

***Western Australian  
Land Information  
Authority Bill 2006***

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**EXPLANATORY MEMORANDUM**



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# WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY BILL 2006

## EXPLANATORY MEMORANDUM

### Introduction

The purpose of the Bill is to establish a land information statutory authority with commercial powers. Information about land and its ownership, use and management is vital for Western Australia's economic, social and environmental development. The agency to be created by this Bill will be the first of its kind in Australia and will help maintain the State's competitive edge in the national and global economy.

The Bill will establish a modern, dedicated land information agency that will:

- deliver core government services in land titling, land information and valuation that are currently provided by the Department of Land Information;
- provide new systems and online services to open up access to extensive government databases about land; and
- lead the commercial development of the State's land information, which has acquired market value in recent years as a result of significant changes in technology, use and demand.

Improved access to land information will provide benefits for government, business and the community in areas such as emergency management, agriculture, urban planning, infrastructure, and land and property development.

The Authority's commercial activities will generate capital funds to replace the State's essential but ageing land information systems, improve data quality and provide faster and easier access to integrated land information. This commercial development could not be carried out adequately under existing Acts, even if these were to be substantially amended, and it would not be appropriate for a department to undertake this level of commercial activity.

Cabinet's decision to establish the Authority stems from recommendations made to it by the Machinery of Government and Functional Review Taskforces. Stakeholders in the public and private sector were consulted extensively during 2002 and 2003 as to the formation of the Authority and the proposed contents of this Bill.

The State Solicitor's Office has provided detailed advice during drafting, while the Departments of Treasury and Finance and the Premier and Cabinet have been closely involved in aspects of the Bill's preparation. The Bill has been independently reviewed for compliance with National Competition Policy.

The Bill has been framed as broad enabling legislation. It will establish the Authority and enable it to undertake functions in land titling, land information and valuation. However, legal authority for those functions is retained within existing Acts such as the *Transfer of Land Act 1893*, *Strata Titles Act 1987* and *Valuation of Land Act 1978*. The Bill amends these Acts sufficiently to enable them to synchronise with the functions of the Authority but otherwise leaves them unchanged. The Bill does not change:

- the statutory processes for registering interests in land under the Torrens system;
- the State's guarantee of indefeasibility of title for people holding registered interests in land. Fees for registering interests in land and searching for them will remain regulated and subject to government's normal fee-setting process;
- the statutory processes for determining land valuations for use by rating and taxation authorities;
- the core functions of the Registrar of Titles, Commissioner of Titles and Valuer-General; and
- the statutory requirement for the Valuer-General to exercise an independent judgement and not be subject to direction from any person when valuing land under the *Valuation of Land Act 1978*.

The Authority will be a public sector agency fully subject to Ministerial controls. It will comply with public sector accountability and reporting provisions and with government policy.

The Bill contains 188 clauses divided into eight parts. Each clause is discussed during the following section of this memorandum, with a brief overview provided at the beginning of each Part and the more significant Divisions.

## Part 1 — Preliminary

This part contains the title of the Bill, relevant commencement provisions, definitions of key terms and the relationship between the Bill and other specified Acts.

### Clause 1 — Short Title —

This is the formal clause titling the Bill, which is the *Land Information Authority Bill 2006*.

### Clause 2 — Commencement —

This clause sets out commencement provisions.

Subclause (1) is intended to practically enable the whole of the Act, other than Part 1, to come into operation on a single day to be fixed by proclamation.

Subclause 2 specifies that Part 1 comes into operation on the day after the Act receives Royal Assent. This addresses a technical issue that an Act needs to be able to be referred to before it is proclaimed.

### Clause 3 — Terms used in this Act —

The clause explains key terms —

**“appointed member”** - means a person appointed by the Minister to the Authority's board of management. This definition is required because the Authority's Chief Executive Officer is also a member of the board, but is not an “appointed member”.

**“Authority”** – references in the Bill to the “Authority” are references to the Western Australian Land Information Authority as established by clause 5.

**“chief executive officer”** – references in the Bill to the “chief executive officer” are references to the person appointed under Part 3 of the *Public Sector Management Act 1994* as the Chief Executive Officer of the Authority.

**“goods and services”** – means anything provided by the Authority. It has been drafted broadly because of the wide range of land information goods and services that the Authority may provide. For example, land information may be provided by the Authority in numerical, textual, pictorial and graphical form. Goods and services may include the datasets, databases, systems, facilities and infrastructure used for managing and distributing land information.

Goods and services may also include a wide range of customised products ranging from digital data, hardcopy maps, satellite imagery, property sales data, and street directories, along with statutory goods and services such as title searches. Services may include the application of knowledge and expertise related to the Authority's functions, for example, in land registration, valuation and information management and provision.

The definition is broad enough to also allow for new goods and services which may arise in the future due to constant and rapid changes in technology and new uses for land information.

**“land information”** includes information about, or related to, any point, line, surface or space, the location of which is fixed by reference to the earth, whether or not it is wholly on, under, or above the surface of the land or sea.

This definition has a technical basis and is derived from the definition used by the Australian and New Zealand Land Information Council. Given the nature and range of the Authority’s functions, it is intended that the definition in the Bill be read broadly to ensure that the Authority is not limited in the performance of its functions by the absence of an express power to provide a particular form of land information.

The provisions in this clause are intended to allow, for example, a point, line, surface or space to be defined horizontally, vertically or three-dimensionally in relation to the earth. A reference to the earth might be achieved by a variety of means, including land surveying, valuations, mapping, observations from aircraft or satellites, and the use of global positioning systems and related technologies. The location of land may also be achieved by reference to a lot, street, suburb, townsite or region, or to a State, Territory or country.

As well as physical information about land, the definition is meant to encompass a wide range of social, cultural and economic information about, or related to, land. This would include but not be limited to: improvements to land such as buildings, structures and infrastructure; the value of land and improvements; interests in land such as easements and leases; information about the use and management of land, including demographic information; and the names and locations of points, features and places in the natural and built environment.

**“member of the authority’s staff”** – references in the Bill to members of the Authority’s staff includes the Chief Executive Officer of the Authority, employees of the Authority and persons seconded to the Authority from other State agencies. The definition is to assist in interpreting the many references to staff throughout the Bill.

**“Treasurer”** – where used in the Bill, this is a reference to the Treasurer of Western Australia.

#### **Clause 4 — Relationship between this Act and certain other Acts —**

This clause explains the relationship between the Bill and other Acts that establish and confer functions on the Commissioner of Titles, Registrar of Titles and Valuer-General.

The designated holders of these offices will be members of the Authority’s staff, via clauses 104, 106 and 168 and will respectively oversee the integrity of the State’s titling and valuation functions. They are currently members of staff of the Department of Land Information.

This clause establishes that if anything in the Bill is inconsistent with a provision of another Act that confers a function on the Commissioner of Titles, Registrar of Titles or Valuer-General, then the provision of the other Act prevails.

This is to ensure that the existing independence of these key officers when performing statutory functions under other relevant Acts is maintained. For example, the ability of the Valuer-General to exercise an independent judgement when valuing any land under the *Valuation of Land Act 1978* (as provided for by section 7 of this Act).

Where the provisions of this Bill are not inconsistent, they are in addition to, and do not detract from, the functions contained in other Acts.

## Part 2 — Western Australian Land Information Authority

This part establishes the Authority and its legal status.

### Clause 5 — Authority Established —

The Western Australian Land Information Authority is to be established as a body corporate with perpetual succession, that is, having the capacity to continue indefinitely. The Authority will be capable of suing and of being sued.

### Clause 6 — Status —

The Authority is to be an agent of the State. This will entitle it to the status, immunities and privileges of the State. This is appropriate for an agency whose activities are significantly governmental, such as the provision of statutory services in land registration and valuation and the delivery of mapping and surveying services for the State.

Despite this status, the Authority will be bound by certain State and Commonwealth laws that are applicable to public entities that trade or operate as a business concern. These include laws covering anti-competitive behaviour, fair trading and competitive neutrality. This will ensure the Authority operates lawfully and on a 'level playing field' when conducting its commercial operations.

Clause 6 does not exempt the Authority from the payment of taxes, duties and other imposts as required by clause 72.

### Clause 7 — Authority to be an SES Organisation —

This clause establishes that the Authority will be part of the public sector and listed in Schedule 2 of the *Public Sector Management Act 1994*. Its Chief Executive Officer and senior executive officers will be appointed under this Act.

