

## ***WESTERN AUSTRALIAN LAND AUTHORITY AMENDMENT BILL 2003***

### **EXPLANATORY MEMORANDUM**

The Western Australian Land Authority, operating as LandCorp (**Authority**) was established in 1992 by the *Western Australian Land Authority Act 1992 (WALA Act)*. The Act had the effect of amalgamating of a number of Government agencies that had different land development functions.

The *Western Australian Land Authority Act 1992* was required to be reviewed after 5 years operation (section 48), and the outcome of that review was partially given effect to by the *Western Australian Land Authority Amendment Act 1998*.

The 2001 Machinery of Government reforms recommended that LandCorp should assume the primary role as the State's land development arm, with its mandate expanded to encompass remediation of contaminated sites, a broader urban renewal function and to take control of the Crown land development function from the Department of Land Administration.

LandCorp's Statutory Authority Review, completed in June 2002 and approved by Government, recommended that the Authority should remain a statutory authority and have its legislation amended to give effect to the Machinery of Government reforms and optimise its functioning. The legislative amendments are based on the *Port Authorities Act 1999*.

Thus the *Western Australian Land Authority Amendment Bill 2003* seeks to complete giving effect to the 1998 Ministerial Review and the 2001 Machinery of Government Reforms by providing for its increased land development mandate and the further commercialisation of the Authority.

The main thrust of the amendments contained in the *Western Australian Land Authority Amendment Act 2003* are:

- to clarify and widen the objects, and therefore the functions and powers, of the Authority, to include urban renewal and remediation of contaminated sites;
- to enshrine the requirement for the Authority to have regard to the triple bottom line concepts of social, economic and environmental outcomes in carrying out its operations;
- to transform the Authority to a statutory authority that no longer enjoys protection of Crown immunity as an agent of the Crown, and is no longer part of the public sector as an SES organisation under the *Public Sector Management Act 1994*; and

- to require the Authority to carry out its functions and operations in a manner that is comparable to a corporation under the *Corporations Act 2001*, with modifications so that it will still be subject to Ministerial and other Government direction, and other minimum public sector standards. This will include the power to enter into business arrangements, such as establishing or acquiring subsidiaries, subject to a number of controls.

The amendments contemplated have been largely modelled on the *Port Authorities Act 1999*, so the Authority will be of a similar status to port authorities under that Act.

Set out below is an explanation of the contents of the Bill, on a clause by clause basis.

Clause No.	Comment
1.	This clause sets out the short title of the Act, which is the <i>Western Australian Land Authority Amendment Act 2003</i> .
2.	<p>This clause provides that the Act will come into effect on a day to be proclaimed. Different sections of the Act may be proclaimed to come into effect on different days.</p> <p>It is intended to proclaim the whole of the Act to come into effect on the same day.</p>
3.	Clause 3 provides that the amendments contained in Part 2 (clauses 3 to 43 inclusive) are amendments to the WALA Act.
4.	<p>Clause 4 amends the long title of the WALA Act:</p> <ul style="list-style-type: none"> <li>• to include a reference to the expanded objects of the Authority relating to the remediation of contaminated land;</li> <li>• to include a reference to the Authority providing for the “<i>environmental</i>” needs of the State as well as the “<i>social</i>” and “<i>economic</i>” needs of the State. This essentially confirms the ‘triple bottom line’ concept now applies to the Authority; and</li> <li>• to delete the reference to the specific function of disposing of surplus Government land assets and to replace it with a general reference to “<i>related purposes</i>”.</li> </ul>
5.	<p>Clause 5 amends the objects in s.3 of the WALA Act in the following ways.</p> <ul style="list-style-type: none"> <li>• The Authority is required to have regard to “environmental outcomes”, in providing land for the social and economic needs of the State. It requires the Authority to have regard to the ‘triple bottom line’ in providing land.</li> <li>• The existing object in paragraph (c) is widened. Paragraph (c) currently provides for the object of “the identification and development or redevelopment of urban and regional centres of population and the provision or improvement of infrastructure</li> </ul>

and facilities for those centres”. The amended paragraph (c) allows for the “identification and development, or urban renewal of centres of population and the provision or improvement of land for those centres”.

The concept of urban renewal is wider than redevelopment, in that it allows the complete rejuvenation of an area. The reference to infrastructure and facilities has been removed as this is now included in the expanded definition of “land” (refer to clause 6(2)).

- A new object is added in paragraph (ca), to promote the remediation and development of contaminated land. This will allow the Authority to undertake the function of project managing all relevant steps in relation to potentially contaminated or contaminated land for which the State is responsible or undertakes to remediate, such as ‘orphan sites’ under the proposed Contaminated Sites Bill.
- The existing object in paragraph (d) is changed so that the Authority is no longer stated to be the “*primary agency*” for the development and disposal of surplus Government land. This object is now stated now in more general terms, to facilitate the development and disposal of surplus public land.

6. Subclause (1) deletes the definition of “**Account**” in s.4 of the WALA Act. This is a consequential amendment due to the change in the nature of the Authority’s status and the way in which it is to maintain its accounts (refer to clause 33).

Subclause (2) amends the definition of “**land**” in s.4 of the WALA Act. That definition currently includes land within the meaning of the *Land Administration Act 1997*, and any legal or equitable estate or interest in land.

The amendment now also includes a reference to:

- (a) buildings and other structures; and
- (b) infrastructure, facilities and services relating to land.

Currently there is a separate definition of “**land**” in s.16(2) of the WALA Act (which sets out the Authority’s functions), which includes a reference to infrastructure, facilities and services relating to land.

It is appropriate to have a single definition of “**land**” that applies consistently to all provisions of the WALA Act. As the Authority’s objects encompass wide land development functions, it is appropriate that it has power to deal with buildings and other structures, and infrastructure and the like relating to land.

Subclause (3) inserts various new definitions in the WALA Act, many of which are as a result of the change in the Authority’s status.

“**Commissioner for Public Sector Standards**” is defined to be the person holding that office under the *Public Sector Management Act 1994*.

The definition of “**contaminated**” is consistent with the definition of that term in the proposed *Contaminated Sites Bill*. It means where a substance is present in or on land at above background concentrations that presents, or has the potential to present, a risk to human health or to any environmental values.

“**Corporations Act**” is defined to be the *Corporations Act 2001* of the Commonwealth.

The term “**develop**” is defined to include redevelop. The effect of this is the Authority can undertake its functions in the development of new areas and the redevelopment of existing areas.

The term “**executive officer**” is defined by reference to the person designated as such under new s.14A.

The term “**management**”, when used in the WALA Act in relation to staff, is defined to include the various aspects of human resource management of recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination.

The term “**member of staff**” is defined by reference to the persons engaged under s.11.

A new definition of “**subsidiary**” is included. It is in the same terms as that term is defined in the *Port Authorities Act 1999*. It means:

- (a) a body that would be a subsidiary under the *Corporations Act* if that Act applied to the Authority; and
- (b) an interest in a unit trust, joint venture or partnership in which the Authority would control the composition of the relevant board or governing body; cast or control more than half of the votes at a general meeting; or control its business affairs.

A new definition of “**Trust Fund**” is included, to mean the Trust Fund under the *Financial Administration and Audit Act 1985*.

