

## LOCAL GOVERNMENT (No. 5).

No. 97 of 1976.

### AN ACT to amend the Local Government Act, 1960-1976.

[Assented to 12th November, 1976.]

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. 5), 1976.*

Short title and citation.

(2) In this Act the Local Government Act, 1960-1976 is referred to as the principal Act.

Approved for reprint 9th August, 1973 and amended by Acts Nos. 12, 74, 83 and 105 of 1973, 27 and 65 of 1974, 36, 65 and 78 of 1975 and 30 of 1976.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1976.

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) The provisions of sections 3, 6, 13, 14, 15, 22, 23, 24, 25, 29, 30, 31 and 32 of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation.

Section 3  
amended.

3. Section 3 of the principal Act is amended—

- (a) by substituting for the passage “, s. 599 to 600” in the arrangement of Division 2 of Part XXVI the passage “*or Security of Agreement to Repay, ss. 599 to 600A*”;
- (b) by adding after the word “*Overdraft*” in the arrangement of Division 3 of Part XXVI the words “*or Security of Agreement to Repay*”; and
- (c) by substituting for the passage “661 to 669” in line one of the arrangement of Division 2 of Part XXVIII the passage “661 to 669E”.

Section 37  
amended.

4. Section 37 of the principal Act is amended—

- (a) by adding after the expression “(2)” in the line immediately following paragraph (f) of subsection (1), the passage “, (3) or (4)”;
- (b) by adding after subsection (2) subsections as follows—

(3) A person is not disqualified from being elected and acting as a mayor, president or councillor of a municipality on the ground that he has direct or indirect pecuniary interest in an agreement to which the municipality is a party if, prior to the nomination of that person as a candidate for election, the Minister determines in writing (as he is

hereby authorised to determine) that having the interest shall not so disqualify that person.

(4) A person acting as mayor, president or councillor of a municipality is not disqualified from continuing to so act on the ground that he has direct or indirect pecuniary interest in an agreement to which the municipality is a party if, prior to his having the interest, the Minister determines in writing (as he is hereby authorised to determine) that having the interest shall not so disqualify that person. .

5. Section 160 of the principal Act is amended by adding after subsection (2) subsections as follows—

Section 160  
amended.

(2a) In giving his approval pursuant to paragraph (b) of subsection (2) of this section the Minister may, after consultation with the council, impose on the approval a condition that the person in respect of whom the approval is given shall obtain the appropriate certificate of qualification under the regulations within such period after his appointment as is fixed by the Minister when giving the approval.

(2b) The Minister may from time to time grant an extension of the period fixed pursuant to subsection (2a) of this section if he considers that the circumstances justify such an extension.

(2c) Where approval is given by the Minister under paragraph (b) of subsection (2) of this section subject to a condition imposed under subsection (2a) of this section and, at the completion of the period fixed pursuant to the

latter subsection or of any extension of that period granted under subsection (2b) of this section,—

- (a) the officer appointed by the council pursuant to that approval still does not hold the certificate of qualification required by the regulations to be held by the occupant of his office; and
- (b) the Minister does not consider that the circumstances justify an extension or further extension of that period,

the Minister may after consultation with the council direct the council to remove the officer from the office and, notwithstanding subsection (2) of section one hundred and fifty-eight, the council shall comply with that direction.

(2d) The provisions of subsection (5) to subsection (12) of section one hundred and fifty-eight both inclusive do not apply to or in relation to an officer who is removed from office pursuant to subsection (2c) of this section. .

Section 160A  
added.

6. The principal Act is amended by adding after section 160 a section as follows—

Officer not  
to engage  
in duties  
uncon-  
nected  
with his  
office.

160A. (1) Except with the express permission of the council of the municipality by which he is engaged or employed, which permission may at any time be withdrawn, no officer shall—

- (a) engage in or undertake any trade or business, whether as principal or agent;
- (b) engage or continue in the private practice of any profession; or
- (c) accept or engage in any employment for reward other than in connection with the duties of his office or offices under the municipality.

(2) A council shall not withhold or withdraw its permission under subsection (1) of this section unless it is of the opinion that the affairs, duties or responsibilities of the officer in connection with the trade, business, profession or employment engaged in, undertaken, practised or accepted by him may conflict with the performance by him of the duties of his office or offices under the municipality.