### Part 3 — Functions of the Authority

This part broadly defines the Authority's main responsibilities and powers, and related matters such as pricing principles and operating outside of the State.

It contains broad enabling functions required for the Authority to continue on from the Department of Land Information in performing the State's land titling and valuation functions. Specific operational functions remain within existing legislation such as the *Transfer of Land Act 1893*, *Strata Titles Act 1987* and *Valuation of Land Act 1978* and will largely be discharged by statutory office holders who are employees of the Authority.

In addition to these specific duties, the Authority will continue to provide land information goods and services for government purposes (currently provided by the Department), as well as commercially develop the State's land information databases and related expertise. To achieve its functions, the Authority will work in cooperation with statutory office holders, other government agencies and the private sector.

The accountability mechanisms in this Part and Part 5 ensure the Authority is subject to Ministerial and government control in the performance of its functions.

#### Clause 8 — Dual objectives of the Authority —

This clause establishes that the Authority will have dual and interdependent roles.

These are to undertake land information functions on behalf of the State, many of which are non-discretionary statutory functions associated with the registration and recording of interests in land and the valuation of land. The Authority will also provide services to government that are required in the public interest, such as accurate information about property addresses, street and place names, and mapping for the State's emergency response services.

The Authority will also provide discretionary goods and services, many of which aim to earn a fair commercial return for the State on its land information asset. The Authority's commercial activities will generate capital funds to replace ageing systems (such as the Department's SmartRegister and SmartPlan systems that support the Titles Register), improve data quality, and provide faster and easier access to land information. These commercial outcomes are essential to support and improve the delivery of statutory and government services.

#### Clause 9 — Functions —

Individual functions in this clause distinguish between what the Authority has a responsibility to do, and what it is given discretion to do. Subclauses 9(1), (2), (3) and (4) deal with the Authority's role in administering, using and providing certain land information.

##### Subclause 9(1)

This subclause requires the Authority to provide, administer and provide access to land information in systems, as required by the laws of the State.

For example, this would include the systems which enable the operation of the Titles Register established under the *Transfer of Land Act 1893*, as well as the information contained in those systems, such as digital and paper certificates of title and survey plans. In this respect, the Authority will be continuing functions carried out by the Department and its predecessors for more than 100 years.

Subclause 9(2)

This subclause exists to interpret subclause 9(1). It recognises that systems that contain information required by law may also contain information that is not required by law. For example, the agency's land titling system contains information that is not required by law - for instance, information about interests in land such as the value of transfers and mortgages, or the area of land affected by carbon rights or tree plantation interests. This information does not form part of the Titles Register itself, and is not specified in legislation, but is necessary to permit the Register to be searched efficiently.

Subclause 9(3)

This subclause is similar in structure to subclause 9(1), except that it deals with the Authority's discretionary role in administering systems and providing information that have no statutory basis. For example, the agency's main online information system (Landgate) contains information such as aerial photographs and satellite imagery that the State has no legal obligation to collect and provide, but which generates significant public and commercial benefit.

Subclause 9(4)

This subclause recognises that the systems administered by the Authority may contain information from other people or organisations. For example, the Shared Land Information Platform currently being developed will electronically link and provide data held by many government agencies.

Subclause 9(5)

This subclause establishes that a main responsibility of the Authority is to manage and provide the staff, resources, systems and other administrative supports that enable statutory functions under other Acts to be performed. These functions are mostly discharged by the Registrar and Commissioner of Titles and the Valuer-General<sup>1</sup>, who will be officers of the Authority, and who respectively oversee the accuracy and integrity of the State's statutory titling and valuation functions. The Department currently provides these resources and support.

Subclause 9(6)

This subclause enables the Authority to generally provide goods and services related to its other functions or expertise. Subclause 9(6)(a) has been included to account for the provision of services by agreement, such as providing systems or the operating environments to 'host' data from other persons.

Subclause 9(7)

This subclause enables the Authority to develop policy, provide policy advice and participate in various forums on behalf of the State. It will ensure continuity of the role currently performed by the Department (which will cease to exist). These policy functions are limited to the Authority's land information functions and the provision of advice on very specific operational legislation under the administration of the Minister for Land Information. They are not in the nature of strategic policy, funding or regulatory functions. An example is the agency's participation in a national electronic conveyancing project, which will require significant changes to systems and operational practices, as well as the modernisation of conveyancing legislation throughout Australia.

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<sup>1</sup> These offices are established under the *Transfer of Land Act 1893* and the *Valuation of Land Act 1978* respectively and perform functions under these and other Acts.

## **Clause 10 — Guiding Principles —**

These principles provide guidance on the manner in which the Authority will operate. They have been included in the Bill as an outcome of consultation with industry and government.

### Subclause 10(1)

This subclause requires the Authority to act in a cost effective manner and on prudent commercial principles. The former reflects government requirements for the effective and efficient delivery of government services.

Acting on prudent commercial principles is intended to ensure, for example, that the Authority applies commercial disciplines to its internal operations and decision-making. For example, making sound economic decisions based on long-term sustainability and the management of risk, being driven by customer and market needs, and acting in a competitively neutral manner.

### Subclause 10(2)

This subclause requires the Authority to operate in a way that supports sustainable economic, environmental and social outcomes for the State. Its inclusion in the Bill is required by the State's Sustainability Strategy and is consistent with the triple bottom line focus emerging in the private sector.

### Subclause 10(3)

This subclause has been included to provide reassurance to key government and industry stakeholders that the Authority will, when performing its functions, have regard to:

- the maintenance of the integrity of the State's titles system and valuation rolls;
- satisfying the land information needs of other State government agencies; and
- the requirements of participants in the land information industry.

## **Clause 11 — Duty to act in accordance with policy instruments —**

The Authority will be required to operate in accordance with the five-year and annual plans agreed with its Minister and the Treasurer. These are covered in Part 5, Division 1 of the Bill.

## **Clause 12 — Powers generally**

Clause 12 contains powers commonly provided to statutory authorities that carry out commercial functions. These will provide the Authority with a complete set of powers to perform its wide ranging functions and in particular to commercially develop the State's land information asset.

The Department is currently unable to fully undertake such commercialisation because it is not an appropriate role for a department, and it is already operating at the limits of the powers provided to it by a patchwork of Acts, including the *Transfer of Land Act 1893*, *State Trading Concerns Act 1916* and *Valuation of Land Act 1978*.

### Subclause 12(1)

Establishes that the Authority has all the powers it needs to perform its functions under this or any other Act. The reference to "or any other Act" is required because the Authority performs functions that support the requirements of other Acts such as the *Transfer of Land Act 1893*, *Strata Titles Act 1987* and the *Valuation of Land Act 1978*.

#### Subclause 12(2)

Provides the Authority with specific powers that it may exercise for the purpose of performing its functions under this or any other Act, including powers to:

- deal in property;
- enter into contracts and arrangements;
- act as an agent and provide consultancy and professional services;
- participate, with the Minister's approval, in a business concern;
- carry out reviews, investigations, feasibility studies and research;
- produce and deal in equipment, facilities or systems;
- use information derived from the performance of any function that the Bill or any other Act gives to the Authority or a member of its staff;
- develop and deal in technology, software and intellectual property; and
- promote and market the Authority and its goods and services.

Such powers are common in legislation establishing statutory authorities but subclause 12(2)(h) is unique to this agency. It enables the Authority to use land information derived (primarily) from the performance of statutory functions by the Registrar of Titles and Valuer-General, who will be members of the Authority's staff. This clause is necessary to enable the Authority to operate without making substantial amendments to the *Transfer of Land Act 1893* and the *Valuation of Land Act 1978*.

The Authority's commercial powers are subject to Ministerial control. Subclause 12(2)(d) requires the Minister's approval for the Authority to participate in any business concern and the Treasurer's approval for the Authority to hold shares or units in a business concern. Similar provisions are found in legislation governing other statutory authorities, such as section 17 of the *Western Australian Land Authority Act 1992* (LandCorp).

#### Subclause 12(3)

This provides that specific powers in subclause (2) do not limit subclause (1) or any of the Authority's other powers.

#### Subclause 12(4)

This enables the Authority to make charitable gifts, ex gratia payments and accept gifts. These provisions are also standard for statutory authorities.

#### Subclause 12(5)

This provides definitions of terms used within the clause.

### **Clause 13 — Transactions that require Minister's approval —**

The Authority must obtain the Minister's approval before entering into transactions where its liability exceeds five million dollars, or a greater amount as allowed for by regulations made on the Treasurer's recommendation. The clause defines what is meant by the Authority's liability.