- 7. This clause repeals s.5(5) of the WALA Act. Under that section, the Authority was stated to be an agent of the Crown, and Crown immunity was conferred on it. This provision is no longer appropriate given the change in the Authority’s status and would be inconsistent with new s.5A.
- 8. This clause adds new ss.5A and 5B in the WALA Act.  
New s.5A provides that the Authority is not an agent of the Crown and does not have the status, immunities and privileges of the Crown. This has the effect of making the Authority an independent statutory authority. It is in similar terms as s.5 of the *Port Authorities Act 1999*.

New s.5B provides that the Authority is not a public sector body under the *Public Sector Management Act 1994* and neither the chief executive officer nor any member of staff is in the Senior Executive Service under that Act. The effect of this section is to remove the Authority from the operation of that Act (except for some limited provisions dealt with specifically elsewhere in the WALA Act). It is in similar terms as s.6 of the *Port Authorities Act 1999*.

9. This clause amends s.8 of the WALA Act, by adding a new subsection (2). If a director of the Authority's board is paid out of moneys appropriated by Parliament (eg a public service officer) then that person is not entitled to remuneration as a director. It is in similar terms as s.10(3) of the *Port Authorities Act 1999*.

10. This clause adds new ss.8A and 8B in the WALA Act.

New s.8A(1) provides that a person's duties as a director of the Authority's board are to prevail if there is a conflict between those duties and the person's other duties as a public service officer. However, the person does not have any Crown immunity in respect of his or her duties as a director of the Authority's board. He or she is liable in the same way as any other director, who is not a public service officer, would be.

For this purpose, a "**public service officer**" is defined in new subsection (2) as a person employed in the Public Sector under Part 3 of the *Public Sector Management Act 1994*.

New s.8A(1) is in similar terms as s.11 of the *Port Authorities Act 1999*.

New s.8B is in the similar terms as s.12 of the *Port Authorities Act 1999*. Subsection (1) obliges a director of the Authority's board to disclose a notifiable interest as soon as he or she becomes aware of it. Failure to do so is an offence liable to a penalty of \$5,000. Under subsection (2), a disclosure is required to be recorded in the minutes of the relevant board meeting.

Subsection (3) defines a "**notifiable interest**" to mean an interest in the matter that under Schedule 1 Part B clause 2(1)(b) will disqualify the director from taking part in the deliberation or decision on the matter at the board meeting. Clause 2(1)(b) of Schedule 1 Part B relates to a proposal before the Authority's board in which the director has a direct or indirect pecuniary interest.

11. Clause 11 repeals s.9 of the WALA Act. Section 9 gave protection to the directors and officers of the Authority in the performance of their duties. Given the change of the Authority's status (especially as it no longer has the immunity of the Crown), this protection is no longer appropriate.

12. Clause 12(1) repeals ss.10 to 13 inclusive of the WALA Act and replaces them with new ss.10 to 13A inclusive.

New s.10 relates to the chief executive officer. It is in similar terms as ss.14 and 15 of the *Port Authorities Act 1999*.

Subsection (1) provides the Authority is to have a chief executive officer, whose function is, subject to the control of the board, to administer the day to day operations of the Authority (subsection (2)).

The board of the Authority has the power to appoint and remove, and fix and alter the terms and conditions of service of, the chief executive officer (subsection (3)).

However:

- (a) the fixing and alteration of the terms and conditions of service, are subject to the *Salaries and Allowances Act 1975*, if that Act applies to the chief executive officer (subsection (4)); and
- (b) the board must get the Minister's approval before exercising any of the powers under subsection (3) (subsection (5)).

The chief executive officer can resign by notice in writing to the board (subsection (6)), but subject to any relevant terms and conditions contained in his or her contract of employment (subsection (7)).

The board of the Authority can appoint a person to act in the office of chief executive officer while he or she is or is expected to be absent or unable to carry out his or her duties (subsection (8)).

New s.11 relates to the staff of the Authority. It is in similar terms as s.16 of the *Port Authorities Act 1999*.

The board of the Authority has the power to engage and manage staff (subsection (1)). This includes the power to determine conditions of employment, disciplinary matters and terminate the employment of staff (subsection (2)).

The minimum conditions of employment and remuneration provided for in an applicable award, order or agreement under the *Industrial Relations Act 1979*, or under the *Minimum Conditions of Employment Act 1993*, must be at least complied with and apply to the employment of the Authority's staff (subsection (3)).

The effect of subsection (4) is that once minimum standards are established under new s.12 in relation to the Authority's staff, an industrial agreement and the other matters dealt with under Part II Division 2B of the *Industrial Relations Act 1979* do not apply to any matters contained in those minimum standards, except for:

- (a) rates of remuneration;
- (b) leave;
- (c) hours of duty; and
- (d) any matter prescribed under s.99(1)(a)(iv) of the *Public Sector Management Act 1994*.

In other words, even if minimum standards are in place, an industrial agreement with the Authority's staff must still deal with, and the Commission's powers still apply to, the 4 matters listed above in paragraphs (a) to (d).

Subsection (4) also provides that an industrial agreement and the other matters dealt with under Part II Division 2B of the *Industrial Relations Act 1979* do not apply to matters concerning the management of staff that are similar to those matters prescribed under s.99(1)(c) of the *Public Sector Management Act 1994*.

In other words, the matters prescribed under s.99(1)(c) of that Act do not apply to industrial agreements that apply to WALA's staff.

An employer-employee agreement (EEA) made under Part VID of the *Industrial Relations Act 1979* cannot vary or affect any of the matters referred to in subsection (4) (subsection (5)).

Except for this requirement in subsection (5), an EEA can be entered into under Part VID of the *Industrial Relations Act 1979* (subsection (6)).

New s.12 relates to the minimum standards for staff management. It is in similar terms as s.17 of the *Port Authorities Act 1999*.

The board of the Authority is required to establish minimum standards of merit, equity and probity in relation to the management of its staff, after consultation with the Commissioner for Public Sector Standards (subsection (1)).

It must have regard to the principles in s.8 of the *Public Sector Management Act 1994* in establishing those standards (subsection (2)). However, this requirement in subsection (2) does not affect the requirement to obtain the Minister's approval in relation to the employment of the chief executive officer under s.10(5) (subsection (3)).

The Commissioner for Public Sector Standards may recommend to the board of the Authority an amendment to the minimum standards for staff management (subsection (4)).

Similarly, under subsection (5) the board of the Authority may amend the minimum standards, or revoke them and substitute them with new minimum standards, after consultation with the Commissioner for Public Sector Standards.

New s.13 relates to the requirement to report to the Commissioner for Public Sector Standards. It is in similar terms as s.18 of the *Port Authorities Act 1999*.

The Commissioner for Public Sector Standards may require the board of the Authority to report periodically to the Commissioner on the observance of those minimum standards of staff management (subsection (1)). The board must comply with that direction (subsection (2)).

The Commissioner for Public Sector Standards may at any time report to the Minister on the observance of those minimum standards (subsection (3)).

New s.13A relates to superannuation benefits for staff, former staff and their dependants. It is in similar terms as s.19 of the *Port Authorities Act 1999*.

Under subsection (1), the Authority may grant superannuation benefits to members and former members of staff and their dependants. For that purpose, it may establish, manage and control, or arrange for the establishment, management and control of a superannuation fund or scheme for retirement benefits. In doing so, it is still subject to s.30 of the *State Superannuation Act 2000*.

The Authority can make contributions to any such fund or scheme (subsection (2)).

