

WESTERN AUSTRALIA

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# LOCAL GOVERNMENT AMENDMENT ACT

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No. 42 of 1987

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**AN ACT to amend the *Local Government Act 1960*.**

[Assented to 3 July 1987]

**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:—

## Short title

1. This Act may be cited as the *Local Government Amendment Act 1987*.

**Commencement**

2. (1) Sections 1, 2, 3 and 32 of this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 23, 24, 25 and 36 of this Act shall come into operation on 1 July 1987.

(3) The provisions of this Act other than sections 1, 2, 3, 23, 24, 25, 33 and 36, shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

**Principal Act**

3. 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, 17, 25, 42 and 79 of 1984, 35, 98, 99, 105 and 109 of 1985 and 9 and 26 of 1986.]

**Section 12 amended**

4. Section 12 of the principal Act is amended in subsection (1) by deleting paragraph (d) and substituting the following paragraph—

“ (d) The division of a district into 2 or more districts. At least 20 persons who, if the prayer of the petition were granted immediately when served on the Minister, would be eligible to be registered as electors on the electoral roll of any of the several districts which would result from the division. ”.

**Section 67 amended**

5. Section 67 of the principal Act is amended in subsection (3) by deleting “paragraph (g), (ga), (h) or (ha) of subsection (1) of section 513” in subparagraph (iii) of paragraph (a) and substituting the following—

“ section 513 (1) (g), (ga), (h), (ha) or (hb). ”.

**Section 100 amended**

6. Section 100 of the principal Act is amended—

(a) by inserting “or” after paragraph (a); and

(b) by deleting paragraphs (b) and (c) and substituting the following paragraph—

“ (b) cast an early, absent or postal vote in accordance with Subdivision J. ”.

**Section 103 amended**

7. Section 103 of the principal Act is amended in subsection (1) by inserting after “held” the following—

“ and an officer appointed to issue absent voting papers shall only be required to make and subscribe a declaration once after he is so appointed ”.

**Section 117 amended**

8. Section 117 of the principal Act is amended—

(a) by deleting “at an election held on an annual election day”; and

(b) by deleting “that election” and substituting the following—

“ an election ”.

**Section 118 amended**

9. Section 118 of the principal Act is amended in subsection (1) by deleting “an electoral officer” and substituting the following—

“ the officer appointed to issue absent voting papers ”.

**Section 121 amended**

10. Section 121 of the principal Act is amended by deleting “, in relation to an election held on an annual election day,”.

**Section 191A inserted**

**11.** After section 191 of the principal Act the following section is inserted—

## Setting of fees and charges by resolution

“ 191A. (1) A council may, in lieu of making by-laws prescribing fees or charges for the use of property or premises vested in or under the care, control or management of the council under section 192, 193 (g), 194 (f), 199 (2) (c), 205 (a), 223 (2) (c), 234 (2) (h) and (k), 240 (c), 245 (2) (d), or 441, set fees or charges for the purposes of any of those sections by resolution.

(2) A fee or charge set by resolution under subsection (1) shall not come into effect until not less than 14 days' notice of the fee or charge has been given in the *Gazette* and notice of the fee or charge has been published within that time in a newspaper circulating in the district.

(3) At the time a fee or charge takes effect pursuant to subsection (2) a fee or charge for the corresponding purpose set by the council concerned in a by-law made before that time shall be of no further force or effect.

(4) A council may enforce a fee or charge that is set by resolution under this section and has effect pursuant to this section in the same manner as it may enforce a fee or charge prescribed by by-law under this Act. ”.

**Section 231A inserted**

**12.** After section 231 of the principal Act the following section is inserted—

## Parking for disabled

“ 231A. (1) In this section “park”, “parking facilities”, “parking region” and “stand” have the same meaning as in section 231.

