

Western Australian Land Authority Amendment Bill 2003

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — Amendments to *Western Australian Land Authority Act 1992*

3.	The Act amended	3
4.	Long title amended	3
5.	Section 3 amended	3
6.	Section 4 amended	4
7.	Section 5 amended	6
8.	Sections 5A and 5B inserted	6
9.	Section 8 amended	6
10.	Sections 8A and 8B inserted	7
11.	Section 9 repealed	8
12.	Sections 10 to 13 replaced by sections 10 to 13A, and transitional provisions	8
13.	Part 2 Division 3 inserted	13
14.	Section 15 repealed	15
15.	Section 16 amended	15
16.	Sections 16B and 16C inserted	16
17.	Section 17 amended	17
18.	Section 17A replaced by section 17A to 17C, and transitional provision	19
19.	Section 18 amended	21
20.	Section 20 amended	21
21.	Section 22 replaced	22
22.	Sections 23A to 23D inserted	23

Contents

23.	Section 23E inserted	26
24.	Section 24 replaced	26
25.	Section 24A amended	27
26.	Section 24B amended	27
27.	Section 24C amended	28
28.	Section 25 amended	28
29.	Section 25A amended	28
30.	Section 25B amended	29
31.	Sections 25BA and 25BB inserted	29
32.	Section 25C amended	31
33.	Section 31 replaced	31
34.	Section 32 amended	32
35.	Sections 33 to 37 replaced by sections 33 to 35A, 36 and 37	32
36.	Section 38 amended	36
37.	Section 39 replaced by sections 39 and 40	37
38.	Section 45 replaced by sections 45 and 45AA	39
39.	Section 45A amended	40
40.	Section 48 amended	41
41.	Schedule 1 amended	41
42.	Schedule 1A inserted	42
43.	Schedule 3 replaced by Schedules 3 and 3A	49
 Part 3 — Amendments to other Acts		
44.	<i>Financial Administration and Audit Act 1985</i>	66
45.	<i>Public Sector Management Act 1994</i>	66

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Western Australian Land Authority
Amendment Bill 2003**

A Bill for

**An Act to amend the *Western Australian Land Authority Act 1992* and
for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Western Australian Land Authority Amendment Act 2003*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days can be fixed under subsection (1) for different provisions.

Part 2 — Amendments to *Western Australian Land Authority Act 1992*

3. The Act amended

- 5 (1) The amendments in this Part are to the *Western Australian Land Authority Act 1992**.

[* Reprinted as at 16 April 1999.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 410.]

- 10 (2) In this Part —
“**WALA Act**” means the *Western Australian Land Authority Act 1992* as amended by this Act.

4. Long title amended

The long title is amended as follows:

- 15 (a) by deleting “and economic” and inserting instead —
“ **, economic and environmental** ”.
- (b) by deleting “to dispose of surplus Government land assets” and inserting instead —
“ **for related purposes** ”.

5. Section 3 amended

20 Section 3 is amended as follows:

- (a) in paragraph (a) by inserting after “State” —
“ while taking account of environmental outcomes ”;
- (b) by deleting paragraphs (c) and (d) and “and” after paragraph (c) and inserting instead —
25 “
- (c) the identification and development, or urban renewal, of centres of population and the provision or improvement of land for those centres;
- 30 and

s. 6

- (d) to facilitate the development and disposal of surplus public land.

”.

6. Section 4 amended

- 5 (1) Section 4 is amended by inserting before “In this Act” the subsection designation “(1)”.
- (2) Section 4 is amended by deleting the definition of “Account”.
- (3) Section 4 is amended in the definition of “land” as follows:
- 10 (a) after paragraph (a) by deleting “and”;
- (b) after paragraph (b) by inserting —
- “
- (c) buildings and other structures; and
- (d) infrastructure, facilities and services relating to land;
- 15 ”.
- (4) Section 4 is amended by inserting the following definitions in the appropriate alphabetical positions —
- “
- 20 **“Commissioner for Public Sector Standards”** means the person holding or acting in the office created by section 16(1) of the *Public Sector Management Act 1994*;
- “Corporations Act”** means the *Corporations Act 2001* of the Commonwealth;
- 25 **“develop”**, in relation to land, includes redevelop;
- “executive officer”** means a member of the staff of the Authority designated under section 14A as an executive officer;
- 30 **“management”**, in relation to staff, includes recruitment, selection, appointment, transfer, secondment, performance management,

redeployment, discipline and termination of
employment;

“member of staff” means a person engaged under
section 11;

5 **“subsidiary”** means —

- (a) a body determined to be a subsidiary of the
Authority under subsection (2); or
- (b) an interest or other rights of the Authority in
10 a unit trust, joint venture or partnership
 where the interest or other rights of the
 Authority in connection with the unit trust,
 joint venture or partnership entitle the
 Authority to —
 - 15 (i) control the composition of the
 governing body of the unit trust, joint
 venture or partnership;
 - 20 (ii) cast, or control the casting of, more
 than one-half of the maximum
 number of votes that might be cast at
 a general meeting of the unit trust,
 joint venture or partnership; or
 - 25 (iii) control the business affairs of the unit
 trust, joint venture or partnership;

25 **“Trust Fund”** means the Trust Fund constituted under
 section 9 of the *Financial Administration and
 Audit Act 1985*.

”.

- 30 (5) Section 4 is amended at the end of the definition of
 “Treasurer” by deleting the full stop and inserting a
 semicolon instead.

s. 7

- (6) At the end of section 4 the following subsection is inserted —

“

- 5 (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the Authority.

”.

7. Section 5 amended

10 Section 5(5) is repealed.

8. Sections 5A and 5B inserted

After section 5 the following sections are inserted —

“

5A. Authority is not an agent of the Crown

15 The Authority is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

5B. Authority and officers not part of public sector

- 20 (1) The Authority is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the chief executive officer nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.
- 25

”.

9. Section 8 amended

- (1) Section 8 is amended by inserting before “A” the subsection designation “(1)”.

(2) At the end of section 8 the following subsection is inserted —

“

(2) Remuneration is not to be paid to a director who holds
a full-time office or position that is remunerated out of
moneys appropriated by Parliament.

”.

10. Sections 8A and 8B inserted

After section 8 the following sections are inserted —

“

8A. Conflict of duties

- (1) If a person is both a public service officer and a director —
- (a) the person’s duties as a director are to prevail if a conflict arises between those duties and the person’s other duties as a public service officer; and
 - (b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.

(2) In this section —

“public service officer” means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.

8B. Disclosure of material personal interests

- (1) A director who has a notifiable interest in a matter involving the Authority must, as soon as possible after the relevant facts have come to the director’s knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$5 000.

s. 11

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

(3) In subsection (1) —

“**notifiable interest**” means an interest in the matter that will, under Schedule 1 Part B clause 2(1)(b), disqualify the director from taking part in any deliberation or decision on the matter at a meeting of the board.

