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LOCAL GOVERNMENT ACT 1995

**LOCAL GOVERNMENT
(CONSTITUTION)
REGULATIONS 1998**

Western Australia

Local Government Act 1995

**Local Government (Constitution)
Regulations 1998**

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Local Government Act 1995

Local Government (Constitution) Regulations 1998

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Local Government (Constitution) Regulations 1998*.

2. Interpretation

In these regulations, unless the contrary intention appears —

“**Form**” means a Form in Schedule 1;

“**section**” means a section of the *Local Government Act 1995*.

Part 2 — Districts and wards

Division 1 — Orders under section 2.1

3. Interpretation

- (1) If there is a reference in a provision in this Part to a district described as “district A” then a reference in that provision to “local government A” is a reference to the local government of district A.
- (2) Subregulation (1), with necessary changes, applies in respect of other districts similarly described.

4. Creating a new district: consequences

- (1) This regulation applies if an order is made under section 2.1 declaring an area of the State to be a district.
- (2) The first general meeting of the electors of the district is to be held under section 5.27 after the local government of the district accepts the annual report for its first financial year.

5. Changing district boundaries: consequences

- (1) In this regulation —
 “commencement” means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 changing the boundaries of a district (**“district A”**).
- (3) If as a result of the order the whole of the area of a ward of district A is severed from it, then on commencement —
 - (a) the ward is abolished; and
 - (b) the number of offices of councillor on the council of local government A is reduced by the number of offices of councillor for the ward.
- (4) If as a result of the order the area of district A incorporates a part of the area of another district (which is not abolished) (**“district B”**), then on commencement —
 - (a) if under section 4.32 a person has, in respect of rateable property in that part of district B, made an enrolment eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —
 - (i) the claim is to be taken to have been made and accepted in respect of district A on the day on which it was accepted in respect of district B; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government B held after the

- claim was so accepted are to be treated as if they had been held by local government A;
- (b) the method of valuation of land used by local government B as a basis for a rate in respect of land in that part of district B immediately before commencement becomes the method of valuation to be used by local government A in respect of that land;
 - (c) if immediately before commencement that part of district B is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government A in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that part, local government A is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government B is to be taken to be a reference to local government A;
 - (d) if a matter or procedure under a written law in relation to any land in that part of district B has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government B or another person, has effect as if it had been performed by local government A or that other person and the matter or procedure may be completed by local government A or that other person; and
 - (e) actions and proceedings by or against local government B are not affected.

6. **Abolishing a district: consequences**

- (1) In this regulation —
“commencement” means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 abolishing a district (**“district A”**).
- (3) On commencement —
 - (a) local government A is disestablished;
 - (b) all offices of members of the council of local government A cease to exist.
- (4) If on commencement the whole of the area of district A is included in the area of one other district (**“district B”**), whether

by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —

- (a) the property, rights and liabilities of local government A become those of the local government B;
- (b) if under section 4.32 a person has, in respect of rateable property in district A, made an enrolment eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —
 - (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
- (c) the method of valuation of land used by local government A as a basis for a rate in respect of land in district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;
- (d) if immediately before commencement any land in district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that area as if it were a scheme prepared by local government B in respect of that area, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that area, local government B is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that area, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (e) if a matter or procedure under a written law in relation to any land in district A has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;

- (f) if a matter or procedure under a written law has not been completed by local government A before commencement, the matter or procedure may be completed by local government B;
 - (g) a person who, immediately before commencement, has a contract of employment with local government A, is to be taken to have an identical contract of employment with local government B;
 - (h) a person who, immediately before commencement, holds an appointment made under a written law by local government A for the purposes of enforcing or administering that written law, becomes a person appointed by local government B for those purposes;
 - (i) a reference in any instrument, contract, written law, or proceedings made or commenced before commencement to local government A shall be read and construed as a reference to local government B;
 - (j) actions and other proceedings commenced by or against local government A and pending immediately before commencement may be continued by or against local government B; and
 - (k) actions and other proceedings which could have been brought by or against local government A may be brought by or against local government B.
- (5) If on commencement, a part of the area of district A is included in the area of another district (“**district B**”), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
- (a) if under section 4.32 a person has, in respect of rateable property in that part of district A, made an enrolment eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —
 - (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
 - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
 - (b) the method of valuation of land used by local government A as a basis for a rate in respect of land in that part of district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;

- (c) if immediately before commencement that part of district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928* —
 - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government B in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
 - (ii) in so far as the scheme applies to that part, local government B is taken to be the responsible authority for the purposes of that Act; and
 - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (d) if a matter or procedure under a written law in relation to any land in that part of district A has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;
- (e) actions and other proceedings commenced by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A and pending immediately before commencement may be continued by or against local government B; and
- (f) actions and other proceedings which could have been brought by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A may be brought by or against local government B.