(2) The Governor may make uniform general by-laws—

- (a) prohibiting the parking or standing of a vehicle within a parking region on any land, whether or not the land is a road or parking facility, that is identified in the specified manner, unless that vehicle is identified in the specified manner as the vehicle of a disabled person;
- (b) prescribing the authority by which and the means by which land may be identified for the purposes of paragraph (a);
- (c) prescribing the authority by which and the means by which the vehicle of a disabled person may be identified for the purposes of paragraph (a);
- (d) prohibiting persons not authorized for the purposes of paragraphs (b) and (c) from purporting to identify land or vehicles or purporting to authorize such identification;
- (e) imposing a penalty not exceeding \$80 for the breach of any uniform general by-law made under this section and prescribing a scale of penalties for first and subsequent offences against the uniform general by-laws increasing in severity for each successive offence by the same offender;
- (f) prescribing the method and the means by which any penalties prescribed shall be paid and collected, or recovered.

(3) Notwithstanding any provision of the *City of Perth Parking Facilities Act 1956*, uniform general by-laws made under this section, shall have effect in relation to parking regions constituted and defined under the *City of Perth Parking Facilities Act 1956* and may be enforced by the council of the City of Perth in the same manner as it may enforce by-laws made under that Act. ”.

### Section 242 amended

13. Section 242 of the principal Act is amended—

- (a) in subsection (1) by deleting “or offered for sale” in the definition of “stall” and substituting the following—

“ , hired or offered for sale or hire ”; and

- (b) in subsection (2) by inserting after “to be sold” in paragraph (h) the following—

“ or hired ”.

### **Section 244 amended**

14. Section 244 of the principal Act is amended in subsection (1) in the definition of “trading”—

- (a) by inserting after “selling” the following—

“ or hiring of ”; and

- (b) by inserting after “sale”, wherever it occurs, the following—

“ or hire ”.

### **Section 277A inserted**

15. After the heading to Part XI of the principal Act the following section is inserted—

#### Interpretation

“ 277A. In this Part, unless the contrary intention appears, “acquire” includes the exercise by a council of the power conferred by section 278 (b). ”.

### **Section 401A amended**

16. Section 401A of the principal Act is amended—

- (a) in subsection (1) by deleting “or the building surveyor” and “with the approval of the Secretary”;

- (b) in subsection (3) by deleting “or the building surveyor”;

- (c) in paragraph (a) of subsection (4) by deleting “or the building surveyor”; and

- (d) in subsection (7)—

- (i) in the definition of “builder” by deleting “building;” and substituting the following—

“ building. ”; and

- (ii) by deleting the definition of “the Secretary”.

**Section 416 amended**

17. Section 416 of the principal Act is amended in subsection (2) by deleting “ratepayers, being owners or occupiers of land in” and substituting the following—

“ electors, being persons who reside in, or own or occupy land in, ”.

**Section 423 amended**

18. Section 423 of the principal Act is amended in subsection (1) by deleting “Governor” and substituting the following—

“ Minister ”.

**Section 431 amended**

19. Section 431 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) A referee is entitled to receive for his time and trouble in determining an appeal or reference under this Part—

(a) the fee prescribed by the regulations; and

(b) from the party by whom he was appointed, such other remuneration, allowance or expenses as are reasonable for his services. ”.

**Section 435 amended**

20. Section 435 of the principal Act is amended by repealing subsection (6) and substituting the following subsection—

“ (6) The Permanent Head of the department of the Government known as the Department of Local Government or an officer of that department nominated in writing by the Permanent Head shall be the secretary of the Committee. ”.

**Section 446 amended**

**21.** Section 446 of the principal Act is amended—

(a) in paragraph (a) by inserting after “women’s grounds,” the following—

“ buildings for the provision of welfare services, ”;

(b) in paragraph (d) by deleting “generally.” and substituting the following—

“ generally; ”; and

(c) by inserting after paragraph (d) the following—

“ (e) the implementation and co-ordination of State and Commonwealth welfare programmes within its district;  
and

(f) the provision of—

(i) counselling and information services;

(ii) activity, refuge, and shelter services, and

(iii) child and youth care. ”.