”.

10 **11. Section 9 repealed**

Section 9 is repealed.

12. Sections 10 to 13 replaced by sections 10 to 13A, and transitional provisions

(1) Sections 10, 11, 12 and 13 are repealed and the following sections are inserted instead —

“

10. Chief executive officer

(1) The Authority is to have a chief executive officer.

(2) The function of the chief executive officer is, subject to the control of the board, to administer the day to day operations of the Authority.

(3) The powers —

(a) to appoint and remove the chief executive officer; and

(b) to fix and alter the terms and conditions of service of the chief executive officer,

are vested in the board.

(4) If the *Salaries and Allowances Act 1975* applies to the chief executive officer, subsection (3)(b) has effect subject to that Act.

- 5 (5) The board must get the Minister's written approval before it exercises any of the powers conferred by subsection (3).
- (6) The chief executive officer may resign from office by giving notice in writing to the board.
- (7) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under subsection (6) can only be exercised in accordance with those terms and conditions.
- 10 (8) The board may appoint a person to act in the office of chief executive officer during any period when the chief executive officer is, or is expected to be, absent from the State or on leave or unable for any other reason to carry out the duties of the office.
- 15 **11. Staff**
- (1) The power to engage and manage the staff of the Authority is vested in the board.
- (2) The power conferred by subsection (1) —
- 20 (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
- (b) does not preclude the delegation of any matter under section 23.
- 25 (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
- (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
- 30 (b) the *Minimum Conditions of Employment Act 1993*.

s. 12

(4) There are excluded from the operation of Part II
Division 2B of the *Industrial Relations Act 1979* —

(a) any matters dealt with by an instrument issued
under section 12 except —

- 5 (i) rates of remuneration;
- (ii) leave;
- (iii) hours of duty; and
- (iv) matters that are similar to matters
10 prescribed for the purposes of
 section 99(1)(a)(iv) of the *Public Sector
 Management Act 1994*;

and

15 (b) matters concerning the management of the staff
 that are similar to matters prescribed for the
 purposes of section 99(1)(c) of the *Public
 Sector Management Act 1994*.

(5) A matter referred to in subsection (4) cannot be varied
or affected by an employer-employee agreement made
under Part VID of the *Industrial Relations Act 1979*.

20 (6) Nothing in this section other than subsection (5) affects
 the operation of Part VID of the *Industrial Relations
 Act 1979*.

12. Minimum standards for staff management

25 (1) The board must, after consultation with the
 Commissioner for Public Sector Standards, prepare and
 issue an instrument setting out minimum standards of
 merit, equity and probity applicable to the management
 of the staff of the Authority.

30 (2) In complying with subsection (1) the board is to have
 regard to the principles set out in section 8 of the
 Public Sector Management Act 1994.

- (3) Section 10(5) is not affected by the requirements of subsection (2).
- (4) The Commissioner for Public Sector Standards may at any time recommend to the board any amendment that the Commissioner thinks should be made to an instrument issued under this section.
- (5) The board may —
- (a) amend an instrument issued under this section; or
 - (b) revoke it and substitute a new instrument,
- but, except where subsection (4) applies, is to do so only after consultation with the Commissioner for Public Sector Standards.

13. Reports to Commissioner for Public Sector Standards

- (1) The Commissioner for Public Sector Standards may in writing direct the board —
- (a) to report to the Commissioner on the observance of the minimum standards in force under section 12; and
 - (b) to make the reports at such times, but not more often than half-yearly,
- as the Commissioner may specify.
- (2) The board must comply with a direction given to it made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on the content or observance of the minimum standards in force under section 12.

s. 12

13A. Superannuation

- 5 (1) The Authority may grant, or make provision for the grant of, retirement benefits to members and former members of staff and their dependants and for that purpose may, subject to section 30 of the *State Superannuation Act 2000* —
- (a) establish, manage and control; or
- 10 (b) enter into an arrangement with any body for the establishment, management and control by that body either alone or jointly with the Authority of,
- any fund or scheme for the purpose of providing for such retirement benefits.
- 15 (2) The Authority may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) —
- “members of staff”** includes the chief executive officer.
- 20 (4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to the Authority or members or former members of staff or their dependants.
- ”.
- 25 (2) The person who was the chief executive officer immediately before the commencement of this section continues in office, under and subject to the WALA Act, as the chief executive officer as if that person had been appointed by the board.
- 30 (3) Other people who were in the employment of the Authority immediately before the commencement of this section continue, under and subject to the WALA Act, as members of staff of the Authority.

- 5 (4) Except as otherwise agreed by the chief executive officer or member of staff, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the chief executive officer or a member of staff of the Authority are not affected, prejudiced or interrupted by —
- (a) the operation of subsection (2) or (3); or
- (b) the Authority ceasing to be an SES organisation under the *Public Sector Management Act 1994*.
- 10 (5) A person mentioned in subsection (2) or (3) is to be regarded as an employee of an organisation for the purposes of Part 6 of the *Public Sector Management Act 1994*.
- (6) Subsection (5) ceases to apply at the expiration of 2 years after the commencement of this section.
- 15 (7) A person mentioned in subsection (3) is to be regarded as having been engaged under section 11 of the WALA Act.
- (8) Where this section uses a term that is given a meaning in the WALA Act, the term has that meaning in this section.

13. Part 2 Division 3 inserted

20 After section 14 the following heading and sections are inserted —

“

Division 3 — Conduct and integrity of staff

14A. Duties of chief executive officer and staff

- 25 (1) Schedule 1A has effect in relation to the chief executive officer, former chief executive officers, members of staff and former members of staff.
- (2) For the purposes of Schedule 1A, the board may designate a member of staff as an executive officer by resolution —
- 30 (a) passed by the board; and

s. 13

(b) notified in writing to the member of staff,
and may in the same manner revoke such a
designation.

14B. Codes of conduct

- 5 (1) The board must, after consultation with the
Commissioner for Public Sector Standards, prepare and
issue a code or codes of conduct setting out minimum
standards of conduct and integrity to be observed by
members of staff.
- 10 (2) In complying with subsection (1) the board is to have
regard to the principles set out in section 9 of the
Public Sector Management Act 1994.
- 15 (3) The board may, after consultation with the
Commissioner for Public Sector Standards, amend any
code of conduct in force under subsection (1) or revoke
it and substitute a new code of conduct.
- (4) In this section and in sections 14C and 14D —
“**members of staff**” includes the chief executive
officer.

20 **14C. Reports to Commissioner for Public Sector
Standards**

- (1) The Commissioner for Public Sector Standards may in
writing direct a board —
- 25 (a) to report to the Commissioner on the
observance by members of staff of any code of
conduct in force under section 14B; and
- (b) to make the reports at such times, but not more
often than half-yearly,
as the Commissioner may specify.