7. Effect of section 2.1 order on local laws

- (1) In this regulation —
 - “**commencement**” means the commencement of the order referred to in subregulation (2).
- (2) If as a result of an order made under section 2.1 an area of the State is declared to be a district (“**district A**”) and the area includes —
 - (a) a part of the area of a district (“**district B**”) the boundaries of which are changed by the order;
 - (b) the whole, or a part, of the area of a district (“**district C**”) that is abolished by the order; or

- (c) a combination of the areas described in paragraphs (a) and (b),

then on commencement —

- (d) the local laws that applied in that part of the area of district B immediately before the commencement continue to apply in respect of that part of the area of district B that is included in district A;
- (e) the local laws that applied in the whole, or that part, of the area of district C immediately before the commencement continue to apply in respect of the whole, or that part, of the area of district C that is included in district A;
- (f) the local laws of local government C continue to apply in respect of the whole, or that part, of the area of district C that is included in district A; and
- (g) the local laws of local governments B and C, in so far as they continue to apply in respect of those areas —
 - (i) are to be administered and enforced by local government A; and
 - (ii) subject to Division 2 of Part 3 of the Act, may be amended or repealed by local government A, as if they were local laws of local government A.

Division 2 — Matters under Schedules 2.1 and 2.2 to the Act

8. Proposals for creating, changing the boundaries of, or abolishing districts (Sch 2.1, cl. 2)

A proposal by affected electors under clause 2 of Schedule 2.1 to the Act is to be in the form of Form 1.

9. Request for a poll on a recommended amalgamation (Sch 2.1, cl. 8)

A request by electors under clause 8 of Schedule 2.1 to the Act asking for a recommendation of the Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts is to be in the form of Form 2.

10. Submission about changes to wards, names or representation (Sch 2.2, cl. 3)

A submission by affected electors under clause 3 of Schedule 2.2 to the Act is to be in the form of Form 3.

Part 3 — Offices on councils

11. Proposals to change the method of filling the office of mayor or president (s. 2.12)

A proposal by electors under section 2.12 to change the method of filling the office of mayor or president of a local government to the other method mentioned in section 2.11(1)(a) or (b) is to be in the form of Form 4.

12. Disqualification for membership; serious local government offences (s. 2.22)

For the purposes of the definition of “serious local government offence” in section 2.22(3) —

- (a) the period referred to in paragraph (a) of the definition is —
 - (i) 2 years in the case of an offence against the Act; or
 - (ii) 3 months in the case of an offence against the former provisions;
- and
- (b) the amount referred to in paragraph (b) of the definition is —
 - (i) \$10 000 in the case of an offence against the Act; or
 - (ii) \$5 000 in the case of an offence against the former provisions.

13. Oaths, affirmations and declarations (ss. 2.29, 2.42)

- (1) For the purposes of sections 2.29 and 2.42 —
 - (a) the form of the oath of allegiance is that in Form 5;
 - (b) the form of the affirmation of allegiance is that in Form 6;
 - (c) the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is that in Form 7;
 - (d) the form of declaration for a commissioner is that in Form 8.
- (2) An oath, affirmation or declaration required by section 2.29 to be taken or made by a person elected as a mayor or president is to be taken or made before —
 - (a) the immediate predecessor of the person in the office of mayor or president; or
 - (b) an authorized person.
- (3) An oath, affirmation or declaration required by section 2.29 to be taken or made by a person elected as a councillor, deputy mayor or deputy president is to be taken or made before an authorized person.

