

Chemistry Centre (WA) Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Chemistry Centre (WA) Bill 2006

A Bill for

An Act to —

- **establish an agency of the Crown with the function of providing chemical information, advice and analytical services to the State and other persons and with related functions;**
- **make consequential amendments to certain Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Chemistry Centre (WA) Act 2006*.

2. Commencement

- 5 (1) This Act, other than Part 1 and Schedule 2, comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- 10 (3) Part 1 and Schedule 2 come into operation on the day on which this Act receives the Royal Assent.

3. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —
- “**account**” means the account referred to in section 27;
- 15 “**board**” means the board of management provided for under section 6 and, in Schedule 1 Division 2, includes a committee;
- “**chairperson**” means the chairperson of the board;
- “**Chemistry Centre**” means the Chemistry Centre (WA) established by section 4;
- 20 “**chief executive officer**” means the chief executive officer referred to in section 16;
- “**client related information**” means, in relation to services provided by the Chemistry Centre —
- 25 (a) information obtained from or for a private client as part of providing those services to the client; or
- (b) the fact that a private client has sought those services;
- “**committee**” means a committee appointed under Schedule 1 clause 14;

“government agency” means —

- (a) a department of the Public Service;
- (b) a State agency or instrumentality; or
- (c) a body (whether incorporated or not) or the holder of an office, post or position, established or continued by or under a written law for a public purpose;

“member of staff” means the chief executive officer or a person referred to in section 17(1) or (2);

“member of the board” includes a person appointed under Schedule 1 clause 5 and, in Schedule 1 Division 2, includes a member of a committee;

“personal information” means information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information, but does not include information or an opinion about a member of the board, a member of a committee, a member of staff or any other person engaged under section 17 or made available under section 17(6) or 18, in that capacity;

“private client” means a person or organisation, other than a government agency —

- (a) for whom the Chemistry Centre has provided, or is providing, services; or
- (b) who has sought the services of the Chemistry Centre;

“subsidiary” means —

- (a) a body determined to be a subsidiary of the Chemistry Centre under subsection (2); or
- (b) a unit trust, joint venture or partnership where the interest or other rights of the Chemistry Centre in connection with the unit trust, joint venture or partnership entitle the Chemistry Centre to —
 - (i) control the composition of the governing body of the unit trust, joint venture or partnership;

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- 5
- (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
 - (iii) control the business affairs of the unit trust, joint venture or partnership.
- (2) The Commonwealth *Corporations Act 2001* Part 1.2 Division 6 applies for the purpose of determining whether a body is a subsidiary of the Chemistry Centre.

Part 2 — Chemistry Centre (WA)

4. Chemistry Centre established

- 5
- (1) A body called the Chemistry Centre (WA) is established.
 - (2) The Chemistry Centre is a body corporate with perpetual succession.
 - (3) Proceedings may be taken by or against the Chemistry Centre in its corporate name.

5. Status

10 The Chemistry Centre is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

6. Board of management

- 15
- (1) The Chemistry Centre is to have a board of management comprising —
 - (a) one member appointed as the chairperson;
 - (b) one member appointed as the deputy chairperson; and
 - (c) 5 other members.
 - (2) The board is the governing body of the Chemistry Centre and, in the name of the Chemistry Centre, is to perform the functions of the Chemistry Centre.
 - 20 (3) The members of the board are to be appointed by the Minister.
 - (4) The Minister is to ensure that each person appointed to the board has expertise that, in the Minister's opinion, is relevant to the functions of the Chemistry Centre.

7. Constitution and proceedings of board

25 Schedule 1 has effect with respect to the board and its members and a committee and its members.

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8. Remuneration of members of the board

- 5
- (1) A member of the board is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.
- 10
- (2) A member of a committee who is not a member of the board is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

Part 3 — Functions and powers of the Chemistry Centre

9. Functions

The functions of the Chemistry Centre are —

- 5 (a) to provide chemical information, advice and analytical services to government agencies, particularly, but not exclusively, in the areas of —
- (i) forensic science and medicine;
 - (ii) public health and safety;
 - 10 (iii) environmental protection; and
 - (iv) crisis and emergency response and management;
- (b) to undertake research and development that will, or is likely to, assist —
- (i) in the development of the State; and
 - 15 (ii) in the performance of its other functions;
- (c) to promote, and assist in the provision of, chemistry based education and training and fundamental and applied research and development;
- 20 (d) to earn revenue by engaging in commercial activities that are not inconsistent with, and do not have an adverse effect on, the performance of its other functions and are —
- (i) connected with the performance of the Chemistry Centre's other functions; or
 - 25 (ii) authorised by the regulations.