**Section 513 amended**

**22.** Section 513 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (g) by deleting “not more than two delegates of the council, and one other member appointed by the council as an observer,” in subparagraph (i) and substituting the following—

“ delegates of the council and other members appointed by the council as observers ”; and

(ii) by inserting after paragraph (ha) the following paragraph—

“ (hb) pay to a member such reasonable expenses as are actually incurred by him in carrying out his duties or performing his functions as a member; ”.



**Section 522 amended**

23. Section 522 of the principal Act is amended—

- (a) in subsection (1) by deleting paragraph (ba); and
- (b) in subsection (3) by deleting “, (b), and (ba) of subsection (1) of this section or any two or those funds” and substituting the following—

“ and (b) of subsection (1) ”.

**Section 523 amended**

24. Section 523 of the principal Act is amended in subsection (1) by deleting “Subject to section five hundred and twenty-five A, the” and substituting the following—

“ The ”.

**Section 525A repealed**

25. Section 525A of the principal Act is repealed.

**Section 540 amended**

26. Section 540 of the principal Act is amended in subsection (6) by deleting “ratepayer” in both places where it occurs and substituting in each place the following—

“ elector ”.

**Section 547 amended**

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

“ electors ”.

**Section 626 amended**

**28.** Section 626 of the principal Act is amended in subsection (2) by deleting “ratepayers” in paragraph (b) and substituting the following—

“ electors ”.

**Section 669A amended**

**29.** Section 669A of the principal Act is amended in subsection (2)—

(a) in paragraph (a) by inserting after “those by-laws” the following—

“ or by any uniform general by-law made under section 231A ”; and

(b) in paragraph (b) by inserting after “those by-laws” the following—

“ or against any uniform general by-law made under section 231A ”.

**Section 669B amended**

**30.** Section 669B of the principal Act is amended in the definition of “offence”—

(a) by inserting after “by-law” the following—

“ or uniform general by-law ”; and

(b) by deleting paragraph (b) and substituting the following paragraph—

“ (b) section 231 or 231A; ”.

**Section 669F inserted**

**31.** After section 669E of the principal Act the following section is inserted—

Infringement notices—general offences

“ 669F. (1) In this section—

“alleged offence”, in relation to an infringement notice, means the offence to which the infringement notice relates;

“alleged offender”, in relation to an infringement notice, means the person to whom the infringement notice is given;

“authorized person” means an officer of a council who is authorized by the council to give infringement notices under this section;

“infringement notice” means a notice given under subsection (2);

“modified penalty”, in respect of an offence to which an infringement notice relates, means the amount of money specified in the notice as being the modified penalty for that offence;

“prescribed person” means a clerk or other officer of a council authorized by the council to be a prescribed person for the purposes of this section.

(2) An authorized person who has reason to believe that a person has committed an offence against this Act that is prescribed by the regulations to be an offence that may be dealt with under this section may give to that person a notice in the prescribed form informing him that if he does not wish to have a complaint of the alleged offence heard and determined by a court he may, within a period of 21 days after the giving of the notice, pay to the council the amount of money specified in the notice as being the modified penalty for that offence.

(3) In an infringement notice the amount of money specified as being the modified penalty for an offence to which the infringement notice relates shall be the amount that is, when the infringement notice is given, for the time being prescribed to apply in respect of the offence if it is dealt with under this section.

(4) An infringement notice may be given to an alleged offender personally at or about the time the alleged offence is believed to have been committed or by posting it to him within 28 days after the alleged offence is believed to have been committed.

(5) A person to whom an infringement notice is given may decline to be dealt with under this section and, if the modified penalty is not paid within the period specified in the notice or within such further time as may, whether before or after the expiry of that period, be allowed by a prescribed person, is deemed to have declined to be so dealt with.

