

# LOCAL GOVERNMENT AMENDMENT ACT (No. 2)

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No. 100 of 1990

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

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

## Short title

1. This Act may be cited as the *Local Government Amendment Act (No. 2) 1990*.

## Commencement

2. (1) Sections 4, 11, 13, 14, 15 and 16 shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

(2) Sections 3, 12, 17 and 18 shall come into operation on the day on which this Act receives the Royal Assent.

(3) Subject to subsections (1) and (2), this Act shall come into operation on the 28th day after the day on which it receives the Royal Assent.

### **Principal Act**

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

*[\*Reprinted as at 24 June 1983 and amended by Acts Nos. 6 and 84 of 1983, 17, 25, 42 and 79 of 1984, 35, 98, 99, 105 and 109 of 1985, 9 and 26 of 1986, 42 and 126 of 1987 and 10 and 39 of 1988.]*

### **Section 122 amended**

4. Section 122 of the principal Act is amended—

(a) in subsection (4)—

(i) by deleting “an envelope” and substituting the following—

“ a postage pre-paid envelope ”; and

(ii) by deleting “and the postal vote certificate envelope” and substituting the following—

“ , the postal vote certificate envelope, and voting instructions in the prescribed form ”; and

(b) in subsection (7) (f), by deleting “, or assist the elector in relation to his vote,”.

### **Section 123 amended**

5. Section 123 of the principal Act is amended—

(a) by deleting “An authorised witness and any other person” and substituting the following—

“ A person, not being the authorized witness, who is ”;

(b) in paragraph (a), by deleting “the manner of exercise of”.

**Section 124 amended**

6. Section 124 of the principal Act is amended—

(a) by inserting after the section designation “124.” the subsection designation “ (1) ”; and

(b) by inserting the following subsection—

“ (2) A person who witnesses the signature of an applicant on an application for a postal vote or on a postal vote certificate commits an offence if the person in any way applies or attempts to apply undue influence or pressure on the person making the application or exercising the vote. ”.

**Section 124A inserted**

7. After section 124 of the principal Act the following section is inserted—

**Duty to send or deliver documents**

“ 124A. A person to whom an elector gives custody of—

(a) an application for a postal vote; or

(b) an envelope on which there is a completed postal vote certificate,

for the purpose of posting or delivering it to the returning officer shall forthwith post or deliver it, accordingly. ”.

**Section 126 amended**

8. Section 126 of the principal Act is amended—

(a) by deleting “not” and substituting the following—

“ neither ”; and

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

“ nor a person expressly authorized to act on behalf of such a candidate in connection with the election ”.

**Section 154C amended**

9. Section 154C of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

- “ (1) A candidate for an election, or a person expressly authorized to act on behalf of a candidate in connection with an election, who, in relation to the election—
- (a) applies undue influence or pressure on an elector to apply for a postal vote;
  - (b) interferes with an elector while the elector is applying for a postal vote;
  - (c) assists, communicates with, or interferes with an elector while the elector is casting an early, absent or postal vote;
  - (d) looks at the vote of an elector;
  - (e) takes custody of, or posts or delivers to the returning officer, an envelope on which there is a completed postal vote certificate; or
  - (f) causes any other person, not being the elector whose vote is enclosed in the envelope, to do anything referred to in paragraph (e),

commits an offence. ”.

**Section 154G amended**

10. Section 154G of the principal Act is amended in the Table—

- (a) in paragraph (l), by deleting “or inducing a person to make”;  
and
- (b) in paragraph (m), by deleting “Wilfully making or inducing a person to make” and substituting the following—

“ Inducing a person to make, or wilfully making, ”.