The chief executive officer is treated as a member of staff for the purposes of being entitled under this section (subsection (3)).

The *State Superannuation Act 2000* continues to apply to the Authority and its members and former members of staff and their dependants despite this section (subsection (4)).

Clauses 12(2) to (9) inclusive contain transitional provisions in relation to the existing staff entitlements.

Clause 12(2) continues the appointment of the chief executive officer, and clause 12(3) continues the appointment of all other staff.

Under clause 12(4), all existing entitlements and rights of the chief executive officer and staff (under a superannuation scheme or for continuity of service) continue even though the Authority is no longer an SES organisation under the *Public Sector Management Act 1994*, unless those persons agree otherwise.

The chief executive officer and staff are still treated as falling under Part 6 of the *Public Sector Management Act 1994* (relating to redeployment and redundancy), for a period of 2 years after the Act comes into force (subclauses 12(5) and (6)). This is consistent with the approach taken with the port authorities and provides for a 2-year safety net to existing staff to be redeployed within the public sector.

Subclause (7) provides that staff whose employment continues under subclause (3) are taken to have been engaged under s.11 of the WALA Act.



Subclause (8) is a definitional section, which adopts the same definitions in the WALA Act for the purposes of these transitional provisions.

13. Clause 13 inserts a new Part 2 Division 3 (new ss.14A – 14D inclusive), entitled “*Conduct and integrity of staff*”, into the WALA Act. It is in similar terms as Part 2 Division 4 of the *Port Authorities Act 1999*.

New s.14A(1) applies the provisions in Schedule 1A to current and former chief executive officers and members of staff. Schedule 1A sets out the duties of these various officers.

Subsection (2) allows the board of the Authority to designate a member of staff to be an executive officer, for the purposes of the higher duties set out in Schedule 1A.

New s.14B relates to the code of conduct of members of staff. The board of the Authority is required to establish such a code of conduct, after consultation with the Commissioner for Public Sector Standards (subsection (1)).

It must have regard to the principles in s.9 of the *Public Sector Management Act 1994* in establishing the code or codes of conduct (subsection (2)).

Under subsection (3), the board of the Authority may amend a code of conduct, or revoke it and substitute it with a new code of conduct, after consultation with the Commissioner for Public Sector Standards.

The chief executive officer is a member of staff for the purposes of the code of conduct and reports to the Commissioner for Public Sector Standards and the Minister (subsection (4)).

New s.14C relates to the requirement to report to the Commissioner for Public Sector Standards.

The Commissioner for Public Sector Standards may require the board of the Authority to report periodically to the Commissioner on the observance of a code of conduct by members of staff (subsection (1)). The board must comply with that direction (subsection (2)).

The Commissioner for Public Sector Standards may at any time report to the Minister on the observance of a code of conduct by members of staff (subsection (3)).

Under new s.14D(1), the board of the Authority is required to separately report to the Minister on the observance of any code of conduct by members of staff, when it delivers its annual report to the Minister. A copy of that report is to be also delivered to the Commissioner for Public Sector Standards (subsection (2)).

14. This clause repeals s.15 of the WALA Act. Under that section, the Authority was required to comply with written laws. As the Authority will no longer be “the Crown” this provision is no longer required, as

there will be no doubt the Authority is obliged to comply with other laws.

15. Clause 15(1) amends s.16(1) of the WALA Act, which relates to the Authority's functions. Section 16(1) is amended so that its functions are consistent with the changes to its objects in s.3 (refer to clause 5).

It amends the Authority's functions as follows:

- (a) the function in existing paragraph (a) is amended, so that it more generally refers to the Authority as being an agency which provides land for the social and economic needs of the State. The specific reference to the Authority being an agency "*through which the government provides*" this land, has been deleted. This reflects the changed status of the Authority as no longer being an agent of the Crown in new section 5A (refer to clause 8);
- (b) the function in existing paragraph (e) is now "*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*";
- (c) a new function is added in paragraph (f) "*to carry out land remediation projects*";
- (d) the function in existing paragraph (f) is widened and is now "*to undertake, plan, provide for, promote or coordinate the development or management of land –*
  - (i) *whether or not for the purposes of any of the functions in paragraphs (a) to (f); and*
  - (ii) *whether or not the Authority holds the land in question.*"

Subclause (2) amends s.16(2) to include a definition of "**land remediation project**" for the purposes of the new object of the Authority, and therefore its function, of that name. It relates to the identification, assessment and remediation of contaminated or potentially contaminated land.

Subclause (3) inserts a new s.16(3) in the WALA Act, to the effect that the Authority may perform its functions in Western Australia or, with the Minister's approval, elsewhere. This will allow it to enter into contracts and the like outside the State.

16. This clause inserts new ss.16B and 16C in the WALA Act.

New s.16B requires the Authority to take account of the social, economic and environmental outcomes in undertaking its functions, and to ensure they are as balanced as is practicable. This effectively requires the Authority to have regard to the 'triple bottom line' in its activities and operations.

New s.16C provides the Authority with discretion as to how and when it performs a function. The fact that the Authority is given a function under the Act does not impose a duty on the Authority to do a particular thing, unless an Act says otherwise or the Authority is directed by the Minister.

17. This clause amends s.17 of the WALA Act, which sets out the Authority's powers.

The Authority's powers are amended in subclause (1) by including the following powers:

- (a) the power to “*deal with*” land (this has been moved from the function in s.16(1)(f)) and deleting the powers to “*manage*” and “*develop*” land because these are now functions under s.16(1)(g);
- (b) the power to acquire, establish or operate an undertaking for the performance of a function or any associated undertaking;
- (c) the power to produce or deal in any equipment, facilities or systems associated with the performance of a function;
- (d) the power to retain agents, consultants and other professional, technical or other services;
- (e) the power to be participate or hold interests in a business arrangement, such as a company, partnership, trust, joint venture, or other profit sharing arrangement;
- (f) the power to carry out any investigation, survey, exploration or feasibility study;
- (g) the power to be involved in research and to publish the results of research;
- (h) the power to develop, hold, use, turn to account and dispose of any intellectual property;
- (i) the power to promote and market the Authority's activities.

Most of these functions are in similar terms as in s.35(2) of the *Port Authorities Act 1999* (with appropriate changes due to the different nature of the Authority's activities).

Subclause (2) amends s.17(4) to the effect that the Authority can only enter into a contract in relation to a business arrangement that relates to land not controlled by the Authority, with the consent of the owner of that land.

Subclause (3) adds new s.17(4a), and gives the Authority the power to make charitable gifts and ex gratia payments, and to accept a gift or the like. It is in similar terms as s.35(7) of the *Port Authorities Act 1999*.

Subclause (4) amends s.17(5) by including definitions of “**business arrangement**” and “**participate**”.

A “**business arrangement**” is defined to mean a company, partnership, trust, joint venture, or an arrangement for sharing profits.

The term “**participate**” is defined to include form, promote, establish, enter, manage, dissolve, wind up and do things incidental to participating in a business arrangement.

18. Clause 18(1) repeals s.17A of the WALA Act and replaces it with new ss.17A to 17C inclusive. These are in similar terms as ss.40 to 42 of the *Port Authorities Act 1999*, while maintaining the requirement to only seek the Minister’s approval to a relevant transaction.

