

LOCAL GOVERNMENT (No. 2).

No. 56 of 1977.

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

[Assented to 23rd November, 1977.]

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. 2), 1977.*

Short title
and citation.

(2) In this Act the Local Government Act, 1960-1977 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1977.

Reprinted as
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, 30, 46,
97 and 124 of
1976 and 5
and 7 of
1977.

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) Section 11 of this Act shall come into operation on the effective date as defined in section 161 of the principal Act as re-enacted by section 8 of this Act.

Section 3
amended.

3. Section 3 of the principal Act is amended by deleting the passage "PART VI.—OFFICERS OF THE MUNICIPALITY, ss. 157 to 170." and substituting the passage "PART VI.—OFFICERS AND EMPLOYEES OF THE MUNICIPALITY, ss. 157 to 170."

Section 73
amended.

4. Section 73 of the principal Act is amended—

(a) as to subsection (1), by deleting paragraph (j) and substituting the following paragraph—

(j) notwithstanding subsection (1) of section forty-one a person who holds the office of mayor or president immediately before the fourth Saturday in May in any year shall continue to hold that office after that date (whether or not he ceases to hold the office of member of the council) until a person is elected or appointed to the office of mayor or president in accordance with this subsection; ;

and

(b) by adding after subsection (1) the following subsection—

(1a) The following provisions apply to and in relation to an election referred to

in paragraph (k) of subsection (1) of this section—

- (a) the councillors shall by secret ballot elect one of their number to the office of mayor or president, as the case requires;
- (b) where the question of the election of mayor or president is being considered at a meeting of the council the clerk shall preside but shall not vote on that question;
- (c) if the councillors, because of an equality of votes or for any other reason, do not elect one of their number to the office of mayor or president the election shall be postponed to the next meeting of the council;
- (d) if at that next meeting the councillors fail to elect one of their number to the office of mayor or president the clerk shall report the fact to the Minister;
- (e) when the Minister receives the report he may appoint one of the councillors, if he is willing to accept the appointment, to the office of mayor or president;
- (f) when none of the councillors is willing to accept the appointment the Minister may recommend to the Governor that a commissioner for the municipality be appointed. .

5. Section 75 of the principal Act is amended by adding after subsection (4a) the following subsection—

Section 75
amended.

(4b) A deputy mayor or deputy president vacates the office of deputy mayor or deputy president if he is elected to the office of mayor or president as the case may be pursuant to paragraph (k) of subsection (1) of section seventy-three. .

Heading to
Part VI
substituted.

6. The principal Act is amended by deleting the heading immediately preceding section 157 and substituting the following heading—

PART VI.—OFFICERS AND EMPLOYEES OF
THE MUNICIPALITY.

Section 157
amended.

7. Section 157 of the principal Act is amended by adding after paragraph (b) of subsection (1) a paragraph as follows—

(c) Paragraph (a) of this subsection does not apply to or in relation to the provisions of section one hundred and sixty-one or the regulations made pursuant to that section. .

Section 161
repealed and
re-enacted.

8. The principal Act is amended by repealing section 161 and re-enacting that section as follows—

Long
service
leave.

161. (1) In this section unless the contrary intention appears—

“Commission in Court Session” has the meaning given to that expression in the Industrial Arbitration Act, 1912;

“effective date” means the date on which the regulations first take effect;

“long service benefit” means long service leave with pay, *pro rata* long service leave with pay or a lump sum payment in lieu of long service leave or *pro rata* long service leave;

“regulations” means regulations made pursuant to this section.

(2) The Governor may make regulations—

- (a) prescribing the long service benefits to which officers and employees shall be entitled by reason of continuous service with one or more municipalities and prescribing the terms and conditions to which entitlement to any long service benefit so prescribed is subject; and
- (b) prescribing such other matters as are necessary or convenient to be prescribed in respect of the provision of long service benefits for officers and employees.