10. Principles of operation

- (1) The Chemistry Centre is to perform its functions and manage its affairs in accordance with the following principles —
- 30 (a) it is to provide high quality, independent chemical information, advice and analytical services;

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- 5
- (b) it is to provide that information and advice and those services in a timely manner;
- (c) it is to maintain its capacity to adhere to the principles in paragraphs (a) and (b), particularly, but not exclusively, by ensuring that —
- 10
- (i) persons with the skills and experience necessary to do so are members of staff, or otherwise employed by or made available to it; and
- (ii) it has, or has available to it, the materials, equipment and infrastructure necessary to perform its functions;
- (d) it is to perform its functions in a cost effective manner (to the extent practicable).
- 15
- (2) When engaging, or proposing to engage, in a commercial activity, the Chemistry Centre is to ensure that —
- (a) the activity is consistent with its strategic development plan and statement of corporate intent; and
- (b) the activity is likely to be of benefit to the community of Western Australia.
- 20
- (3) The Chemistry Centre may perform any of its functions in the State or elsewhere.

11. Powers

- (1) The Chemistry Centre has all the powers it needs to perform its functions.
- 25
- (2) The Chemistry Centre may, for the purpose of performing any of its functions, but subject to any limitation imposed by this Act —
- 30
- (a) acquire, construct, add to, alter, improve, hold, maintain, manage, develop or dispose of, real or personal property;

-
- 5
- (b) enter into a contract or other arrangement, including a contract or arrangement for the provision of services to the Chemistry Centre;
- (c) act as an agent or provide consultancy, professional or technical services or other assistance under a contract for services or other arrangement;
- 10
- (d) with the Minister's and the Treasurer's approval, participate in any business concern or acquire, hold and dispose of, shares, units or other interests in or relating to a business concern;
- (e) collaborate with any person or body in the performance of its functions;
- (f) carry out any investigation, survey, exploration, feasibility study, evaluation or review;
- 15
- (g) produce and publish information on matters relating to its functions, including results for research and development undertaken by the Chemistry Centre, alone or collaboratively;
- 20
- (h) produce and deal in any equipment, facilities or system associated with the performance of its functions;
- (i) develop and turn to account any technology, software or other intellectual property that relates to its functions and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- 25
- (j) promote and market the Chemistry Centre and its activities.
- (3) Subsection (2) does not limit subsection (1) or any of the Chemistry Centre's other powers.
- 30
- (4) The Chemistry Centre may —
- (a) make any gift for a charitable purpose or any other purpose of benefit to the community or a section of the community;

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- (b) make any ex gratia payment that it considers to be in the Chemistry Centre's interest; or
- (c) accept any gift or other payment if it is absolute, or subject to conditions that it would be able to satisfy.

5 (5) In this section —

“acquire” includes acquiring —

- (a) by way of a lease, licence, easement or bailment; or
- (b) in any other manner in which an interest in property may be acquired;

10 **“business concern”** means a company, a partnership, a trust, a joint venture or any other business arrangement;

“dispose of” includes dispose of —

- (a) by way of a lease, licence, easement or bailment; or
- (b) in any other manner in which an interest in property may be disposed of;

15

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

12. Transactions that require Ministerial approval

20 (1) Despite sections 9, 10 and 11, the Chemistry Centre must get the Minister's approval before a transaction to which this section applies is entered into.

(2) This section applies to a transaction if —

- (a) it is to be entered into by the Chemistry Centre or a subsidiary of the Chemistry Centre;
- (b) it is not exempt under section 13; and
- (c) the Chemistry Centre's liability exceeds the relevant amount.

25

- (3) For the purposes of subsection (2)(c) —
- (a) the Chemistry Centre’s liability is the amount or value of the consideration or the amount to be paid by the Chemistry Centre or a subsidiary, worked out as at the time when the transaction is entered into; and
 - (b) the relevant amount is the larger of —
 - (i) an amount equal to 5% of the value of the total reported assets of the Chemistry Centre as set out in the most recent annual report of the Chemistry Centre under the *Financial Management Act 2006* Part 5; or
 - (ii) \$1 000 000.
- (4) In this section and section 13 —
- “**transaction**” includes a contract or other arrangement but does not include —
- (a) an exercise of the power under section 11(2)(d); or
 - (b) a transaction under section 28.

13. Exemptions from section 12

- (1) The Minister, with the Treasurer’s concurrence, may by order exempt a transaction or class of transaction from the operation of section 12 either unconditionally or on specified conditions.
- (2) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer’s concurrence.
- (3) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause a copy of it to be laid before each House of Parliament or be dealt with in accordance with section 36.

14. Delegation by the Chemistry Centre

- (1) The Chemistry Centre may delegate to a person any power or duty of the Chemistry Centre under another provision of this Act.

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- (2) The delegation must be in writing executed by the Chemistry Centre.
- (3) If a person is not a member of the board or a member of the staff of the Chemistry Centre, a power or duty can only be delegated to the person under this section if the person has been approved for the purposes of this section by the Minister.
- (4) An approval under subsection (3) may be given in respect of —
- (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of the Chemistry Centre to perform a function through an officer or agent.
- (8) This section does not apply to the execution of documents but authority to execute documents on behalf of the Chemistry Centre can be given under section 37.