(6) A prescribed person may, whether or not the modified penalty has been paid, withdraw an infringement notice at any time within a period of 28 days after it was given by sending to the alleged offender a notice in the prescribed form, signed by the prescribed person, advising the alleged offender that the infringement notice has been withdrawn.

(7) Any amount paid by way of modified penalty pursuant to an infringement notice that has been withdrawn under subsection (6) shall be refunded.

(8) Where, pursuant to an infringement notice, the modified penalty has been paid in accordance with the notice within the period specified therein or within such further time as is allowed and the infringement notice has not been withdrawn under subsection (6), no proceedings shall be brought or penalty shall be imposed that could not be brought or imposed if the person to whom the infringement notice was given had been convicted by a court of, and punished for, the alleged offence.

(9) Subject to, and in accordance with, Part XXVIII, the Governor may make regulations prescribing all matters which by this section are required or permitted to be prescribed or are necessary or expedient to be prescribed for the purposes of this section and, in particular may make regulations prescribing a modified penalty or modified penalties for any offence or class of offence if dealt with under this section.

(10) This section does not apply to an offence under section 665A (1) or an offence defined in section 669B. ”.

**Part XXVIII amended**

**32.** (1) Part XXVIII of the principal Act is amended by inserting after Division 3 the following division—

“ *Division 3A—Description of land*

Land descriptions

678B. (1) In this section—

“authorized land officer” means the Surveyor-General or other officer authorized in that behalf by the Permanent Head of the Department;

“Department” has the same meaning as that term has in and for the purposes of the *Land Act 1933*.

(2) For the purposes of this Act a description of land may be made by reference to a plan or diagram relating to the land that is registered or deposited in the Department and certified under the hand of an authorized land officer.

(3) A plan or diagram referred to in subsection (2) shall be open to public inspection on payment of the fee, if any, prescribed by or under the *Land Act 1933*.

(4) All plans and diagrams certified under the hand of an authorized land officer to be copies of the original plans or diagrams or portions thereof registered or deposited in the Department shall be admissible in evidence in court or before any person having by law or the consent of parties authority to hear, receive and examine evidence, and shall be evidence for the same purpose and to the same extent as the originals thereof if they had been produced. ”.

(2) No Order made before the coming into operation of subsection (1) for the purposes of the principal Act as in force before the coming into operation of this section and no act or omission done or made, or purporting to have been done or made, thereunder shall be, or ever have been, invalid or unlawful by reason only that a land description contained therein was made by reference to a plan or diagram.

**Section 679 amended**

33. Section 679 of the principal Act is amended—

- (a) by inserting after the section designation “679.” the subsection designation “(1)”; and
- (b) by inserting the following subsection—

“ (2) Where a council considers that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of any act or omission of the council, the council may by a resolution passed by an absolute majority of the members make such payment or provide such benefit to that person as appears to it to be appropriate, notwithstanding that the council may not be under a legal obligation so to do. ”.

**Part XXX inserted**

34. After Part XXIX of the principal Act the following Part is inserted—

“ PART XXX—ASSOCIATIONS OF LOCAL GOVERNMENT

Interpretation

730. In this Part, unless the contrary intention appears—

“Association” means an association constituted under this Part.

Local Government Association of  
Western Australia constituted

731. (1) On the coming into operation of section 34 of the *Local Government Amendment Act 1987*, the association known as the Local Government Association of Western Australia and incorporated under the *Associations Incorporation Act 1895*—

- (a) is by that name constituted under this Part as a body corporate with perpetual succession and a common seal;  
and
- (b) ceases to be incorporated under or to be subject to the provisions of the *Associations Incorporation Act 1895*.

(2) The association incorporated under subsection (1) shall operate according to the constitution of that association as in force immediately before it was so incorporated or as amended from time to time in accordance with section 735.