(3) An officer may appeal in writing to the Minister against the decision of a council to withhold or withdraw its permission under subsection (1) of this section and the Minister may—

- (a) grant or restore such permission in the name of the council; or
- (b) dismiss the appeal,

and the Minister's decision is not subject to appeal.

(4) Nothing in this section shall prevent an officer from being jointly engaged or jointly employed by several municipalities or from becoming a member or shareholder only of any incorporated company or of any company or society of persons registered under any statute. .

7. Section 171 of the principal Act is amended— Section 171 amended.

(a) by adding after subsection (2) a subsection as follows—

(2a) Except with the consent of the Minister, the council shall not hold an annual general meeting of electors until after the audit of the annual financial statements of the council has been completed. ;

- (b) by deleting the word "At" in line one of subsection (7) and substituting the passage "Subject to subsection (8) of this section, at"; and
- (c) by adding after subsection (7) a subsection as follows—

(8) Paragraph (b) of subsection (7) of this section does not apply in relation to an annual general meeting of electors that is held with the consent of the Minister given under subsection (2a) of this section, but where, after that meeting, the mayor or president receives a copy of the report of the auditor or auditors—

- (a) the clerk shall give notice, in a newspaper circulating in the district, that the report has been received and that it is available for inspection by electors at the office of the council; and
- (b) the report shall be read at the next annual general meeting of electors. .

Section 173  
amended.

8. Section 173 of the principal Act is amended by adding after paragraph (a) of subsection (8) a paragraph as follows—

(aa) Where the deputy-mayor or deputy-president, or a councillor, presides at a meeting of a council he has and shall exercise a deliberative vote only. .

Section 174  
amended.

9. Section 174 of the principal Act is amended—

(a) as to subsection (4)—

- (i) by adding after the word "person" in line one the passage " , other than the person presiding at a meeting,"; and

- (ii) by deleting the passage “, in the opinion of the Mayor or President,” in lines one and two of paragraph (a) and substituting the words “determined by the person presiding at the meeting to be”;
- (b) by adding after subsection (4) a subsection as follows—
- (4a) A person presiding at a meeting who is liable to disclose the fact that he has an interest in a matter shall not take part in the consideration or discussion of that matter at the meeting unless an absolute majority of the persons present at that meeting who are entitled to vote on that matter determine by motion, which may be moved without notice,—
    - (a) that the interest that person has is so remote or trivial that if he were to take part in any consideration or discussion he could not reasonably be regarded as likely to be influenced by that interest; or
    - (b) that he is permitted to speak on that matter. ;
- (c) by repealing subsection (5) and re-enacting that subsection as follows—
- (5) Where it is determined in accordance with paragraph (a) of subsection (4) or paragraph (a) of subsection (4a) of this section that the interest of a person is so remote or trivial as to permit him to take part in any consideration or discussion of the matter then, subject to paragraph (a) of subsection (8) of section one hundred and seventy-three, that person may also vote upon the matter but there shall be recorded in the minutes of the meeting particulars of that determination. ; and

- (d) by inserting before the word "of" in line four of subsection (6) the passage "or paragraph (b) of subsection (4a)".

Section 174A  
amended.

10. Subsection (1) of section 174A of the principal Act is amended by deleting subparagraph (ii) of paragraph (b) and substituting a subparagraph as follows—

- (ii) an interest in another lot which although neither adjoining nor adjacent—
- (A) is a lot which is, in the opinion of the person presiding at the meeting, likely to be advantaged or disadvantaged by the rezoning; or
  - (B) is a lot which, in a case where the person concerned is presiding at the meeting, an absolute majority of the persons present at the meeting who are entitled to vote on the matter under consideration determine by motion, which may be moved without notice, to be likely to be advantaged or disadvantaged by the rezoning.

Section 177  
amended.

11. Subsection (1) of section 177 of the principal Act is amended by deleting the words "their seats" where occurring in lines three and four and in line five, and substituting the words "the council chamber" in each case.

Section 182  
amended.