- (2) The board must comply with a direction given to it under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on any matter relating to the observance by members of staff of a code of conduct in force under section 14B that the Commissioner thinks should be brought to the Minister's attention.

14D. Reports to Minister

- (1) The board, when it delivers to the Minister its annual report under section 25BA, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 14B.
- (2) The board is to give to the Commissioner for Public Sector Standards a copy of each report under subsection (1).

”.

14. Section 15 repealed

Section 15 is repealed.

15. Section 16 amended

- (1) Section 16(1) is amended as follows:
- (a) by deleting “functions of the Authority are” and inserting instead —
- “ Authority has the following functions ”;
- (b) in paragraph (a) by deleting “through” and “the government”;

s. 16

- (c) by deleting paragraphs (e) and (f) and “and” after paragraph (e) and inserting —

“

- (e) to identify other potential centres of population, and centres of population in need of urban renewal, and use its powers to bring about the provision, or improvement, of land, infrastructure, facilities or services for the same.

”.

- (2) Section 16(2) is amended by deleting the definition of “land”.

- (3) After section 16(2) the following subsection is inserted —

“

- (3) The Authority may perform any of its functions in the State or, with the Minister’s approval, elsewhere.

”.

16. Sections 16B and 16C inserted

After section 16A the following sections are inserted —

“

16B. Authority to consider outcomes

The Authority is to take account of the social, economic and environmental outcomes of the performance of its functions and is to ensure that those outcomes are balanced so far as is practicable.

16C. Authority can act at its discretion

The conferral of a function on the Authority does not impose a duty on the Authority to do any particular thing and, subject to any enactment and any direction given to the Authority by the Minister, it has a discretion as to how and when it performs the function.

”.

17. Section 17 amended

(1) Section 17(2) is amended as follows:

- (a) in paragraph (a) by deleting “manage and” and inserting instead —
5 “ deal with or ”;
- (b) by deleting paragraph (b) and inserting instead —
“
 - (b) undertake, plan, provide for, promote or
10 coordinate the subdivision, amalgamation,
improvement, development, alteration or
management of land, whether or not the
Authority holds the land in question;
 - (ba) extract minerals from land;”;
- 15 (c) after paragraph (c)(i) by inserting —
“ or ”;
- (d) after paragraph (c)(ii) by deleting “or”;
- (e) by deleting paragraph (c)(iii);
- (f) after paragraph (e) by deleting “and”;
- 20 (g) after paragraph (f) by deleting the full stop and
inserting —
“
 - ;
 - (g) acquire, establish or operate —
25 (i) any undertaking necessary or
convenient for the performance of the
function; and
(ii) any associated undertaking;
 - (h) produce or deal in any equipment, facilities or
30 system associated with, the performance of the
function;”

s. 17

- 5
- (i) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the Authority;
- (j) participate in any business arrangement or acquire, hold or dispose of shares, units or other interests in, or relating to, a business arrangement;
- 10
- (k) carry out any investigation, survey, exploration or feasibility study;
- (l) collaborate in, carry out, or procure the carrying out of, research or publish information that results from research;
- 15
- (m) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- 20
- (n) promote and market the Authority and its activities.
- ”.
- (2) Section 17(4) is amended by inserting after “(2)(c)” —
- “ or (j) ”.
- (3) After section 17(4) the following subsection is inserted —
- 25 “
- (4a) The Authority may —
- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
- 30
- (b) make any ex gratia payment that the board considers to be in the Authority’s interest;

- ”.
- (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the Authority.

- 5 (4) Section 17(5) is amended by inserting before the definition of “person” the following definitions —

“

“business arrangement” means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

“participate” includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement;

”.

10
15

18. Section 17A replaced by section 17A to 17C, and transitional provision

- (1) Section 17A is repealed and the following sections are inserted instead —

20 “

17A. Transactions that require Ministerial approval

(1) Despite sections 16 and 17, the Authority must get the Minister’s approval before a transaction to which this section applies is entered into.

(2) This section applies to a transaction if —

(a) it is to be entered into by the Authority or a subsidiary of the Authority;

(b) it is not exempt under section 17B; and

(c) the Authority’s liability exceeds the relevant amount.

25
30

s. 18

- (3) For the purposes of subsection (2)(c) —
- (a) the Authority's liability is the amount or value of the consideration or the amount to be paid or received by the Authority or a subsidiary, ascertained as at the time when the transaction is entered into;
- (b) the relevant amount is —
- (i) a sum equal to 5% of the value of the total reported assets of the Authority as set out in the most recent annual report of the Authority under section 25BA; or
- (ii) if a greater sum is prescribed, that greater sum.

17B. Exemptions from section 17A

- (1) The Minister, with the Treasurer's concurrence, may by order exempt a transaction or class of transaction from the operation of section 17A either unconditionally or on specified conditions.
- (2) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer's concurrence.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transaction or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 45A.

17C. Meaning of “transaction”

In sections 17A and 17B —

“transaction”—

- 5 (a) includes a contract or other arrangement or
any exercise of the power conferred by
section 17(2)(j) or 20; and
 - (b) does not include —
 - 10 (i) any acquisition or transaction referred to
in section 22(1);
 - (ii) any transaction under section 33, 34 or
35A; or
 - (iii) an offer or agreement to enter into a
15 transaction if the offer or agreement is
conditional on the approval of the
Minister.
- ”.

- 20 (2) Until the first annual report under section 25BA of the
WALA Act as inserted by section 31, the reference in
section 17A(3)(b) of the WALA Act to an annual report
includes a reference to an annual report under the *Financial
Administration and Audit Act 1985*.

19. Section 18 amended

Section 18(1) is amended by deleting “and related functions
under section 16(1)(f)”.

25 **20. Section 20 amended**

Section 20(2)(a) is deleted.

s. 21

21. Section 22 replaced

Section 22 is repealed and the following section is inserted instead —

“

5

22. Subsidiaries

- (1) Despite sections 16 and 17, the Authority must get the Minister's approval before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- 10 (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.
- (3) The Authority must ensure that the constitution of every subsidiary of the Authority that under a written law or the Corporations Act is required to have a
15 constitution —
 - (a) contains provisions to the effect of those required by Schedule 3;
 - (b) is consistent with this Act; and
 - 20 (c) is not amended in a way that is inconsistent with this Act.
- (4) The Authority must, to the maximum extent practicable, ensure that every subsidiary of the Authority complies with its constitution and with this Act.
- 25 (5) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of the Authority.
- (6) A director, the chief executive officer or a member of staff may with the approval of the Authority become —
30 (a) a member of the committee of an incorporated association; or

s. 22

Authority (whether directly or indirectly) is entitled to make the assumptions mentioned in section 23C.