New s.17A requires the Authority to obtain the Minister’s approval to a transaction if:

- (a) it is entered into by the Authority or a subsidiary;
- (b) if it is not otherwise exempt from the requirement; and
- (c) the Authority’s liability exceeds the relevant amount. For these purposes, the liability is the amount or value of the consideration at the time the transaction is entered into; and the relevant amount is 5% of the total reported assets of the Authority as set out in its most recent annual report or any greater sum that is prescribed.

Under new s.17B the Minister can, by order with the Treasurer’s concurrence, exempt specific transactions or classes of transactions from the requirement for approval under new s.17A. The exemption order can be revoked or amended, again with the Treasurer’s concurrence. Any order of this type is required to be laid before Parliament within 14 days after it is made.

New s.17C defines the term “**transaction**” for the purposes of new ss.17A and 17B. It includes the Authority participating in a business arrangement under amended s.17(2)(j) and taking land by compulsory acquisition.

It does not include:

- (a) an acquisition or transaction in relation to a subsidiary under s.22 (refer clause 21);
- (b) an investment, borrowing or hedging transaction;
- (c) an offer or agreement if it is conditional on the Minister’s approval.

Subclause (2) contains a transitional provision in relation to the cross over from the last annual report prepared by the Authority under the *Financial Administration and Audit Act 1985* and the first prepared under the amended WALA Act, for the purposes of determining the relevant amount under new s.17A(3)(b).

19. Clause 19 amends s.18(1) of the WALA Act. It is a consequential amendment, as a result of the alteration to the numbering in s.16(1) of the WALA Act (refer clause 15(1)).
20. Clause 20 amends s.20 of the WALA Act, which relates to the taking or compulsory acquisition of interests in land. The effect of the amendment is to allow the Authority to take interests in land in relation to remediation projects.
21. Clause 21 repeals s.22 of the WALA Act and replaces it with a new s.22. New s.22 is in similar terms as in s.39 of the *Port Authorities Act 1999*.
- Under new s.22(1) the Authority must get the Minister's approval before it acquires a subsidiary, such as an interest in a company, unit trust, partnership or joint venture. The Minister cannot give his or her approval unless the Treasurer also agrees (subsection (2)).
- Under subsection (3), the constitution of the subsidiary is required to contain the various provisions set out in Schedule 3 to the WALA Act, and is not to be inconsistent or become inconsistent with the WALA Act.
- The Authority is required to ensure, as much as practicable, that any subsidiary complies with its constitution and the WALA Act (subsection (4)).
- Subsection (5) provides that if there is any inconsistency between the provisions of the WALA Act and the subsidiary's constitution, the provisions of the WALA Act are to prevail.
- A director, the chief executive officer or any other member of staff may represent the Authority at a subsidiary's meetings or on its board or any committee, with the Authority's approval (subsection (6)).
- Neither the Authority nor the Minister are a director of a subsidiary (and therefore liable as such) by reason of any of these provisions (subsection (7)).
- Under subsection (8), new s.22 and Schedule 3 are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act.
22. Clause 22 inserts new ss.23A to 23D in the WALA Act. These are in similar terms as in ss.45 to 48 of the *Port Authorities Act 1999*.
- New s.23A refers to assumptions that any person dealing with the Authority is entitled to make, including for the purposes of any proceedings relating to those dealings. New s.23B is in similar terms, but relates to assumptions a third person who has dealings with a person, who has acquired property from the Authority, may make.
- The assumptions that can be made for the purposes of new ss.23A and 23B are set out in new s.23C. These assumptions relate to:

- (a) compliance with the WALA Act;
- (b) due appointment and authority to exercise powers by a director, chief executive officer, executive officer, member of staff or particular kind of agent of the Authority;
- (c) issue of genuine and true copies of documents on behalf of the Authority;
- (d) proper sealing (and therefore execution) of a document by the Authority;
- (e) proper performance by the directors, chief executive officer, members of staff and agents of the Authority of each of their duties.

New s.23D contains ‘carve out’ provisions to these assumptions. If the relevant person actually knows, or ought to know (due to his or her relationship with the Authority) the assumption is incorrect, then the person is not entitled to make the relevant assumption. The ‘carve out’ provision also applies for the purposes of any proceedings relating to the relevant dealing with the Authority, or property acquired from the Authority.

23. Clause 23 inserts new s.23E in the WALA Act. It specifies the cases in which the Authority is required to comply with an “**administrative policy requirement**”. The Authority is required to comply with such a requirement if:

- (a) the Minister directs it to comply; or
- (b) a written law requires it to do so.

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

The Authority, however, always has the option to comply with administrative policy requirements even if is not directed to do so.

A similar provision, although not in identical terms is in s.71 of the *Port Authorities Act 1999*. New s.23E is in more specific terms.

24. Clause 24 repeals s.24 of the WALA Act and replaces it with a new s.24. It is in similar terms as in ss.72 and 73 of the *Port Authorities Act 1999*.

New s.24(1) allows the Minister to give directions to the Authority as to the performance of its functions, either generally or on a particular matter. The Authority is required to give effect to that direction.

The Minister is required to lay a copy of any direction given before Parliament (subsection (2)).

Subsection (3) sets out when the direction becomes effective, depending on whether a notice is given in relation to it under s.17 of the *Statutory*

*Corporations (Liability of Directors) Act 1996*. If there is none, it becomes effective after 7 days.

The Authority can ask the Minister to extend this 7 day period under subsection (4).

25. Clause 25 amends s.24A of the WALA Act. Section 24A currently requires the Authority to consult with the Minister in certain cases in relation to the operations of the Authority. The amendment in subclause (1) extends this requirement to consult in those cases in relation to operations of a subsidiary.  
  
Subclause (2) maintains the mandatory requirement for the Authority to consult with the Minister on major initiatives or a course of action of significant public interest, whether or not it relates to the acquisition of a subsidiary.
26. Clause 26 includes a consequential reference to a “*subsidiary*” in s.24B of the WALA Act. Section 24B relates to keeping the Minister informed.
27. Clause 27 includes consequential references to a “*subsidiary*” in s.24C of the WALA Act. Section 24C relates to giving notice of financial difficulty to the Minister.
28. Clause 28 amends s.25 of the WALA Act, by including consequential references to a “*subsidiary*” (subclause (1)).  
  
Subclause (2) adds a new s.25(3a) in the WALA Act. Section 25 relates to the requirement of the board or chief executive officer of the Authority to provide information to the Minister if so requested. New subsection (3a) requires the Minister to be advised, when he or she is given information, if the public disclosure of that information would adversely affect the commercial interests of the Authority, a subsidiary or any other person. It is in similar terms as s.75(4) of the *Port Authorities Act 1999*.
29. Clause 29 amends s.25A(1) of the WALA Act, by including consequential references to a “*subsidiary*”. Section 25A relates to the requirement for a strategic development plan and a statement of corporate intent.
30. Clause 30 repeals s.25B(1) of the WALA Act and replaces it with a new section. It requires the Authority to give to the Minister half yearly reports on the operations of the Authority and any subsidiary. These reports are to be consolidated.  
  
The report is to include information prescribed by the regulations to be included (as subsection (2) currently provides), and also any information required to be included by the relevant statement of corporate intent (as now being inserted by subclause (2)).
31. Clause 31 inserts new ss.25BA and 25BB in the WALA Act, which relate to the preparation of an annual report by the Authority. As the

*Financial Administration and Audit Act 1985* will no longer apply to the Authority in this respect, specific provisions are required to be included in the WALA Act. They are in similar terms as ss.68 and 69 of the *Port Authorities Act 1999*.