15. Use of trading names for Chemistry Centre and its operations

- The Chemistry Centre may use and operate under one or more trading names approved by the Minister, being —
- (a) an abbreviation or adaptation of its corporate name; or
 - (b) a name other than its corporate name.

Part 4 — Staff

16. Chief executive officer

- (1) A chief executive officer of the Chemistry Centre is to be appointed under the *Public Sector Management Act 1994* Part 3.
- 5 (2) Subject to the control of the board, the chief executive officer is to administer the day to day operations of the Chemistry Centre.

17. Other staff and contractors

- (1) Public service officers may be appointed or made available under the *Public Sector Management Act 1994* Part 3 to enable the Chemistry Centre to perform its functions.
- 10 (2) The Chemistry Centre may engage persons as staff otherwise than under the *Public Sector Management Act 1994* Part 3.
- (3) The remuneration of and other terms and conditions of employment of persons referred to in subsection (2) are not to be less favourable than is provided for in —
- 15 (a) an applicable industrial award, order or agreement under the *Industrial Relations Act 1979*; or
- (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Nothing in subsection (3) affects the operation of the *Industrial Relations Act 1979* Part VID.
- 20 (5) Subsections (1) and (2) do not affect the power of the Chemistry Centre to engage a person under a contract for services or appoint a person on a casual employment basis under the *Public Sector Management Act 1994* section 100.
- 25 (6) The Chemistry Centre may, by arrangement on such terms as are agreed with the relevant parties, make use of the services of a person employed by another person.

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18. Use of other government staff and facilities

- (1) The Chemistry Centre may by arrangement with the relevant employing authority 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 State.
- (2) The Chemistry Centre 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) is to be made on such terms as are agreed to by the parties.
- 15 (4) In this section, “**employing authority**”, “**Public Service**” and other expressions used in the *Public Sector Management Act 1994* each have the meaning given to them in that Act.

Part 5 — Accountability and financial provisions

Division 1 — Accountability

19. Duty to observe policy instruments

5 The Chemistry Centre is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

20. Strategic development plan and statement of corporate intent

- 10 (1) The Board must, at the prescribed times, prepare and submit to the Minister —
- (a) a strategic development plan for the Chemistry Centre; and
 - (b) a statement of corporate intent for the Chemistry Centre.
- 15 (2) The regulations may make provision for the following —
- (a) the manner and form in which the Board is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
 - (b) the period a strategic development plan or statement of corporate intent is to cover;
 - 20 (c) the matters to be set out in a strategic development plan or statement of corporate intent;
 - (d) the functions of the Board, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
 - 25 (e) the operation of a strategic development plan or statement of corporate intent.
- 30 (3) If a regulation referred to in subsection (2) enables the Minister to give directions to the Board, the Minister must cause a copy of a direction given under the regulation to be laid before each

House of Parliament or be dealt with in accordance with section 36 —

- (a) within 14 days after a direction is given; or
 - (b) if the direction is the subject of a notice under the *Statutory Corporations (Liability of Directors) Act 1996* section 17, within 14 days after it is confirmed under that section.
- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

21. Minister to be kept informed

- (1) The Chemistry Centre must —
- (a) keep the Minister reasonably informed of the operations, financial performance, and financial position of the Chemistry Centre and prospects of the Chemistry Centre;
 - (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters referred to in paragraph (a); and
 - (c) if matters arise that in the Chemistry Centre's opinion may prevent, or significantly affect, achievement of the Chemistry Centre's objectives and targets outlined in its strategic development plan and statement of corporate intent — promptly inform the Minister of the matters and its opinion in relation to them.
- (2) This section is subject to section 24.

22. Minister may give directions

- (1) The Minister may give written directions to the Chemistry Centre with respect to the performance of its functions generally, and the Chemistry Centre must give effect to any such direction.

(2) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of Parliament, or dealt with under section 36, within 14 days after the day on which the direction is given.

5 (3) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable authority of the Chemistry Centre under the *Financial Management Act 2006* Part 5.

23. Minister to have access to information

10 (1) The Minister is entitled —

- (a) to have information in the possession of the Chemistry Centre; and
- (b) if the information is in or on a document, to have, and make and retain copies of, that document.

15 (2) For the purposes of subsection (1) the Minister may —

- (a) request the Chemistry Centre to give information to the Minister;
- (b) request the Chemistry Centre to give the Minister access to information; and
- 20 (c) request the use of the staff of the Chemistry Centre to obtain the information and give it to the Minister.

(3) The Chemistry Centre must comply with a request under subsection (2).

(4) This section is subject to section 24.

25 (5) In this section —

“**document**” includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

30 “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Chemistry Centre.