The nature of a transaction is defined by clause 15 to be a contract or other arrangement, or any exercise of the power conferred by subclause 12(2)(d). This does not include the Authority's investment of funds, as governed by clause 73, or the hedging or borrowing of funds, as governed by clauses 74 and 75 and which require the Treasurer's approval.

This clause ensures Ministerial oversight of significant transactions of the Authority. It is consistent with similar provisions in Acts governing other statutory authorities, such as the State's redevelopment authorities and port authorities, and the Water Corporation and LandCorp. The amount of five million dollars is considered by the Department of Treasury and Finance to be a suitable threshold.

**Clause 14 — Exemptions from section 13 —**

This clause allows the Minister, with the Treasurer's concurrence, to exempt a transaction or a class of transactions from the operation of clause 13. This provision would be likely to be used for transactions of a routine nature or ongoing operational contracts.

**Clause 15 — Meaning of "transaction" in sections 13 and 14 —**

As mentioned above, clause 15 defines that a transaction governed by clauses 13 and 14 includes a contract or other arrangement, or the exercise of any power conferred by subclause 12(2)(d). It does not include the Authority's investment, hedging or borrowing of monies, which are separately governed by clauses 73, 74 and 75.

**Clause 16 — Pricing principles —**

Through its statutory objectives, functions and powers, the Authority is able to raise charges and set prices in general. This clause establishes principles as to how the Authority sets prices in certain circumstances, providing additional certainty for the Authority and its customers in this respect.

The principles in the clause were established through extensive consultation with stakeholders as to the balance between the Authority's commercial role and its public interest responsibilities. They are modelled on current government policy for pricing land information and other arrangements existing within government. They will apply in the main to discretionary goods and services, such as maps, aerial photographs, satellite images and geographic information. The principles do not apply to goods and services subject to a regulated fee, such as title searching.

The Minister and Treasurer will oversee the Authority's pricing framework through the strategic development plan and statement of corporate intent provided for in Part 5 of the Bill.

Subclause 16(1)

This subclause sets out the scope and coverage of the clause, which applies to charges for goods or services that the Authority provides under this Act or any other written law. For example, the Authority will provide certain discretionary goods and services, such as property sales data, under section 39 of the *Valuation of Land Act 1978*.

The principles only apply in the circumstances detailed in subclauses (3), (4), (6), (7) and (9). These are discussed in more detail below.

Subclause 16(2)

This subclause affirms that the pricing principles do not apply to fees that are fixed by written law. This would include fees for services such as the registering and searching of interests in land under the *Transfer of Land Act 1893*. Such fees are set by regulation on a cost-recovery basis.

Subclause 16(3)

Under this subclause, the Authority is required to charge to make an overall profit when providing goods or services for use for any purpose that involves any commercial benefit being derived. This would include use for commercial purposes by any person, including the commercial operations of State government entities. The subclause will ensure that the Authority acts in a competitively neutral manner. It is consistent with the Authority's objective of earning a fair commercial return for the State.

Subclauses 16(4) and 16(5)

These subclauses establish the principles for charging in certain circumstances when the Authority provides fundamental land information. Fundamental land information consists of core databases containing State-wide information on matters such as land tenure, land contours and the location of roads and survey marks. (See subclause (10) for further detail.)

Fundamental land information is essential to the non-commercial operations of many State and local government agencies and this clause ensures that they will continue to receive it at marginal cost and not be charged full cost recovery or a commercial price.

Subclause (4) applies where the Authority provides fundamental land information to State and local government agencies, and other parties approved under subclause (9), for a purpose that does not involve any commercial benefit being derived. In such cases, the Authority is to charge only the cost of extracting the information from its systems and providing it. Subclause (5) identifies the sorts of costs that the Authority may include in such a charge and those that cannot be included.

Subclause 16(6)

This subclause establishes the principle for charging in certain circumstances when the Authority provides goods and services other than fundamental land information. Such goods might include products such as maps and customised datasets.

Subclause (6) applies where the Authority provides any goods and services (other than fundamental land information) to State and local government agencies, and other parties approved under subclause (9), for a purpose that does not involve any commercial benefit being derived. The charge is to be designed to cover the Authority's total costs related to the goods or services. However, total cost does not involve the making of a profit (as provided for under subclause (3)).

The subclause will ensure that the Authority acts in a competitively neutral manner when providing contestable goods and services to government, and that State Government does not pay more than once for services developed and used by its agencies.

Subclause 16(7)

This subclause allows the Authority to charge on a different basis to the provisions in clause 16 by agreement with another party. This would primarily be used to exchange and share data through arrangements agreed with other parties, such as Commonwealth agencies, where there is mutual benefit.

Subclause 16(8)

This subclause allows the Authority to make a profit on an arrangement made by agreement with another party under subclause (7).

Subclause 16(9)

Subclause (9) provides the Authority with a discretionary power to extend the pricing arrangements for non-commercial use of goods and services provided by subclauses (4) and (6) to persons other than State and local government agencies.

It will be necessary for the Authority to be satisfied that the person has functions of a public nature; will not use the goods and services other than for purposes of education, research, or community or regional activities, and will comply with any conditions on which the goods or services are provided.

Subclause 16(10)

This subclause provides for regulations to prescribe certain land information to be fundamental for the purposes of pricing under subclause (4). This will enable the land information identified as fundamental by the Department of Land Information to continue under the Authority. In summary, this will consist of core databases containing State-wide information on matters such as land tenure, land contours and the location of roads and survey marks, to name a few.

**Clause 17 — Certain information free of charge in exceptional circumstances —**

This clause has been included to extend the Minister's general powers of direction under section 65. It sets out the circumstances and process by which the Minister may direct the Authority to provide land information free of charge, where there is sufficient public benefit.

As identified in the clause's heading, it is envisaged that the power would be used in exceptional circumstances as it otherwise has the potential to undermine the rationale for establishing the Authority, which is to operate commercially to generate the capital required to upgrade the State's land information systems and earn a fair return for the State.

The clause reflects this by balancing the Minister's right to direct the Authority with a requirement to justify the public benefit of the direction, consider its impact, and obtain the Treasurer's concurrence. As with all directions made under clause 65, the Minister would be required to table the direction in Parliament.

Subclauses 17(1) and (2)

These subclauses establish the Minister's power to direct the Authority to provide free of charge, a class of information, or information relating to a specific case.

Subclause 17(3)

Subclause (3) allows the Minister to make such a direction even though it would require the Authority to act contrary to the pricing principles in clause 16. However the direction cannot apply to information subject to a regulated fee, such as the search of a land title.

Subclauses 17(4) and (5)

These subclauses require that before making the direction the Minister consider the financial impact on the Authority, be satisfied that there is sufficient public benefit, and obtain the Treasurer's concurrence.

**Clause 18 — Use of names for Authority and its operations —**

The clause permits the Authority to use or operate under one or more trading names allowed by the Minister. Any trading name and logo would need to conform to government policy.

**Clause 19 — Acting beyond the limits of State —**

This clause enables the Authority to act outside the territorial limits of the State or Commonwealth when performing its functions. It has primarily been included to enable the Authority to continue the Department's International Program for land information and land administration consultancy, which currently relies on delegated powers from the Minister for Lands under the *Land Administration Act 1997*. This Program will be significantly expanded in China, south-east Asia and the Pacific region to earn commercial revenue. This provision will also allow the Authority to market some of its unique products and services in other parts of Australia, such as the Firewatch system which uses satellite data to identify and track bushfires.

**Clause 20 — Delegation by Authority —**

The clause empowers the Authority to delegate a power or duty under this or any other Act to a person. This type of clause is commonly found in legislation establishing statutory authorities and allows the business to function effectively and efficiently. The delegation power would primarily be used by the Authority's board to delegate certain functions to its chairman or to the Chief Executive Officer, and for the latter to delegate functions to line managers.

Subclauses (3), (4) and (5) allow for a delegation to be made to a person who is not a member of the Authority's board or staff, or to a committee containing such a person, but both instances would require Minister's approval.

A delegation may be sub-delegated where this is expressly authorised by the delegation.

## Part 4 — General administration of Authority

This Part establishes the management and staffing structures necessary to enable the Authority to perform its functions under this or any other Act.

Division 1 establishes a board of management to govern the Authority and sets out procedures for the board's operation. The clauses in this Division are generally standard for the boards of management of statutory authorities, unless otherwise noted.