New s.25BA requires separate annual reports for the Authority and its subsidiaries to be prepared, and given to the Minister within 5 working days after the Auditor General's report is received. The report of the Authority, but not a subsidiary, is required to be laid before Parliament within 21 days after receipt of it.

New s.25BB sets out what information is to be included in the annual reports of the Authority and its subsidiaries. This includes:

- (a) such information to allow an informed assessment of the entity's operations to be made;
- (b) commentary on any significant issues relating to the performance of the entity, that were raised in the statement of corporate intent;
- (c) particulars of certain directions given by the Minister during the year or that continued to be material during that year;
- (d) particulars of the impact of any directions given under s.24(1) by the Minister on the financial position, profits and losses and prospects of the entity;
- (e) details of the amount of payments and remuneration to the directors of the board of the Authority;
- (f) any information required to be included by the statement of corporate intent.

These provisions are in addition to the other provisions contained in Schedule 3A of the WALA Act.

32. Clause 32 amends s.25C of the WALA Act. Section 25C relates to the ability of the board of the Authority to request the Minister to delete commercially sensitive matters from various reports. The amendments relate to:

- (a) a consequential amendment due to the change in the source of power for the preparation of the Authority's annual report; and
- (b) the test of whether or not the matter is of a commercially sensitive nature being changed from an absolute one, to one based on the reasonable belief of the board.

New subsection (1a) gives the Minister discretion as to whether or not to comply with such a request, unless the matter is one that is required by the WALA Act to be included in the annual report.

The effect of the amendment is to make s.25C in similar terms as s.70 of the *Port Authorities Act 1999*.



33. Clause 33 repeals s.31 of the WALA Act and replaces it with a new s.31, which is in similar terms as s.79 of the *Port Authorities Act 1999*.  
It allows the Authority to keep one or more accounts at:
- (a) the Treasury, as part of the Trust Fund; or
  - (b) with the Treasurer's approval, in any bank.
- Monies received and paid by the Authority are to be transacted through one of these accounts.
34. Clause 34 amends s.32 of the WALA Act, which relates to the liability of the Authority for duties, taxes and the like.
- Section 32(1), which confirmed that the Authority was liable to stamp duty and other taxes and duties under any written law, is repealed. This provision is no longer required as there is now no doubt that it is subject to these taxes and duties. This is due to the changed status of the Authority (ie. it is no longer an agent of the Crown).
- The exception to this rule, to the effect that the Authority is not liable for local government rates on land held by it continues to apply. The land will, however, be rateable for local government rates if it is leased or let by it, or held by it jointly with any other person who is not a public authority, in the hands of the lessee, tenant or joint holder. The Authority, however, pays "local government rate equivalent" to the Consolidated Fund where land is not leased or let.
35. Clause 35 repeals ss.33 to 37 inclusive of the WALA Act and replaces them with new ss.33 to 35A, 36 and 37. These new sections are in similar terms (but not as wide) as ss.80, and 85 to 89 inclusive of the *Port Authorities Act 1999*.
- New s.33 allows the board of the Authority to decide how the Authority's surplus funds are to be invested.
- New s.34 sets out the Authority's borrowing powers, which are:
- (a) to borrow or re-borrow;
  - (b) to obtain credit; or
  - (c) otherwise to arrange for financial accommodation to be extended to the Authority.
- The regulations may prescribe registers the Authority is required to keep (subsection (2)).
- New s.35 sets out restrictions on the Authority's borrowing powers. Under subsection (1) the Authority cannot borrow or re-borrow moneys without the Treasurer's approval. However, this approval can be by way of a notice issued under subsection(3) (subsection (2)).
- The Treasurer may by notice impose monetary limits on these borrowing powers (subsection (3)).

The monetary limit is to relate to the financial year specified by the Treasurer, and can relate to the total amount outstanding at any time or the total liabilities that can be incurred during the year (subsection (4)).

The limit can be varied for a subsequent financial year, but remains in place until it is so varied (subsections (5) and (6)). The Treasurer may by notice impose other conditions (subsection (7)). The Authority is required to comply with any limit, but the liability of the Authority is not affected if it doesn't comply with the limit (subsection (8) and (9)). Persons dealing with the Authority do not have to enquire as to whether or not any such limit has been exceeded (subsection (10)).

New s.35A allows the Authority to enter into various types of hedging transactions (including foreign exchange transactions; currency swaps, caps, collars and floors; interest rate agreements, swaps, caps, collars and floors; options; futures contracts and options; and any other class of transaction approved by the Minister with the Treasurer's concurrence), to manage, limit or reduce its perceived risks or anticipated costs.

New s.36(1) allows the Treasurer, with the Minister's concurrence, to guarantee a financial obligation of the Authority that arises under s.34 of the WALA Act.

The Treasurer is to determine the terms and conditions of the guarantee (subsection (2)). The effect of a guarantee given by the Treasurer is that it is guaranteed by the State and is charged against and appropriated from the Consolidated Fund (subsection (3)). Any monies received or recovered in respect of the guarantee are to be credited to the Consolidated Fund (subsection (4)).

New s.37 allows the Treasurer to charge the Authority for giving a guarantee under s.36, after consulting with the board of the Authority. The Treasurer is to determine the times for and amounts of instalments of those charges.

36. Clause 36 amends s.38 of the WALA Act. Section 38 relates to the payment of dividends by the Authority to the Consolidated Fund. Under existing subsections (3) and (6) the Minister may direct the board of the Authority to pay an interim or final dividend.

Under new subsection (8), a copy of any such direction is required to be laid before Parliament, within 14 days after the direction is given.

37. Clause 39 repeals s.39 and replaces it with new ss.39 and 40 of the WALA Act. These are in similar terms as ss.90 and 91 of the *Port Authorities Act 1999*.

New s.39 applies the *Financial Administration and Audit Act 1985* to the Authority in a limited way. The provisions of that Act do not apply to the Authority or a person performing functions under the WALA Act except for:

- (a) those specifically referred to in other provisions of the WALA Act; and
- (b) s.58C of that Act does apply. This section prohibits anything being done that would limit the Minister's power to disclose information to Parliament.

New s.40 applies new Schedule 3A to the WALA Act to the financial administration and audit of the Authority. Under subsection (2), the provisions in that Schedule can be amended by regulations, but subject to the limits in subsections (3) and (4).

Under subsections (3) and (4), Schedule 3A can be amended so that the provisions in that Schedule will, in the Minister's opinion, substantially correspond with the corresponding provision in the Corporations Act, with any necessary modifications as are consistent with the policy of the WALA Act. Subsection (5) goes on to allow consequential amendments to the WALA Act by regulation, where that is necessary due to the changes to Schedule 3A allowed under subsection (2).

Regulations can only be made amending Schedule 3A with the Treasurer's concurrence.

38. Clause 38 repeals s.45 and replaces it with new ss.45 and 45AA of the WALA Act. These are in similar terms as ss.134 and 135 of the *Port Authorities Act 1999*.

New s.45 provides for the Authority to have a common seal and how it is to be affixed to documents, and what constitutes due execution of a document by the Authority. A document is duly executed if:

- the common seal is affixed to a document by 2 directors, or a director and the chief executive officer; or
- a person authorised to do so by the board of the Authority, under subsection (4) (who can be a director, the chief executive officer or a member of staff), signs the document on behalf of the Authority.