24. Information not available to the Minister

- 5 (1) Nothing in this Act entitles the Minister to have client related information or personal information in the possession of the Chemistry Centre obtained in the course of the Chemistry Centre performing its functions.
- (2) This section does not apply to, or in relation to, client related information or personal information to the extent to which —
- 10 (a) the information is already in the public domain;
- (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to any person or organisation to be ascertained;
- 15 (c) disclosure of the information to the Minister is required by another written law; or
- (d) disclosure of the information to the Minister is authorised by each person or organisation to whom it relates.

25. Protection for disclosure or compliance with directions

20 The Chemistry Centre or a person performing functions under this Act is not liable —

- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under this Act; or
- 25 (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under this Act.

Division 2 — Financial provisions

26. Chemistry Centre's funds

30 The funds available for enabling the Chemistry Centre to perform its functions consist of —

- (a) money received by the Chemistry Centre in the performance of its functions;

- (b) money from time to time appropriated by Parliament;
- (c) money borrowed by the Chemistry Centre under section 28; and
- 5 (d) other money lawfully received by, made available to, or payable to, the Chemistry Centre under this or any other Act.

27. Chemistry Centre (WA) Account

- 10 (1) Money received by the Chemistry Centre is to be credited to, and money paid by the Chemistry Centre is to be debited to, an account called the “Chemistry Centre (WA) Account, which is to be established” —
 - (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or
 - 15 (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.
- (2) The Minister may —
 - (a) with the concurrence of the Treasurer, fix an amount that the Chemistry Centre is required to pay to the Treasurer by way of financial return to the State; and
 - 20 (b) under section 22, direct the Chemistry Centre to make the payment.
- (3) The amount fixed under subsection (2) is limited to the amount of the Chemistry Centre’s profits.

28. Borrowing

- 25 (1) The Chemistry Centre may, with the prior approval of the Minister and the Treasurer and on the terms and conditions determined by the Treasurer —
 - (a) borrow or re-borrow money;
 - (b) obtain credit; or
 - 30 (c) otherwise arrange for financial accommodation to be extended to the Chemistry Centre.

- (2) The total amount of money borrowed in any one financial year is not to exceed the amount determined by the Treasurer.
- (3) The Chemistry Centre is to keep any register that the regulations require for the purposes of this section.

5 **29. Guarantees**

- (1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the performance by the Chemistry Centre, in the State or elsewhere, of any financial obligation of the Chemistry Centre.
- 10 (2) A guarantee is to be in the form, and subject to the terms and conditions, determined by the Treasurer.
- (3) The due payment of money payable by the Treasurer under a guarantee is to be charged to the Consolidated Account, which this subsection appropriates accordingly.
- 15 (4) The Treasurer is to cause any amounts received or recovered, from the Chemistry Centre or otherwise, in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

30. Charges for guarantee

- 20 (1) The Treasurer may, after consultation with the Chemistry Centre, fix charges to be paid by the Chemistry Centre to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 29.
- (2) Payments by the Chemistry Centre to the Treasurer in respect of
25 those charges are required to be made at times, and in instalments, as determined by the Treasurer.

31. Liability for duties, taxes and other statutory imposts

- (1) Despite any other written law but except as stated in subsection (2) —
30 (a) the Chemistry Centre; and

- (b) deeds or other instruments to which it is a party,
are liable to and chargeable with duties, taxes or other imposts
under any written law.
- 5 (2) Despite subsection (1) but subject to subsection (3), the
Chemistry Centre is not liable to pay any local government rate
or charge.
- (3) Subsection (2) does not apply to the liability to pay any rate or
charge in respect of land held under a lease or tenancy
agreement from the Chemistry Centre.
- 10 (4) The Chemistry Centre is to pay to the Treasurer in respect of
each financial year an amount equivalent to the sum of all local
government rates and charges that, but for subsection (2) and
the *Local Government Act 1995* section 6.26(2)(a)(i), the
15 Chemistry Centre would have been liable to pay in respect of
that financial year.
- (5) Subsection (4) does not apply in relation to rates and charges in
respect of land referred to in subsection (3).
- (6) An amount payable under subsection (4) —
- 20 (a) is to be determined in accordance with such principles
as the Treasurer may direct; and
- (b) is to be paid at such time or times as the Treasurer may
direct.
- (7) The first payment under subsection (4) is to be in respect of the
next full financial year after the commencement of this Act.

