

LOCAL GOVERNMENT (No. 4).

No. 105 of 1973.

AN ACT to amend the Local Government Act, 1960-1973.

[Assented to 4th January, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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. 4), 1973.*

Short title
and citation.

(2) In this Act the Local Government Act, 1960-1973, is referred to as the principal Act.

Reprinted as
approved for
reprint, 3rd
May, 1968,
and amended
by Acts
Nos. 21 of
1968, 35, 83
and 107 of
1969, 16, 21,
49, 80 and
120 of 1970,
66 of 1971,
46, 81 and
94 of 1972;
and 21 of
1973.

(3) The principal Act as amended by this Act may be cited as the Local Government Act, 1960-1973.

Commence-
ment.

2. This Act or any provision thereof shall come into operation on such date as is or such dates as are, respectively, fixed by proclamation.

S. 6
amended.

3. Section 6 of the principal Act is amended—

(a) as to the interpretation of the expression “officer”, by adding after the passage “building surveyor,” in line four of that interpretation the passage “town planner,”; and

(b) by adding after the interpretation of the expression “town clerk” a new interpretation as follows—

“town planner” means the senior officer exercising town or regional planning functions in relation to the municipality; .

S. 159
amended.

4. Section 159 of the principal Act is amended by adding after the passage “engineer,” in line five the passage “town planner,”.

S. 160
amended.

5. Section 160 of the principal Act is amended by adding after the passage “engineer,”—

(a) in line two of subsection (1);

(b) in line two of subsection (2);

(c) in line three of subsection (4),

the passage “town planner,”.

S. 173
amended.

6. Section 173 of the principal Act is amended—

(a) as to subsection (9), by deleting the words “his seat”, in line three of that subsection, and substituting the words “the council chamber”; and

(b) as to subsection (10), by deleting the passage "on the voices, unless a member of the council calls for a show of hands, in which case, the result is determined on the count of raised hands", in lines two to four of that subsection, and substituting the passage "on the count of raised hands, but may be determined on the voices unless a member of the council calls for a show of hands".

7. Section 174 of the principal Act is repealed and re-enacted with amendments as two new sections as follows—

S. 174
repealed and
re-enacted.

174. (1) For the purposes of this section, a person shall be regarded as having an interest in a matter if he has a direct or indirect pecuniary interest in that matter other than an interest shared in common with the public or the ratepayers of the municipality or the inhabitants of the district of the municipality.

Members
prohibited
from taking
part in
considera-
tion of or
voting on a
matter in
which they
are
interested.

(2) Subject to any exemption granted pursuant to subsection (9) of this section, this section applies to all meetings of the council or of a committee of the council, to all persons who are members of the council, and to all persons who are members of a committee of the council pursuant to section one hundred and eighty or section one hundred and eighty-one.

(3) A person to whom this section applies who has an interest in a matter which is to be considered or discussed or to be voted upon at a meeting to which this section applies shall disclose the fact that he has the interest either—

(a) by written notice given to the clerk prior to the meeting; or

- (b) at the meeting as soon as is practicable after the commencement of the meeting.

(4) A person 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—

- (a) the interest that person has is, in the opinion of the Mayor or President, 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) the persons present and entitled to vote at the meeting determine by an absolute majority on a motion, which motion may be moved without notice, that he may so speak.

(5) Where the Mayor or President determines 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 that person may also vote upon the matter but there shall be recorded in the minutes of the meeting particulars of that determination.

(6) Where a motion permitting a person to speak has been passed in accordance with paragraph (b) of subsection (4) of this section, the person so permitted to speak is not entitled to vote on the matter and there shall be recorded in the minutes of the meeting particulars of the motion and of the moving and carrying of the motion and the fact that the member so permitted to speak did not vote on the matter.

(7) Where a person gives written notice of an interest to the clerk or where an interest is disclosed by a person at a meeting the clerk

shall record in a book to be kept for the purpose particulars of the disclosures so made in accordance with the requirements of this section, and the book shall be made available by the clerk for inspection by ratepayers of the municipality at reasonable times.

(8) A council or a committee of a council may by resolution exclude any person to whom this section applies who has an interest in any matter from any meeting to which this section applies whilst that matter is being considered, discussed or voted upon, and any person named in that resolution shall not attend the meeting during that time.

(9) Where—

- (a) the number of persons recorded as having an interest in a matter is at any one time so great a proportion as to impede the transaction of business at that meeting; or
- (b) the Minister for any other reason is of the opinion that it is in the interest of ratepayers or inhabitants of the district,

the Minister may, on the application of the council or of the clerk, exempt a member or members from the provisions of this section either unconditionally or subject to specified conditions or restrictions, and an exemption so granted takes effect according to its tenor.

