

Perth International Centre for Application of Solar Energy Amendment Bill 2003

CONTENTS

1.	Short title	1
2.	Commencement	2
3.	The Act amended	2
4.	Section 3 amended	2
5.	Part 1A inserted	3
6.	Sections 5, 6, 7 and 8 repealed	3
7.	Section 9 amended	3
8.	Section 10 repealed	4
9.	Part 2 Division 3 repealed	4
10.	Section 19 amended	4
11.	Section 21 repealed	4
12.	Section 24 amended	4
13.	Section 29 amended	4
14.	Section 30 amended	5
15.	Section 31 amended	5
16.	Section 32 amended	6
17.	Section 33 amended	6
18.	Sections 34 and 35 repealed	6
19.	Part 6 inserted	6
20.	Schedules 1 and 2 repealed	12
21.	Transitional and savings provisions	12
22.	<i>Constitution Acts Amendment Act 1899</i> amended	12
23.	<i>Financial Administration and Audit Act 1985</i> amended	13
24.	<i>Freedom of Information Act 1992</i> amended	13

Contents

**Schedule 1 — Transitional and savings
provisions**

	Division 1 — Preliminary	
1.	Meaning of terms used in this Schedule	14
2.	Interpretation Act to apply	15
	Division 2 — Provisions that apply on the commencement day	
3.	The Board	15
4.	Managing Director	15
5.	The International Advisory Council	15
	Division 3 — Provisions that apply in relation to the abolition of the Centre	
6.	Devolution of Centre's assets, liabilities etc.	16
7.	Agreements and instruments generally	16
8.	References to the Centre in written law	16
9.	Funds	17
10.	Final report on abolition of the Centre	17
11.	Immunity continues	17
12.	Registration of documents	18
13.	Saving	18

Western Australia

LEGISLATIVE ASSEMBLY

**Perth International Centre for Application of
Solar Energy Amendment Bill 2003**

A Bill for

An Act to —

- **amend the *Perth International Centre for Application of Solar Energy Act 1994*, and provide for the phasing out and expiry of that Act;**
- **amend certain other Acts as a consequence, and for related purposes.**

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Perth International Centre for Application of Solar Energy Amendment Act 2003*.

s. 2

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) This Act, other than the provisions referred to in subsections (1) and (3), comes into operation on a day fixed by proclamation.
- (3) Sections 22 to 24 come into operation immediately after the *Perth International Centre for Application of Solar Energy Act 1994* expires.

3. The Act amended

The amendments in this Act are to the *Perth International Centre for Application of Solar Energy Act 1994**, unless otherwise indicated.

[* *Act No. 36 of 1994.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 277 and Act No. 3 of 2002.]

4. Section 3 amended

Section 3 is amended as follows:

- (a) by inserting the following definition in the appropriate alphabetical position —
- “
- “**administrator**” means the person holding office under section 35 as the administrator of the affairs of the Centre;
- ”;
- (b) by deleting the definitions of “Advisory Council”, “alternate director”, “appointed director”, “Board”, “chairperson”, “committee”, “Commonwealth Minister”, “director”, “international development organization”, “Managing Director”, “multilateral development agency” and “Murdoch University”;

- (c) by deleting the definition of “representative of the Centre” and inserting the following definition instead —

“

“**representative of the Centre**” means the
administrator or an outside assistant;

”.

5. Part 1A inserted

After section 3 the following Part is inserted —

“

Part 1A — Expiry of Act

3A. Expiry of Act

This Act expires at the end of the day fixed by the
Minister by an Order published in the *Gazette*.

”.

6. Sections 5, 6, 7 and 8 repealed

Sections 5, 6, 7, and 8 are repealed.

7. Section 9 amended

- (1) Section 9(1) is amended by deleting “Managing Director” and
inserting instead —

“ administrator ”.

- (2) Section 9(2) is amended by deleting “Managing Director” and
inserting instead —

“ administrator ”.

- (3) Section 9(3) is amended by deleting “Managing Director” and
inserting instead —

“ administrator ”.

s. 8

8. Section 10 repealed

Section 10 is repealed.