Division 2 provides for a Chief Executive Officer, general staff and the use of other government staff and of contractors.

### Part 4 — Division 1 — Board of management

#### Subdivision 1 — General provisions

This subdivision establishes the general role of the Authority's board of management. The board will be responsible for managing the affairs of the Authority, subject to the control of the Minister as exercised through the policy instruments and powers of the Minister provided for in Part 5.

The subdivision also deals with the membership of the board and its committees, and the remuneration and allowances of its members.

Board members will be subject to the operation of the *Statutory Corporations (Liability of Directors) Act 1996* (see clause 188). This requires, among other things, that members have the same fiduciary relationship with the Authority, and the same duties to the Authority to act with loyalty and in good faith, as the director of a company incorporated under the *Commonwealth Corporations Act 2001*.

#### Clause 21 — Board is governing body —

The clause establishes that the Authority is to have a board of management. The board is the governing body of the Authority and, in the name of the Authority, is to perform the functions of the Authority under this or any other Act.

While the Chief Executive Officer is responsible for the day-to-day operations of the Authority, subject to the control of the board (as provided for by clause 44), the board is ultimately accountable to the Minister for the performance of the Authority.

#### Clause 22 — How board is constituted —

Subclause (1) requires that the board comprise at least four but no more than six persons appointed by the Minister, along with the Authority's Chief Executive Officer. The latter requirement provides a link between strategic and operational decision-making and reflects the dual roles of the Authority to provide core government services and operate commercially.

Subclause (2) prohibits members of the Authority's staff from appointment to the board.

Under subclause (3) the Minister is to designate one of the appointed members to be the chairman and another to be the deputy chair. The Chief Executive Officer cannot be designated to either role as that person is not an appointed member of the board.

Under subclause (4), the Minister is to ensure that board members between them have the knowledge and experience to enable the Authority's functions under this Act to be effectively performed. For example, to carry out the Authority's commercial functions, the board will require members with relevant business, strategic and financial expertise. In line with recommendations made by Western Australia's Auditor General in a 1999 report, it is intended that the members of the governing board be selected on the basis of merit and capacity rather than their ability to represent stakeholder and interest groups.

Under subclause 22(5), the Minister may not appoint a person as a member of the board who has other interests or duties that might be expected to conflict with their duties as a board member.

Note that subclause 25(3) also provides that the office of an appointed member becomes vacant if the holder becomes ineligible under subclause 22(5) to be an appointed member.

**Clause 23 — Remuneration and allowances —**

The clause entitles members of the board to be paid remuneration and allowances. These are to be set by the Minister on the recommendation of the Minister for Public Sector Management. The Chief Executive Officer will not be paid sitting fees but may be entitled to receive allowances (such as travel) on the Minister's approval.

**Clause 24 — Term of office —**

This clause establishes that the term for which members are appointed to the board is to be fixed and not longer than three years. The clause provides for the renewal of an appointment or its temporary continuation for not more than 3 months, subject to conditions.

**Clause 25 — Casual vacancies —**

This clause deals with casual vacancies on the board. Vacancies may arise should an appointed member resign or be removed by the Minister on the following grounds:

- mental or physical incapacity;
- insolvency;
- absence without leave for three consecutive meetings;
- neglect of duty; or
- misconduct.

**Clause 26 — Leave of absence —**

This allows the board to grant a member leave of absence on terms and conditions it thinks fit.

**Clause 27 — Deputy chairman acting as chairman —**

This clause provides for the deputy chairman to act for the chair if the latter is unable to act because of sickness, absence or other cause.

**Clause 28 — Alternate members —**

The Minister may appoint an alternate member to act temporarily in the place of an appointed member (other than the chairman) if the member is unable to act because of sickness, absence or other cause. Alternate members have the entitlements and responsibilities of board members and are to be appointed with regard to the provisions in subclauses 22(4) and (5).

### **Clause 29 — Committees —**

The board may appoint committees to assist it to perform its functions, and may discharge or alter such committees. Committees may include non-members of the board but must include at least one member. This provision may be used at times, for example, to add specialist expertise to an audit and risk management committee.

Subclause (3) allows a committee to determine its own procedures but these must be consistent with directions of the board and the terms of any delegation. It would be expected that board committees operate in line with best practice in corporate governance and, for example, keep minutes of their proceedings, as the board is required to do under clause 39.

### **Clause 30 — Disclosure of material personal interest —**

This clause requires a member of the board to disclose a material personal interest in a matter to be considered by the board. A member of a board committee is also required to disclose a material personal interest in a matter before a committee. A member's disclosure is to be recorded in the minutes of the relevant meeting. Failure to disclose a material personal interest carries a penalty of a fine of \$10,000.

This is consistent with provisions in Schedule 2 of the *Zoological Parks Authority Act 2001* and ensures probity and transparency in decision making by the board.

Clauses 40, 41, 42 and 43 deal with meeting procedures in the event that a member has a material personal interest.

## **Part 4 — Division 1 — Board of management**

### **Subdivision 2 — Meetings**

This subdivision covers procedures for meetings of the board and its committees, and related powers of the Minister. These are consistent with provisions existing variously in Acts governing other statutory authorities, such as in Schedule 1 of the *Western Australian Land Authority Act 1992* (LandCorp), Schedule 2 of the *Zoological Parks Authority Act 2001* and Schedule 1 of the *Forest Products Authority Act 2000*.

### **Clause 31 — Holding meetings —**

The board's first meeting is to be convened by the chairman and thereafter at times and places agreed by the board. The chair may convene a special meeting at any time.

### **Clause 32 — Quorum —**

The board is to comprise no less than five and no more than seven members in total (under clause 22).

Section 54(2) of the *Interpretation Act 1984* contains provisions that determine three or more persons constitute a quorum for a body established by written law. Notwithstanding that section, this clause affirms that attendance by less than 3 members of the board does not constitute a quorum.

### **Clause 33 — Presiding at meetings —**

The clause establishes that the chairman is to preside at meetings, or the deputy in the absence of the chair. It also enables board members to appoint one of their number to preside if the neither the chairman, nor the deputy, is presiding.

**Clause 34 — Procedure at meetings —**

The board is to determine procedures for its meetings where not fixed by the Bill. This is consistent with provisions existing variously in Acts governing other statutory authorities such as in Schedule 1 of the *Western Australian Land Authority Act 1992* (LandCorp) and Schedule 2 of the *Zoological Parks Authority Act 2001*.

**Clause 35 — Voting —**

Each member present at a board meeting has a deliberative vote. This includes the Chief Executive Officer, who is a member of the board via clause 22. Decisions are to be made by majority vote with the presiding officer (under clause 33) having a casting vote if there is no majority.

**Clause 36 — Inviting consultant to participate in meeting —**

The board may arrange for a person to attend a meeting in a consultative capacity but that person may not vote.

**Clause 37 — Holding meetings remotely —**

This provides for a member to take part in board meetings by teleconference, or other means of instantaneous communication, if they are unable to attend in person.

**Clause 38 — Resolution without meeting —**

This clause allows the board to make a decision without meeting, by signing or otherwise assenting in writing. At least half of the board's members must assent for a decision to take effect.

**Clause 39 — Minutes to be kept —**

The board must keep accurate records of proceedings at its meetings.

**Clause 40 — Voting by interested board member —**

This clause prohibits a member with a material personal interest in a matter from voting or being present while the matter is considered, including reference to a proposed resolution under clause 41.

**Clause 41 — Section 40 may be declared inapplicable —**

This clause provides (in summary) that clause 40 does not apply if the board passes a resolution that members are satisfied that the interest should not disqualify the interested member from considering or voting on the matter.

**Clause 42. — Quorum where section 40 applies —**

Subclause (1) establishes that three members entitled to vote on a matter constitute a quorum when another member is disqualified from dealing with a matter under clause 40. It also enables the Minister to deal with a matter to the extent that the board cannot deal with it because of subclause (1).

**Clause 43 — Minister may declare sections 40 and 42 inapplicable —**

This clause allows the Minister to declare in writing that clause 40 (voting by interested board member) or clause 42 (quorum where section 40 applies) do not apply in relation to a specified matter. The Minister is required to lay the text of such a declaration before each House of Parliament.

## **Part 4 — Division 2 — Staff and contractors**

### **Clause 44 — Chief executive officer —**

The Chief Executive Officer of the Authority will be appointed as a member of the Senior Executive Service (SES) under the *Public Sector Management Act 1994*. The requirement that the CEO cannot be excluded from the SES will ensure the position remains within the auspices of Government and assist in meeting the purposes of the SES as outlined in Section 42 of the *Public Sector Management Act*.