- 5 (2) In any proceedings in relation to the dealings, any assertion by the Authority or the new owner that the matters that the third party is entitled to assume were not correct must be disregarded.

23C. Assumptions that may be made

The assumptions that a person is, because of section 23A or 23B, entitled to make are —

- 10 (a) that, at all relevant times, this Act has been complied with;
- (b) that a person who is held out by the Authority to be a director, the chief executive officer, an executive officer, a member of staff or an agent
- 15 of a particular kind —
- (i) has been properly appointed; and
- (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive
- 20 officer, a member of staff or an agent of that kind, as the case may require;
- (c) that a member of staff or agent of the Authority who has authority to issue a document on behalf of the Authority has authority to warrant
- 25 that the document is genuine;
- (d) that a member of staff or agent of the Authority who has authority to issue a certified copy of a document on behalf of the Authority has authority to warrant that the copy is a true copy;
- 30 (e) that a document has been properly sealed by the Authority if —
- (i) it bears what appears to be an imprint of the Authority's seal; and

(ii) the sealing of the document appears to
comply with section 45;

and

(f) that the directors, chief executive officer,
members of staff and agents of the Authority
have properly performed their duties to the
Authority.

23D. Exception to sections 23A and 23B

(1) Despite sections 23A and 23B, a person is not entitled
to assume a matter mentioned in section 23C if —

(a) the person has actual knowledge that the
assumption would be incorrect; or

(b) because of the person's connection or
relationship with the Authority, the person
ought to know that the assumption would be
incorrect.

(2) If, because of subsection (1), a person is not entitled to
make a particular assumption in relation to dealings
with the Authority, section 23A(2) does not apply to
any assertion by the Authority in relation to the
assumption.

(3) If, because of subsection (1), the third party is not
entitled to make a particular assumption in relation to
an acquisition or purported acquisition from the
Authority of title to property, section 23B(2) does not
apply to any assertion by the Authority or the new
owner in relation to the assumption.

”.

s. 23

23. Section 23E inserted

Before section 24 the following section is inserted in Part 3A
Division 1 —

“

5

23E. Independence of Authority

(1) In this section —

“**administrative policy requirement**” means a
direction or administrative request given or made
by or on behalf of the government to public
authorities generally.

10

(2) The Authority does not have to comply with an
administrative policy requirement unless —

(a) directed to do so by the Minister under
section 24; or

15

(b) required to do so under any other written law.

”.

24. Section 24 replaced

Section 24 is repealed and the following section is inserted
instead —

20

“

24. Minister may give directions

(1) The Minister may give directions in writing to the
Authority with respect to the performance of its
functions, either generally or in relation to a particular
matter, and, subject to subsection (3), the Authority is
to give effect to any such direction.

25

(2) The Minister must cause the text of any direction under
subsection (1) to be laid before each House of
Parliament or dealt with under section 45A —

30

(a) within 14 days after the direction is given; or

- (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- 5 (3) A direction under subsection (1) becomes effective —
- (a) on the expiry of 7 days after its receipt by the board or of any longer period that the Minister may, at the request of the board, determine; or
- 10 (b) if it is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, on its being confirmed under that section.
- (4) If the board asks the Minister to extend the 7 day period under subsection (1), the Minister must decide
- 15 whether or not to agree to the request and notify the board of that decision before the 7 day period has expired.
- ”.

25. Section 24A amended

- 20 (1) Section 24A(1) and (2) are amended by inserting after “Authority” —
- “ or a subsidiary ”.
- (2) Section 24A(2) is amended by inserting after “17A applies” —
- “ or an acquisition mentioned in section 22 ”.

25 **26. Section 24B amended**

Section 24B(a) is amended by inserting after “Authority” in both places where it occurs —

“ and its subsidiaries ”.

s. 27

27. Section 24C amended

(1) Section 24C(1) is amended as follows:

(a) by inserting after “that the Authority” —
“ or a subsidiary ”;

5 (b) by inserting after “of the Authority” and “to the
Authority” —
“ or the subsidiary ”.

(2) Section 24C(2)(a) and (b) are amended by inserting after
“Authority” —

10 “ or subsidiary ”.

28. Section 25 amended

(1) Section 25(1) and (2)(c) are, amended by inserting after
“Authority” —

“ or a subsidiary ”.

15 (2) After section 25(3) the following subsection is inserted —

“

(3a) Where the chief executive officer or the board
furnishes or gives access to information to the Minister,
the Minister is to be advised whether or not in the
20 opinion of the chief executive officer or the board the
public disclosure of the information would adversely
affect the commercial interests of the Authority or a
subsidiary or of any other person.

”.

25 **29. Section 25A amended**

Section 25A(1)(a) and (b) are amended by inserting after
“Authority” —

“ and any subsidiary ”.

30. Section 25B amended

- (1) Section 25B(1) is repealed and the following subsections are inserted instead —

“

- 5 (1) The Authority must, for the first half of a financial year, give to the Minister a report on the operations of the Authority and of each subsidiary.
- (1a) A half-yearly report is to be prepared on a consolidated basis.

10

”.

- (2) Section 25B(2)(a) is amended by deleting “such reports” and inserting instead —

“

15

the report or required to be included in the report by a relevant statement of corporate intent under Division 2

”.

31. Sections 25BA and 25BB inserted

After section 25B the following sections are inserted —

20

“

25BA. Annual reports

- (1) The Authority must prepare and deliver to the Minister in each year separate annual reports on the operations of the Authority and of each subsidiary.
- 25 (2) The annual report of the Authority is to be sent to the Minister on or before a day prescribed, or provided for, in Schedule 3A and the other reports are to be sent to the Minister at the same time.
- 30 (3) The Minister must within 21 days after the day on which a copy of an annual report of the Authority is delivered to the Minister cause a copy of the report to

s. 31

be laid before each House of Parliament or dealt with under section 45A.

- (4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with under section 45A.

25BB. Contents of annual reports

- (1) The annual report in respect of the Authority or a subsidiary must —

- (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the Authority or the subsidiary;
- (b) include a commentary on any significant issues relating to the performance of the Authority or the subsidiary that were raised in any relevant statement of corporate intent under Division 2;
- (c) include particulars of any directions given by the Minister under section 24(1) or 38(3) or (6) or referred to in section 25A(4) that —
- (i) apply to the Authority or the subsidiary; and
- (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;
- (d) include particulars of the impact on the financial position, profits and losses and prospects of the Authority or the subsidiary of any directions that were given by the Minister under section 24(1) during the relevant financial year;

- (e) include total value of payments and details of remuneration made to directors of the board of the Authority; and
 - (f) include the information required to be included in the report by a relevant statement of corporate intent under Division 2.
- (2) The requirements of section 25BA and this section are in addition to those of Schedule 3A.

”.