9. Part 2 Division 3 repealed

Part 2 Division 3 is repealed.

5 **10. Section 19 amended**

Section 19(2) is amended as follows:

- (a) by inserting after paragraph (b) —
“ and ”;
- 10 (b) by deleting the semicolon in paragraph (c) and “and”
after it and inserting a full stop;
- (c) by deleting paragraph (d).

11. Section 21 repealed

Section 21 is repealed.

12. Section 24 amended

15 Section 24(3)(c) is deleted and “and” after it and the following
is inserted instead —

- “
- (c) the remuneration, if any, determined under
section 35(7); and
- 20 ”.

13. Section 29 amended

- (1) Section 29 is amended by inserting before “Subject to” the
subsection designation “(1)”.

(2) At the end of section 29 the following subsection is inserted —

“

(2) For the purposes of the *Financial Administration and
Audit Act 1985* the administrator is the accountable
authority of the Centre.

”.

14. Section 30 amended

(1) Section 30(2)(b) is deleted and the following paragraph is
inserted instead —

“

(b) it is signed on behalf of the Centre by the
administrator.

”.

(2) Section 30(3) is amended by deleting “Board” and inserting
instead —

“ administrator ”.

(3) Section 30(4) is amended by deleting “Board” and inserting
instead —

“ administrator ”.

(4) Section 30(5) is repealed.

15. Section 31 amended

Section 31(2) is repealed and the following subsection is
inserted instead —

“

(2) Subsection (1) does not relieve the Centre of any
liability that, but for that subsection, it might have for
the acts or omissions of a representative of the Centre.

”.

s. 16

16. Section 32 amended

Section 32 is amended by deleting “Board” and inserting instead —

“ Minister ”.

5 **17. Section 33 amended**

After section 33(1) the following subsections are inserted —

“

10 (1a) The Governor may make regulations prescribing matters that are necessary or convenient to be prescribed for the purpose of the winding-up of the affairs of the Centre in preparation for this Act to expire under section 3A.

(1b) Regulations providing for the winding-up referred to in subsection (1a) may make provision for any matter —

15 (a) provided for by the *Corporations Act 2001* of the Commonwealth relating to the liquidation of corporations; and

(b) not inconsistent with Part 6.

”.

20 **18. Sections 34 and 35 repealed**

Sections 34 and 35 are repealed.

19. Part 6 inserted

After section 33 the following Part is inserted —

“

25 **Part 6 — Winding-up affairs of the Centre**

34. Interpretation

In this Part, unless the contrary intention appears —

“**appointed day**” means the day on which section 19 of the *Perth International Centre for Application*

of Solar Energy Amendment Act 2003 comes into operation;

“**assets**”, in relation to the Centre, means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“**liability**” means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

“**right**” means any right, power, privilege or immunity whether actual, contingent or prospective.

35. Administrator of affairs of the Centre

- (1) The Minister is on the appointed day, or as soon as practicable thereafter, to appoint a person to be the administrator of the affairs of the Centre.
- (2) The administrator holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (3) Subject to this section, the administrator —
 - (a) is the governing body of the Centre;
 - (b) has all the functions and powers of the Centre for the purpose of winding-up of the affairs of

s. 19

- the Centre in preparation for the Act to expire under section 3A;
- 5 (c) may engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as he or she considers necessary to carry out the orderly winding-up of the affairs of the Centre; and
- 10 (d) has such additional powers and functions as are necessary or desirable for the purpose of that winding-up.
- (4) Without limiting the generality of subsection (3), the administrator may for the purpose referred to in that subsection —
- 15 (a) on behalf of the Centre and with the consent in writing of the Minister —
- (i) compound or compromise any claim or demand made, or any debt or sum of money owing, to or by the Centre;
- 20 (ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Centre or whereby the Centre may be rendered liable;
- 25 (iii) compromise any debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Centre and a debtor or person apprehending liability to the Centre, and all questions in any way
- 30
- 35