12. Section 182 of the principal Act is amended—

- (a) by repealing subsection (2c);
- (b) by deleting the words commencing with the word "The" in line one of subsection (3) and ending with the word "appointed" in line three of that subsection and substituting the words "Where the mayor or president is *ex officio* a member of a committee so appointed he may but is not obliged to preside as chairman of the meetings of the committee";

- (c) by adding after subsection (7) a subsection as follows—

(7a) Where the chairman, who is not the mayor or president is absent at the commencement of a meeting of a committee so appointed the members of the committee present at the meeting may elect one of their number so present to preside as chairman. ; and

- (d) by deleting the word “chairman” in line three of subsection (9), and substituting the words “person presiding as chairman of the meeting”.

13. Section 221 of the principal Act is amended— Section 221 amended.

- (a) by adding after paragraph (b) the word “and”;
- (b) by deleting the passage “permitted; and” in the last line of paragraph (c) and substituting the passage “permitted.”; and
- (c) by deleting paragraph (d).

14. Subsection (2) of section 231 of the principal Act is amended— Section 231 amended.

- (a) by deleting paragraphs (j), (k) and (ka);
- (b) by deleting the passage “offender;” in the last line of paragraph (q), and substituting the passage “offender.”; and
- (c) by deleting paragraph (r).

15. Subsection (2) of section 234 of the principal Act is amended— Section 234 amended.

- (a) by deleting paragraph (i) and substituting a paragraph as follows—
- (i) for prohibiting or regulating the admission of vehicles and cattle on property; ;

- (b) by adding after paragraph (m) the word “and”;
- (c) by deleting the passage “council; and” in the last line of paragraph (n), and substituting the passage “council.”; and
- (d) by deleting paragraph (o).

Section 245A  
amended.

16. Section 245A of the principal Act is amended by adding after subsection (3) subsections as follows—

(4) In subsections (5) and (6) of this section—  
“authorised officer” means an officer of the council authorised by the council to exercise and carry out the powers and duties conferred by those subsections.

(5) Where by-laws, or uniform general by-laws, made under this section require the owner or occupier of land on which there is a swimming pool to instal or provide structures or devices for the protection of the safety of persons who may enter upon the land—

- (a) an authorised officer may enter upon the land and inspect the land and the swimming pool for the purpose of ascertaining whether that requirement has been complied with;
- (b) if an authorised officer is of the opinion that, as a result of non-compliance with that requirement, the swimming pool constitutes a danger to the public he may, by notice served on the owner and the occupier of the land, direct that the requirement be complied with within such period as the authorised officer considers reasonable in the circumstances and specifies in the notice;
- (c) if, at the expiration of the period specified in a notice served pursuant to paragraph (b) of this subsection, neither the owner nor the occupier of

the land has complied with the direction contained in the notice, an authorised officer may enter upon the land, with or without assistants, and, subject to subsection (7) of this section, take such measures as he considers necessary in order to prevent the swimming pool from being a danger to the public, and the costs of taking those measures may be recovered by the council from the owner or occupier by action in a court of competent jurisdiction.

(6) An authorised officer, or person assisting an authorised officer, may enter occupied premises in the exercise of the powers conferred by subsection (5) of this section irrespective of whether or not notice of his intention to do so has been given to the occupier. .

(7) The council may impose limitations and conditions on the measures that may be taken by authorised officers pursuant to paragraph (c) of subsection (5) of this section and an authorised officer shall not take any measure that is not in accordance with the conditions and limitations so imposed unless the council, after receipt and consideration of a report by the authorised officer, directs that measure to be taken in the particular case. .

17. Subsection (2) of section 423 of the principal Act is amended by adding after the word "architect" in line one of paragraph (a), the passage " , engineer".

Section 423  
amended.

18. Subsection (4) of section 538 of the principal Act is amended—

Section 538  
amended.

(a) by repealing paragraph (b) and substituting a paragraph as follows—

(b) On receipt of a return mentioned in paragraph (a) of subsection (2) of this section showing the amount received from

the sale of gas or electricity during the financial year ending on the thirtieth day of June, one thousand nine hundred and seventy-seven or any financial year thereafter, the council shall assess a sum not exceeding one and one quarter per centum of the amount shown. ; and

- (b) by deleting the word “sums” in line two of paragraph (c), and substituting the word “sum”.

Section 550  
amended.

19. Section 550 of the principal Act is amended by deleting the word “five” in line two of subsection (2) and substituting the word “ten”.

Section 556  
amended.

20. Section 556 of the principal Act is amended by repealing subsections (3) and (4) and substituting subsections as follows —

Power to  
state case  
for Supreme  
Court.