32. Section 25C amended

- (1) Section 25C(1) is amended as follows:
- (a) by deleting “under the *Financial Administration and Audit Act 1985*” and inserting instead —
“ 25BA ”;
 - (b) by deleting “is” and inserting instead —
“ the board believes, on reasonable grounds, to be ”.
- (2) After section 25C(1) the following subsection is inserted —
- “
- (1a) The Minister may comply with a request under subsection (1) unless the matter is one that is required under clause 32 of Schedule 3A to be included in the report.

”.

33. Section 31 replaced

- Section 31 is repealed and the following section is inserted instead —

“

31. Accounts

- (1) In this section —
- “**account**” means an account held —
- (a) as part of the Trust Fund; or

s. 34

(b) with the Treasurer's approval, at a bank as defined in section 3(1) of the *Financial Administration and Audit Act 1985*.

(2) The Authority is to maintain one or more accounts.

5 (3) Money received by the Authority is to be credited to, and expenditure of the Authority is to be paid from, an account maintained by it.

”.

34. Section 32 amended

10 (1) Section 32(1) is repealed.

(2) Section 32(2) is amended by deleting “Despite subsection (1) and section 15, but subject” and inserting instead —
“ Subject ”.

(3) Section 32(3) is amended by inserting after “1995” —
15 “ in the hands of the lessee, tenant or joint holder ”.

35. Sections 33 to 37 replaced by sections 33 to 35A, 36 and 37

Sections 33 to 37 are repealed and the following sections are inserted instead —

“

20 **33. Investment**

Funds of the Authority that are not in an account held as part of the Trust Fund and are not being used for the performance of the Authority's functions may be invested in such investments as the board determines.

25 **34. Borrowing**

(1) The Authority may, subject to section 35 —
(a) borrow or re-borrow moneys;
(b) obtain credit; or

(c) otherwise arrange for financial accommodation to be extended to the Authority.

(2) The Authority is to keep such registers for the purposes of this section as may be prescribed.

5 **35. Borrowing restrictions**

(1) The Authority is not to exercise the power conferred by section 34(1)(a) except with, and in accordance with, the Treasurer's approval.

10 (2) Without limiting subsection (1), the Treasurer's approval may be given by way of a notice under subsection (3).

(3) The Treasurer may, by notice to the Authority, impose monetary limits on the exercise of the power conferred by section 34(1)(a).

15 (4) A monetary limit is to be determined for the exercise of that power in a financial year specified by the Treasurer and may relate to —

20 (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of that power; or

(b) the total liabilities that can be incurred during that year as a result of the exercise of that power.

25 (5) A monetary limit for the time being in force may be varied for a subsequent financial year by the Treasurer by a further notice under subsection (3).

(6) A monetary limit for the time being in force continues to apply until it is so varied.

30 (7) The Treasurer may, by notice to the Authority, impose other conditions on the exercise of the power conferred

s. 35

by section 34(1)(a) or vary a condition for the time being in force.

(8) The Authority must comply with any monetary limit or other condition for the time being in force in relation to it.

(9) A liability of the Authority is not unenforceable or in any way affected by a failure of the Authority to comply with this section.

(10) No person dealing with the Authority is bound or concerned to enquire whether the Authority has complied or is complying with this section.

35A. Hedging transactions

(1) The Authority may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 34 —

(a) enter into an agreement or arrangement to effect any of the following transactions —

(i) a foreign exchange transaction;

(ii) a forward foreign exchange transaction;

(iii) a currency swap;

(iv) a forward currency swap;

(v) a foreign currency cap, a foreign currency collar or a foreign currency floor;

(vi) a forward interest rate agreement;

(vii) an interest rate swap;

(viii) a forward interest rate swap;

(ix) an interest rate cap, an interest rate collar or an interest rate floor;

- 20 (2) In subsection (1)(a) —
 “interest rate” includes coupon rate, discount rate and
 yield.

36. Guarantees

- 30 terms and conditions as the Treasurer determines.

s. 36

- (3) The due payment of moneys payable by the Treasurer under a guarantee —
- (a) is by this subsection guaranteed by the State; and
- 5 (b) is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from the Authority or otherwise in respect of
- 10 any payment made by the Treasurer under a guarantee to be credited to the Consolidated Fund.

37. Charges for guarantee

- (1) The Treasurer may, after consultation with the board, fix charges to be paid by the Authority to the Treasurer for the benefit of the Consolidated Fund in respect of a
- 15 guarantee given under section 36.
- (2) Payments by the Authority to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer
- 20 determines.

”.

36. Section 38 amended

After section 38(7) the following subsection is inserted —

“

- 25 (8) The Minister must, within 14 days after a direction is given under subsection (3) or (6), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 45A.

”.

37. Section 39 replaced by sections 39 and 40

Section 39 is repealed and the following sections are inserted instead —

“

5 **39. Limited application of *Financial Administration and Audit Act 1985***

(1) Despite anything in the *Financial Administration and Audit Act 1985*, that Act, other than the provisions referred to in subsection (2) and clauses 33(2) and 34(2) of Schedule 3A, does not apply to the Authority or any person performing functions under this Act.

(2) The Minister and the board must comply with section 58C of the *Financial Administration and Audit Act 1985* as if —

- 15 (a) the Authority were a statutory authority; and
 (b) the board were its accountable authority,
within the meaning of that Act.

40. Financial administration and audit

20 (1) Schedule 3A has effect in relation to the financial administration and audit of the Authority.

(2) Schedule 3A may be amended by regulations made by the Governor in accordance with subsections (3) and (4).

- (3) If —
- 25 (a) a provision of Schedule 3A that set out the substance of a provision of the Corporations Act, does not accurately reflect the corresponding provision of the Corporations Act as in force for the time being;
- 30 (b) the Corporations Act as in force for the time being does not contain a provision that corresponds to a provision of Schedule 3A that

s. 37

set out the substance of a provision of the Corporations Act; or

- (c) the Corporations Act as in force for the time being contains a provision relating to a matter provided for by Schedule 3A, the substance of which is not set out in Schedule 3A,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be in such form that Schedule 3A as amended will, in the opinion of the Minister, be substantially the same as the corresponding provisions of the Corporations Act, but with such modifications as are consistent with the policy of this Act.

- (5) If because of the amendment of Schedule 3A by regulations under subsection (2) it is necessary or expedient to —

- (a) delete or alter a reference in this Act to a provision of Schedule 3A;
- (b) include in this Act a reference to a provision of Schedule 3A; or
- (c) make some other consequential modification to this Act,

the regulations may amend this Act for the purpose of deleting, altering or including the reference or making the modification.

- (6) Regulations are not to be made under subsection (2) except with the Treasurer's concurrence.

”.