- 5 relating to or affecting the assets or the
winding-up of the affairs of the Centre,
on such terms as are agreed, and take
any security for the discharge of, and
give a complete discharge in respect of,
any such debt, liability or claim; or
- (iv) sell or otherwise dispose of, in any
manner, all or any part of the assets of
the Centre;
- 10 (b) do all acts and execute in the name and on
behalf of the Centre all deeds, receipts and
other documents and for that purpose use when
necessary the common seal of the Centre in
accordance with section 30;
- 15 (c) subject to the *Bankruptcy Act 1966* of the
Commonwealth, prove on behalf of the Centre
in the bankruptcy of any debtor of the Centre or
under any deed executed under that Act; or
- 20 (d) take out letters of administration of the estate of
a deceased debtor, and do any other act
necessary for obtaining payment of any moneys
due from a debtor, or a debtor's estate, that
cannot be conveniently done in the name of the
Centre.
- 25 (5) The administrator may, either generally or as otherwise
provided by the instrument of delegation, by writing
signed by him or her delegate to any person of whose
services the Centre makes use under section 11 any of
his or her powers or duties under this Act, other than
30 this power of delegation.
- (6) The administrator must comply with any direction
given to him or her by the Minister —
- (a) in relation to the performance of any function,
or the exercise of any power, by the
35 administrator; and

s. 19

(b) for the purpose referred to in subsection (3)(b).

- (7) The administrator is entitled to such remuneration, if any, as is determined by the Minister.

36. Steps to be taken in winding-up of affairs of the Centre

5

- (1) The Centre shall, on and after the appointed day, cease to perform its functions and exercise its powers except so far as, in the opinion of the administrator, is required for the purpose referred to in section 35(3)(b).

10

- (2) The administrator shall, for the purpose referred to in section 35(3)(b), collect and take into his or her custody or under his or her control all the assets of the Centre, and apply those assets in the discharge of all the liabilities of the Centre, and take such other steps as are necessary or desirable for that purpose.

15

- (3) For the purpose of applying the assets of the Centre in the discharge of all its liabilities, the administrator shall as soon as is practicable after the appointed day —

20

(a) by notice published in the *Gazette* invite all creditors of the Centre; and

(b) if the administrator knows or suspects that any persons are creditors of the Centre, on or before the date of the publication referred to in paragraph (a) serve on those persons invitations in writing,

25

to submit to him or her proof of their debts and claims within such period of not less than 21 days after the day of publication of the notice referred to in paragraph (a) as is specified in that notice.

30

- (4) The administrator shall —
- (a) compile a list of all proofs, submitted to him or her within the period referred to in

- subsection (3) in response to the notice
published, or any invitation served, under that
subsection; and
- 5 (b) admit or reject, wholly or in part, each proof
appearing on the list compiled under this
subsection.
- 10 (5) Before admitting or rejecting a proof, wholly or in part,
the administrator shall in writing served on the creditor
concerned require that creditor to furnish the
administrator with such further evidence in support of
the relevant debt or claim as is specified in that
requirement within such period of not less than 14 days
from the date of that service as is so specified.
- 15 (6) The Centre is not liable in respect of a debt or claim
proof of which —
- (a) subject to any decision made by the Supreme
Court under section 38, is rejected under
subsection (4);
- 20 (b) is not submitted to the administrator within the
period referred to in subsection (3).
- 25 (7) All debts payable on a contingency and all claims
against the Centre (present or future, certain or
contingent, ascertained or sounding only in damages)
are admissible to proof against the Centre, a just
estimate being made by the administrator so far as
possible of the value of such debts or claims as are
subject to any contingency or sound only in damages or
for some other reason do not bear a certain value.
- 30 (8) The amount of a debt of the Centre (including a debt
that is for or includes interest) is to be computed for the
purposes of this Part as at the appointed day.
- (9) All debts or claims proved under this section —
- (a) rank equally; and

s. 20

- (b) if the assets of the Centre are insufficient to meet them in full, shall be paid proportionately.

