

Legal Deposit Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

Legal Deposit Bill 2011

A Bill for

An Act to facilitate the preservation of the State's published documentary heritage for current and future generations by —

- **requiring the deposit with the State Librarian of copies of certain published material; and**
- **authorising the State Librarian to require that certain material published on the Internet be deposited with the State Librarian, and to make consequential amendments to the *Library Board of Western Australia Act 1951* and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Legal Deposit Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Purpose of Act

(1) The purpose of this Act is to facilitate the preservation of the State’s published documentary heritage for current and future generations.

(2) The purpose is to be achieved by —

- (a) requiring that copies of certain documents published in the State are deposited with the State Librarian; and
- (b) authorising the State Librarian to require that certain documents published on the Internet are deposited with the State Librarian.

4. Terms used

(1) In this Act, unless the contrary intention appears —

Board means The Library Board of Western Australia constituted by the *Library Board of Western Australia Act 1951* section 5(1);

document means a document in any form and includes —

- (a) any writing on any material (for example, books, periodicals, newspapers, magazines, reports, newsletters, calendars, directories, handbooks,

- 1 guidebooks, sheet music, maps, plans and pamphlets);
2 and
- 3 (b) information recorded, stored or communicated by means
4 of an electronic recording device, computer or other
5 electronic medium (for example, audio cassettes, video
6 cassettes, multimedia kits, computer magnetic tapes,
7 computer optical disks, floppy disks, compact disks,
8 CDROMs and DVDs); and
- 9 (c) information recorded or stored by means of any other
10 kind of device or medium (for example, a film,
11 microfilm, microfiche or vinyl record); and
- 12 (d) information on a website;
- 13 **electronic** includes electrical, digital, magnetic, optical,
14 electromagnetic, biometric and phototonic;
- 15 **information** includes information in the form of data, text,
16 images or sound;
- 17 **non-print public document** means a public document that is
18 published in a medium other than print and includes a document
19 of the kind referred to in the definition of **document**
20 paragraph (b) or (c);
- 21 **public document** —
- 22 (a) means a document —
- 23 (i) that is printed or produced by any other means in
24 the State or is commissioned to be printed or
25 otherwise produced outside the State (including
26 outside Australia) by a person who is resident in
27 the State or whose principal place of business is
28 in the State; and
- 29 (ii) of which one or more copies are published in the
30 State;
- 31 but
- 32 (b) does not include —
- 33 (i) a document on the Internet; or

s. 4

- 1 (ii) a State record (as defined in the *State Records*
2 *Act 2000* section 3(1)); or
- 3 (iii) a document, or a document belonging to a class
4 of document, that is prescribed by the regulations
5 not to be a public document;
- 6 ***publish*** means —
- 7 (a) in relation to a document other than a document on the
8 Internet, to make the document publicly available by —
- 9 (i) issuing one or more copies of the document to
10 the public; or
- 11 (ii) making one or more copies of the document
12 available to the public upon request;
- 13 or
- 14 (b) in relation to a document on the Internet, to make the
15 document available to the public on the Internet,
16 whether or not there is any restriction on members of the public
17 acquiring, accessing or using the document;
- 18 ***publisher*** means —
- 19 (a) in relation to a document other than a document on the
20 Internet, the person who publishes the document; or
- 21 (b) in relation to a document on the Internet, the person who
22 has control over the content of the website, or the part of
23 the website, on which the document is located;
- 24 ***restriction***, in relation to acquiring, accessing or using a
25 document —
- 26 (a) means a physical, technical or mechanical restriction
27 such as the requirement to pay a fee or price, or some
28 other requirement such as the use of a password, that
29 prevents or restricts free public access to the document;
30 but
- 31 (b) does not include a legal restriction recorded in or
32 claimed for the document;

1 **State Librarian** means the person appointed to the office of
2 State Librarian under the *Library Board of Western Australia*
3 *Act 1951* section 6(1A);

4 **WA Internet document** has the meaning given in section 5.