Division 3 — *Financial Management Act 2006 and Auditor General Act 2006*

32. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

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

Part 6 — General provisions

33. Confidentiality

- 5 (1) This section applies to a person who is or has been a member of the board, a member of a committee, a member of staff or any other person engaged or appointed under section 17 or made available under section 17(6) or 18.
- (2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —
- 10 (a) for the purpose of performing functions under this Act or another written law;
- (b) as required under another written law;
- (c) with the written consent of the person to whom the information relates; or
- 15 (d) in other prescribed circumstances.
- Penalty: a fine of \$10 000 or imprisonment for 12 months.
- (3) For the purposes of subsection (2)(a), it is not a function of a person to whom this section applies to, directly or indirectly, record, disclose or make use of any client related information or personal information unless it is necessary to do so —
- 20 (a) as part of providing a service to the client to whom the information relates;
- (b) for the internal management and control of the Chemistry Centre; or
- 25 (c) for the purposes of subsection (5).
- (4) Subsection (3) does not limit the functions of a person to whom this section applies to the extent to which —
- 30 (a) the information is already in the public domain;
- (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to any person to be ascertained; or

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(c) recording, disclosing or making use of the information is authorised by each person or organisation to whom it relates.

5 (5) Despite the rest of the provisions of this Act, the board may disclose information to the Minister if the board considers that, because of the exceptional nature of the case, it is in the public interest to do so.

34. Confidentiality — contractors

10 (1) This section applies in respect of a contract with the Chemistry Centre for the provision of services to the Chemistry Centre and applies to —

- (a) a person with whom the Chemistry Centre has the contract;
- 15 (b) a director or employee of a person referred to in paragraph (a); and
- (c) any other person who performs functions under or in fulfilment of the contract.

20 (2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of performing functions under or in fulfilment of the contract except —

- (a) for the purpose of performing functions under or in fulfilment of the contract;
- (b) as required under another written law;
- 25 (c) with the written consent of the person to whom the information relates; or
- (d) in other prescribed circumstances.

Penalty: a fine of \$10 000 or imprisonment for 12 months.

30 (3) In this section —
“**director**” has the meaning given to that term in the Commonwealth *Corporations Act 2001* section 9.

35. Confidentiality — reports and other documents

- 5 (1) A report that must be prepared under the *Financial Management Act 2006* Part 5 (and any accompanying document) and any other report or document of the Chemistry Centre that is to be, or might be, made public, must not include client related information or personal information unless each person or organisation to whom the information relates has given consent to including the information.
- 10 (2) The Chemistry Centre may request the Minister to delete from —
- 15 (a) a copy of a report under the *Financial Management Act 2006* Part 5 (and any accompanying document) that is to be laid before a House of Parliament or made public; or
- (b) any other document of the Chemistry Centre that is to be, or might be, made public,
- 20 information that is of a commercially sensitive nature (but which is not client related information or personal information), and the Minister may, despite the *Financial Management Act 2006* section 64 or an obligation, however arising, to make the document public, comply with the request except where the document is to be laid before either House of Parliament by its own order.
- 25 (3) Subsections (1) and (2) do not apply to the extent to which —
- (a) the information is already in the public domain;
- (b) the information is summary or statistical information that could not reasonably be expected to enable particulars relating to any person to be ascertained; or
- 30 (c) the disclosure of the information is authorised by each person or organisation to whom it relates.
- (4) Subsection (2) does not apply to the extent to which disclosure of the information to the Minister is required by another written law.

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- (5) A copy of a document from which any matter has been deleted must —
- (a) contain a statement, at the place in the document where the matter was deleted, detailing the reasons for the deletion; and
 - (b) if the deletion occurred under subsection (2) — be accompanied by an opinion from the Auditor General stating that the information deleted is commercially sensitive.

10 **36. Laying documents before Parliament**

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
- (a) at the commencement of the period, a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

37. Execution of documents by Chemistry Centre

- (1) The Chemistry Centre is to have a common seal.
- (2) A document is duly executed by the Chemistry Centre if —
- (a) the common seal of the Chemistry Centre is affixed to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the Chemistry Centre by a person or persons authorised to do so under subsection (5).
- 5 (3) The common seal of the Chemistry Centre is not to be affixed to any document except as authorised by the board.
- (4) The common seal of the Chemistry Centre is to be affixed to a document in the presence of 2 members of the board, who are to sign the document to attest that the common seal was so affixed.
- 10 (5) The Chemistry Centre may, by writing under its common seal, authorise a member or members of the board or a member or members of staff to sign documents on behalf of the Chemistry Centre, either generally or subject to the conditions or restrictions specified in the authorisation.
- 15 (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- 20 (7) When a document is produced bearing a seal purporting to be the common seal of the Chemistry Centre, it is to be presumed that the seal is the common seal of the Chemistry Centre unless the contrary is shown.

38. Contract formalities

- 25 (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting as authorised by the Chemistry Centre may make, vary or discharge a contract in the name of or on behalf of the Chemistry Centre in the same manner as if that contract were made, varied or discharged by a natural person.
- 30 (2) The making, variation, or discharge of a contract in accordance with subsection (1) is effectual in law and binds the Chemistry Centre and other parties to the contract.

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- (3) Subsection (1) does not prevent the Chemistry Centre from making, varying or discharging a contract under its common seal.