37. Administrator to notify date of completion of duties

5 The administrator shall, when he or she has completed the performance of the duties imposed by sections 35 and 36, notify the Minister in writing of the day on which that completion took place.

38. Appeals from acts, omissions or decisions of administrator

- 10 (1) A person aggrieved by any act, omission or decision of the administrator may appeal to the Supreme Court in respect of that act, omission or decision.
- (2) The Supreme Court may confirm, reverse or modify that act or decision, or remedy that omission, as the case requires, and make such orders, including orders
15 in respect of costs, and give such directions as it thinks fit.

”.

20. Schedules 1 and 2 repealed

20 Schedules 1 and 2 are repealed.

21. Transitional and savings provisions

Schedule 1 has effect with respect to transitional and savings provisions.

22. Constitution Acts Amendment Act 1899 amended

- 25 (1) The amendment in this section is to the *Constitution Acts Amendment Act 1899**.

[* Reprinted as at 8 June 2001.

30 For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 72 and Acts Nos. 24 and 25 of 2001, 5, 20 and 30 of 2002.]

- (2) Schedule V Part 3 is amended by deleting “The board of directors of the Perth International Centre for Application of Solar Energy established under the *Perth International Centre for Application of Solar Energy Act 1994*.”.

5 **23. *Financial Administration and Audit Act 1985* amended**

- (1) The amendment in this section is to the *Financial Administration and Audit Act 1985**.

[* *Reprinted as at 16 September 2002.*

10 *For subsequent amendments see Acts Nos. 30 and 38 of 2002.*]

- (2) Schedule 1 is amended by deleting “Perth International Centre for Application of Solar Energy”.

24. *Freedom of Information Act 1992* amended

- 15 (1) The amendment in this section is to the *Freedom of Information Act 1992**.

[* *Reprinted as at 3 March 2000.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 144 and Act No. 21 of 2002.]

- 20 (2) Schedule 2 is amended by deleting “The Perth International Centre for Application of Solar Energy.”.

Schedule 1 — Transitional and savings provisions

[s. 21]

Division 1 — Preliminary

1. Meaning of terms used in this Schedule

- 5 In this Schedule, unless the contrary intention appears —
- “**administrator**” has the meaning given to that term by section 3 of
the *Perth International Centre for Application of Solar Energy
Act 1994* after its amendment by the *Perth International Centre
for Application of Solar Energy Amendment Act 2003*;
- 10 “**assets**” means property of every kind whether tangible or intangible,
real or personal, corporeal or incorporeal and includes without
limitation —
- (a) choses in action;
- (b) goodwill; and
- 15 (c) rights, interests and claims of every kind in or to property,
whether arising from, accruing under, created or evidenced by or
the subject of, an instrument or otherwise and whether liquidated
or unliquidated, actual, contingent or prospective;
- 20 “**Board**” means the Board of Directors of the Perth International
Centre for Application of Solar Energy as constituted under the
Act immediately before the commencement day;
- “**Centre**” means the Perth International Centre for Application of
Solar Energy;
- 25 “**commencement day**” means the day on which section 21 of the
*Perth International Centre for Application of Solar Energy
Amendment Act 2003* comes into operation;
- “**expiry day**” means the day at the end of which the *Perth
International Centre for Application of Solar Energy Act 1994*
expires under section 3A of that Act;
- 30 “**liability**” means any liability, duty or obligation whether actual,
contingent or prospective, liquidated or unliquidated, or whether
owed alone or jointly or jointly and severally with any other
person;

“**Minister**” means the Minister responsible for the administration of the *Energy Coordination Act 1994*;

“**right**” means any right, power, privilege or immunity whether actual, contingent or prospective;

5 “**the Act**” means the *Perth International Centre for Application of Solar Energy Act 1994* as in force immediately before the commencement day.

2. Interpretation Act to apply

10 This Schedule does not limit the operation of the *Interpretation Act 1984*.

Division 2 — Provisions that apply on the commencement day

3. The Board

- (1) On the commencement day the Board is dissolved and its members go out of office.
- 15 (2) A reference to the Board in a written law in force or a document in existence immediately before the commencement day is, unless because of the context it would be inappropriate to do so, to be read as a reference to the administrator.

