

## **Western Australian Resources Heritage Fund Bill 2007**

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Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Hon. John Day, MLA)*

## **Western Australian Resources Heritage Fund Bill 2007**

**A Bill for**

**An Act to provide for the establishment of the Western Australian Resources Heritage Fund to ensure that a proportion of the value of Western Australia's non-renewable resources is retained for future generations of Western Australians.**

The Parliament of Western Australia enacts as follows:

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1. **Short title**

This is the *Western Australian Resources Heritage Fund Act 2007*.

2. **Commencement**

5 This Act comes into operation on a date to be fixed by proclamation.

3. **Terms used in this Act**

In this Act unless the contrary intention appears —

10 **“Board”** means the Western Australian Resources Heritage Fund Board constituted under section 5;

**“Fund”** means the Western Australian Resources Heritage Fund established by this Act;

**“Fund Account”** means the Western Australian Resources Heritage Fund Account established under section 11;

15 **“March CPI”**, for a relevant financial year, means the index number for the quarter ending on the last 31 March before the financial year commences, as shown in the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the  
20 *Census and Statistics Act 1905* of the Commonwealth;

**“Minister”** means the Treasurer of the State;

**“non-renewable resource revenue”** means royalties received by the State —

25 (a) royalties received by the State pursuant to regulations made under section 109 of the *Mining Act 1978* in respect of minerals or any class of minerals, obtained from land that is the subject of a mining lease or other mining tenement granted under the *Mining Act 1978*, or that is the subject of an application for the  
30 grant of a mining lease or other mining tenement under the *Mining Act 1978*;

- 5 (b) royalties received by the State pursuant to the provisions of any agreement to which the State is a party and under which a party to the agreement is authorised or required to carry out any mining operations, that is approved or ratified by an Act of Parliament of the State;
- 10 (c) royalties received by the State from a permittee, lessee or licensee in respect of petroleum recovered in a permit area, lease area or licence area, pursuant to section 143 of the *Petroleum (Submerged Lands) Act 1982*;
- 15 (d) royalties received by the State from a permittee, holder of a drilling reservation, lessee or licensee in respect of petroleum recovered in a permit area, drilling reservation, lease area or licence area, pursuant to section 142 of the *Petroleum Act 1967*;
- 20 (e) royalties received by the State pursuant to the provisions of the agreement between the State and West Australian Petroleum Pty. Limited relating to Petroleum Lease 1H granted under the *Petroleum Act 1936*, as ratified by the *Barrow Island Royalty Variation Agreement Act 1985*; and
- 25 (f) payments received from the Commonwealth pursuant to section 129 of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth, in respect of royalties received by the Commonwealth under the *Petroleum (Submerged Lands) (Royalty) Act 1967* of the Commonwealth.

#### 4. Administration

- 30 Subject to the general direction and control of the Minister, this Act shall be administered by the Board.

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**5. Western Australian Resources Heritage Fund Board**

- (1) There is hereby established a body corporate to be called the Western Australian Resources Heritage Fund Board.
- (2) The Board is a body corporate with perpetual succession.
- 5 (3) Proceedings may be taken by or against the Board in its corporate name.

**6. Agent of Crown**

The Board is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

10 **7. Membership**

- (1) The Board consists of the following members —
  - (a) a Chair;
  - (b) 4 other ordinary members.
- (2) The Chair and the ordinary members of the Board are to be  
15 appointed by the Governor in Council.
- (3) A person is eligible for appointment as the Chair or an ordinary member of the Board if the Minister is satisfied that the person has —
  - (a) substantial experience or expertise; and
  - 20 (b) professional credibility and significant standing;in at least one of the following fields —
  - (c) investing in financial assets;
  - (d) the management of investments in financial assets;
  - (e) corporate governance.
- 25 (4) The members of the Board shall be appointed for such term, not exceeding 3 years, as is specified in instrument of his or her appointment, but may from time to time be reappointed.

**8. Constitution and proceedings of Board**

The constitution and proceedings of the Board shall be as prescribed by regulations.

**9. Remuneration**

- 5           There shall be paid out of the funds of the Board to —
- (a) the Chair; and
  - (b) an ordinary member,
- of the Board, such remuneration and allowances as are determined in his or her case by the Minister on the
- 10           recommendation of the Minister for Public Sector Management.

**10. Common seal, agents, attorneys and facsimiles of Board**

- (1) The common seal of the Board shall —
  - (a) be kept in such custody as the Board directs; and
  - (b) not to be used except as authorised by the Board.
- 15       (2) When a document purporting to bear the common seal of the Board is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is provided, presume that —
  - (a) the document bears that common seal; and
  - 20       (b) that common seal was duly affixed to that document.
- 25       (3) The Board may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds or other instruments on its behalf, and a deed or other instrument executed by such an agent or attorney on behalf of the Board binds the Board and has the same effect as it if it were under the common seal of the Board.

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- (4) For the purposes of this Act, the Board may make use of a facsimile of —
- (a) its common seal; or
  - (b) the signature of an agent or attorney empowered to execute deeds or other instruments on its behalf under subsection (3),
- and a deed or other instrument purporting to evidence indebtedness on the part of the Board and to be endorsed with such a facsimile shall, until the contrary is shown, be deemed to have been sealed by it or signed by the agent or attorney, as the case requires.

**11. Staff**

- (1) The power to engage and manage the staff of the Board is vested in the Board.
- (2) The power conferred by subsection (1) —
  - (a) includes powers to determine remuneration and other terms and conditions of service and to remove, suspend and discipline members of staff; and
  - (b) does not preclude the delegation of any matter under section 13.
- (3) The remuneration of members of staff and other terms and conditions of employment shall not be less favourable than is provided for in —
  - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*;
  - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in this section affects the operation of Part VID of the *Industrial Relations Act 1979*.