(3) Without affecting the generality of subsection (2) of this section the regulations shall—

- (a) prescribe circumstances in which service shall or shall not (as the case may require) be regarded as continuous for the purpose of determining the entitlement of an officer or employee to long service benefits;
- (b) prescribe the service that shall be taken into account in determining the entitlement of an officer or employee to long service benefits, which service may include service before the effective date;
- (c) provide that an officer or employee who has, immediately before the effective date, an entitlement to a long service benefit under another Act, or under by-laws made pursuant to section two hundred and thirty as enacted before that date, or under the provisions of an industrial award or agreement in force under the Industrial Arbitration Act, 1912, shall retain that entitlement;

- (d) prescribe that—
 - (i) in the case of officers or employees of a prescribed municipality; or
 - (ii) in prescribed circumstances, the long service benefits of an officer or employee who was in the employ of a municipality on a date specified in the regulations in that regard (being a date earlier than the effective date) and who remains in the employ of that municipality shall, to the prescribed extent, continue to be determined in accordance with by-laws in force immediately before the effective date being by-laws made by the council of the municipality pursuant to section two hundred and thirty as enacted before the effective date;
- (e) require a council to keep records of such matters as are prescribed relating to the employment of each officer or employee of the municipality and of his entitlement to long service benefits and to make copies of such records available upon written request by the officer or employee concerned or another council;
- (f) provide that where an officer or employee of a municipality takes a long service benefit and the service in respect of which the benefit accrued included—
 - (i) service in the employment of one or more other municipalities or in the employment of two or more other municipalities jointly; or
 - (ii) service in the employment of the first-mentioned municipality jointly with one or more other municipalities,the council of the first-mentioned municipality may recover from the

council of that other municipality or the council of each of those other municipalities, as the case may be, a contribution towards the cost to the first-mentioned council of the benefit, and prescribe the manner in which the amount of such contributions shall be determined;

- (g) constitute a Board of Reference (in this section referred to as "the Board") having such functions and powers in relation to the determination of questions and disputes arising in relation to the provision of long service benefits under the regulations as are prescribed;
- (h) provide for the appointment and tenure of members of the Board and for the protection of those members against personal liability;
- (i) authorise the Board, for any purpose connected with, or related to, the carrying out of its functions, to—
 - (i) hold inquiries;
 - (ii) summon witnesses;
 - (iii) receive evidence on oath or affirmation;
 - (iv) administer an oath or affirmation; and
 - (v) require the production of documents or records;
- (j) provide that a person who having been lawfully summoned to appear at an inquiry before the Board does not appear in obedience to the summons, or who appears, whether summoned or not, and—
 - (i) refuses to be sworn or affirmed as a witness;

- (ii) refuses to answer any question he is lawfully required to answer; or
 - (iii) refuses to produce any document or record he is lawfully required to produce,
commits an offence against the regulations and is liable to a penalty not exceeding two hundred dollars;
 - (k) provide for the notification, effect and enforcement of determinations of the Board;
 - (l) provide that appeals against determinations of the Board may be made, within the prescribed time and in the prescribed manner, to the Commission in Court Session.
- (4) Subject to the regulations—
- (a) on the effective date any provisions of—
 - (i) another Act;
 - (ii) any by-laws made pursuant to section two hundred and thirty as enacted before that date; or
 - (iii) any industrial award or agreement in force under the Industrial Arbitration Act, 1912, that regulate the provision of long service benefits shall cease to apply to or in relation to officers and employees of municipalities;
 - (b) on and after the effective date the provision of long service benefits for officers and employees of municipalities shall be regulated by the regulations. .

Section 173
amended.

9. Subsection (7) of section 173 of the principal Act is amended by deleting the word "The" in line one and substituting the passage "Subject to this Act, the".

10. Section 179 of the principal Act is amended by repealing subsection (1a) and substituting the following subsections—

Section 179
amended.