The common seal can only be affixed to a document in a way authorised under this section (subsection (3)).

An authorisation under subsection (4) to affix the common seal of the Authority can be given generally or in relation to specified matters, and may authorise the common seal to be affixed by 2 or more persons jointly. A person dealing with the Authority may presume the authorisation continues during its term or until he or she is given notice of termination of the authorisation (subsection (5)).

A document executed by a person under authorisation will only be a deed if it is executed as a deed and the person has authority to execute it as a deed (subsection (6)).

A document purported to be executed in accordance with s.45 of the WALA Act is presumed to be duly executed, until the contrary is shown.

New s.45AA of the WALA Act sets out various provisions for making contracts by the Authority.

Under subsection (1), a person who is authorised to make, vary or discharge a contract for the Authority can make, vary or discharge that contract in the same manner as if it were being made, varied or discharged by a natural person.

Anything done under subsection (1) is effective at law and binds the Authority and the other parties to the contract (subsection (2)).

The Authority can still make, vary or discharge a contract under its common seal (subsection (3)).

39. Clause 39 amends s.45A of the WALA Act. That section sets out the procedure for laying documents referred to in various other provisions in the WALA Act, before each House of Parliament. The list of those other provisions in this section is consequentially amended as a result of other substantive amendments to the WALA Act.

40. Clause 40 amends s.48 of the WALA Act. Section 48 requires the WALA Act to be reviewed every 5 years. The effect of the amendment is to require the reviews to be initiated every 5 years from the anniversary of the commencement of this amending Act.

41. Clause 41 amends Schedule 1 to the WALA Act. Schedule 1 relates to the “*Constitution and proceedings of directors and board*” (Part A) and “*Duties of directors*” (Part B).

Part A clause 5(8) is repealed and replaced with a new provision that requires the board to keep and preserve records of its meetings and circulating resolutions.

Part B clause 2 is amended by adding new subclauses (6) to (10) inclusive. Clause 2 generally requires a director to disclose any pecuniary interest he or she has in relation to a proposal before the board, and not to take part in any deliberation or decision of the board on that proposal.

New subclause (6) allows the board to resolve that, despite a director having a pecuniary interest in a proposal, he or she is not disqualified from considering or voting on the proposal. The director cannot take part in the board’s deliberation and decision on this resolution. These amendments are in similar terms as clause 8 of Schedule 2 to the *Port Authorities Act 1999*.

New subclause (7) provides for a reduced quorum of directors at a directors’ meeting that is considering a proposal, where a director is disqualified from taking part in any deliberation or decision on the proposal because he or she has a pecuniary interest in the proposal. The reduced quorum is at least 2 directors who are not so disqualified.

If the board of the Authority cannot deal with a proposal because there are not at least 2 directors who are not so disqualified from dealing with a proposal at a directors' meeting, new subclause (8) allows the Minister to deal with the proposal.

The Minister can declare that the disqualification provision in subclause (1)(b), and the reduced quorum provision in subclause (7), do not apply to a specified proposal, either generally or in relation to particular resolutions (subclause (9)).

If the Minister makes a declaration under subclause (9), a copy of it is to be laid before Parliament within 14 days after it is made (subclause (10)).

42. Clause 42 inserts a new Schedule 1A to the WALA Act, which contains "*Provisions about duties of chief executive officer and staff*". It is in similar terms as Schedule 3 to the *Port Authorities Act 1999*.

**Clause 1** provides that the chief executive officer stands in the same fiduciary relationship with, and owes the same duties to act with loyalty and in good faith, to the Authority as a director does with and to a company. These obligations are enforceable by the board of the Authority.

**Clause 2** contains the following interpretation provisions for the purposes of Division 2 (clauses 2 to 6 inclusive) of Schedule 1A:

- The term "**officer**" means the chief executive officer, an executive officer and any other member of staff.
- The term "**summary conviction penalty**" has the same meaning as in s.5 of the *Criminal Code*.
- A person who attempts to commit an offence under the Division is guilty of that offence.
- The chief executive officer's duties under Division 2 are in addition to those contained in Division 1 (ie. in clause 1).

Under **clause 3**, the chief executive officer and an executive officer has a duty to act honestly in the performance of his or her functions.

Failure to do so with an intention to deceive or defraud or for any other fraudulent purpose is a crime, punishable by a fine of \$20,000 or 5 years imprisonment or both. A summary conviction penalty is a fine of \$12,000 or 3 years imprisonment or both.

Failure to comply with this duty (ie. without the necessary intent), is liable to a fine of \$5,000.

Under **clause 4**, the chief executive officer and an executive officer is required to exercise the degree of care and diligence in performing his or her functions, as a reasonable person in his or her position would reasonably be expected to exercise in the Authority's circumstances.

Failure to comply with this duty is liable to a fine of \$5,000.

Under **clause 5**, an officer or former officer must not make improper use of information acquired by him or her in that position, for his, her or another's gain or to cause detriment to the Authority.

Failure to comply with this duty is a crime, punishable by a fine of \$20,000 or 5 years imprisonment or both. A summary conviction penalty is a fine of \$12,000 or 3 years imprisonment or both.

Under **clause 6**, an officer or former officer must not make improper use of his or her position, for his, her or another's gain or to cause detriment to the Authority.

Failure to comply with this duty is a crime, punishable by a fine of \$20,000 or 5 years imprisonment or both. A summary conviction penalty is a fine of \$12,000 or 3 years imprisonment or both.

**Clause 7** allows a court to order a person to pay damages to the Authority, and for that order to be enforced as a judgment, where:

- (a) the person is convicted of an offence under clause 3, 4, 5 or 6; and
- (b) the Authority has suffered loss or damage as a result of the act or omission that led to the conviction.

**Clause 8** allows the Authority to recover from a person who has contravened clause 3, 4, 5 or 6 (whether or not that person has been convicted of an offence) as a debt an amount equal to any profits made by that person, and any loss or damage suffered by the Authority, as a result of that contravention.

**Clause 9** gives the court power to relieve a person from liability under clauses 1 (duties of chief executive officer), 7 (order to pay compensation) and 8 (recovery by Authority of profit or loss) in certain circumstances. These circumstances are if the person has acted honestly and ought fairly to be excused, in the circumstances.

**Clause 10** allows a person to apply to the Supreme Court for relief of the type set out in clause 9, if that person has reason to believe he or she could be liable to a claim under clause 1, 7 or 8.

**Clause 11** gives further powers to a judge to withdraw a case from a jury and to relieve a person from liability in whole or part by directing judgment for the person, during the hearing of a case to which clause 9 otherwise applies.

**Clause 12** gives protection against a claim under clause 1 (duties of chief executive officer), 3 (duty to act honestly) or 4 (duty to exercise reasonable care and diligence) to certain persons for anything done or not done by him or her in complying with a direction given in that person's course of employment. The protection does not apply if the

breach of any of those clauses related to how a thing was done or not done, and the direction did not require it to be done in that way.

Under **clause 13**, the Authority or any subsidiary cannot exempt a chief executive officer or an executive officer from liability incurred by the person in that capacity. Similarly the Authority or any subsidiary cannot give an indemnity to a chief executive officer or an executive officer from liability incurred by the person in that capacity, and for a liability that is owed to:

- (a) the Authority or any subsidiary; or
- (b) any other person, if the liability did not arise out of conduct in good faith.