38. Section 45 replaced by sections 45 and 45AA

Section 45 is repealed and the following sections are inserted instead —

“

- 5 **45. Execution of documents**
- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority if —
- 10 (a) the common seal of the Authority is affixed to it in the presence of 2 directors or of a director and the chief executive officer; or
- (b) it is signed on behalf of the Authority by a person or persons referred to in subsection (4).
- (3) The common seal of the Authority is not to be affixed to a document except in accordance with this section.
- 15 (4) The Authority may, by authorisation in writing under its common seal, authorise a director, the chief executive officer or a member of staff to execute documents on its behalf.
- (5) An authorisation under subsection (4) —
- 20 (a) may be given —
- (i) either generally or in respect of a specified matter or specified matters; and
- (ii) so as to authorise 2 or more persons to execute documents jointly;
- 25 and
- (b) may be presumed by a person dealing with the Authority to continue —
- (i) during any period for which it is conferred; or
- 30

s. 39

- (ii) if subparagraph (i) does not apply, until notice of termination of the authorisation is given to the person so dealing.

- 5 (6) A document executed by a person under an authorisation under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.
- 10 (7) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

45AA. Contract formalities

- 15 (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of the Authority may make, vary or discharge a contract in the name of or on behalf of the Authority in the same manner as if that contract were made, varied or discharged by a natural person.
- 20 (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the Authority and other parties to the contract.
- (3) Subsection (1) does not prevent the Authority from making, varying or discharging a contract under its common seal.

25 ”.

39. Section 45A amended

Section 45A(1)(a) is amended by deleting “17A(4), 24(3)(b), 25A(4) or 36(8)” and inserting instead —

- 30 “
17B(4), 24(2), 25A(4), 25BA(3) or 38(8),
Schedule 1 Part B clause 2(10) or Schedule 3A
clause 28(5) or 33
”.

40. Section 48 amended

Section 48(1) is amended by deleting “1998” and inserting instead —

“ 2003 ”.

5 **41. Schedule 1 amended**

- (1) Schedule 1 Part A clause 5(8) is repealed and the following subclause is inserted instead —

“

- 10 (8) The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

”.

- (2) Schedule 1 Part B clause 2(1) is amended by deleting “subclause (3)” and inserting instead —

15 “ subclauses (3) and (6) ”.

- (3) Schedule 1 Part B clause 2(1)(b) is amended by inserting after “proposal” —

“

20 or in respect of any proposed resolution under subclause (6) in relation to the proposal, whether in relation to that or a different director

”.

- (4) After Schedule 1 Part B clause 2(5) the following subclauses are inserted —

25 “

- (6) Subclause (1)(b) does not apply if the board has at any time passed a resolution that —

- (a) specifies the director, the interest and the proposal;
and

s. 42

(b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the proposal.

5 (7) Despite Part A clause 5(5), if a director is disqualified under subclause (1)(b) in relation to a proposal, a quorum is present during the consideration of that proposal if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that proposal.

10 (8) The Minister may deal with a proposal in so far as the board cannot deal with it because of subclause (7).

(9) The Minister may by writing declare that subclauses (1)(b) and (7) do not apply in relation to a specified proposal either generally or in voting on particular resolutions.

15 (10) The Minister must within 14 days after a declaration under subclause (9) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 45A.

”.

20 **42. Schedule 1A inserted**

After Schedule 1 the following Schedule is inserted —

“

Schedule 1A — Provisions about duties of chief executive officer and staff

25 [s. 14A]

Division 1 — General duties of chief executive officer

1. Duties of chief executive officer

30 (1) It is declared that the chief executive officer has —
(a) the same fiduciary relationship with the Authority;
and

- (b) the same duties to the Authority to act with loyalty and in good faith,

as a director of a company incorporated under the Corporations Act has with and to the company.

- 5 (2) The duties referred to in subclause (1) are enforceable by the
board of the Authority and not otherwise.

Division 2 — Particular duties stated

2. Interpretation

- (1) In this Division —
- “**officer**” means —
- (a) the chief executive officer; or
- (b) an executive officer or other member of staff of the Authority;
- “**summary conviction penalty**”, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.
- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- (3) For the chief executive officer, the duties provided for by this Division are in addition to those in clause 1.

3. Duty to act honestly

- 25 (1) The chief executive officer or an executive officer must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A person who contravenes subclause (1) —
- (a) with intent to deceive or defraud —
- (i) the Authority; or
- (ii) creditors of the Authority or of any other person;
- 30 or

s. 42

(b) for any other fraudulent purpose,

is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

(3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.

4. Duty to exercise reasonable care and diligence

The chief executive officer or an executive officer must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Authority's circumstances.

Penalty: \$5 000.

5. Duty not to make improper use of information

(1) An officer or a former officer of the Authority must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Authority.

(2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

6. Duty not to make improper use of position

(1) An officer must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Authority.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

Division 3 — Compensation

7. Payment of compensation may be ordered

- (1) Where —

- (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and
- (b) the court is satisfied that the Authority has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the Authority of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

8. Civil proceedings for recovery

Where a person contravenes clause 3, 4, 5 or 6, the Authority may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the Authority by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the Authority has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Division 4 — Relief from liability

9. Relief from liability

For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- 5 (a) is, or may be, liable under that section;
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,
- 10 the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

10. Application for relief

- (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- 15 (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

11. Case may be withdrawn from jury

- 20 Where a case to which clause 9 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that section to be relieved either wholly or partly from liability sought to be enforced against the person —
- 25 (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.
- 30

12. Compliance with directions

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- 5 (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

**Division 5 — Restrictions on indemnities
and exemptions**

13. Indemnification and exemption of chief executive officer and executive officers

- (1) The Authority or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to the Authority incurred as the chief executive officer or an executive officer.
- 15
- (2) The Authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the chief executive officer or an executive officer —
- 20
- (a) a liability owed to the Authority or a subsidiary;
- (b) a liability that is owed to someone other than the Authority or a subsidiary and did not arise out of conduct in good faith.
- 25
- (3) Subclause (2) does not apply to a liability for legal costs.
- (4) The Authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the chief executive officer or an executive officer if the costs are incurred —
- 30
- (a) in defending or resisting a proceeding in which the person is found to have a liability for which the

s. 42

person could not be indemnified under
subclause (2);

- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.

- (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

14. Insurance premiums for certain liabilities of chief executive officer and executive officers

- (1) The Authority or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the chief executive officer or an executive officer against a liability (other than one for legal costs) arising out of —
 - (a) conduct involving a wilful breach of duty in relation to the Authority; or
 - (b) a contravention of clause 5 or 6.

- (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

15. Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

- (1) Clauses 13 and 14 do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.

”.

43. Schedule 3 replaced by Schedules 3 and 3A

Schedule 3 is repealed and the following Schedules are inserted instead —

“

5

**Schedule 3 — Provisions to be included
in constitution of subsidiaries**

[s. 22]

1. Disposal of shares

10

- (1) The Authority is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the Authority.