This clause also ensures that the CEO will have all the necessary powers to effectively manage the Authority's day-to-day operations.

### **Clause 45 — Other staff and contractors —**

#### Subclause 45(1)

As is current Government practice, members of the SES will be appointed by the Authority (for and on behalf of the Crown) under the *Public Sector Management Act 1994*.

The Authority will employ and manage staff who are not members of the SES under its enabling legislation rather than the *Public Sector Management Act 1994*. This arrangement is common practice for statutory authorities and contributes to the Board's ability to properly manage all the agency's resources, including human resources.

Arrangements for staff transferring from the department to the Authority are covered under clause 94.

#### Subclause 45(2)

As is common for statutory authorities, the Authority will be empowered to engage assistance under contract for services or to appoint a person on a casual employment basis. The use of contractors and casual employees will occur consistent with relevant awards, agreements and Government policy.

#### Subclause 45(3)

The Authority will be empowered to make use of the services of an employee of another person, by agreement. This would enable the Authority to use staff from other public sector agencies or the private sector, for example, as part of partnership activities or staff exchange programs.

### **Clause 46 — Use of government staff and facilities —**

This clause empowers the Authority to make arrangements with other State bodies to use the services of their staff or use their facilities. This would enable, for example, the secondment of staff with special expertise not available in-house, or the sharing of technical infrastructure.

## Part 5 — Accountability and financial provisions

Part 5 makes the Authority subject to the control of the Minister and the financial oversight of the Treasurer. Division 1 provides the Minister with powers to direct the Authority and obtain information. The Authority is to be accountable to the Minister through a strategic development plan and statement of corporate intent and must consult the Minister on major initiatives and significant matters of public interest.

Division 2 establishes the Authority's financial arrangements. These include powers to retain revenues, establish a bank account and invest surplus funds and - subject to the Treasurer's approval - borrow and hedge funds. In keeping with its commercial role, the Authority is required to pay taxes and duties and to recommend annually whether it should pay a dividend to government. Division 3 contains miscellaneous accountability provisions.

Clauses in Part 5 are consistent with standard arrangements for statutory authorities in Western Australia.

### Part 5 — Division 1 — Accountability

#### Clause 47 — Draft strategic development plan to be submitted —

This clause requires the Authority's board to prepare and submit to the Minister a draft strategic development plan to apply from the next financial year. Subsequent clauses require it to also prepare an annual statement of corporate intent. These two documents provide government with an effective tool for setting targets for, and monitoring the performance of, statutory authorities that undertake commercial functions.

Clause 47 requires the Authority to submit the draft plan to the Minister six months before the start of the relevant financial year, or on a date fixed by the Minister with the Treasurer's concurrence. These provisions are consistent with the latest advice on budget cycles from the Department of Treasury and Finance.

#### Clause 48 — Transitional provision —

The Authority's first strategic development plan will be required for its first full year of operation. If the Authority commences operations midway through a financial year, a plan would not be required for that year. However financial planning and accountability would occur through the budget process and annual reporting.

#### Clause 49 — Negotiating strategic development plan —

The Authority's board and the Minister are to agree on the draft plan as soon as possible, and not later than one month before the start of the relevant financial year. The Minister requires the Treasurer's concurrence before agreeing to a draft plan.

#### Clause 50 — Minister's powers in relation to draft strategic plan —

This sets out the Minister's powers in relation to the draft strategic development plan and ensures that activities proposed by the Authority during the period covered by the plan are subject to the Minister's oversight and control. The Minister may request the Authority's board to include or revise matters in the draft plan and the board is to comply as soon as practicable. In the event that they cannot reach agreement on the draft plan, the Minister may direct the board under the provisions in sections 65 and 66.

**Clauses 51 and 52 — Agreed strategic development plan and Strategic development plan if not agreed**

These clauses outline the timing of the commencement of the plan once agreement is reached between the Minister and the Authority, and provide for the most recent draft plan to be adopted until agreement is reached.

**Clause 53 — Content of strategic development plan —**

The strategic development plan is to cover a forecast period of 5 years (or less by agreement). The plan is to set out the Authority's medium to long term objectives and any other matters agreed on by the Minister and the Authority.

It is proposed that the matters to be addressed in the Authority's plan will be specified in regulations, as required by subclause (2). This approach was recommended by the Department of Treasury and Finance, with whom the proposed content for such regulations has been discussed and agreed. The Treasurer's concurrence is required to make or amend the regulations.

It is intended that the plan would cover matters such as the Authority's strategic objectives; operational and financial performance targets; pricing policies; capital expenditure; sales and revenue projections; personnel and financial requirements; and relevant government policy.

**Clause 54 — Modification of strategic development plan —**

This provides for the Authority and Minister to modify the plan by agreement or at the Minister's direction. Modifications would be subject to the Treasurer's concurrence.

**Clause 55 — Draft statement of corporate intent to be submitted —**

The annual statement of corporate intent, along with the strategic development plan, provide government with an effective tool for setting targets for, and monitoring the performance of, statutory authorities that undertake commercial functions.

Clause 55 requires the Authority to submit the draft statement of corporate intent to the Minister six months before the start of the relevant financial year, or on a date fixed by the Minister with the Treasurer's concurrence. These provisions are consistent with the latest advice from the Department of Treasury and Finance.

**Clause 56 — Transitional provision —**

The Authority's first statement of corporate intent will be required for its first full year of operation. If the Authority commences operations midway through a financial year, a statement would not be required for that year. However financial planning and accountability would occur through the budget process and annual reporting.

**Clause 57 — Negotiating statement of corporate intent —**

The Authority's board and the Minister are to agree on the draft statement of corporate intent as soon as possible and not later than one month before the start of the relevant financial year. The Minister requires the Treasurer's concurrence before agreeing to a draft plan.

**Clause 58 — Minister's powers in relation to draft statement of corporate intent —**

This sets out the Minister's powers in relation to the draft statement of corporate intent. The Minister may request the Authority to include or revise matters in the draft statement and the Authority is to comply as soon as practicable. The Minister may direct the Authority to modify the statement in the event that they cannot reach agreement on the draft.

**Clauses 59 and 60 — Agreed statement of corporate intent and Statement of corporate intent if not agreed —**

These clauses outline the timing of the commencement of the statement of corporate intent once agreement is reached between the Minister and the Authority's board, and provide for the draft statement to be adopted until agreement is reached.

Unlike the strategic development plan, the statement of corporate intent is a public document. Clause 59 requires the Minister to table in Parliament the agreed statement of corporate intent. If a House is not sitting, the Minister must lay the document in accord with clause 91.

**Clause 61 — Content of statement of corporate intent —**

The statement of corporate intent is to cover the Authority's next financial year, as provided for by clause 55. This clause requires the statement of corporate intent to be consistent with the strategic development plan.

It is proposed that the matters to be addressed in the statement of corporate intent will be specified in regulations, as required by subclause (2). This approach was recommended by the Department of Treasury and Finance, with whom the proposed content for such regulations has been discussed and agreed. The Treasurer's concurrence is required to make the regulations.

The statement is to include any matters other than those required by regulations as agreed on by the Minister and the Authority.

It is envisaged that the statement of corporate intent would cover matters such as the Authority's major initiatives in relation to its strategic objectives; the nature and scope of functions to be performed during the year; annual operational and financial performance targets; pricing policies and performance targets and measures. The statement of corporate intent will also specifically address how major initiatives may impact on the matters covered in subclause 10(3).

**Clause 62 — Modification of statement of corporate intent —**

This provides for the Authority and Minister to modify the statement of corporate intent by agreement or at the Minister's direction, subject to the Treasurer's concurrence.

**Clause 63 — Consultation —**

Subclause 63(1)

This subclause requires the Minister and the Authority's board to consult, either directly or through appointed representatives, at the request of either party, in relation to the Authority's operations.

Subclause 63(2)

This subclause requires the board to consult with the Minister before entering upon a course of action that, in its opinion, amounts to a major initiative or is likely to be of significant public interest. This applies whether or not the course of action involves a financial transaction of an amount requiring Ministerial approval under clause 13.

The clause is a standard provision in legislation for statutory authorities and provides an additional mechanism for the Minister to oversee the Authority.