(3) Any party to an appeal to a Valuation Appeal Court may, at any time before the decision of the Court is given on the appeal, request the Court to state a case for determination by the Supreme Court and the Valuation Appeal Court shall give effect to that request and shall not give its decision on the appeal until it has been notified of the determination of the Supreme Court on the case stated.

Determina-  
tion by  
Supreme  
Court  
of case  
stated.

(4) The Supreme Court has jurisdiction to determine cases stated under subsection (3) of this section and make such order as to the payment of costs of and incidental to the proceedings in the Supreme Court as it considers just.

Decision  
to be  
delivered  
by Chairman  
and is  
final.

(4a) The decision of a Valuation Appeal Court on an appeal shall be delivered by the Chairman of the Court and is final and conclusive. .

21. Subsection (1) of section 592 of the principal Act is amended by adding after the word "Titles" in line three the word "of".

Section 592 amended.

22. The heading to Division 2 of Part XXVI of the principal Act is amended by adding after the word "*Overdraft*" the words "*or Security of Agreement to Repay*".

Heading amended.

23. The principal Act is amended by adding after section 600 a section as follows—

Section 600A added.

600A. (1) For the purpose of defraying the whole or part of the costs of the acquisition or development of land by a council incurred under a scheme being administered by the council for the purpose of subdividing land into residential lots, the council may, with the written consent of the Minister, obtain from a permanent society within the meaning of the Building Societies Act, 1976 advances secured by an agreement to repay the money so advanced made in writing and under the seal of the municipality.

Power to borrow from building societies.

(2) The council shall expend the money so advanced for the purpose for which it is advanced, and not otherwise.

(3) The council shall apply the receipts arising out of the scheme in relation to which the money is so advanced towards the repayment of, and payment of interest on, the advances.

(4) The amounts estimated to be received by the council and to be applied in accordance with subsection (3) of this section shall both be shown in the budget of the municipal fund. .

24. The heading to Division 3 of Part XXVI is amended by adding after the word "*Overdraft*" the words "*or Security of Agreement to Repay*".

Heading amended.

Section 602  
amended.

25. Section 602 of the principal Act is amended by adding after the word "overdraft" in line four the words "or on security of an agreement to repay".

Section 630  
amended.

26. Section 630 of the principal Act is amended—

(a) by adding after subsection (2) a subsection as follows—

(2a) The council shall cause copies of each statement so prepared to be printed or copied and available, at least seven days before the annual meeting of the electors of the municipality, to such ratepayers and creditors of the municipality as apply to the council for a copy of it whether before, at, or within a reasonable time, after that meeting. ;

(b) by deleting the word "the" in line one of subsection (3) and substituting the word "each"; and

(c) by repealing subsection (4).

Section 657  
amended.

27. Subsection (1) of section 657 of the principal Act is amended by deleting paragraphs (a), (b) and (c) and substituting paragraphs as follows—

(a) serve it on the owner or occupier or other person;

(b) leave it for the owner or occupier or other person at his usual or last known place of residence;

(c) if it is addressed to the owner and the person giving or serving it is not aware of any place at which it can be left for the owner under paragraph (b) of this subsection, serve it on the occupier, if any, of the building or land or leave it for the occupier at his usual or last known place of residence or, if there is no occupier or the person giving or serving it is not aware of any place at which it can be left for the occupier under this paragraph, affix it to a conspicuous part of the building or land;

- (ca) if it is addressed to the occupier and the person giving or serving it is not aware of any place at which it can be left for the occupier under paragraph (b) of this subsection, affix it to a conspicuous part of the building or land; .

28. Section 669A of the principal Act is amended by deleting the word “regulations” in the penultimate line of subsection (2), and substituting the word “by-laws”. Section 669A amended.

29. The principal Act is amended by adding after section 669A a section as follows— Section 669B added.

669B. In this section and the next three succeeding sections— Interpretation.

“authorised officer” means an officer of a council who is authorised by the council to serve notices under sections six hundred and sixty-nine C and six hundred and sixty-nine D;

“driving” includes “riding” and “driver” includes “rider”;

“offence” means an offence against a by-law made under—

- (a) paragraph (c) of section two hundred and twenty-one;
- (b) section two hundred and thirty-one; or
- (c) paragraph (i) of subsection (2) of section two hundred and thirty-four,

of which the use, driving, parking, standing or leaving of a vehicle is an element.