-
- (4) An oath, affirmation or declaration required by section 2.42 to be taken or made by a person appointed as a commissioner is to be taken or made before an authorized person.
- (5) In this regulation —
- “authorized person”** means a person before whom a statutory declaration can be made under section 2 of the *Declarations and Attestations Act 1913*.

Part 4 — Miscellaneous

14. Transitional provision: Certain council members (s. 9.71)

- (1) To avoid doubt it is declared that for the purposes of the application of Part 2, Division 5 of the Act and section 2.32 to —
- (a) the remainder of the term of office of a member of council referred to in clause 6 of Schedule 9.3; or
 - (b) the term of office of a member of council elected at an election referred to in clause 13 of Schedule 9.3,

the member is to be regarded as being an elector of the district so long as he or she continues to —

- (c) reside in the district; or
 - (d) be, within the meaning of the former provisions, the owner or occupier of rateable property in the district.
- (2) In subregulation (1) —
- “former provisions”** means the *Local Government Act 1960* as in force immediately before the day on which the *Local Government Act 1995* came into operation.

15. Local Government (Constitution) Regulations 1996 repealed

The *Local Government (Constitution) Regulations 1996* are repealed.

Schedule 1 — Forms

Form 1. Proposal to create, change the boundaries of, or abolish a district [r. 8]

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Proposal to create, change the boundaries of, or abolish a district¹

To: The Local Government Advisory Board.

1. The affected electors, whose names, details and signatures are set out in the attached list, propose that an order should be made under section 2.1 of the *Local Government Act 1995* in relation to the district of [name of district proposed to be created, affected or abolished].
2. A summary of the purposes of the proposed order is as follows:
[Here set out summary]
3. The following documents are attached to and form part of this proposal:
 - a statement setting out clearly the nature of the proposal and the effects of the proposal on local governments; and
 - a plan illustrating any proposed changes of the boundaries of a district.
4. This proposal is served on behalf of the listed signatories by —

Name:	Signature:
Contact address:	Phone No.:
Date:	

¹ Under clause 2(1)(d) of Schedule 2.1 to the *Local Government Act 1995* a proposal that an order be made under section 2.1 of the Act to create, change the boundaries of, or abolish a district can be made to the Local Government Advisory Board by affected electors who —

- are at least 250 in number; or
- are at least 10% of the total number of affected electors.

[Form 1 continued]

List of affected electors (form of each page of signatories)

We, the undersigned, propose that an order be made under section 2.1 of the *Local Government Act 1995* for the purposes summarized in item 2 of this proposal in relation to the district named in item 1.

Full name of affected elector ²	Address which entitles, or would entitle, you to vote in the elections of the local government of the district proposed to be created, affected or abolished	Signature of affected elector	Date

² An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is —

- an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or
- a person who would be an elector if the area directly affected by the proposal became, or became part of, a district.

Form 2. Request for poll on a recommended amalgamation**[r. 9]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Request for a poll on a recommended amalgamation¹

To: The Minister for Local Government.

1. The electors of the district of [name of district whose electors are making the request], whose names, details and signatures are set out in the attached list, request that the recommendation of the Local Government Advisory Board that the districts of [names of the 2 or more districts to be abolished or amalgamated] be abolished and amalgamated, be put to a poll of electors of the districts.
2. This request is served on behalf of the listed signatories by —

Name:	Signature:
Contact address:	Phone No.:
Date:	

List of electors (form of each page of signatories)

We the undersigned, electors of the district of [name of district whose electors are making the request], request that the recommended abolition and amalgamation of the districts of [names of the 2 or more districts to be abolished or amalgamated] be put to a poll of electors of those districts under the *Local Government Act 1995*.

Full name of elector ²	Address which entitles you to vote in the elections of the local government of a district recommended for amalgamation	Signature of elector	Date

¹ Under clause 8 of Schedule 2.1 to the *Local Government Act 1995*, a request asking for a recommendation of the Local Government Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts can be made to the Minister for Local Government by —

- at least 250 of the electors of one of the districts; or
- at least 10% of the electors of one of the districts.

² An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

Form 3. Submission about changes to wards, name or representation
[r. 10]

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Submission about changes to wards, name or representation¹

To: The ²Mayor/President of [name of local government].