**Clause 64 — Minister to be kept informed —**

This clause is consistent with normal accountability mechanisms for the conduct of statutory authorities. It requires the Authority to keep the Minister reasonably informed of its operations and its financial performance, position and prospects, and provide the Minister with reports and information as required by the Minister.

The Authority is required to promptly inform the Minister if matters arise that may prevent or significantly affect the achievement of objectives and targets in its strategic development plan and statement of corporate intent.

**Clause 65 — Minister may give directions —**

The Minister may direct the Authority in relation to the performance of its functions under this or any other Act, either generally or in relation to a specific matter. The Authority is required to give effect to a direction when it becomes effective under clause 66. This is appropriate for a body that is an agent of the State.

The Minister's use of this power is made transparent by subclauses (2) and (3). These require the Minister to lay before each House of Parliament the text of any direction, and for the Authority to include the same text in its annual report.

Subclause 2(b) refers to section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*. Under the latter Act, the Authority's board must notify the Minister if it considers that compliance with a direction would not be in the interests of the Authority or that the direction is unlawful. In such case, the Minister must confirm or cancel a direction (the Act provides that confirmation of a direction has no effect if the direction is unlawful). Subclause 65 (2) (b) of the Bill requires the Minister to table in Parliament a confirmation of a direction made under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*.

**Clause 66 — When directions take effect —**

This clause establishes the various circumstances in which a direction given by the Minister takes effect. This ensures that the Authority carries out the actions provided for in clause 65 within a fixed period. A direction becomes effective within seven days of the Authority receiving it, although the Minister may determine a longer period at the request of the Authority's board.

**Clause 67 — Minister to have access to information —**

Upon request, the Authority is required to provide the Minister information in its possession that relates to the functions of the Authority, including information in or on documents. The provisions are standard and are appropriate for a body that is an agent of the State and accountable to a Minister.

**Clause 68 — Deletion of commercially sensitive matters —**

The clause empowers the Authority to request the Minister to delete, from a document that is to be made public, a matter of a commercially sensitive nature.

This type of clause is relatively common for statutory authorities that engage in commercial activities in a competitive market. It is envisaged that the Authority would make such a request of the Minister only where it believes there are real and substantial concerns that the information may compromise the financial or competitive position of the Authority or a person with whom it is doing business.

Documents would include a copy of any report made under the *Financial Administration and Audit Act 1985* that is to be laid before Parliament or made public, or any other document that may be made public. The clause authorises the Minister to comply with the request.

Exercise of this power requires that the document being released shows the place where the matter was deleted, and the reasons why, and is accompanied by an opinion from the Auditor General stating that the deleted information is commercially sensitive.

Nothing in this clause is intended to affect the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

## **Part 5 — Division 2 — Financial provisions**

### **Clause 69 — Authority's funds —**

The Authority's funds will consist of any money lawfully received by, made available to or payable to the Authority or a member of its staff under this or any other Act. These funds may consist of:

- regulated fees payable under the *Transfer of Land Act 1893* and *Strata Titles Act 1986* and other miscellaneous Acts;
- regulated fees and other charges made under the *Valuation of Land Act 1978*;
- revenue from the sale of non-regulated products and services, such as digital data, hardcopy maps and land information consultancy;
- an appropriation to fund the delivery of core government services (such as the State mapping program) that are not funded through regulated fees;
- any community service obligation (CSO) payments that may be made by the Department of Treasury and Finance; and
- any money borrowed by the Authority under clause 75.

The reference in the clause to members of staff allows the Authority to retain any fees and charges paid directly or indirectly to officers such as the Registrar of Titles and Valuer-General. This has been included to avoid numerous amendments to other Acts and regulations that provide, for example, for the payment of fees to the Registrar.

It is expected that the Authority would retain operating surpluses from its funds, after giving consideration to the payment of a dividend to government under clause 71. Under its business plan, the Authority intends to generate an operating surplus to fund its program of capital investment to replace essential but ageing land information systems, develop new systems and improve data quality.

### **Clause 70 — Western Australian Land Information Authority Account —**

Money received and paid by the Authority must be transacted through an account maintained by the Department of Treasury and Finance as part of the Trust Fund, or through a bank account approved by the Treasurer.

### **Clause 71 — Dividends —**

The Authority has been established to earn for the State a fair return on its long-term investment in land information. To this end, the clause provides for the Authority to recommend the payment of an interim or final dividend each financial year. Similar provisions are found in the *Western Australian Land Authority Act 1992*, *Forest Products Act 2000* and the *Port Authorities Act 1999*.

The clause has been prepared on advice from the Department of Treasury and Finance with the intention that it will synchronise with clause 20 of the Financial Management Bill 2005 (currently a Green Bill for public comment) which would allow the Treasurer to direct that funds held in an agency's special purpose account be transferred to the Consolidated Account.

Subclause 71(1)

This subclause requires the Authority's board to annually recommend to the Minister as to whether it should pay a final dividend and if so, the amount to be paid.

Subclause 71(2)

This subclause allows the Minister, with the Treasurer's concurrence, to accept the recommendation or direct the Authority to pay a dividend at an amount fixed in the direction.

Subclause 71(3)

This subclause deals with the timing of the payment of the dividend.

Subclause 71(4)

This subclause provides that if the Authority's board considers it justified to pay an interim dividend, it may recommend to the Minister the amount to be paid.

Subclause 71(5)

This subclause allows the Minister, with the Treasurer's concurrence, to accept a recommendation made under subclause (4) or direct the Authority to pay an interim dividend at an amount fixed in the direction.

Subclause 71(6)

This subclause deals with the timing of the payment of an interim dividend.

Subclause 71(7)

This subclause requires the Minister to table in Parliament a direction to the Authority to pay a final or interim dividend. This is a standard provision and ensures that the Minister and Treasurer are accountable for the Authority being adequately funded.

**Clause 72 — Liability for duties, taxes, and other statutory imposts —**

This clause requires the Authority to pay statutory duties, taxes and imposts. The provisions are similar to those in place for other statutory authorities that have commercial functions (e.g. LandCorp, Forest Products Commission) and are a key requirement to ensure the Authority's competitive neutrality.

Subclause 72(1)

This subclause renders the Authority, and deeds and instruments to which it is a party, liable and chargeable with duties, taxes and imposts under any written law. As a result, the Authority will be liable, among other things, for payroll tax, stamp duty and goods and services tax.

The Authority is expected to pay income tax equivalents to the State government in accord with the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*.

Subclauses 72(2), (3), (4) and (5)

These subclauses deal with local government rates and charges.

As is standard for State government statutory authorities, the Authority is not liable to pay local government rates and charges but must pay an equivalent amount to the Treasurer. Land held under a lease or tenancy arrangement from the Authority is excluded from this arrangement, and would most likely be paid as outgoings under standard lease terms and conditions.

Subclauses 72(6) and (7)

These subclauses establish arrangements for the calculation of the amount and timing of the payment to be made to the Treasurer under subclause (4).

**Clause 73 — Investment —**

This enables the Authority to invest surplus funds as part of the effective management of its funds. Any investment would be subject to the requirements of the *Financial Administration and Audit Act 1985*, including Division 7 of Part II of that Act, which deals with the investment of funds by statutory authorities.

The same provision is found in the *Port Authorities Act 2000* and the *Western Australian Land Authority Act 1992*.

**Clause 74 — Hedging transactions —**

This clause enables the Authority, with the Treasurer's approval, to manage, limit or reduce financial risks or anticipated costs arising from the exercise of the borrowing powers provided for in clause 75.

It is envisaged these provisions would be primarily used to hedge against foreign exchange risks arising from the Authority's International Program which provides and charges for land information and administration consultancy. This Program, successfully established by the Department, will be significantly expanded by the Authority in regions such as the Pacific, south-east Asia and China, to earn commercial revenues.

Subclause 74(1)

This subclause allows for a number of measures to be used to manage financial risk and for the Minister, with the Treasurer's concurrence, to approve other transactions or classes of transactions.

Subclause 74(2)

This subclause allows for certain combinations of the measures to manage risk.

Provisions in this clause are very similar to those found in the *Port Authorities Act 2000* and the *Western Australian Land Authority Act 1992*.

**Clause 75 — Borrowing —**

The Authority may borrow money with the Treasurer's prior approval.

The Authority will require investment capital for its ongoing business needs, including asset replacement, the upgrade and replacement of core systems and the undertaking of new business initiatives. The Authority's current five-year business plan does not assume any borrowing but it is prudent to include the facility in the Bill. The provisions are standard for statutory authorities with a commercial function.