Section 669C  
added.

30. The principal Act is amended by adding after section 669A a section as follows—

Onus on  
owner of  
vehicle to  
identify  
driver.

669C. (1) Any owner of a vehicle and any person to whom for the time being the possession or control of a vehicle may be entrusted shall, if required by a member of the police force or an officer of a council, give any information which it is in his power to give, which may lead to the identification of any person who was driving or who was in charge of a vehicle when an offence is alleged to have been committed.

Penalty: Eighty dollars.

(2) Where an offence is alleged to have been committed and the identity of the driver or person in charge of the vehicle in respect of which the allegation is made is not known and cannot immediately be ascertained an authorised officer may, within thirty days after the date on which the offence is alleged to have been committed, serve on the owner of the vehicle a notice in the prescribed form containing particulars of the offence alleged to have been committed and requiring the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

(3) Where, under the provisions of subsection (2) of this section, notice is served on the owner of a vehicle within the time specified in that subsection, then, unless within twenty-one days after the date of the service of the notice the owner of the vehicle—

(a) informs the clerk of the council or an authorised officer as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or

- (b) satisfies the clerk of the council that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

(4) A notice served under subsection (2) of this section shall *inter alia* contain a short statement of the effect of subsection (3) of this section. .

31. The principal Act is amended by adding after section 699A a section as follows—

Section 699D added.

699D. (1) Where an authorised officer has reason to believe that a person has committed an offence in respect of which a modified penalty is prescribed, he may serve on that person a notice, in the prescribed form, (in this section called an “infringement notice”) informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to the council, within twenty-one days after the date of the service of the notice, the amount of the modified penalty.

Proceedings by way of infringement notice.

(2) Where the identity of the driver or person in charge of a vehicle in respect of which an offence is alleged to have been committed is not known and cannot immediately be ascertained, an infringement notice may—

- (a) in any case, be addressed to and served on the owner of the vehicle within thirty days after the date on which the offence is alleged to have been committed; or
- (b) where the allegation is of an offence of which the parking, standing or leaving of a vehicle is an element, be addressed to the owner of the vehicle,

without naming him or stating his address, and be served by attaching it to the vehicle or leaving it in or on the vehicle.

(3) Where, under the provisions of subsection (2) of this section, an infringement notice is addressed to and served on the owner of a vehicle within the time specified in paragraph (a) of that subsection or addressed to the owner of a vehicle and served by attaching it to the vehicle or leaving it in or on the vehicle, then, unless within twenty-one days after the date of the service of the infringement notice—

(a) the modified penalty is paid; or

(b) the owner of the vehicle—

(i) informs the clerk of the council or an authorised person as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or

(ii) satisfies the clerk of the council that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

(4) A person who receives an infringement notice may decline to be dealt with under the provisions of this section and where he fails to pay the modified penalty within twenty-one days after the date of the service of the notice he is deemed to have declined to be dealt with under those provisions.

(5) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn at any time within twenty-eight days

after it is served, by the sending of a notice, in the prescribed form, signed by an authorised officer, to the alleged offender advising the alleged offender that the infringement notice has been withdrawn; and in that event, the amount of any modified penalty that has been paid shall be refunded.

(6) Where a modified penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (5) of this section, proceedings shall not be brought against any person with respect to the offence alleged in the notice.

(7) A person, other than the owner, driver or person in charge of a vehicle in respect of which an offence is alleged to have been committed, shall not remove any infringement notice relating to the offence affixed to the vehicle or left in or on the vehicle by an authorised person.

(8) An infringement notice served under subsection (2) of this section shall *inter alia* contain a short statement of the effect of subsection (3) of this section. .

32. The principal Act is amended by adding after section 669A a section as follows—

Section 669E  
added.

669E. Subject to, and in accordance with, the requirements of Part VIII of this Act a council may make by-laws prescribing all matters which by sections six hundred and sixty-nine C or six hundred and sixty-nine D are required or permitted to be prescribed or are contemplated as being prescribed or which are, in the opinion of the council, necessary or expedient to be prescribed for the purposes of those sections and, in particular may make by-laws prescribing a modified penalty or modified penalties for any offence, or class of offence, if dealt with under section six hundred and sixty-nine D. .

By-laws.