1. The affected electors of the district of [name of district], whose names, details and signatures are set out in the attached list, submit that an order should be made under the *Local Government Act 1995* for the following purpose:

[Here set out the purpose]

for the following reasons:

[Here set out the reasons]

[Attach any other relevant documentation, including a map if appropriate]

2. This submission is served on behalf of the listed signatories by —

Name:

Signature:

Contact address:

Phone No.:

Date:

¹ Under clause 3 of Schedule 2.2 to the Local Government Act 1995, a submission that an order be made under the Act about wards, the name of a district or ward or the number of councillors for a district or ward can be made to the local government concerned by affected electors who —

- are at least 250 in number; or
- are at least 10% of the total number of affected electors.

² Delete the one that does not apply.

[Form 3 continued]

List of affected electors (form of each page of signatories)

We the undersigned, submit that an order should be made under the *Local Government Act 1995* for the purpose set out in item 1 of this submission in relation to the [name of local government].

Full name of affected elector ³	Address which entitles you to vote in the elections of the local government to which this submission relates	Signature of affected elector	Date

³ An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the submission.

Form 4. Proposal to change the method of filling the office of mayor or president [r. 11]

Local Government Act 1995

Local Government (Constitution) Regulations 1998

Proposal to change the method of filling the office of mayor or president ¹

To: The ²Mayor/President of [name of local government].

1. The method of filling the office of ²mayor/president currently used by the [name of local government] is ²election by electors of the district/election by the council from amongst the councillors.
2. The electors of [name of district], whose names, details and signatures are set out in the attached list, propose that the method of electing the mayor/president of the [name of local government] be changed to ²election by the council from amongst the councillors/ election by electors of the district.
3. A summary of the reasons for the proposed change is as follows:
[Here set out summary]
4. This proposal is served on behalf of the listed signatories by —

Name:	Signature:
Contact address:	Phone No.:
Date:	

¹ Under section 2.11(1) of the *Local Government Act 1995*, the method of filling the office of mayor or president of a local government is either —

- election by the electors of the district; or
- election by the council from amongst the councillors.

Under section 2.12 of the Act, a proposal to change from one method to the other method can be made to the local government by electors of the district who —

- are at least 250 in number; or
- are at least 10% of the total number of electors of the district.

² Delete the one that does not apply.

[Form 4 continued]

List of electors (form of each page of signatories)

We the undersigned, propose that the method of filling the office of
²mayor/president of the [name of local government] be changed to ²election by the
 council from amongst the councillors/ election by electors of the district.

Full name of elector ³	Address which entitles you to vote in the elections of the local government to which this proposal relates	Signature of elector	Date

³ An elector is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

Form 5. Oath of allegiance

[r. 13(1)(a)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Oath of allegiance

I, ,
of
sincerely promise and swear that I will be faithful and bear true allegiance to
¹ ,
²her/his heirs and successors, according to law.
So help me God.

Sworn at on.....
by
Before me:

¹ Insert the name of the reigning sovereign.
² Delete the one that does not apply.

Form 6. Affirmation of allegiance

[r. 13(1)(b)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Affirmation of allegiance

I, ,
of
solemnly and sincerely affirm that I will be faithful and bear true allegiance to
¹ ,
² her/his heirs and successors, according to law.

Affirmed at on.....
by
Before me:

¹ Insert the name of the reigning sovereign.
² Delete the one that does not apply.

Form 7. Declaration by elected member of council

[r. 13(1)(c)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Declaration by elected member

I,

of

having been elected to the office of ¹mayor/ deputy mayor/ president/ deputy president/ councillor of the ².....

declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the code of conduct adopted by the ².....
under section 5.103 of the *Local Government Act 1995*.

Declared at on.....

by

Before me:

¹ Delete those that do not apply.

² Insert the name of the local government.

Form 8. Declaration by commissioner

[r. 13(1)(d)]

Local Government Act 1995
Local Government (Constitution) Regulations 1998
Declaration by commissioner

I, ,
of ,
having been appointed to the office of commissioner
of the ¹

declare that I take the office upon myself and will duly, faithfully, honestly, and
with integrity, fulfil the duties of the office according to the best of my judgment
and ability.

Declared at on.....

by

Before me:

¹ Insert the name of the local government.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