The State's financial position is protected in that borrowings cannot be made without the Treasurer's prior approval. The Treasurer would set terms and conditions for the borrowing and the Authority would be accountable for the direct payment and management of the debt, which would appear on the Authority's balance sheet and the consolidated balance sheet of government.

In line with good business practice, the Authority will need to maintain a register of its borrowings.

**Clause 76 — Guarantees —**

This clause provides for the Treasurer, on the Minister's recommendation, to guarantee any financial obligation of the Authority. Such a clause is standard for agents of the State that have a power to borrow money.

A Treasurer's guarantee is not required for the Authority to make borrowings, but the ability to offer such a guarantee provides reassurance to lenders who require certainty that debts incurred by the Authority would be met by the State in the unlikely event that the Authority was unable to meet its obligations.

The Authority's current five-year business plan does not assume the need to make any borrowing to meet its capital investment program and it is unlikely that this guarantee clause would be used.

The clause allows for any money payable by the Treasurer to be charged to the Consolidated Fund and any amounts received from the Authority to be credited to the Fund.

**Clause 77 — Charges for guarantee —**

This clause imposes a charge on the Authority for the benefit of the guarantee provided by the Treasurer under clause 76. This is necessary to factor in the full cost of inputs and ensure that the Authority does not enjoy a competitive advantage in the marketplace in this regard. It is consistent with legislative provisions for other statutory authorities such as the Forest Products Commission and Public Transport Authority.

**Clause 78 — Authority may extend credit —**

This clause allows the Authority to generally provide credit to its customers in the normal course of business.

This ability to offer lines of credit is also applicable where the Authority is providing integrated services and collecting funds on behalf of, or for, other organisations. For example, the Authority will operate and expand the Department's EAS2 (Electronic Advice of Sale) initiative, which combines data from multiple agencies into a single integrated on-line product. This involves the collection and remittance of funds on behalf of third parties such as State and local government agencies.

It is proposed that the credit may be secured, as the Authority considers appropriate or, unsecured. This is consistent with section 36 of the *Public Transport Authority Act 2003*.

**Clause 79 — Notice of financial difficulty —**

The Authority's board is required to notify the Minister in writing if it is of the opinion that the Authority is unable or unlikely to satisfy any of its financial obligations.

The Minister must confer with the Treasurer and the Authority to determine a course of action and initiate such action as is required to satisfy the financial obligation. The Minister may, with the Treasurer's concurrence, direct the Authority to cease or limit the performance of any function.

This clause reinforces the Authority's accountability to the Minister, and the Minister and Treasurer's ability to protect the State's financial position.

**Clause 80 — Half-yearly reports —**

The provision of half-yearly reports provides the Minister and Treasurer with an additional level of oversight of the Authority's operations than is required by the *Financial Administration and Audit Act 1985*. Half-yearly reporting is required of other statutory authorities such as LandCorp and the Forest Products Commission.

## Part 5 — Division 3 — Other provisions

### **Clause 81 — Application of *Financial Administration and Audit Act 1985* —**

This is a standard provision that ensures that the Authority and its operations are fully subject to the *Financial Administration and Audit Act 1985* for financial administration, audit and reporting.

### **Clause 82 — Protection for disclosure or compliance with directions —**

This clause provides that the Authority or another person is not liable, in certain circumstances, against any claim arising as a consequence of the disclosure of information or documents when performing a function under the Bill or another Act. These circumstances involve the disclosure of information or documents via:

- a duty under clause 63 (consultation with Minister), clause 64 (Minister's directions), clause 67 (Minister's access to information), clause 79 (notice of financial difficulty) or clause 80 (half-yearly reports);
- a duty imposed by the *Financial Administration and Audit Act 1985*; and
- the carrying out of a Ministerial direction.

Subclause (2) does not affect the responsibility of the Authority's directors to act honestly and with due care and diligence as required by sections 9 and 10 of the *Statutory Corporations (Liability of Directors) Act 1996*.

These provisions are reasonably standard for statutory authorities but the protection offered by clause 82 has been deliberately limited to the circumstances outlined above, in order to avoid creating a general protection for the disclosure of any information (given that the agency's primary activity is information).

## Part 6 — Miscellaneous

The provisions in this section are fairly standard across statutory authorities (a recent example being the *Public Transport Authority Act 2003*) and provide for the protection of people dealing with the Authority and a range of miscellaneous provisions.

### Part 6 — Division 1 — Protection of people dealing with Authority

#### Clause 83 — People dealing with Authority may make assumptions —

This clause entitles persons dealing with the Authority to make assumptions about the matters described in section 85, for example, that persons acting on the Authority's behalf are properly authorised to do so. The Authority will not be able to plead in any legal proceedings that those assumptions were incorrect.

#### Clause 84 — Third parties may make assumptions —

This clause means that the assumptions available to a person under clause 83 extend to a third party who has acquired, or purported to acquire, title to property from the Authority. In essence, the third party can assume that good title to the property was passed from the Authority to the person who originally acquired it from the Authority.

#### Clause 85 — Matters that can be assumed —

This clause provides that in dealings with the Authority, people are entitled to assume that:

- the Authority is acting in accordance with the Bill;
- persons held out by the Authority to be the Chief Executive Officer, board member, member of staff or agent have been properly appointed and authorised to act on behalf of the Authority;
- a member of staff or agent of the Authority issuing or certifying documents on behalf of the Authority has authority to do so;
- documents bearing the seal of the Authority have been properly sealed; and
- the Chief Executive Officer, board members, staff and agents of the Authority have properly performed their duties.

#### Clause 86 — When those matters cannot be assumed —

A person will not be entitled to rely on the statutory assumptions contained in clause 85 where they know, or because of their relationship with the Authority, should know, that the assumption is incorrect.

In these circumstances, the Authority would be able to plead in any legal proceedings that such an assumption was incorrect.

### Part 6 — Division 2 — Other provisions

#### Clause 87 — Execution of documents by Authority —

As with any body corporate, this clause requires the Authority to have a corporate seal that can only be used with the authorisation of the Authority.

For a document to be properly executed by the Authority, the common seal must be affixed in the presence of two members of the Authority's board.

Subclause 87(5) allows the Authority to, in writing under the common seal, authorise board members or members of staff to sign documents on its behalf, either generally or subject to conditions. This mechanism permits the Authority to delegate the signing of its documents and not be required to seal every document.

In the absence of any proof to the contrary a document bearing the common seal is to be taken as having been properly executed.

**Clause 88 — Contract formalities —**

For administrative convenience, the Authority will be able to authorise a person to make, vary or discharge contracts in the name of, or on behalf of, the Authority which will have the effect of binding the Authority.

**Clause 89 — Confidential information officially obtained —**

This clause means that any person who, as part of their functions under this Bill, records, uses or discloses confidential information without lawful authority commits an offence. The clause does not create a duty of confidentiality but depends on there being a duty created elsewhere. For example, secrecy or confidentiality provisions in other Acts or provisions in commercial contracts that would create the duty. The Bill creates the offence in respect of the breach of confidentiality and the penalty.

The clause and the penalty that may be imposed are consistent with existing provisions in section 81 of the Criminal Code.

The clause focuses only on confidential information and does not otherwise affect the lawful discharge of duties associated with the Authority's role in managing and providing information, including information which is part of registers available to the public.

**Clause 90 — Protection from liability for wrongdoing —**

Consistent with provisions for statutory authorities, this clause provides that a person who is performing a function in good faith will be protected from legal action being brought against them. The common law defines good faith as being where a person acts honestly, without fraud or collusion in wrong doing.

This protection does not extend to the Authority or the State, which will remain vicariously responsible for the acts and omissions of persons performing functions on the Authority's behalf.

This protection is not necessarily afforded to those who are performing functions as board members, but in so doing breach the provisions of the *Statutory (Liability of Directors) Act 1996*. This Bill requires directors to act honestly, with reasonable care and diligence, and to not make improper use of information or improperly use their position. Penalties are applicable for breaches of these provisions.

**Clause 91 — Laying documents before Houses of Parliament not sitting —**

The clause details requirements relating to the tabling of documents by the Minister before a House of Parliament that is not sitting. It requires the Minister to provide a copy of the document to the Clerk of the relevant House, and for this document to be regarded as having been properly laid before the House.

**Clause 92 — Regulations**

This clause enables the Governor to make regulations for any matters that are required or permitted under the Bill. If any regulation creates an offence, the maximum penalty cannot exceed \$2000.