(1a) A council may appoint such member or members thereof as it considers necessary to be the deputy or deputies, as the case may be, to act on behalf of a member of an occasional or standing committee whenever that member is unable to be present at a meeting thereof and where two or more deputies are so appointed they shall have seniority in the order determined by the council.

(1aa) Where a member of a standing or occasional committee does not attend a meeting thereof any deputy of that member is, subject to subsection (1ab) of this section, entitled to attend that meeting in place of the member and act for the member thereat, and while so acting has all the powers of that member.

(1ab) A deputy who is one of two or more deputies of a member of a standing or occasional committee is not entitled to attend a meeting of the committee in place of that member if the meeting is attended by another deputy of that member who has precedence over that deputy in the order of seniority determined under subsection (1a) of this section. .

11. Section 230 of the principal Act is amended by inserting before the word "including" in line four of paragraph (a) the words "but not".

Section 230
amended.

12. Subsection (3) of section 297A of the principal Act is amended by deleting paragraph (c) and substituting the following paragraphs—

Section 297A
amended.

(c) the officer in charge in this State of the Australian Postal Commission established under the Postal Services Act 1975 of the Parliament of the Commonwealth;

- (ca) the officer in charge in this State of the Australian Telecommunications Commission established under the Telecommunications Act 1975 of the Parliament of the Commonwealth; .

Section 409A
amended.

13. Subsection (1) of section 409A of the principal Act is amended by deleting the expression “(16)” in line four and substituting the expression “(39)”.

Section 548
amended.

14. Subsection (1) of section 548 of the principal Act is repealed and the following subsections substituted—

(1) The council, after so preparing the respective budgets referred to in subsection (2) of section five hundred and forty-seven (in this section called “the budgets”) and after ascertaining the deficiency disclosed by them (in this section called the “budget deficiency”), shall, not later than the thirty-first day of August in each year, impose a general rate on rateable property in the district of the municipality.

(1a) Subject to this section, the general rate imposed under subsection (1) of this section shall be of an amount sufficient to yield the budget deficiency.

(1b) Notwithstanding subsections (1) and (1a) of this section, after preparing the budgets but before adopting them, the council may make written application to the Minister for approval to impose a general rate proposed in the application being a rate that will yield an amount less than the budget deficiency.

(1c) The council shall attach to an application made under subsection (1b) of this section—

(a) copies of the budgets; and

(b) a report that—

- (i) explains the provisions of the budgets for the collection of revenue and the extent to which the budgets confine disbursements to urgent or essential purposes;
- (ii) gives details of the general rate that would be sufficient to yield the budget deficiency and of the extent to which the amount that would be yielded by the general rate proposed in the application would be less than the budget deficiency;
- (iii) sets out the reasons why, in the opinion of the council, it would be impracticable or unreasonable to impose a general rate of an amount sufficient to yield the budget deficiency; and
- (iv) sets out the council's opinion as to the first occasion when it will be practicable and reasonable in a succeeding financial year to impose a general rate of an amount sufficient to yield the budget deficiency in respect of that financial year.

(1d) On application being made to him under subsection (1b) of this section the Minister may—

- (a) approve of the imposition of the general rate proposed in the application and direct the council to adopt the budgets;

- (b) approve of the imposition of the general rate proposed in the application and direct the council to adopt the budgets with such amendments as the Minister specifies in his direction; or
- (c) refer the application back to the council for further consideration by the council.

(1e) In exercising his discretion under subsection (1d) of this section the Minister shall have regard to—

- (a) whether or not, in his opinion, the budgets make adequate provision for the collection of revenue and confine disbursements to urgent or essential purposes; and
- (b) whether or not, in his opinion, the imposition of a general rate of an amount sufficient to yield the budget deficiency would be impracticable or would impose an unreasonable burden on ratepayers.

(1f) Where the Minister grants his approval pursuant to paragraph (a) or (b) of subsection (1d) of this section the council shall comply with his directions as to the adoption of the budgets and impose the general rate so approved.

