 1988 s. 6; amended by No. 14 of 1996 s. 4; No. 49 of 2004 s. 13.]

14. Consideration of recommendations

- (1) On receipt of the recommendations referred to in section 10 the Minister shall —
 - (a) approve the recommendations; or
 - (b) refer the recommendations back to the Commission with a request to the Commission to review the whole or any part of the recommendations.

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- (2) Where, under subsection (1)(b), the Minister requests the Commission to review the whole or any part of its recommendations the following provisions shall apply —
- (a) the request shall contain a statement of the reasons for the request;
 - (b) on receipt of the request the Commission shall forthwith —
 - (i) consider whether, in the light of the request and the reasons given for the request, any amendment to the recommendations is necessary or desirable; and
 - (ii) resubmit the recommendations, with or without amendment, to the Minister;
 - (c) the Minister shall approve of the recommendations as resubmitted to him under paragraph (b)(ii).

[Section 14 inserted by No. 12 of 1988 s. 6.]

15. Notification of allocations

- (1) Before particulars of the manner in which Commonwealth funds have been allocated amongst local governments are made public, the Minister shall inform the Commonwealth Minister, in writing, of those particulars.
- (2) Having informed the Commonwealth Minister as required under subsection (1), the Minister shall cause each local government to be informed of the amount of Commonwealth funds allocated to it for the financial year.

[Section 15 inserted by No. 12 of 1988 s. 6; amended by No. 14 of 1996 s. 4.]

16. Distribution of Commonwealth funds

When Commonwealth funds are paid to the State, the State shall, without undue delay, make unconditional payment to

local governments in accordance with the allocation approved under this Act.

[Section 16 inserted by No. 12 of 1988 s. 6; amended by No. 14 of 1996 s. 4.]

16A. Statement of payments to be furnished

As soon as practicable after the end of the financial year the Minister shall furnish to the Treasurer of the Commonwealth —

- (a) a statement, in accordance with a form approved by the Treasurer, specifying the payments made by the State during that financial year in accordance with the Commonwealth Act and the dates of those payments; and
- (b) a certificate by the Auditor General certifying that, in the opinion of the Auditor General, the contents of the statement are correct.

[Section 16A inserted by No. 12 of 1988 s. 6.]

16B. Furnishing of additional advice to Minister

- (1) The Minister may request the Commission to report on any matter related to local government finance referred to it by the Minister.
- (2) The Commission shall comply with such a request as soon as practicable after it is made.

[Section 16B inserted by No. 12 of 1988 s. 6.]

16C. Annual report

- (1) As soon as practicable after 1 September in each year the Commission shall prepare and furnish to the Minister a report on its recommendations, methods and activities during the preceding 12 months.
- (2) The Minister shall cause the report to be laid before each House of Parliament as soon as practicable after receiving the report.

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Part III Allocation and distribution of Commonwealth funds

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[Section 16C inserted by No. 12 of 1988 s. 6.]

Part IV — Miscellaneous

17. Validity of acts of Commission

An act, proceeding or determination of the Commission shall not be invalid by reason only of a vacancy in the office of any member or a defect or irregularity in the appointment of any member or deputy of a member.

18. Liability

No liability shall attach to a person who is or has been, a member, or the deputy of a member, for any act or omission by him, or by the Commission, in good faith and in the exercise or purported exercise of his or its powers or function under this Act.

19. Regulations

The Governor may make such regulations as may be necessary or expedient for the purposes of this Act.

20. Review of Act

- (1) The Minister shall carry out a review of the operation of this Act as soon as is practicable after 1 January 1991 and every 5th anniversary of that date and in the course of such review the Minister shall consider and have regard to —
 - (a) the effectiveness of the operations of the Commission;
 - (b) the need for the continuation of the functions of the Commission; and
 - (c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.

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- (2) The Minister shall prepare a report based on the review referred to in subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

[Section 20 inserted by No. 56 of 1985 s. 10.]

Notes

¹ This is a compilation of the *Local Government Grants Act 1978* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Local Government Grants Act 1978</i>	4 of 1978	11 May 1978	11 May 1978
<i>Local Government Grants Amendment Act 1985</i>	56 of 1985	28 Oct 1985	13 Dec 1985 (see s. 2 and <i>Gazette</i> 13 Dec 1985 p. 4758)
<i>Local Government Grants Amendment Act 1988</i> ⁴	12 of 1988	6 Sep 1988	1 Jul 1988 (see s. 2(b))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2) and Pt. 3	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 45	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the <i>Local Government Grants Act 1978</i> as at 1 Mar 2002 (includes amendments listed above)			
<i>Local Government Amendment Act 2004</i> s. 13	49 of 2004	12 Nov 2004	1 Apr 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 12 Div 4	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 53	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89 ⁵	39 of 2010	1 Oct 2010	To be proclaimed (see s. 2(b))

² Footnote no longer applicable.

³ Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to chief executive officer. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

⁴ The *Local Government Grants Amendment Act 1988* s. 7 reads as follows:

“

7. Saving

Anything done before the commencement of this Act by the Commission in accordance with the *Local Government (Financial Assistance) Act 1986* of the Commonwealth is valid notwithstanding anything to the contrary in the principal Act as in force before the commencement of this Act.

”

⁵ On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to “Minister for Public Sector Management” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

Table

<i>Local Government Grants Act 1978</i>	s. 7(2)
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