**Section 245A amended****11. Section 245A of the principal Act is amended—****(a) in subsection (2)—****(i) by deleting paragraph (a) and substituting the following paragraphs—**

“ (a) for requiring the owner or occupier of land on which there is a swimming pool to instal or provide such structures or devices as are prescribed for the protection of the safety of persons who may, with or without the knowledge or consent of the owner, enter upon that land;

(aa) to require the owner or occupier of land on which there is a swimming pool to annually provide the council with a signed statement that the person has checked such structures or devices as are prescribed for the protection of the safety of persons who may, with or without the knowledge or consent of the owner, enter upon that land; ”;

and

**(ii) in paragraph (b), by deleting “two hundred dollars” and “ten dollars” and respectively substituting—**

“ \$5 000 ” and “ \$250 ”;

**(b) by inserting after subsection (3) the following subsection—**

“ (3a) The prescribing of structures or devices referred to in subsection (2) (a) may be by reference to regulations made under Part XV or any code or standard as adopted by or referred to in regulations so made. ”;

(c) in subsection (5)—

- (i) by deleting the words “structures or devices” and substituting the following—

“ such structures or devices as are prescribed ”;  
and

- (ii) by inserting before paragraph (a) the following paragraph—

“ (aa) for the purpose of ascertaining whether that requirement has been complied with, the council shall cause an authorized officer to inspect the land and the swimming pool at least once before 1 July 1992 and periodically thereafter so that a period of not more than 4 years elapses between inspections; ”; and

(d) by inserting after subsection (7) the following subsections—

“ (8) A council may, for a financial year, fix the charge to be imposed on each owner or occupier of land on which there is a swimming pool, to meet the estimated cost in that financial year of carrying out the inspections required by subsection (5) (aa), but the charge fixed—

(a) shall not exceed the estimated average cost of carrying out inspections in that year; and

(b) shall not exceed the maximum charge, if any, prescribed by regulation.

(9) In imposing the charge under subsection (8) a council may provide for concessions in specified classes of cases.

(10) A council shall—

(a) cause notice of the charge fixed under subsection (8) to be published in the *Gazette*;

- (b) cause to be served upon each person on whom a charge is imposed under subsection (8) notice of the imposition of the charge specifying when the charge is due and payable;

and

- (c) where by-laws or regulations under subsection (2) (aa) require the owner or occupier of land on which there is a swimming pool to provide a signed statement, cause such a person to be given a prescribed form for making the statement.

(11) A council may recover the amount of a charge imposed under subsection (8) in a court of competent jurisdiction.

(12) Publication of notice of a charge as required by subsection (10) (a) may be included in the publication under section 550 of the memorandum of imposition of a rate and notice of the imposition of a charge as required by subsection (10) (b) may be included in the notice of valuation and rate required by section 542.

(13) The penalty for falsely making a statement required under by-laws or regulations made under subsection (2) (aa) is the same as if the statement was a statutory declaration. ”.

## **Section 528 amended**

12. Section 528 of the principal Act is amended in subsection (6)—

- (a) in paragraph (a) by inserting after “that year” the following—

“ , in addition to any amount appropriated under paragraph (aa) ”;

- (b) by inserting after paragraph (a) the following paragraph—

“ (aa) A council shall, by virtue of and without authorization other than this subsection, appropriate from its ordinary revenue and pay into a particular reserve fund such additional

amount, if any, as is, under section 548 (4), raised by rates to meet expenditure to be incurred in carrying out an undertaking for the benefit of the ratepayers or inhabitants of a particular area as set out in the municipal fund budget. ”; and

- (c) in paragraph (c) by deleting “that mentioned in paragraph (a) of this subsection” and substituting the following—

“ those mentioned in paragraphs (a) and (aa) ”.

### **Section 635B amended**

13. Section 635B of the principal Act is amended by deleting subsection (3) and substituting the following subsection—

“ (3) The functions of the Board are—

- (a) to register persons as local government auditors, in accordance with the regulations;
- (b) to cancel the registration of persons as local government auditors, in accordance with the regulations;
- (c) to provide auditing advice to registered local government auditors and to municipalities;
- (d) to report to the Minister regarding any matter in respect of local government audits on which the Minister requests advice; and
- (e) to review and assess the quality of any audit carried out by a registered local government auditor. ”.

**Section 635C repealed and a section substituted**

14. Section 635C of the principal Act is repealed and the following section is substituted—

**Appeals against decisions of Board**

“ **635C.** (1) Where the Board—

- (a) refuses an application for registration as a local government auditor; or
- (b) cancels the registration of a person as a local government auditor,

the Board shall, in writing, notify the applicant for registration or the person whose registration was cancelled of its decision and of the reasons for that decision.