39. Protection from liability

- 5 (1) An action in tort does not lie against a person other than the Chemistry Centre for anything that the person has done, in good faith, in the performance or purported performance of a function under this or any other Act.
- 10 (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Chemistry Centre nor the Crown is relieved of any liability that it might have for another person having done anything as described in that subsection.
- 15 (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

40. Regulations

20 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.

41. Review of Act

- 25 (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after —
- (a) the fifth anniversary of its commencement; and
- (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any

event not more than 12 months after the relevant anniversary),
cause it to be laid before each House of Parliament.

42. Transitional and savings provisions

Schedule 2 has effect.

5 **43. Amendments to other Acts**

Schedule 3 has effect.

Schedule 1 — Constitution and proceedings of the board

[s. 7]

Division 1 — General provisions

1. Term of office

5 A member of the board holds office for such term, not exceeding 3 years, as is specified in the instrument of his or her appointment, but may from time to time be re-appointed.

2. Resignation, removal, etc.

(1) The office of a member of the board becomes vacant if he or she —
10 (a) resigns the office by written notice addressed to the Minister;
(b) is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth; or
(c) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member of the board from office if the
15 Minister is satisfied that the member —
(a) has neglected his or her duty;
(b) has misbehaved;
(c) is incompetent;
20 (d) is suffering from mental or physical incapacity impairing the performance of his or her functions; or
(e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of the board of which the member has had notice.

3. Leave of absence

25 The board may grant leave of absence to a member on such terms and conditions as it thinks fit.

4. Chairperson unable to act

30 If the chairperson is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairperson is to perform the functions of the chairperson.

5. Board member unable to act

- 5 (1) If a member of the board, other than the chairperson, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while acting in accordance with the appointment, that other person is to be taken to be a member of the board.
- 10 (2) If the member of the board who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subclause (1), appoint another person to act in his or her place as a member.
- (3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

6. Saving

15 No act or omission of a person acting in place of another under clause 4 or 5 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

7. Calling of meetings

- 20 (1) Subject to subclause (2), meetings are to be held at the times and places that the board determines.
- (2) A special meeting of the board may at any time be convened by the chairperson.
- (3) The first meeting of the board is to be convened by the chairperson.

8. Presiding officer

- 25 (1) The chairperson is to preside at all meetings of the board at which he or she is present.
- (2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

9. Quorum

30 A quorum for a meeting of the board is at least one half of the number of members.

10. Voting

- (1) At any meeting of the board each member present has a deliberative vote.
- 5 (2) If the votes cast on a question are equally divided, the person presiding has a casting vote on the question.

11. Minutes

The board is to cause accurate minutes to be kept of the proceedings at its meetings.

12. Resolution without meeting

- 10 (1) A resolution of the board in writing signed by each member of the board, or assented to by each member by letter, telegram, telex, facsimile transmission, email or other similar means, has the same effect as if it had been passed at a meeting.
- 15 (2) The board must cause a record to be kept of each resolution under subclause (1).

13. Holding meetings remotely

20 The presence of a member at a meeting of the board need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

14. Committees

- (1) The board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the board.
- 25 (3) Subject to the directions of the board and to the terms of any delegation under section 14, a committee may determine its own procedures.

15. Board to determine own procedures

Subject to this Act, the board is to determine its own procedures.

Division 2 — Disclosure of interests etc.

16. Disclosure of interests

5 (1) A member of the board who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: a fine of \$10 000.

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

17. Voting by interested members

A member of the board who has a material personal interest in a matter that is being considered by the board —

- 15 (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
 - (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;

and

- 20 (b) must not be present while —
- (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

25 **18. Clause 17 may be declared inapplicable**

Clause 17 does not apply if the board has at any time passed a resolution that —

- 30 (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

19. Quorum where clause 17 applies

- 5 (1) Despite clause 9, if a member of the board is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the board cannot deal with it because of subclause (1).

20. Minister may declare clauses 17 and 19 inapplicable

- 10 (1) The Minister may by writing declare that clause 17 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- 15 (2) The Minister must cause a copy of the declaration under subclause (1) to be laid before each House of Parliament, or be dealt with under section 36, within 14 days after a declaration is made.

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Schedule 2 Transitional provisions

Division 2 Transfer of assets, liabilities, proceedings etc.

cl. 2

provided by the body established by this Act, the Minister may make and publish in the *Gazette* a transfer order that —

- 5
- (a) specifies which assets and liabilities of the State are to be assigned to the Chemistry Centre by operation of clause 3; and
- (b) specifies any agreement or instrument that, by operation of clause 3, is to have effect as if references to the Chemistry Centre (WA) were substituted, in accordance with the order, for references in it to the State or the Department (however expressed).
- 10
- (2) An asset or liability of the State may be specified in a transfer order if the Minister considers that the asset or liability —
- (a) relates to the operations of that part of the Department known as the Chemistry Centre; or
- 15
- (b) is necessary for the performance of the functions of the body established by this Act.
- (3) A transfer order may also deal with incidental or supplementary matters and has effect accordingly.
- (4) The transfer order may specify things by reference to schedules which —
- 20
- (a) need not be published in the *Gazette*; but
- (b) must be available for public inspection,
- and anything specified in a schedule is to be taken to be specified in the order.
- 25
- (5) A thing may be specified in a transfer order by describing the class to which it belongs.
- (6) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to an official under clause 5, the Minister is to consult with the, or each,
- 30
- official as to the form and content of the schedule.
- (7) A transfer order can only be made before the transfer time.
- (8) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.