The Authority or any subsidiary may indemnify a chief executive officer or an executive officer for legal costs incurred by that person in defending an action in that capacity, except in the following cases:

- (a) in relation to proceedings under which the person is not entitled to be indemnified by the Authority or subsidiary for the liability;
- (b) in criminal proceedings in which the person is found guilty;
- (c) in proceedings for relief under clause 9 or 10 and the court does not grant the relief.

The decision on any appeal is to be taken into account for the purposes of determining the outcome of any of these proceedings.

**Clause 14** sets out the circumstances in which the Authority or any subsidiary can pay insurance premiums to cover the liability of the chief executive officer or an executive officer. It may not pay for a policy that covers against those persons' liability arising out of:

- (a) a wilful breach of duty; or
- (b) a breach of clause 5 (duty not to make improper use of information) or 6 (duty not to make improper use of position).

**Clause 15** qualifies further the operation of clauses 13 and 14, in relation to indemnities and insurance premiums. Those clauses do not authorise anything that would otherwise be unlawful. In addition, if there is an indemnity or insurance that covers a liability that is not allowed to be covered under clause 13 or 14, the indemnity or insurance is void to that extent.

43. Clause 43 repeals the existing Schedule 3 and inserts new Schedules 3 and 3A to the WALA Act, which relate to:

- Schedule 3 - *“Provisions to be included in constitution of subsidiaries”*;
- Schedule 3A – *“Financial administration and audit”*.

These Schedules are in similar terms as Schedules 4 and 5 to the *Port Authorities Act 1999*.

### ***Schedule 3***

***Schedule 3 clause 1*** - shares in any subsidiary may not be sold or disposed of without the Minister's approval. The Minister can sign a transfer of any such shares.

***Schedule 3 clause 2*** - the directors of the subsidiary must be appointed by the Authority, but with the prior written approval of the Minister. The subsidiary's operations must be carried out in accordance with the statement of corporate intent of the Authority and the subsidiary. The board of the subsidiary is accountable to the Minister in accordance with Schedule 3A and the subsidiary's constitution.

***Schedule 3 clause 3*** – no additional shares can be issued, and no shares can be transferred, in a subsidiary, without the Minister's prior written approval.

***Schedule 3 clause 4*** – a subsidiary cannot itself form or participate in a subsidiary, except with the Minister's prior written approval and the Treasurer's concurrence. The subsidiary must ensure the constitution of any such subsidiary complies with the WALA Act, and that such subsidiary complies with its constitution and the WALA Act.

### ***Schedule 3A***

***Schedule 3A clause 1*** – defines the terms “**financial year**” and “**regulations**” for the purposes of Schedule 3A. It incorporates the definitions used in the Corporations Act in relation to “**accounting standard**”, “**company**” and “**financial records**”.

***Schedule 3A clause 2*** (compare s.286 Corporations Act) – the Authority is required to keep financial records that correctly record and explain its transactions and financial position and performance; and would enable true and fair financial statements to be prepared and audited. This includes where the Authority acts as trustee. The records are to be kept for 7 years.

***Schedule 3A clause 3*** (compare s.288 Corporations Act) – if the financial records are kept in electronic form, they must be convertible to hard copy. A person who is entitled to inspect the records must be given access to a hard copy.

***Schedule 3A clause 4*** (compare s.289 Corporations Act) – the Authority can decide where the records are kept. If they are kept outside of Australia there must be sufficient information in Australia to enable true and fair financial statements to be prepared. The Authority must notify the Treasurer as to where the information is kept. The Minister can direct the Authority to produce specified records that are kept out of Australia.



***Schedule 3A clause 5*** (compare s.290 Corporations Act) – a director of the Authority has a right of access to its financial records. The Supreme Court can also authorise a person to inspect the records on a director's behalf. The Supreme Court can also make orders in relation to limits on the use of the information, and on the taking of copies.

***Schedule 3A clause 6*** (compare s.292 Corporations Act) – a financial report and directors' report for the Authority must be prepared before 30 September in each year.

***Schedule 3A clause 7*** (compare s.295 Corporations Act) – the financial report is to consist of:

- (a) the financial statement for the year;
- (b) the notes to the financial statements; and
- (c) the directors' declaration about the statements and notes.

The clause contains further elaboration as to what comprises each of the financial statements (in subclause (2)), the notes (in subclause (3)) and the directors' declaration (in subclause (4)).

The financial statements must be prepared on a consolidated basis, if that is required by the accounting standards.

The directors' declaration must be in accordance with a resolution of the directors, set out the date on which it is made and be signed by at least 2 directors.

***Schedule 3A clause 8*** (compare s.296 Corporations Act) – the financial report must comply with the accounting standards (under the Corporations Act) and any regulations made under that Act.

***Schedule 3A clause 9*** (compare s.297 Corporations Act) – the financial statements and notes must give a true and fair view of the financial position and performance of the Authority (and the consolidated entity, if relevant), in addition to the obligation to comply with the accounting standards.

***Schedule 3A clause 10*** (compare s.298 Corporations Act) – the Authority is required to prepare a directors' report for each financial year. It is to include the general information in clause 11 and the specific information in clause 12. It must be in accordance with a resolution of the directors, set out the date on which it is made and be signed by at least 2 directors.

***Schedule 3A clause 11*** (compare s.299 Corporations Act) – the general information required to be included in the directors' report is:

- (a) a review of the Authority's operations during the year and the results of those operations;
- (b) any significant changes in the Authority's state of affairs during the year;

- (c) the principal activities of the Authority during the year and any significant changes in them;
- (d) details of any thing that has arisen during the year that has significantly affected or may significantly affect the Authority's operations or the results of those operations in future years, or the Authority's state of affairs in future years;
- (e) likely developments in the Authority's operations in future years, and the expected results of those operations; and
- (f) details of the Authority's performance in relation to any particular and significant State or Commonwealth environmental regulation that applies to the Authority's operations.

If consolidated financial statements are required, then the directors' report must be on the consolidated entity.

A directors' report may omit material in relation to likely developments in the Authority's operations in future years and the expected results of those operations, if to include that information would be likely to result in unreasonable prejudice to the Authority or the consolidated entity (if relevant). If material is omitted, the report must say so.

***Schedule 3A clause 12*** (compare s.300 Corporations Act) – the specific information required to be included in the directors' report is:

- (a) dividends or distributions paid during the year;
- (b) dividends or distributions recommended or declared to be paid but which were not paid during the year; and
- (c) the name of each director of the Authority, and his or her term of directorship; qualifications, experience and special responsibilities; and attendance at board and board committee meetings during the year.

These details do not have to be included in the directors' report if they are included in the financial report for the same financial year.

***Schedule 3A clause 13*** (compare s.300A Corporations Act) – the directors' report is also to include:

- (a) discussion of board policy for determining the Authority's senior executives' emoluments;
- (b) discussion of the relationship between that policy and the Authority's performance; and
- (c) details of the emoluments of each director and the five highest paid officers of the Authority.

***Schedule 3A clause 14*** (compare s.301 Corporations Act) – the financial report is required to be audited by the Auditor General and an auditor's report is to be obtained.