(10) A person who—

- (a) contravenes the provisions of this section; or
- (b) contravenes any condition or restriction specified in relation to any exemption granted by the Minister,

commits an offence unless he did not know, and proves that he did not know, that a matter in which, at the material time, he had an interest was the subject for consideration, discussion or voting.

Penalty: Four hundred dollars.

Application
of s. 174.

174A. (1) In the application of section one hundred and seventy-four—

- (a) any contract, proposed contract, proposal, scheme, town or regional planning zoning or use, or other thing in relation to which the municipality is to supply or receive goods or services, or has a direct or indirect pecuniary interest, or in relation to which the council has the power of approval or refusal, shall be taken to be a matter in which a person may have an interest;
- (b) in relation to the adoption, modification or revocation of a town or regional planning scheme for any area comprised in the district of the municipality, or to the rezoning of a lot or lots, a person shall be regarded as not likely to be influenced by any interest other than—
 - (i) an interest in a lot to be rezoned or an adjoining or adjacent lot to be affected by the rezoning; or
 - (ii) an interest in another lot which although neither adjoining or adjacent would, in the opinion of the Mayor or President, be likely to be advantaged or disadvantaged by the rezoning;

- (c) a person is to be regarded as having an interest in a matter if that person or his nominee is—
- (i) a member of a body corporate or other body; or
 - (ii) a partner or in the employment of another person,
- having a direct interest in the matter unless the interest is held in the capacity of a trustee or in some other capacity which affords to him no beneficial interest, or unless that body or other person is a public body; and
- (d) in the case of persons living together the interest of one if known to the other is to be regarded as the interest of the other, and where persons are married to each other they are to be regarded as living together unless living apart pursuant to a deed of separation or an order of a court of competent jurisdiction.

(2) For the purposes of paragraph (c) of subsection (1) of this section the term “public body” includes a person or association of persons who as a body and not for their own profit carry on activities for the promotion and encouragement of, and giving effect to, things of public concern and interest, whether in relation to churches, chapels, religious bodies, schools, hospitals, benevolent institutions, charitable institutions, science, art, literature, recreation, the supply of services or commodities or otherwise.

8. Section 181 of the principal Act is amended by adding after the passage “public library,” in line six of subsection (1), the word “museum”.

S. 181
amended.

S. 190
amended.

9. Section 190 of the principal Act is amended by inserting after subsection (5) three new subsections as follows—

(5a) The notice of the intention to submit the by-law for confirmation by the Governor to be published in a newspaper in accordance with paragraph (d) of subsection (5) of this section and the text of the by-law posted on the official notice board of the council in accordance with paragraph (e) of that subsection shall in each case be accompanied by a notice making known to the public that objections to and representations in respect of the proposed by-law may be made to the council during the period of twenty-one days commencing on the date of the publication and in the manner specified in the notice.

(5b) Within the period of twenty-one days commencing on the date of the publication and in the manner so specified, any person or body that wishes to make an objection or representation to the council in respect of the proposed by-law may submit that objection or representation with all relevant accompanying documents or information to the council.

(5c) The council shall consider any objection or representation made under this section and shall report thereon to the Minister at the time of or prior to the delivery of the sealed form to the Minister pursuant to paragraph (f) of subsection (5) of this section.

S. 218
amended
and s. 244A
added.

10. The principal Act is amended—

(a) as to section 218, by redesignating the the section as subsection (1) and adding a new subsection as follows—

(2) In relation to the prohibition or regulation of bills, placards, advertisements and hoardings used for advertising

purposes, and in relation to the removal of any such thing, the provisions of section two hundred and forty-four A apply as if those provisions were enacted in this section. ; and

- (b) by adding after section 244 a new section as follows—

244A. (1) In relation to the prohibition, regulation, control and removal of advertisements and advertising structures the Governor may make and publish in the *Gazette* uniform general by-laws for all or any of the purposes for which by-laws may be made by a council under section two hundred and eighteen and subparagraphs (i) and (iii) of paragraph (1) of section two hundred and forty-four, and all of the provisions of section four hundred and thirty-three A apply to and in relation to uniform general by-laws made under the provisions of this section as if those provisions were enacted in this section.

Advertise-
ments.