- (9) A transfer order, or a schedule to which it refers, may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.

3. Consequences of transfer order

5 If a transfer order is made, then —

- 10 (a) at the transfer time the assets specified in the transfer order are, by operation of this clause, assigned to the Chemistry Centre and if an asset was previously held on behalf of the State it is assigned to the Chemistry Centre to hold in its own right;
- (b) at the transfer time the liabilities specified in the transfer order are, by operation of this clause, assigned to and become the liabilities of the Chemistry Centre;
- 15 (c) any agreement or instrument specified in the order has effect, by operation of this clause, as if references to the Chemistry Centre (WA) were, at the transfer time, substituted, in accordance with the order, for references in it to the State or the Department (however expressed);
- 20 (d) any proceedings or remedy that might have been commenced by, or available against or to, the State in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to, the Chemistry Centre; and
- 25 (e) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment by, to or in respect of the State or the Department (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of the Chemistry Centre.

30 **4. Department to complete necessary transactions**

- (1) If an asset or liability cannot be properly assigned to the Chemistry Centre by the operation of this Schedule —
- 35 (a) the Department is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to the Chemistry Centre in accordance with this Schedule; and

(b) the Department is to take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to the Chemistry Centre in accordance with this Schedule.

5 (2) The fact that subclause (1)(a) applies to an asset or liability that is assigned to the Chemistry Centre under this Schedule does not affect the duty of the accountable authority of the Chemistry Centre under the *Financial Management Act 2006*.

5. Registration of documents

10 (1) The Minister is to cause a copy of each transfer order, and any schedule to which it refers, to be delivered to each official having responsibility for a register relating to property of a kind affected by the transfer order.

15 (2) The officials are to take notice of this Schedule and any transfer order, including a schedule to which the order refers, and are to record and register in the appropriate manner the documents necessary to show the effect of the transfer order and this Schedule.

(3) In this clause —
“official” means —

- 20 (c) the Registrar of Titles;
(d) the Minister administering the *Mining Act 1978*; or
(e) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions.

6. Exemption from State taxes

25 (1) State tax is not payable in relation to —
(a) anything that occurs by the operation of this Schedule; or
(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this
30 Schedule, or for a purpose connected with or arising out of giving effect to this Schedule.

- (2) The Minister may certify in writing that —
- (a) a specified thing occurred by the operation of this Schedule;
or
 - (b) a specified thing was done under this Schedule, or to give
effect to this Schedule, or for a purpose connected with or
arising out of giving effect to this Schedule.
- (3) For all purposes and in all proceedings, a certificate under
subclause (2) is sufficient evidence of the matters it certifies, except
so far as the contrary is shown.
- (4) In this clause —
“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921*
and any other tax under a written law.
- 7. Rectifying error in transfer order**
- (1) The Minister may, by order published in the *Gazette*, make any
provision that is necessary to correct any error in a transfer order or a
schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the
transfer time.
- (3) To the extent that a provision of an order under this clause has effect
before the day of its publication in the *Gazette*, clause 3 does not, as a
result of that provision, operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the
State, the Chemistry Centre or any other authority, agency or
instrumentality of the State), the rights of that person existing
before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State, the
Chemistry Centre or any other authority, agency or
instrumentality of the State), in respect of anything done or
omitted to be done before the day of publication.

Division 3 — Continuing effect of things done

8. Terms used in this Division

(1) In this Division —

“**new Chemistry Centre**” means the body established by this Act.

5 (2) In this Division, a reference to a thing done or omitted to be done by, to or in respect of the old Chemistry Centre is to be read as a reference to the thing being done or omitted to be done by, to or in respect of the State, before the transfer time, via or by reference to that part of the Department known as the Chemistry Centre.

10 **9. Completion of things commenced**

Anything commenced to be done by the old Chemistry Centre before the transfer time may be continued by the new Chemistry Centre so far as the doing of that thing is within the functions of the new Chemistry Centre.

15 **10. Continuing effect of references and things done generally**

(1) Unless the contrary intention appears or the context otherwise requires, a reference to the Chemistry Centre (however expressed) in any agreement or instrument made before the transfer time is to be taken, after the transfer time, to be a reference to the new Chemistry Centre.