**12. Use of other government staff etc.**

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
- 5           (a) in the Public Service;
- (b) in a State agency or instrumentality; or
- (c) otherwise in the service of the Crown in right of the State.
- (2) The Board may by arrangement with —
- 10           (a) a department of the Public Service; or
- (b) a State agency or instrumentality,
- make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) shall be made on
- 15 such terms as are agreed by the parties.

**13. Delegation by Board**

- (1) The Board may, either generally or as otherwise provided by the instrument of delegation, delegate all or any of its powers and duties under this Act, other than the power of delegation, to an
- 20 eligible person.
- (2) In subsection (1) —
- “eligible person”** means —
- (a) a person engaged under section 11; or
- (b) a person whose services the Board is using under
- 25 section 12.
- (3) A person purporting to exercise a power or perform a duty under a delegation under this section is presumed to do so, in the absence of evidence to the contrary, in accordance with the terms of that delegation.

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**14. Protection of members of Board, officers, etc.**

5 No matter or thing done by any member of the Board or by any officer or other person appointed or employed under the provisions of this Act, if done *bona fide* in the exercise of powers conferred by this Act, or in the performance of duties imposed under this or any other Act, shall subject that member, officer or other person to any personal liability.

**15. Western Australian Resources Heritage Fund**

10 (1) For the purposes of this Act there shall be established a fund, to be called “The Western Australian Resources Heritage Fund”, which shall be administered by the Board.

(2) All moneys from time to time belonging to the Fund shall be credited to an account, to be called “The Western Australian Heritage Resources Fund Account”, which shall be kept at Treasury forming part of the Trust Fund constituted under section 10 of the *Financial Management Act 2006*.

(3) The Fund shall consist of —

(a) non-renewable resource revenue transferred to the Fund under section 16;

20 (b) any money appropriated by Parliament for the purposes of this Act, which has been credited to the Fund Account in accordance with a Ministerial determination under section 17;

(c) income from moneys invested under section 18;

25 (d) any other money received by the Board to be used for the purposes of Fund.

**16. Transfer of non-renewable resource revenue**

30 (1) Within 28 days after 1 July 2008, and within 28 days of 1 July in each subsequent year, the Minister may transfer an amount from the Consolidated Account to the Fund Account, being a proportion (“**relevant proportion**”) of the total non-renewable

resource revenue received by the State for the 12 months immediately preceding 1 July in that year.

- 5 (2) The Minister must as soon as practicable after transferring an amount in accordance with subsection (1) prepare and cause to be laid before both Houses of Parliament a report setting out the amount transferred and the relevant proportion.

**17. Credits to the Fund Account**

- 10 (1) The Minister must, by writing, determine that any amount as may be appropriated by Parliament from time to time for the purpose of being credited to the Fund Account, be credited to the Fund Account on a specified day.

- (2) A determination under subclause (1) is irrevocable.

**18. Investment of moneys in the Fund**

- 15 (1) Subject to this section, the Board may invest amounts standing to the credit of the Fund in any financial assets.

- (2) Investments under subsection (1) are to be made in the name of the Board.

- (3) Investments under subsection (1) are taken to be investments of the Fund.

- 20 (4) Investments made by the Board must be made with the objective of maximizing long-term financial returns.

- 25 (5) Subject to the regulations, when making investments the Board must adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return that will enable the Fund to meet the objective set out in subsection (4).

**19. Income of Fund**

- (1) The income of the Fund accrues to and forms part of the Fund.

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- (2) Subject to section 20, no income or capital amount forming part of the Fund may be transferred or otherwise expended from the Fund before 1 July 2012.
- 5 (3) Within 28 days after 1 July 2012, and within 28 days of 1 July in each subsequent year, the Minister may transfer the net income of the Fund for the 12 months immediately preceding 1 July in that year less the amount to be retained in the Fund under section 20, from the Fund to the Consolidated Account, to be used by the State for the development of the State or  
10 otherwise for the benefit of the people of the State.
- (4) Any expenditure by the State from the Consolidated Account of any amount transferred from the Fund under subsection (3) must first be approved by a resolution passed by each House of Parliament.

15 **20. Inflation proofing**

- (1) Subject to subsection (3), for the financial year 2012-2013 and each subsequent financial year (“**relevant year**”), the Board must retain in the Fund a proportion of the income of the Fund for the immediately preceding 12 months calculated in  
20 accordance with subsection (2).
- (2) The amount for the purpose of subsection (1) is an amount equal to equal to the value of the total equity of the Fund as recorded in the financial statements of the Fund as at 31 March of the financial year immediately preceding the relevant year (the  
25 “**relevant date**”) multiplied by the percentage variation, if any, in the March CPI for the year ending on the relevant date.
- (3) If the percentage variation in the March CPI for the purposes of subsection (2) is a negative number, that negative number shall be treated as if it were zero.

30 **21. Operating expenses**

The Board may pay any operating expenses of the Fund from time to time if, in the opinion of the Board, the expense is

reasonably necessary for the proper administration and management of the Fund.

**22. Financial administration, audit and reporting**

5 The provisions of the *Financial Management Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Fund and its operations.

**23. Quarterly reporting**

10 The Minister must, as soon as practicable after the end of each of the first 3 quarters of every financial year, prepare and cause to be laid before both Houses of Parliament a report on the activities of the Fund and financial statements for the preceding quarter.

**24. Regulations**

15 The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

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