2. Directors

15

- (1) The directors of the subsidiary are to be appointed by the Authority, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the Authority and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 3A and in the constitution of the subsidiary.

20

3. Further shares

25

Shares may not be issued or transferred except with the prior written approval of the Minister.

4. Subsidiaries of subsidiary

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written

s. 43

approval of the Minister given with the Treasurer's concurrence.

- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times comply with this Act.
- 5 (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

Schedule 3A — Financial administration and audit

[s. 40(1)]

10

Division 1 — Preliminary

1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —
“**financial year**” has the meaning given by clause 23(1);
“**regulations**” means regulations made under the
15 Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions “**accounting standard**”, “**company**” and “**financial records**”) have the
20 respective meanings given to those terms in Part 1.2 of the Corporations Act.

Division 2 — Financial records

2. Obligation to keep financial records
(*cf. s. 286 Corporations Act*)

- (1) The Authority must keep written financial records that —
25 (a) correctly record and explain its transactions and financial position and performance; and
(b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions
30 extends to transactions undertaken as trustee.

- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

3. Physical format
(*cf. s. 288 Corporations Act*)

5 If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

10 **4. Place where records are kept**
(*cf. s. 289 Corporations Act*)

- (1) The Authority may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- 15 (3) The Authority must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct the Authority to produce specified financial records that are kept outside Australia.
- 20 (5) The direction must —
- (a) be in writing;
- (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
- 25 (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

5. Director access
(*cf. s. 290 Corporations Act*)

- 30 (1) A director has a right of access to the financial records at all reasonable times.

s. 43

- 5
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
- 10
- (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

Division 3 — Financial reporting

15 **Subdivision 1 — Annual financial reports and directors' reports**

6. Preparation of annual financial reports and directors' reports
(*cf. s. 292 Corporations Act*)

20 A financial report and a directors' report must be prepared for each financial year by the Authority before 30 September.

7. Contents of annual financial report
(*cf. s. 295 Corporations Act*)

- 25
- (1) The financial report for a financial year consists of —
- (a) the financial statements for the year;
- (b) the notes to the financial statements; and
- (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
- 30
- (a) a profit and loss statement for the year;
- (b) a balance sheet as at the end of the year;

- (c) a statement of cash flows for the year; and
 - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- 5 (3) The notes to the financial statements are —
 - (a) disclosures required by the regulations;
 - (b) notes required by the accounting standards; and
 - (c) any other information necessary to give a true and fair view.
- 10 (4) The directors' declaration is a declaration by the directors —
 - (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards;
 - 15 (b) that the financial statements and notes give a true and fair view;
 - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the Authority will be able to pay its debts as and when they become due and payable; and
 - 20 (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
 - 25 (i) clause 8 (compliance with accounting standards and regulations); and
 - (ii) clause 9 (true and fair view).
- (5) The declaration must —
 - (a) be made in accordance with a resolution of the directors;
 - 30 (b) specify the date on which the declaration is made; and
 - (c) be signed by at least 2 directors.

8. Compliance with accounting standards and regulations
(cf. s. 296 Corporations Act)

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

9. True and fair view
(cf. s. 297 Corporations Act)

- (1) The financial statements and notes for a financial year must give a true and fair view of —
- (a) the financial position and performance of the Authority; and
 - (b) if consolidated financial statements are required under clause 7(2)(d) — the financial position and performance of the consolidated entity of which the Authority is part.
- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

10. Annual directors' report
(cf. s. 298 Corporations Act)

- (1) The Authority must prepare a directors' report for each financial year.
- (2) The report must include —
- (a) the general information required by clause 11; and
 - (b) the specific information required by clause 12.
- (3) The report must —
- (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the report is made; and
 - (c) be signed by at least 2 directors.

11. Annual directors' report — general information
(cf. s. 299 Corporations Act)

- (1) The directors' report for a financial year must —
- 5 (a) contain a review of operations during the year of the Authority and the results of those operations;
 - (b) give details of any significant changes in the Authority's state of affairs during the year;
 - 10 (c) state the Authority's principal activities during the year and any significant changes in the nature of those activities during the year;
 - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
 - 15 (i) the Authority's operations in future financial years;
 - (ii) the results of those operations in future financial years; or
 - (iii) the Authority's state of affairs in future financial years;
 - 20 (e) refer to likely developments in the Authority's operations in future financial years and the expected results of those operations; and
 - 25 (f) if the Authority's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the Authority's performance in relation to environmental regulation.
- 30 (2) If consolidated financial statements are required under clause 7(2)(d), the report must be on the consolidated entity of which the Authority is part.
- (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —
- 35 (a) the Authority; or

s. 43

- (b) if consolidated financial statements are required under clause 7(2)(d) — the consolidated entity or any entity (including the Authority) that is part of the consolidated entity.

- 5 (4) If material is omitted from the report, the report must say so.

12. Annual directors' report — specific information
(cf. s. 300 Corporations Act)

- (1) The directors' report for a financial year must include details of —
 - 10 (a) dividends or distributions paid during the year;
 - (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
 - (c) the name of each person who has been a director of the Authority at any time during or since the end of
15 the year and the period for which they were a director.
- (2) The report must also include details of —
 - (a) each director's qualifications, experience and special responsibilities;
 - 20 (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
 - (c) the number of meetings of each board committee held during the year and each director's attendance
25 at those meetings.
- (3) Details do not have to be included in the directors' report for a financial year if they are included in the financial report for that financial year.

13. Annual directors' report — other specific information
(cf. s. 300A Corporations Act)

The directors' report for a financial year must also include —

- 5 (a) discussion of board policy for determining the nature and amount of emoluments of senior executives of the Authority;
- (b) discussion of the relationship between such policy and the Authority's performance; and
- 10 (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the Authority receiving the highest emolument.

14. Audit of annual financial report
(cf. s. 301 Corporations Act)

The Authority must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 33 and 34 and obtain an auditor's report.

Subdivision 2 — Audit and auditor's report

15. Audit opinion
(cf. s. 307 Corporations Act)

The Auditor General must form an opinion about —

- 25 (a) whether the financial report is in accordance with this Schedule, including —
 - (i) clause 8 (compliance with accounting standards and regulations); and
 - (ii) clause 9 (true and fair view);
- 30 (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit;

s. 43

(c) whether the Authority has kept financial records sufficient to enable a financial report to be prepared and audited; and

(d) whether the Authority has kept other records and registers as required by this Schedule.

16. Auditor General's report on annual financial report
(cf. s. 308 Corporations Act)

(1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —

(a) clause 8 (compliance with accounting standards and regulations); and

(b) clause 9 (true and fair view).

(2) If not of that opinion, the Auditor General's report must say why.

(3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.

(4) If it is not practicable to quantify the effect fully, the report must say why.