5 (2) In this Act, unless the contrary intention appears, a reference to
6 a copy of a public document includes a reference to a device or
7 medium that contains a non-print public document.

8 **5. Term used: WA Internet document**

9 (1) A document published on the Internet is a **WA Internet**
10 **document** if—

11 (a) the publisher of the document is a person who is resident
12 in the State or whose principal place of business is in the
13 State; or

14 (b) under the regulations, the document is to be taken to be
15 a WA Internet document.

16 (2) A WA Internet document is the document at a particular point in
17 time, and if that document is subsequently changed in any
18 significant respect, it becomes a different WA Internet
19 document for the purposes of this Act.

20 (3) A WA Internet document does not include—

21 (a) a State record (as defined in the *State Records Act 2000*
22 section 3(1)); or

23 (b) a document, or a document belonging to a class of
24 document, that is prescribed by the regulations not to be
25 a WA Internet document.

26 **6. Crown bound**

27 This Act binds the Crown in right of the State and, so far as the
28 legislative power of the Parliament permits, the Crown in all its
29 other capacities.

1 **Part 2 — Deposit of public documents with State**
2 **Librarian**

3 **7. Application of Part**

- 4 (1) This Part applies to a public document that is published on or
5 after the day on which this section comes into operation.
- 6 (2) The fact that a document is also published on the Internet does
7 not affect the application of this Part in respect of the document.

8 **8. Copies of public documents to be given to State Librarian**

9 The publisher of a public document to which this Part applies
10 must, in accordance with the regulations, give to the State
11 Librarian, at the publisher's own expense, the prescribed
12 number of copies (not exceeding 2) of the document.

13 **9. Direction to comply with s. 8**

- 14 (1) If the State Librarian considers that the publisher of a public
15 document has not given copies of the document to the State
16 Librarian in accordance with section 8, the State Librarian may
17 direct the publisher to do so.
- 18 (2) The direction may relate to —
19 (a) one or more public documents; or
20 (b) one or more classes of public document.
- 21 (3) The direction must be by a written notice signed by the State
22 Librarian and given to the publisher.
- 23 (4) The direction must specify —
24 (a) each public document or class of public document to
25 which the direction relates; and
26 (b) the period (being at least 30 days after the date of the
27 notice) within which the publisher must comply with the
28 direction; and
29 (c) any other matter prescribed by the regulations.

1 (5) The publisher must not, without reasonable excuse, fail to
2 comply with the direction.

3 Penalty:

4 (a) for an individual — a fine of \$1 000;

5 (b) for a body corporate — a fine of \$5 000.

6 **10. State Librarian may grant exemption from s. 8**

7 (1) The State Librarian may by order exempt a specified person or a
8 specified class of person from section 8 or from specified
9 provisions of the regulations made for the purposes of that
10 section.

11 (2) An order under subsection (1) may provide for circumstances in
12 which, and conditions subject to which, an exemption is to
13 apply.

14 (3) An exemption is of no effect at any time when a condition to
15 which it is subject is not being observed.

16 (4) An order under subsection (1) is subsidiary legislation for the
17 purposes of the *Interpretation Act 1984*, and section 42 of that
18 Act applies to and in relation to an order as if the order were a
19 regulation.
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1 **Part 3 — Deposit of WA Internet documents with**
2 **State Librarian**

3 **11. Application of Part**

4 This Part applies to a WA Internet document —

- 5 (a) that is published on or after the day on which this
- 6 section comes into operation; and
- 7 (b) whether or not the document is published in any other
- 8 manner.

9 **12. Publishers to provide location of WA Internet documents to**
10 **State Librarian**

- 11 (1) The publisher of a WA Internet document to which this Part
- 12 applies must, within 30 days after the document is published,
- 13 give to the State Librarian the prescribed information in relation
- 14 to the location of the document on the Internet.
- 15 (2) *The Criminal Code* section 177 does not apply to the obligation
- 16 under subsection (1).