(1g) On an application being referred back to it by the Minister pursuant to paragraph (c) of subsection (1d) of this section the council may—

- (a) impose a general rate of an amount sufficient to yield the budget deficiency; or
- (b) make a further written application to the Minister proposing—

- (i) the imposition of the general rate proposed in the original application together with amendments to the budgets; or
- (ii) the imposition of a general rate different to that proposed in the original application with or without amendments to the budgets.

(1h) On application being made to him under paragraph (b) of subsection (1g) of this section the Minister may—

- (a) approve of the imposition of the general rate proposed in the application and direct the council to adopt the budgets;
- (b) approve of the imposition of the general rate proposed in the application and direct the council to adopt the budgets with such amendments as the Minister specifies in his direction; or
- (c) reject the application.

(1i) The provisions of subsections (1e) and (1f) of this section apply, with such modifications and adaptations as are necessary, in relation to an application made under paragraph (b) of subsection (1g) of this section.

(1j) Where the Minister rejects an application made to him under paragraph (b) of subsection (1g) of this section the council shall adopt the budgets and impose a general rate of an amount sufficient to yield the budget deficiency.

(1k) Where the Minister grants his approval pursuant to paragraph (a) or (b) of subsection (1d) or paragraph (a) or (b) of subsection (1h) of this section he may, from time to time, with respect to the financial year to which the approval relates—

- (a) direct the council to furnish him with such information and returns relating to its financial position as he specifies in his direction; and
- (b) give any other direction he thinks fit in relation to the collection of revenue and the incurring of expenditure by the council,

and the council shall give effect to any direction so given. .

Section 599A
amended.

15. Section 599A of the principal Act is amended

(a) as to subsection (1)—

(i) by deleting the passage “section five hundred and sixty-one the payment of rates is postponed” in lines two and three and substituting the passage “the Pensioners (Rates Rebates and Deferments) Act, 1966 the payment of rates is deferred”; and

(ii) by deleting the word “postponed” in the penultimate line and substituting the word “deferred”; and

(b) as to subsection (2) by deleting the word “postponed” in line one and substituting the word “deferred”. .

Section 599B
added.

16. The principal Act is amended by adding after section 599A the following section—

599B. (1) Where pursuant to section five hundred and forty-eight the Minister has approved of an application by a council to

Power to
borrow in
respect of
budget
deficit.

impose a general rate that will yield an amount less than the budget deficiency referred to in that section the council may, subject to any direction given by the Minister pursuant to that section, obtain advances from a bank on overdraft of its current account of an amount not exceeding the amount by which that budget deficiency exceeds the estimated yield of that rate.

(2) Subsection (1) of this section authorizes a council to obtain advances on overdraft of its current account that are in addition to advances that it may so obtain pursuant to section five hundred and ninety-nine. .

17. Section 637 of the principal Act is amended— Section 637
amended.

(a) by repealing subsection (3) and substituting the following subsection—

(3) Subject to subsection (4) of this section the council of a municipality shall on demand pay to the Minister the amount so assessed. ; and

(b) as to subsection (4), by deleting paragraph (b) and substituting the following paragraph—

(b) a city or town, or a shire specified in the Twenty-seventh Schedule, that satisfies the Minister that—

(i) it has established and maintains a system of internal audit;

(ii) the internal audit is carried out by a Government Inspector of Municipalities; and

(iii) the whole of the cost of the carrying out of the internal audit is borne by the city, town or shire, as the case may be, .

Twenty-
seventh
Schedule
substituted.

18. The Twenty-seventh Schedule to the principal Act is deleted and the following schedule substituted—

TWENTY-SEVENTH SCHEDULE.

Shires Specified for the Purposes
of Section 637(4).

Armadale-Kelmscott.

Bayswater.

Belmont.

Kalamunda.

Mundaring.

Peppermint Grove.

Rockingham.

Swan.

Wanneroo. .