4. Managing Director

20 On the commencement day the person holding the office of Managing Director under the Act immediately before the commencement day ceases to hold that office.

5. The International Advisory Council

25 On the commencement day the International Advisory Council established under Part 2 Division 3 of the Act ceases to exist and its members go out of office.

Schedule 1 Transitional and savings provisions

**Division 3 — Provisions that apply in relation to the
abolition of the Centre**

6. Devolution of Centre's assets, liabilities etc.

On and after the expiry day —

- 5 (a) the assets and rights of the Centre that were immediately
before that day vested in that body vest in the State by force
of this clause;
- (b) the liabilities of the Centre immediately before that day
become, by force of this clause, the liabilities of the State;
- 10 (c) any proceedings or remedy that immediately before that day
might have been brought or continued by or available against
or to the Centre, may be brought or continued and are
available, by or against or to the State; and
- (d) all records and data of the Centre pass to the Minister.

15 **7. Agreements and instruments generally**

Any agreement or instrument subsisting immediately before the
expiry day —

- (a) to which the Centre is a party; or
- (b) which contains a reference to the Centre,
- 20 has effect after the expiry day as if —
- (c) the State were substituted for the Centre as a party to the
agreement or instrument; and
- (d) any reference in the agreement or instrument to the Centre
were (unless the context otherwise requires) amended to be or
- 25 include a reference to the State.

8. References to the Centre in written law

A reference to the Centre in an enactment in force immediately before
the expiry day may, where the context so requires, be read as if it had
been amended to be a reference to the State.

9. Funds

On the expiry day the account referred to in section 24(2) of the *Perth International Centre for Application of Solar Energy Act 1994* is to be closed and the moneys in the account credited to the Consolidated Fund.

10. Final report on abolition of the Centre

(1) In this clause —

“**FAA Act**” means the *Financial Administration and Audit Act 1985*;

“**the Act**” means the *Perth International Centre for Application of Solar Energy Act 1994*.

(2) Section 65A of the FAA Act applies in relation to the preparation and submission of a final report in respect of the Centre for the period starting from the expiry of the last financial year of the Centre to have expired before the expiry of the Act and ending with the expiry of the Act, as if —

(a) references in that section to a department were references to the Centre; and

(b) references in that section to provisions of sections 62 to 65 of the FAA Act were references to the equivalent provisions of sections 66 to 70 of the FAA Act.

(3) If, when the Act expires, any duties imposed by Part II Division 14 of the FAA Act on the accountable authority of the Centre have not been complied with in relation to the Centre for any financial year that expired before the expiry of the Act, those duties are to be performed by the person identified in subclause (4) as if that person were the accountable authority.

(4) The duties referred to in subclause (3) are to be performed by the reporting officer appointed under section 65A(2) of the FAA Act as applied by subclause (2).

11. Immunity continues

Despite the expiry of the *Perth International Centre for Application of Solar Energy Act 1994*, where the Centre had the benefit of any immunity in respect of an act, matter or thing done or omitted before the expiry day, that immunity continues in that respect for the benefit of the State.

Schedule 1 Transitional and savings provisions

12. Registration of documents

5 The Registrar of Titles is to take notice of the provisions of this
Schedule and is empowered to record and register in the appropriate
manner the necessary documents, and otherwise to give effect to this
Schedule.

13. Saving

 The operation of any provision of this Schedule is not to be
regarded —

- 10 (a) as a breach of contract or confidence or otherwise as a civil
wrong;
- (b) as a breach of any contractual provision prohibiting,
restricting or regulating the assignment or transfer of assets,
rights or liabilities or the disclosure of information;
- 15 (c) as giving rise to any remedy by a party to an instrument or as
causing or permitting the termination of any instrument,
because of a change in the beneficial or legal ownership of
any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise
unenforceable; or
- 20 (e) as releasing or allowing the release of any surety.

=====