(2) A uniform general by-law made under the provisions of this section shall provide for the establishment of an appeal tribunal with power to hear and determine any question as to—

- (a) the conditions under which a licence for an advertisement or structure is issued;
- (b) the refusal to grant a licence;
- (c) the revocation of a licence; and
- (d) the removal of any advertisement or advertising structure not conforming to the requirements of that by-law but in existence prior to the enactment of the by-law.

(3) For the purposes of a uniform general by-law made under the provisions of this section an appeal tribunal shall be constituted by—

- (a) a chairman appointed by the Minister;
- (b) a person who is a member of a municipal council, nominated by that body known as The Local Government Association of W.A. (Inc.);
- (c) a person who is an architect recognised as an expert in the field of town planning, nominated by the Western Australian Division of the Royal Australian Planning Institute; and
- (d) a person who is the building surveyor appointed for a municipality, appointed by the Minister.

(4) A uniform general by-law made under the provisions of this section may require that any advertisement of a kind specified therein identifies the person authorising it and the person printing or publishing it, and may provide for the summary removal of any advertisement which fails to comply with that requirement.

S. 258
amended.

11. Section 258 of the principal Act is amended by inserting after subsection (5) three new subsections as follows—

(5a) The notice of intention to submit the adoption for confirmation by the Governor to be published in a newspaper in accordance with paragraph (c) of subsection (4) of this section

and the text of the by-law posted on the official notice board of the council in accordance with paragraph (d) of that subsection shall in each case be accompanied by a notice making known to the public that objections to and representations in respect of the adoption of the proposed by-law may be made to the council during the period of twenty-one days commencing on the date of the publication and in the manner specified in the notice.

(5b) Within the period of twenty-one days commencing on the date of the publication and in the manner so specified, any person or body that wishes to make an objection or representation to the council in respect of the adoption of the proposed by-law may submit that objection or representation with all relevant accompanying documents or information to the council.

(5c) The council shall consider any objection or representation made under this section and shall report thereon to the Minister at the time of or prior to the delivery of the sealed form to the Minister pursuant to paragraph (e) of subsection (4) of this section.

12. Section 360 of the principal Act is amended by adding after subsection (2) a new subsection as follows—

S. 360
amended.

(3) A person who is entitled to claim under the provisions of section five hundred and sixty-one to be exempt from liability for the payment of rates or charges under this Act in respect of land of which he is in actual occupation as owner may claim to be entitled to exemption from the liability to pay a charge otherwise payable under this section in relation to that land and thereupon the provisions of section five hundred and sixty-one shall apply to the payment of that charge.

S. 374
amended.

13. Section 374 of the principal Act is amended by adding after subsection (1a) new subsections as follows—

(1b) A council may—

- (a) delegate to a person appointed to the office of building surveyor the authority to approve or disapprove on behalf of the council in so far as it relates to building matters any application made under this section where that application conforms with the requirements of the by-laws and the pre-determined policy of the council; and
- (b) delegate to a person appointed to the office of town planner the authority to approve or disapprove on behalf of the council in so far as it relates to the planning aspects any application made under this section where that application conforms with the requirements and pre-determined policy of the council in relation to town or regional planning,

and may vary or revoke a delegation.

(1c) A delegation under subsection (1b) of this section does not prevent the exercise of a power or the performance of a function by the council.

(1d) A power or function delegated by the council and exercised or performed by the delegate shall be taken to have been exercised by the council.

S. 460
amended.

14. Section 460 of the principal Act is amended—

- (a) by deleting subsection (1) and substituting a new subsection as follows—

(1) Where there is not a public pound situated within five kilometres of the land, or where the holding capacity of

any such pound is exhausted, the owner or occupier of land on which cattle are found trespassing or in respect of which the provisions of subsection (3) of section four hundred and fifty-eight apply may impound the cattle in a convenient and suitable place—

(a) upon his land; or

(b) by arrangement with the owner of any adjacent land, upon that land. ;

(b) as to subsection (2) by deleting the words “The owner or occupier of the land”, in line one of that subsection, and substituting the words “A person impounding cattle under the provisions of subsection (1) of this section”;

(c) as to subsection (3),—

(i) by deleting paragraph (a) and substituting a new paragraph as follows—

(a) A person impounding cattle under the provisions of subsection (1) of this section shall cause the cattle to be fed and maintained while they are impounded. ;

(ii) by deleting the words “impounding the cattle” in line three of paragraph (b) and substituting the words “causing the cattle to be impounded”;

(iii) by deleting the words “the owner of the land may impound them in the nearest suitable public pound”, in lines nine and ten of paragraph (b)

and substituting the passage “the person who caused the cattle to be impounded may—