(5) The Auditor General's report must describe —

(a) any defect or irregularity in the financial report; and

(b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.

(6) The report must specify the date on which it is made.

(7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

17. Auditor General's power to obtain information
(cf. s. 310 Corporations Act)

The Auditor General —

- 5 (a) has a right of access at all reasonable times to the books of the Authority; and
- (b) may require any officer to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

18. Assisting Auditor General
(cf. s. 312 Corporations Act)

An officer of the Authority must —

- 10 (a) allow the Auditor General access to the books of the Authority; and
- 15 (b) give the Auditor General any information, explanation or assistance required under clause 17.

Subdivision 3 — Special provisions about consolidated financial statements

19. Directors and officers of controlled entity to give information
(cf. s. 323 Corporations Act)

20 If the Authority has to prepare consolidated financial statements, a director or officer of a controlled entity must give the Authority all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

25

20. Auditor General's power to obtain information from controlled entity
(cf. s. 323A Corporations Act)

- 30 (1) Where the financial report includes consolidated financial statements, the Auditor General —
- (a) has a right of access at all reasonable times to the books of any controlled entity; and

s. 43

- (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

- 5 (2) Any information, explanation or other assistance required under subclause (1)(b) is to be given at the expense of the Authority.

21. Controlled entity to assist the Auditor General
(cf. s. 323B Corporations Act)

10 If the Authority has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and
- 15 (b) give the Auditor General any information, explanation or assistance required under clause 20.

22. Application of subdivision to entity that has ceased to be controlled
(cf. s. 323C Corporations Act)

20 Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the Authority when its financial report is being prepared or audited.

Subdivision 4 — Financial years of the Authority and the entities it controls

25 **23. Financial years**
(cf. s. 323D Corporations Act)

- (1) The financial year of the Authority is the 12 month period ending on 30 June.
- 30 (2) Where the Authority has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.

- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

Division 4 — Accounting standards

24. Accounting standards
(*cf. s. 334 Corporations Act*)

5

- (1) An accounting standard applies to —
- (a) periods ending after the commencement of the standard; or
 - (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) The Authority may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors.

10

25. Equity accounting
(*cf. s. 335 Corporations Act*)

15

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

26. Interpretation of accounting standards
(*cf. s. 337 Corporations Act*)

20

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

25

s. 43

27. Evidence of text of accounting standard
(cf. s. 339 Corporations Act)

- 5 (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
- (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
- (b) a specified provision of a standard of that kind.
- 10 (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
- 15 (a) the specified standard was in force at that time under that section; and
- (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

Division 5 — Exemptions and modifications

28. Treasurer's power to make specific exemption orders
(cf. s. 340 Corporations Act)

- 20 (1) On an application made in accordance with subclause (3) in relation to the Authority, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
- 25 (a) the directors;
- (b) the Authority;
- (c) the Auditor General.
- (2) The order may —
- 30 (a) be expressed to be subject to conditions; and
- (b) be indefinite or limited to a specified period.

- (3) The application must be —
- (a) authorised by a resolution of the directors;
 - (b) in writing and signed by a director; and
 - (c) lodged with the Treasurer.
- 5 (4) The Treasurer must give the Authority written notice of the making, revocation or suspension of the order.
- (5) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 45A within 14 days after the order is made.
- 10

29. Criteria for specific exemption orders and class orders
(cf. s. 342 Corporations Act)

To make an order under clause 28, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

15

- (a) make the financial report or other reports misleading;
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

Division 6 — Sanctions for contraventions of this Schedule

20

30. Compliance with Divisions 2 and 3
(cf. s. 344 Corporations Act)

- 25 (1) A director of the Authority must take all reasonable steps to comply with, or to secure compliance with, Divisions 2 and 3.
- (2) A person who contravenes subclause (1) with intent to deceive or defraud the Minister or the Treasurer or creditors of the Authority, is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.
- 30 Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

s. 43

- (3) In subclause (2) —
“**summary conviction penalty**” has the same meaning as in
section 5 of *The Criminal Code*.
- 5 (4) If subclause (2) does not apply a person who contravenes
subclause (1) is liable to a fine of \$5 000.
- (5) Subclause (1) does not apply to clause 17, 18, 20 or 21.

Division 7 — Miscellaneous

31. Deadline for reporting to the Minister
(*cf. s. 315 Corporations Act*)

- 10 (1) In subclause (2) —
“**the prescribed day**” means the fifth working day after
receipt by the directors under clause 16 of the Auditor
General’s report.
- 15 (2) The Authority must as soon as practicable but not later than
the close of business on the prescribed day in each year send
to the Minister a copy of the annual report required by
section 25BA.

32. Annual financial reporting to the Minister
(*cf. s. 314 Corporations Act*)

- 20 The annual report of the Authority under section 25BA is to
contain the following documents —
- (a) the financial report for the year;
- (b) the directors’ report for the year;
- (c) the Auditor General’s report on the financial report;
- 25 (d) a copy of any order of the Treasurer under
clause 28.

33. Audit

- 30 (1) If the Auditor General cannot complete the audit of the
Authority by 30 September in any year he or she is to
submit an interim report to the Minister setting out the
reasons for his or her inability to complete the audit by that

date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament or dealt with under section 45A within 7 sitting days of receiving that report.

- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of the Authority.

34. Powers and duties of the Auditor General

- (1) If the Auditor General in the course of the performance of duties as auditor of the Authority and its subsidiaries, is satisfied that —

- (a) there has been a contravention of any provision of this Schedule; and
- (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board,

the Auditor General is to forthwith report the matter to the Minister in writing.

- (2) The provisions of sections 78 to 80 and 82 to 91 and section 95 of the *Financial Administration and Audit Act 1985* apply to the Authority as if it were a statutory authority named in Schedule 1 to that Act.

35. Extension of time

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.

- (2) Where the Minister grants an extension of time under subclause (1), clause 28(5) applies to the memorandum evidencing the extension as if it were an order under clause 28(1).

Part 3 — Amendments to other Acts

44. *Financial Administration and Audit Act 1985*

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

5 [* Reprinted as at 16 September 2002.
For subsequent amendments see Acts Nos. 30 and 38 of 2002.]

- (2) Schedule 1 is amended by deleting the item “Western Australian Land Authority”.

10 **45. *Public Sector Management Act 1994***

- (1) The amendments in this section are to the *Public Sector Management Act 1994**.

15 [* Reprinted as at 9 February 2001.
For subsequent amendments see Acts Nos. 24 of 2001 and 20 of 2002.]

- (2) Schedule 1 is amended by renumbering the item that begins “18 Any port authority” as item 16A and inserting after that item —

“

17 Western Australian Land Authority established by the
Western Australian Land Authority Act 1992

20 ”.

- (3) Schedule 2 item 61 is deleted.

=====