17 **13. Direction to give WA Internet documents to State Librarian**

- 18 (1) The State Librarian may direct the publisher of a WA Internet
- 19 document to which this Part applies to give to the State
- 20 Librarian, at the publisher's own expense, a specified number of
- 21 electronic copies (not exceeding 3) of the document in such
- 22 format as is specified in the direction.
- 23 (2) The direction may relate to —
- 24 (a) one or more WA Internet documents; or
- 25 (b) one or more classes of WA Internet document.
- 26 (3) The direction may —
- 27 (a) require the publisher to give the specified number of
- 28 electronic copies of a WA Internet document each time

- 1 the document (by reason of section 5(2)) becomes a
2 different WA Internet document; or
- 3 (b) require the publisher to provide the specified number of
4 electronic copies of the document at such reasonable
5 intervals as are specified in the direction.
- 6 (4) The direction must not specify a requirement of the kind
7 referred to in subsection (3)(a) unless the State Librarian
8 considers that it is reasonably practicable for the publisher to
9 comply with the requirement.
- 10 (5) The direction must be by a written notice signed by the State
11 Librarian and given to the publisher.
- 12 (6) The direction must specify —
- 13 (a) each WA Internet document or class of WA Internet
14 document to which the direction relates; and
15 (b) any other matter prescribed by the regulations.
- 16 (7) The publisher must not, without reasonable excuse, fail to
17 comply with the direction.
- 18 Penalty:
- 19 (a) for an individual — a fine of \$1 000;
20 (b) for a body corporate — a fine of \$5 000.
- 21 (8) For the purposes of subsection (7), the publisher is to be taken
22 to have complied with the direction if —
- 23 (a) the publisher expressly authorises the State Librarian to
24 make, free of charge, copies of a WA Internet document
25 to which the direction relates; and
26 (b) if there is a restriction that prevents the State Librarian
27 from making those copies, the publisher provides the
28 State Librarian with the means to make those copies
29 without imposing an unreasonable burden on the
30 resources of the Board.

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Part 4 — Legal proceedings

14. Civil action to obtain copies of public documents

- (1) If the publisher of a public document or a WA Internet document fails to comply with a direction given to the publisher under section 9(1) or 13(1) in respect of the document, the Board may apply to the District Court for an order —
 - (a) that the publisher give to the State Librarian the copies of the document that ought to have been given to the State Librarian under section 8 or 13(1); or
 - (b) that the publisher pay to the Board the costs reasonably incurred, or to be incurred, by the Board in obtaining the copies of the document that ought to have been given to the State Librarian under section 8 or 13(1).
- (2) The Court may make the order sought if the Court is satisfied —
 - (a) in the case of a direction under section 9(1), that the publisher did not give copies of the document to the State Librarian in accordance with section 8 and that the publisher, without reasonable excuse, failed to comply with the direction under section 9(1); or
 - (b) in the case of a direction under section 13(1), that the publisher, without reasonable excuse, failed to comply with the direction under section 13(1).
- (3) The order may be on such terms and conditions as the Court thinks fit.
- (4) An order under this section is a judgment of the Court and may be enforced accordingly.
- (5) This section does not affect the liability of a person under section 9(5) or 13(7).

1 **15. Civil action to require publishers to provide assistance to**
2 **State Librarian**

- 3 (1) If the publisher of a non-print public document or a WA Internet
4 document fails to comply with a direction given to the publisher
5 under section 18(2) to provide reasonable assistance in respect
6 of the document, the Board may apply to the District Court for
7 an order that the publisher provide to the State Librarian the
8 assistance that ought to have been provided in respect of the
9 document under that direction.
- 10 (2) The Court may make the order sought if the Court is satisfied
11 that —
- 12 (a) the assistance required under the direction was
13 reasonably necessary for the purposes of this Act; and
- 14 (b) the publisher, without reasonable excuse, failed to
15 comply with the direction.
- 16 (3) The order may be on such terms and conditions as the Court
17 thinks fit.
- 18 (4) An order under this section is a judgment of the Court and may
19 be enforced accordingly.
- 20 (5) This section does not affect the liability of a person under
21 section 18(6).