(3) On the coming into operation of section 34 of the *Local Government Amendment Act 1987* the association incorporated under subsection (1) shall—

(a) give to the Minister; and

(b) lodge with the Commissioner for Corporate Affairs,

a copy of the constitution referred to in subsection (2).

Country Shire Councils' Association  
of Western Australia constituted

732. (1) On the coming into operation of section 34 of the *Local Government Amendment Act 1987*, the association known as the Country Shire Councils' Association of Western Australia and incorporated under the *Associations Incorporation Act 1895*—

(a) is by that name constituted under this Part as a body corporate with perpetual succession and a common seal;

and

(b) ceases to be incorporated under or to be subject to the provisions of the *Associations Incorporation Act 1895*.

(2) The association incorporated under subsection (1) shall operate according to the constitution of that association as in force immediately before it was so incorporated or as amended from time to time in accordance with section 735.

(3) On the coming into operation of section 34 of the *Local Government Amendment Act 1987* the association incorporated under subsection (1) shall—

(a) give to the Minister; and

(b) lodge with the Commissioner for Corporate Affairs,

a copy of the constitution referred to in subsection (2).

### Country Urban Councils' Association constituted

733. (1) On the coming into operation of section 34 of the *Local Government Amendment Act 1987*, the association known as the Country Urban Councils' 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 34 of the *Local Government Amendment Act 1987* the association incorporated under subsection (1) shall lodge with the Commissioner for Corporate Affairs a copy of the constitution referred to in subsection (2).

### Common seal

734. All courts, judges and persons acting judicially shall take judicial notice of the common seal of an Association and shall presume that it was duly affixed.

### Amendment of constitution

735. Subject to section 736, an Association may amend its constitution from time to time and shall, whenever it does so, forthwith—

(a) give to the Minister; and

(b) lodge with the Commissioner for Corporate Affairs,

a copy of the amendment to the constitution.

### Objects and functions

736. (1) An Association has the objects and functions set out in its constitution.

(2) Subject to subsection (3), an Association may from time to time, with the approval of the Minister, alter, vary, rescind or add to the objects for which it is constituted.



(3) Without limiting the generality of subsection (1), an Association may—

- (a) of its own motion, make representations and submissions to the Minister on any matter or thing relating to or affecting its members; and
- (b) with the approval of the affected members, arrange contracts of insurance on behalf of all or any of its members for any of the purposes mentioned in section 513 (1) (b).

### Powers

737. An Association may do all acts and things that may be necessary to be done to enable it to achieve its objects and perform its functions and, in particular and in addition to any other powers conferred on it by this Act, the Association may in its corporate name—

- (a) acquire, hold and dispose of real and personal property;
- (b) accept any gift, whether by will or *inter vivos*, of any real or personal property or any interest or estate in that property, or disclaim the benefit of any such gift;
- (c) sue and be sued; and
- (d) do and suffer all that bodies corporate may do and suffer. ”.

### Transitional—Associations

35. (1) Nothing in section 34 of this Act affects the membership of, or the continuation of any rights, powers, remedies, liabilities and obligations of, any association constituted under Part XXX of the principal Act as inserted by this Act.

(2) Upon the day on which section 34 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 Country Urban Councils' Association shall vest in and belong to the association constituted under section 733 of the principal Act as inserted by section 34 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 Country Urban Councils' Association shall become rights, powers, remedies, liabilities and obligations of the association constituted under section 733 of the principal Act as inserted by section 34 of this Act and may be enforced or realized by that association.

### **Transitional—parking fund**

**36.** (1) Where immediately before the commencement day a council established and operated a parking fund pursuant to section 522 of the principal Act as in force before the coming into operation of section 23 of this Act the council shall on the commencement day transfer all assets and liabilities of that parking fund into the municipal fund of the council and thereafter the provisions of Part XXIV of the principal Act as amended by this Act shall have effect in relation thereto accordingly.

(2) In subsection (1) "commencement day" means the day upon which section 25 of this Act comes into operation.

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