20

(2) Any act, matter or thing done or omitted to be done before the transfer time by, to or in respect of the old Chemistry Centre, to the extent that that act, matter or thing —

(a) has any force or significance after the transfer time; and

25

(b) is not governed by another provision of this Schedule,

is to be taken, after the transfer time, to have been done or omitted by, to or in respect of the new Chemistry Centre.

Division 4 — Miscellaneous transitional provisions

11. Relevant amount for the purposes of section 12

5 For the period before the Chemistry Centre submits its first annual report under the *Financial Management Act 2006* Part 5, section 12(3)(b)(i) of this Act is to be taken to refer to the amount of \$200 000.

12. Further transitional provision may be made

- 10 (1) If there is not sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the provision of services by that part of the Department known as the Chemistry Centre to services being provided by the new Chemistry Centre, the regulations may make that provision.
- (2) The regulations may be made so as to have effect from the transfer time.
- 15 (3) To the extent that a provision of the regulations has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
- 20 (a) to affect, in a manner prejudicial to any person (other than the State, the Chemistry Centre or any other authority, agency or instrumentality of the State), the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State, the Chemistry Centre or any other authority, agency or instrumentality of the State), in respect of anything done or
- 25 omitted to be done before the day of publication.

13. Saving

- The operation of any provision of this Schedule is not to be regarded —
- 30 (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of information;

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- 5
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset or liability;
 - (d) as causing any contract or instrument to be void or otherwise unenforceable; or
 - (e) as releasing or allowing the release of any surety.

Schedule 3 — Amendment of other written laws

[s. 43]

1. *Constitution Acts Amendment Act 1899* amended

5 (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899**.

 [* *Reprint 13 as at 18 March 2005.*

For subsequent amendments see Acts Nos. 20, 34, 53, 59, 70 and 75 of 2004 and 1, 2 and 24 of 2005.]

10 (2) Schedule V Part 3 is amended by inserting before the item relating to the Chicken Meat Industry Committee the following item —

 “

 The Chemistry Centre (WA) established by the *Chemistry Centre (WA) Act 2006*.

 ”.

15 **2. *Financial Management Act 2006* amended**

 (1) The amendment in this clause is to the *Financial Management Act 2006**.

 [* *Act No. 76 of 2006.*

For subsequent amendments see Act No. 77 of 2006.]

20 (2) Schedule 1 is amended by inserting the following item in the appropriate alphabetical position —

 “ Chemistry Centre (WA) ”.

3. *Public Sector Management Act 1994* amended

25 (1) The amendment in this clause is to the *Public Sector Management Act 1994**.

 [* *Reprint 6 as at 14 May 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 368 and Act No. 5 of 2005.]

cl. 4

- (2) Schedule 2 is amended by inserting after item 3D the following item —

“

3E Chemistry Centre (WA), established by the *Chemistry Centre (WA) Act 2006*

”.

5 **4. *Statutory Corporations (Liability of Directors) Act 1996* amended**

- (1) The amendment in this clause is to the *Statutory Corporations (Liability of Directors) Act 1996**.

[* *Reprint 3 as at 7 November 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 431 and Act No. 20 of 2004.]

- (2) Schedule 1 is amended by inserting after the item relating to the Busselton Water Board the following item —

“

Chemistry Centre (WA) a member of the Board *Chemistry Centre (WA) Act 2006*

”.

15 **5. Various references to Director of the Chemistry Centre changed to chief executive officer of the Chemistry Centre**

Each provision listed in the Table to this clause is amended by deleting “Director” in each place where it occurs and inserting instead —

“ chief executive officer ”.

Table

<i>Fluoridation of Public Water Supplies Act 1966</i>	s. 5(2)(d) s. 15(3)
<i>Health Act 1911</i>	s. 246B(2)(b)
<i>Poisons Act 1964</i>	s. 8(2)(aa)

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
account	3(1)
acquire	11(5)
assets	Sch. 2, cl. 1
board.....	3(1)
business concern.....	11(5)
chairperson.....	3(1)
Chemistry Centre	3(1)
chief executive officer	3(1)
client related information.....	3(1)
committee	3(1)
Department	Sch. 2, cl. 1
director	33(3)
dispose of.....	11(5)
document	23(5)
employing authority	18(4)
government agency.....	3(1)
information	23(5)
liability	Sch. 2, cl. 1
member of staff.....	3(1)
member of the board.....	3(1)
Minister	Sch. 2, cl. 1
new Chemistry Centre	Sch. 2, cl. 8(1)
official	Sch. 2, cl. 5(3)
participate in	11(5)
personal information.....	3(1)
private client	3(1)
Public Service	18(4)
right	Sch. 2, cl. 1
State tax	Sch. 2, cl. 6(4)
subsidiary.....	3(1)
transaction.....	12(4)
transfer order.....	Sch. 2, cl. 1
transfer time	Sch. 2, cl. 1