(i) impound the cattle in the nearest suitable public pound;
or

(ii) arrange with the council for a sale of the cattle to be carried out by a person appointed by the council at the place where the cattle are impounded or at such other place as the council directs and in the same manner as if the cattle had been impounded under subparagraph (i) of this paragraph in a public pound established and maintained by that council”;

(d) by adding after subsection (3) a new subsection as follows—

(3a) Where a council is requested by the owner or occupier of land within its district who has caused cattle to be impounded under this section to arrange for a sale of the cattle to be carried out by a person appointed by the council, the council shall make the requisite arrangements accordingly and shall cause a sale to be held and the money received in respect of the sale to be dealt with as though the cattle had been impounded in a public pound which was established and maintained by that council. ; and

(e) as to subsection (4),—

(i) by inserting after the word “cattle” in line one of that subsection the words “or causing cattle to be impounded”; and

- (ii) by deleting the words “on his land” in line five of that subsection and substituting the words “or at his request”.

15. Section 512 of the principal Act is amended, as to paragraph (h), by adding after the word “employee” in line twelve the words “without the prior written consent of the Minister”.

S. 512
amended.

16. Section 513 of the principal Act is amended, as to paragraph (h), by deleting the passage “and either the loss so incurred, or twenty dollars whichever is the lesser amount” and substituting the passage—

S. 513
amended.

- (i) where the loss of earnings so incurred is less than twenty dollars, the amount of the loss; or
- (ii) where the amount of the loss of earnings exceeds twenty dollars or cannot accurately be certified, the sum of twenty dollars.

17. The principal Act is amended by adding after section 516 a new section as follows—

S. 516A
added.

516A. (1) If a council is of opinion that a tree constitutes a danger to persons or property on land adjoining the land on which the tree is situate the council may, by written notice served on the owner of the land on which the tree is situate, require him to render the tree safe.

Power to
render
trees safe.

(2) In default of compliance with a notice so served within thirty-five days after the date of service the council may remove the tree or part of it at the expense of the owner and for the purpose may lawfully enter on the land, by its agents, servants and workmen and carry

out necessary work, and the expense of doing so is recoverable by the council from the owner for the time being of that land in the same manner as rates recoverable under this Act, and until recovered is a charge upon the land.

(3) An owner who is served with a notice under subsection (1) of this section may, within thirty days of the service upon him of the notice, by causing notice in writing stating his grounds to be served upon the Minister, appeal against the decision of the council to the Minister who may confirm or disallow the notice and thereupon the order of the Minister has effect according to its tenor and is not subject to appeal.

(4) In case of emergency the council may enter upon land and carry out the necessary work to render a tree safe without the necessity for thirty-five days prior notice being given to the owner of the land, but in any such case the council shall give such notice, if any, as is practicable and the expense of the work shall not be recoverable without the consent of the Minister.

(5) A person who is entitled to claim under the provisions of section five hundred and sixty-one to be exempt from liability for the payment of rates or charges under this Act in respect of land of which he is in actual occupation as owner may claim to be entitled to exemption from the liability to pay a charge otherwise payable under this section in relation to that land and thereupon the provisions of section five hundred and sixty-one shall apply to the payment of that charge.

S. 533
amended.

18. Section 533 of the principal Act is amended by adding after the words "other than a coal-mining lease", in paragraph (eb) of subsection (3), the words "or a miner's homestead lease".

19. Section 556 of the principal Act is amended by adding after subsection (1) thereof a new subsection as follows—

S. 556
amended.

(1a) The Governor may, in respect of any person appointed to constitute or to be registrar of a Valuation Appeal Court, appoint another person to be the deputy of the person appointed under subsection (1) of this section and while taking the place of that firstmentioned person his deputy has all the powers and entitlements of the person appointed under subsection (1).

20. The principal Act is amended by adding after section 599 a new section as follows—

S. 599A
added.

599A. (1) Where in accordance with the provisions of section five hundred and sixty-one the payment of rates is postponed in respect to any financial year, a council may, with the written consent of the Minister, obtain advances from a bank on overdraft of an amount not exceeding the amount of the rates so postponed in that year.

Power to
borrow in
respect of
postponed
rates.

(2) The amount of rates so postponed and the advances received under this section shall both be shown in the budget of the municipal fund.

21. Section 669A of the principal Act is amended by deleting paragraph (a) of subsection (2) thereof and substituting a new paragraph as follows—

S. 669A
amended.

(a) notwithstanding the provisions of section six hundred and sixty-eight the council has the sole responsibility for regulating and controlling traffic in that part in relation to the powers conferred on that council by any of those by-laws; and .