22 **16. Who may commence criminal proceedings**

23 Without limiting the functions of the DPP under the *Director of*
24 *Public Prosecutions Act 1991*, a prosecution for an offence
25 under this Act may only be commenced by the Board or a
26 person authorised in writing by the Board to do so.

27 **17. Other powers of court in criminal proceedings**

- 28 (1) If, under section 9(5) or 13(7), a court convicts a person of
29 failing to comply with a direction given to the person in respect
30 of a public document or a WA Internet document, the court

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- 1 may, if the court considers it appropriate in the circumstances of
2 the case —
- 3 (a) order the offender to give to the State Librarian the
4 copies of the document that ought to have been given to
5 the State Librarian under section 8 or 13(1); or
- 6 (b) order the offender to pay to the Board the costs
7 reasonably incurred, or to be incurred, by the Board in
8 obtaining the copies of the document that ought to have
9 been given to the State Librarian under section 8
10 or 13(1).
- 11 (2) If, under section 18(6), a court convicts a person of failing to
12 comply with a direction given to the person to provide
13 reasonable assistance in respect of a non-print public document
14 or a WA Internet document, the court may, if the court
15 considers it appropriate in the circumstances of the case, order
16 the offender to provide to the State Librarian the assistance that
17 ought to have been provided in respect of the document under
18 the direction.
- 19 (3) An order under subsection (1) or (2) —
- 20 (a) may be made on such terms and conditions as the court
21 thinks fit; and
- 22 (b) is in addition to any other penalty that may be imposed
23 on the offender; and
- 24 (c) may be enforced as if it were a judgment of the court.

Part 5 — General

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2 **18. Publishers to assist State Librarian to preserve and access**
3 **deposited copies of certain documents**

4 (1) This section applies to a document that is a non-print public
5 document or a WA Internet document.

6 (2) If the State Librarian considers that it is reasonably necessary
7 for the purposes of this Act, the State Librarian may, at any
8 time, direct the publisher of a document to which this section
9 applies to provide, at the publisher's own expense, reasonable
10 assistance to the State Librarian to enable the State Librarian to
11 preserve and access the copies of the document that are obtained
12 by the State Librarian under this Act.

13 (3) The direction may relate to —

- 14 (a) one or more documents; or
15 (b) one or more classes of document.

16 (4) The direction must be by written notice signed by the State
17 Librarian and given to the publisher.

18 (5) The direction must specify —

- 19 (a) each document or class of document to which the
20 direction relates; and
21 (b) the manner in which the publisher is required to assist
22 the State Librarian; and
23 (c) the period (being at least 30 days after the date of the
24 notice) within which the publisher must comply with the
25 direction; and
26 (d) any other matter prescribed by the regulations.

27 (6) The publisher must not, without reasonable excuse, fail to
28 comply with the direction.

29 Penalty:

- 30 (a) for an individual — a fine of \$1 000;

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- 1 (b) for a body corporate — a fine of \$5 000.
- 2 (7) The regulations may provide for circumstances in which a
3 direction under this section may require the publisher of a
4 document to provide to the State Librarian a copy of any
5 computer program necessary to enable the State Librarian to
6 preserve and access the copies of the document.

7 **19. Regulations**

- 8 (1) The Governor may make regulations prescribing all matters that
9 are required or permitted by this Act to be prescribed, or are
10 necessary or convenient to be prescribed to give effect to the
11 purposes of this Act.
- 12 (2) Regulations made under subsection (1) for the purposes of
13 section 8 may do any or all of the following —
- 14 (a) prescribe the number of copies of a public document to
15 be given to the State Librarian under that section,
16 including by prescribing different numbers of copies
17 (not exceeding 2) according to the class of document or
18 such other circumstances or factors as may be specified
19 in the regulations;
- 20 (b) specify the period (being not less than 30 days) within
21 which copies of a public document must be given to the
22 State Librarian after it is published;
- 23 (c) provide for the manner in which copies of a public
24 document must be given;
- 25 (d) provide for circumstances in which copies of a reprint or
26 subsequent edition of a public document are not required
27 to be given;
- 28 (e) in respect of cases where a public document is published
29 in copies of a differing quality or standard, specify
30 requirements in relation to the quality or standard of the
31 copies given;
- 32 (f) in respect of cases where a public document is published
33 in different formats, specify requirements in relation to

