

## EXPLANATORY MEMORANDUM

### PUBLIC WORKS AMENDMENT (WA BUILDING MANAGEMENT AUTHORITY ABOLITION) BILL 2019

The purpose of this Bill is to amend the *Public Works Act 1902* to abolish the Western Australian Building Management Authority (the Authority).

The Authority was established under the Public Works Act in 1984. Originally called the Western Australian Building Authority, it was created to provide government the ability to carry out capital raising for public works.

The Authority has been used on two occasions as a fund-raising vehicle: to borrow approximately \$285 million in 1984; and approximately \$55 million in 1996. Since then, the State has met its capital works borrowing requirements through other means.

Abolishing the Authority will reduce red tape by removing the need for an annual report to be prepared.

#### Part 1 – Preliminary

**Clause 1: Short Title**

This clause provides that the short title of this Act is the *Public Works Amendment (WA Building Management Authority Abolition) Act 2019* (the Act).

**Clause 2: Commencement**

This clause specifies the commencement date of the Act.

Paragraph (a) provides that Part 1 comes into operation on the day on which the Royal Assent is received.

Paragraph (b) provides that the remainder of the Act comes into operation on the day after assent day.

#### Part 2 – *Public Works Act 1902* amended

This Part abolishes the Authority and provides transitional arrangements for its abolition. It also makes other minor amendments to the *Public Works Act 1902* that are unrelated to abolishing the Authority.

**Clause 3: Act amended**

This clause provides that the Act amends the *Public Works Act 1902*.

**Clause 4: Section 2 amended**

This clause deletes the definition of “judge”, because the term is now defined in section 5 of the *Interpretation Act 1984*, which applies to all laws of the State.

This amendment is unrelated to the Authority being abolished.

**Clause 5: Part IA deleted**

This clause deletes Part IA of the Public Works Act, which established the Authority and describes its functions, powers and related matters. Deleting this Part removes the legal authority and status of the Authority.

**Clause 6: Part VIII inserted**

This clause inserts a new Part VIII to provide the transitional arrangements for abolishing the Authority.

**Part VIII – Transitional matters for *Public Works Amendment (WA Building Management Authority Abolition) Act 2019***

**Division 1 – Interpretation**

**124. Terms used**

This section defines the terms used in this Part.

**Division 2 – Authority abolished**

**125. Authority**

This section provides that the Authority is abolished on the transition day, which is the day after Royal Assent.

**126. Immunity continues**

When the Authority is abolished, the Minister for Works will assume any of its obligations.

This section extends any immunity that the Authority had in respect of an act, matter or thing before the transition day to the Minister for Works so far as the act, matter or thing is within the Minister for Works' powers.

**Division 3 – Transfer of Authority's assets, rights and liabilities**

**127. Assets, rights and liabilities**

This section provides for the transfer of all the Authority's assets, rights and liabilities to the Minister for Works on the transition day. It also makes it clear that any legal proceedings that may have been commenced by or against the Authority can be brought by or continued against the Minister for Works.

Although this is a standard provision included in legislation abolishing a body, the Authority has no known assets or liabilities and is not a party to any current proceedings.

## **128. Registration of documents**

This section provides that a relevant official must take notice of the transitional arrangements, and record and register any documents required to give effect to these arrangements.

This is another standard provision included in legislation that abolishes a body. The Authority has no known assets or liabilities that would require documents to be registered to give effect to the transitional arrangements.

## **129. Authority to complete necessary transactions**

This section sets out the requirements if any of the Authority's assets or liabilities cannot be properly assigned to the Minister for Works.

Subsection (1) provides that the asset or liability will remain an asset or liability of the Authority and that all practical steps will be taken to assign the asset or liability to the Minister for Works.

Subsection (2) provides that the Department assisting the Minister for Works remains accountable under the *Financial Management Act 2006* for any of the Authority's assets or liabilities. The Department of Finance is currently responsible for principally assisting the Minister for Works in administering the Public Works Act.