(2) An applicant for registration or person whose registration has been cancelled may, if aggrieved by a decision of the Board, appeal to a Local Court against the decision.

(3) An appeal under this section may be instituted by the appellant, within the prescribed time, lodging with the clerk of the Local Court to which the appeal is to be made and the Board a notice of appeal specifying the grounds of appeal.

(4) An appeal under this section shall be in the nature of a rehearing *de novo* and shall be heard before a Local Court constituted by a stipendiary magistrate.

(5) On hearing an appeal under this section, the Local Court may—

- (a) confirm, quash or vary the decision of the Board or substitute its own decision for that of the Board;

and

- (b) make any other order as to costs or otherwise.

(6) The decision of a Local Court on an appeal under this section is final and conclusive and the Board shall give effect to it. ”.

### **Section 635D amended**

15. Section 635D of the principal Act is amended—

- (a) in paragraph (f) by deleting “the manner in which and”; and
- (b) by inserting after paragraph (f) the following paragraph—
  - “ (fa) with respect to the fees payable for registration as a local government auditor and providing that registration may lapse at the expiry of a period of time in respect of which fees have been paid; ”.

### **Section 635F amended**

16. Section 635F of the principal Act is amended—

- (a) in subsection (2)—
  - (i) in paragraph (a) by inserting after “Board” the following—
    - “ or lapses in accordance with the regulations ”;
  - and
  - (ii) in paragraph (c) by deleting “Minister” and substituting the following—
    - “ Board ”;
- (b) in subsection (4) (b) by deleting “upheld by the Minister” and substituting the following—
  - “ confirmed ”;

(c) by inserting after subsection (4) the following subsection—

“ (4a) Notwithstanding subsection (2) (a), where the registration of a person as a local government auditor for the purposes of this Act lapses in accordance with the regulations, any appointment that he holds as an auditor of a municipality shall cease to have effect if and only if—

(a) he does not reapply for registration within the prescribed time; or

(b) his application for registration is refused by the Board and he does not appeal against the decision within the prescribed time; or

(c) his application for registration is refused by the Board and that decision is confirmed on appeal,

but while the decision is subject to appeal, or an appeal is pending, he shall not act as, or exercise or perform any of the powers or duties of, the auditor of a municipality. ”;

and

(d) in subsection (8) by deleting “Minister” and substituting the following—

“ Board ”.

### **Section 733A inserted**

17. After section 733 of the principal Act the following section is inserted—

#### **Western Australian Municipal Association constituted**

“ **733A.** (1) On the coming into operation of section 17 of the *Local Government Amendment Act (No. 2) 1990*, the association known as the Western Australian Municipal Association is by that name constituted under this Part as a body corporate with perpetual succession and a common seal.

(2) The association incorporated under subsection (1) shall operate according to the constitution of that association lodged with and approved by the Minister or as amended from time to time in accordance with section 735.

(3) As soon as practicable after the coming into operation of section 17 of the *Local Government Amendment Act (No. 2) 1990* the association incorporated under subsection (1) shall lodge with the Commissioner for Corporate Affairs a copy of the constitution referred to in subsection (2). ”.

### **Transitional—Western Australian Municipal Association**

18. (1) Nothing in section 17 of this Act affects the membership of, or the continuation of any rights, powers, remedies, liabilities and obligations of, the association constituted under section 733A of the principal Act as inserted by section 17 of this Act.

(2) Upon the day on which section 17 of this Act comes into operation—

- (a) all real and personal property and every right and interest in that property held immediately before that day by any person for or on behalf of the body known as the Western Australian Municipal Association shall vest in and belong to the association constituted under section 733A of the principal Act as inserted by section 17 of this Act; and
- (b) all rights, powers, remedies, liabilities and obligations held immediately before that day by any person for or on behalf of the body known as the Western Australian Municipal Association shall become rights, powers, remedies, liabilities and obligations of the association constituted under section 733A of the principal Act as inserted by section 17 of this Act and may be enforced or realized by that association.