- 1 the format of the copies given, including by providing
2 for the State Librarian to determine (either generally or
3 in a particular case) the format of the copies given;
- 4 (g) in respect of cases where a public document is published
5 in more than one medium —
- 6 (i) provide that each of those media is a different
7 public document for the purposes of section 8; or
- 8 (ii) provide that section 8 applies only in respect of
9 one or some of those media, and provide for the
10 manner of determining that medium or media;
- 11 (h) require materials (for example, containers, wrapping
12 material, notices or instructions) that generally
13 accompany a public document to be given with the
14 copies of the public document;
- 15 (i) provide for the issuing of a receipt in relation to copies
16 of a public document given, including circumstances in
17 which a receipt is not required to be issued.
- 18 (3) Regulations made under subsection (1) may provide for matters
19 relating to access to or use of the copies of a public document or
20 of a WA Internet document that are obtained by the State
21 Librarian under this Act, including by providing for limitations
22 on access and use.
- 23 (4) Subsections (2) and (3) do not limit the making of regulations
24 under subsection (1).

25 **20. Regulations: consultation**

- 26 (1) Before regulations are made under this Act, the Minister must,
27 as far as is reasonably practicable, consult with any persons who
28 appear to the Minister to be likely to be affected by the
29 regulations.
- 30 (2) Consultation may be undertaken in any way that the Minister
31 thinks appropriate in the circumstances, having regard to the
32 number of persons who will be likely to be affected by the
33 regulations.

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1 **Part 6 — Consequential amendments to *Library Board***
2 ***of Western Australia Act 1951***

3 **21. Act amended**

4 This Part amends the *Library Board of Western Australia*
5 *Act 1951*.

6 **22. Section 12 amended**

7 In section 12 delete “jurisdiction,” and insert:

8

9 jurisdiction, or proceedings under the *Legal Deposit*
10 *Act 2011* section 14 or 15,
11

12 **23. Section 13 amended**

13 (1) In section 13(1) delete “the regulations” and insert:

14

15 the *Legal Deposit Act 2011*
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17 (2) In section 13(2)(a) delete “Act; or” and insert:

18

19 Act or the *Legal Deposit Act 2011*; or
20

21 **24. Section 15 amended**

22 (1) In section 15(2):

23 (a) in paragraph (b) delete “Australia.” and insert:

24

25 Australia; and
26

- 1 (b) after paragraph (b) insert:
2
- 3 (c) may perform the functions conferred on the
4 Board under the *Legal Deposit Act 2011*.
5
- 6 (2) In section 15 after each of subsections (1)(Aa) to (d) and (2)(a)
7 insert:
8
- 9 and
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- 11 **25. Section 16 amended**
- 12 (1) In section 16(1) after “this Act” (first occurrence) insert:
13
- 14 and the *Legal Deposit Act 2011*
15
- 16 (2) In section 16(2)(b) delete “this Act.” and insert:
17
- 18 this Act and the *Legal Deposit Act 2011*.
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-

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined Term | Provision(s) |
|--------------------------------|---------------------|
| Board..... | 4(1) |
| document..... | 4(1) |
| electronic..... | 4(1) |
| information..... | 4(1) |
| non-print public document..... | 4(1) |
| public document..... | 4(1) |
| publish..... | 4(1) |
| publisher..... | 4(1) |
| restriction..... | 4(1) |
| State Librarian..... | 4(1) |
| WA Internet document..... | 4(1), 5(1) |