***Schedule 3A clause 15*** (compare s.307 Corporations Act) – the Auditor General, in auditing the financial report of the Authority, is to form an opinion on the following matters:

- (a) whether the financial report is in accordance with the requirements of Schedule 3A;
- (b) whether he or she has been given all information, explanation and assistance necessary to conduct the audit;
- (c) whether the Authority has kept financial records sufficient to enable the financial report to be prepared and audited; and
- (d) whether the Authority has kept other records and registers as required by Schedule 3A.

***Schedule 3A clause 16*** (compare s.308 Corporations Act) – the Auditor General is required to report to the Minister as to whether he or she believes the financial report is in accordance with the requirements of Schedule 3A. If his or her opinion is that it is not, then the Auditor General's report must say why not.

If the Auditor General believes the financial report does not comply with an accounting standard, his or her report must try to quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify that effect, the report must say why.

The report must also:

- (a) describe any defect or irregularity in the financial report, and any deficiency or the like in any of the matters on which the Auditor General is to form an opinion under clause 15; and
- (b) specify the date on which it is made.

The Auditor General is required to give a copy of his or her report to the directors of the Authority as soon as practicable after it is given to the Minister.

***Schedule 3A clause 17*** (compare s.310 Corporations Act) – the Auditor General has a right of access to the books of the Authority at all reasonable times, and may require information, explanations or other assistance to be given to him or her as part of the audit or review.

***Schedule 3A clause 18*** (compare s.312 Corporations Act) – an officer of the Authority is required to give the Auditor General access to the Authority's books, and the other information, explanation or assistance required under clause 17.

***Schedule 3A clause 19*** (compare s.323 Corporations Act) – if the Authority is required to prepare consolidated financial statements, a director or officer of the consolidated entity is to give the Authority all information necessary to prepare those consolidated financial statements and notes.

***Schedule 3A clause 20*** (compare s.323A Corporations Act) – where the financial report includes consolidated financial statements, the Auditor General has the same right of access, and to information and the like in respect of the consolidated entity as he or she has in respect of the Authority under clause 17. Information and the like is to be given by the consolidated entity at the Authority’s expense.

***Schedule 3A clause 21*** (compare s.323B Corporations Act) – where the financial report includes consolidated financial statements, an officer or auditor of the consolidated entity is to give to the Auditor General the same access, information and the like of the type referred to in clause 20, as an officer of the Authority is required to give under clause 18.

***Schedule 3A clause 22*** (compare s.323C Corporations Act) – clauses 19, 20, 21 continue to apply for the purposes of preparing or auditing a financial report, even if the controlled entity is no longer part of the consolidated entity when the financial report is being prepared or audited.

***Schedule 3A clause 23*** (compare s.323D Corporations Act) – the financial year of the Authority is the 12 month period ending on 30 June. If the Authority is required to prepare consolidated financial statements, it must ensure the financial years of the consolidated entities are synchronised, by the end of 12 months after the consolidation happens.

***Schedule 3A clause 24*** (compare s.334 Corporations Act) – an accounting standard applies to:

- (a) periods ending after the start of the standard; or
- (b) periods ending, or starting, on or after a later date specified in the standard.

The directors of the Authority can elect in writing to apply the accounting standard to start earlier, unless the accounting standard says otherwise.

***Schedule 3A clause 25*** (compare s.335 Corporations Act) – nothing in Schedule 3A prevents the accounting standards from incorporating equity accounting principles.

***Schedule 3A clause 26*** (compare s.337 Corporations Act) – for the purposes of interpreting an accounting standard:

- (a) expressions used in the accounting standard have the same meaning as in Chapter 2M of the Corporations Act; and
- (b) Part 1.2 of the Corporations Act applies as if the standard’s provisions were part of that Chapter.

***Schedule 3A clause 27*** (compare s.339 Corporations Act) – the clause applies to a document, or a copy of a document, published by the Australian Accounting Standards Board or the Australian Securities and

Investments Commission in relation to an accounting standard, or a provision of it, specified under s.334 of the Corporations Act.

The document is proof in proceedings under the WALA Act that the standard was in force at the time specified in the document and that the text of the standard, or provision of it, was as set out in the document, unless there is evidence to the contrary.

***Schedule 3A clause 28*** (compare s.340 Corporations Act) – the Authority can apply to the Treasurer for an order that exempts any of the directors, the Authority and the Auditor General from any of the requirements of Divisions 2 (financial records) and 3 (financial reports).

The Treasurer's order can be subject to conditions, and for an indefinite or a limited period.

The application must be authorised by a resolution of the directors, in writing and signed by a director.

The Treasurer can make, revoke or suspend such an order, and must give notice in writing to the Authority of any such order.

The text of an exemption order must be laid before both Houses of Parliament within 14 days after it is made.

***Schedule 3A clause 29*** (compare s.342 Corporations Act) – the Treasurer can only give an exemption order under clause 28 if he or she is satisfied that to comply with the relevant requirements of Division 2 or 3 would:

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

***Schedule 3A clause 30*** (compare s.344 Corporations Act) – a director is required to take all reasonable steps so that Divisions 2 (financial records) and 3 (financial reports), other than the clauses relating to the audit and auditor's report, are complied with.

Failure to do so with intent to deceive or defraud the Minister or the Treasurer or creditors of the Authority is a crime, punishable by a fine of \$20,000 or imprisonment for 5 years or both. A summary conviction penalty is a fine of \$12,000 or imprisonment for 3 years or both.

Any other failure to comply (ie. without the necessary intent) is liable to a fine of \$5,000.

***Schedule 3A clause 31*** (compare s.315 Corporations Act) – the Authority is required to send a copy of its annual report to the Minister within 5 working days after receiving the Auditor General's report.

***Schedule 3A clause 32*** (compare s.314 Corporations Act) – the Authority's annual report is required to contain the following documents:

- (a) the financial report;
- (b) the directors' report;
- (c) the Auditor General's report;
- (d) a copy of any order by the Treasurer granting an exemption from compliance with any of the provisions of Divisions 2 (financial records) and 3 (financial reports).

**Schedule 3A clause 33** – if the Auditor General cannot complete the audit by 30 September, he or she is to give an interim report to the Minister, which sets out why the audit cannot be completed. The Minister is to lay a copy of the interim report before both Houses of Parliament within 7 days after it is received.

Section 92 of the *Financial Administration and Audit Act 1985* applies to audits of the Authority. This section requires the Auditor General to report on matters of significance to Parliament.

**Schedule 3A clause 34** – The Auditor General is required to report to the Minister a breach of any provision of Schedule 3A unless the matter has been or will 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 of the Authority.

Sections 78 to 80, 82 to 91 and 95 of the *Financial Administration and Audit Act 1985* apply to the Authority. These provisions generally relate to the powers of the Auditor General in conducting audits, including of subsidiaries.

**Schedule 3A clause 35** – the Minister can extend the time for a person, except the Auditor General, to comply with a provision of Schedule 3A to a later specified date. If the Minister grants such an extension, a copy of the memorandum granting the extension must be laid before Parliament within 14 days after it is made.

- 44. Clause 44 amends the *Financial Administration and Audit Act 1985*, by deleting the Authority from Schedule 1 to that Act. The effect of this amendment is that the Authority is no longer a statutory authority that is subject to the operation of that Act.
- 45. Clause 45 amends the *Public Sector Management Act 1994* by inserting a reference to the Authority in Schedule 1 to that Act, and deleting the reference to it in item 61 of Schedule 2 to that Act. The effect of these amendments is that the Authority is no longer an SES organisation, and is not a non-SES organisation, for the purposes of that Act.