For the purpose of subsection (1), subsection (3) provides that the Authority is deemed to continue to exist. This is necessary because clause 125 abolishes the Authority on the transition day.

Subsection (4) provides that the Authority is to perform the functions through a person appointed by the Minister for Works.

Subsection (5) provides that the person appointed under subsection (4) holds office at the pleasure of the Minister for Works.

Subsection (6) gives the Authority the necessary powers to perform the functions under this section.

## **130. Exemption from State tax**

This section provides that duty and any other State tax or charge is not payable on the transfer of any assets, rights and liabilities from the Authority to the Minister for Works or for anything else done as part of the transitional arrangements.

## **131. Operating Accounts of Authority**

This section sets out what must happen on the transition day to any operating accounts held by the Authority. Although the Authority currently has no operating accounts or any former accounts with attached liabilities, this is a standard provision included in legislation abolishing a body.

### **132. Investments**

This section provides that:

- any authorised investment of the Authority's funds before the transition day continues to be authorised on and after transition day; and
- funds previously authorised for investment must be credited to the Department's operating account if they cease to be invested.

The Authority does not currently have any funds invested.

## **Division 4 – Continuation of certain things**

### **133. Completion of things done**

This section provides that if the Authority commences something before transition day, the Minister for Works can continue doing the thing after transition day if it is within the Minister for Works' powers.

### **134. Continuing effects of things done**

Under this section, an act or omission by the Authority before transition date is taken to have been done or not done by the Minister for Works after transition day if the act or omission has force or significance or is not governed by Part VIII of the Public Works Act. The act or omission must be within the Minister for Works' powers.

### **135. Agreements, instruments, proceedings and remedies generally**

This section applies to any agreement, instrument, proceeding or remedy that does not relate to any assets or liabilities of the Authority.

On and after transition day, any reference to the Authority in an agreement or instrument is to be taken as a reference to the Minister for Works if the reference relates to the Minister for Works' functions.

Any proceedings or remedies by or against the Authority, or that might have been available to or against the Authority, may be commenced or continued against the Minister for Works so far as the proceedings or remedy relate to an act, matter or thing within the Minister's functions.

## **Division 5 – Other matters**

### **136. Transitional regulations**

This section provides that the Governor may make regulations to deal with any transitional matter not defined in the Act.

Subsection (1) defines the terms used in the section.

Subsection (2) states that if a transitional matter cannot be dealt with by Part VIII of the Public Works Act, the Governor may make regulations that are required, necessary or convenient to deal with the transitional matters.

Subsection (3) provides that regulations may prescribe that provisions of the Act do not apply to a specific matter or that they apply in a modified form.

Subsection (4) allows regulations to specify that a thing existed, or did not exist, on a date that is before the regulations are published but after transition day.

Subsection (5) applies if regulations are made under subsection (2), and subsection (4) applies to a provision contained within those regulations. This subsection provides that the provision does not prejudice the rights of a person that existed before the regulation publication day and does not impose liabilities on a person for an act or omission done before regulation publication day.

### **137. Effect on other instruments, rights and obligations**

This section provides that the abolition of the Authority does not:

- represent a breach of contract or civil wrong;
- represent a breach of a restriction on transferring assets, rights or liabilities, or the disclosure of information;
- enable a party to an agreement to seek a remedy, or to terminate the agreement, because of a change in ownership of assets, rights or liabilities;
- result in any contract or agreement becoming unenforceable; or
- result in any release of any security.

### **138. Interpretation Act 1984 not affected**

Part V of the *Interpretation Act 1984* deals with the consequences of the repeal of acts. This section makes it clear that Part V applies to the repeal of an enactment of Part 2 of the Act.

## **Part 3 – *Financial Management Act 2006* amended**

### **Clause 7: Act amended**

This clause provides that the Act amends the *Financial Management Act 2006*.

### **Clause 8: Schedule 1 amended**

This clause amends the *Financial Management Act 2006* to remove reference to the Authority on the list of statutory authorities that is included in Schedule 1 to the *Financial Management Act 2006*.