**Clause 93 — Review of Act —**

To ensure the continued relevance and effectiveness of the legislation, this clause requires the Minister to conduct a review of the Act every five years. That review is to consider:

- the effectiveness of the Authority's operations;
- the need to continue the functions of the Authority; and
- any other issue relevant to the operation of the Act and the effectiveness of the Authority.

The report is to be laid before Parliament within 12 months of the end of the relevant five year review period.

## Part 7 — Transitional Matters

The Statutory Authority will replace the department and assume responsibility for functions previously performed by it. Its establishment involves the transition of staff, assets, liabilities, contracts, rights, proceedings, agreements and instruments, arrangements, documents and records and other matters from a single department to a new authority created within the public sector.

This differs from many other statutory authorities which have involved the disestablishment of, or transfer of functions, assets and staff from, body corporate entities, or the establishment of a new entity outside the public sector. On advice from the State Solicitor, it was determined that specific transition, transfer and savings provisions were not required in the Bill, and that transitional and transfer arrangements from the department to the Authority could be dealt with administratively. This means that, on commencement, the Authority replaces the department and assumes all:

- assets, rights and liabilities;
- agreements, contracts, instruments and proceedings; and
- any other matters.

However, it was considered prudent to include provisions in the Bill to deal with the matters below, which primarily provide for:

- the transfer of the Department's general staff to the Authority. The State Solicitor's Office advises that a mechanism is required to do this, and the best way would be through the Bill; and
- the Authority to succeed former bodies and the completion of things commenced.

The latter primarily relates to the titles registration process and lodgement of survey documents where dealings from external parties may have been lodged with the department but not completed by the commencement date of the Authority.

The inclusion and operation of these matters does not otherwise affect the administrative assignment, transition and saving of any other relevant matter.

### Part 7 — Division 1 — Staff

#### Clause 94 — Other staff in the former department —

The transfer of the Department's Chief Executive Officer and members of the Senior Executive Service will be managed administratively in accordance with transfer provisions in the *Public Sector Management Act 1994* (sections 50 and 54). Therefore the Bill is silent on this transfer.

This clause provides for the transfer of all of the Department's general staff to the Authority, including both permanent and fixed term contractors.

Relevant legislation, award provisions and Government policy will together ensure that employee rights and entitlements will be protected and substantially the same on transition to the Authority. These rights and entitlements include:

- tenure;
- remuneration;
- terms and conditions of employment, such as redeployment and redundancy provisions;
- existing or accruing leave entitlements;
- superannuation; and
- continuity of service.

All arrangements for transferring these rights and entitlements across will be dealt with administratively. These protections will be incorporated into the agency's Human Resource Transition Plan for the transition of staff and will be confirmed in writing via letters to staff.

The Government is aware that there may be an issue with the Authority being a "constitutional corporation" for the purposes of the new Federal industrial relations legislation (Workchoices).

At the time of writing the WA Government's response with respect to how WorkChoices will impact on public sector constitutional corporations has not yet been confirmed, and therefore award coverage for the Authority's general staff has not been finally determined. However, DOCEP's Circular to Departments and Authorities No. 15 of 2005 commits to protecting the pay and conditions of public sector employees affected by WorkChoices. As a public sector body, the Authority will be bound by all lawful instructions or directions from the State Government in this regard.

## **Part 7 — Division 2 — General Matters**

The general purpose of this Division is to enable the Authority to succeed "former bodies". This includes all the documents that were held in the names of the former bodies. Any references in other laws to former bodies are now to be read to be references to the Authority, if it is appropriate in the context to do so.

### **Clause 95 — Terms used in this division —**

The definition of "document" is drafted in wide terms to cover plans, diagrams and other records and documents that are a graphical representation of a matter or thing. This is because these documents are received by the agency as part of its business activities.

The definition of "former body" is a reference to all the former bodies that were predecessors of the Authority. This is to save having to repeat references to these predecessor organisations in subsequent clauses of the Bill.

The definition of "former office" is to deal with reference in the *Transfer of Land Act 1893* and the *Registration of Deeds Act 1856* to the department or the office which is dealing with registration of documents.

### **Clause 96 — General transitional provisions might not apply —**

The purpose of this clause is to give the transitional provisions contained in the Bill general application, except where it would be inappropriate in the context for the amendment to apply.

**Clause 97 — Certain references to former bodies —**

The purpose of this clause is to ensure that references in any laws of the State to the predecessors of the Authority can be read as a reference to the new Authority.

**Clause 98 — Certain references to department —**

The purpose of this clause is to provide that in any laws or documents a reference to the Department which assists the Minister in the administration in the *Transfer of Land Act 1893* can be read as a reference to the new Authority.

**Clause 99 — References to things done in former offices —**

The purpose of this clause is to ensure that the things that were done in former offices that are referred to in any written laws or documents will now be interpreted as being done in the new Authority. This is to ensure that there can be no doubt that the new Authority is undertaking all the actions of its predecessors.

**Clause 100 — References to documents of former bodies —**

The purpose of this clause is to ensure that any reference in any written law or document to a document of the “former body” is to be read as a reference to a document of the Authority.

**Part 7 — Division 3 — Regulations for other matters**

**Clause 101 — Transitional Regulations —**

The provisions of this clause enable regulations to be made for transitional matters, if required. Similar provisions are common, and have been used for example in the *Economic Regulation Authority Act 2003* and the *Fire and Emergency Services Authority Act 1998*.

Subclause 101(1)

The purpose of this subclause is to enable the making of regulations on transitional matters. Transitional matters are widely defined as a matter that needs to be dealt with for the transition required because of this Bill. This provision is included in case a matter arises which requires a specific transitional provision.

Subclause 101(2)

This subclause provides a definition of transitional matters for the purposes of the Bill. It is broadly defined to mean anything that needs to be dealt with for the purposes of effecting transition.

Subclause 101(3)

This subclause permits the regulations for transitional matters made under subsection 1 to apply, apply with modifications, or not apply, to any written law.

Subclause 101(4)

This subclause provides that the regulations have effect according to their terms even if the state of affairs to which the regulations are directed had either existed or not existed before the date on which the regulations were made.

Subclause 101(5)

The purpose of this subclause is to give a particular meaning to the word “specified” in subsections 3 and 4 of clause 101. The term means anything as specified or described in the regulations.

Subclause 101(6)

The purpose of this subclause is to provide that the regulations made under this clause must not prejudicially affect any person or impose any liabilities on any person other than the State, an authority of the State or a local government. This is to ensure that there is no impact on any private citizen or company on the making of the regulations.

## Part 8 — Other Acts

The Bill provides for the Authority to undertake the land titling and valuation functions currently performed by the Department. Legal authority for most of those functions is retained within existing legislation such as the *Transfer of Land Act 1893* and *Valuation of Land Act 1978*. This Part deals with minor amendments to these Acts.

The Bill makes no change to the State's guarantee of indefeasibility of title for people holding registered interests in land, and it does not change the roles of the Commissioner and Registrar of Titles in overseeing the accuracy and integrity of the land titling system. The processes for valuing land under the *Valuation of Land Act 1978*, and the Valuer-General's role in ensuring that valuations are made independently and impartially, also do not change.

The balance of Part 8 is largely procedural, dealing with amendments to other legislation that flow from the principles contained in this Bill. Amendments have been kept to a minimum and agreed to by relevant departments.

### Part 8 — Division 1 — *Transfer of Land Act 1893* and related provisions

Clauses 102 – 119 deal exclusively with amendments to the *Transfer of Land Act 1893* (TLA). Clauses 120 – 165 make amendments to other Acts arising from the amendments to the TLA.

#### Clause 102 — The Act amended —

This clause specifies that the amendments made in Division 1 of the Bill are to the *Transfer of Land Act 1893* (TLA) unless otherwise stated.

#### Clause 103 — Section 4 amended —

This amendment removes from section 4(1)(a) of the *Transfer of Land Act 1893* the definitions of:

- “Department”;
- “Examiner of Titles”; and
- “Minister”.

The definition of “Department” is replaced by a definition of “Authority” as the Authority will take over the operations of the Department upon the commencement of the Bill.

The definition of “Examiner of Titles” is replaced with an amended reference to “Examiner of Titles” in the proposed section 8(1) in clause 108 of the Bill.

The removal of the definition “Minister” is because the *Interpretation Act 1984* already provides that a reference in legislation to a Minister, is to be construed as a reference to the Minister to whom the administration of the Act has been given by the Governor.

**Clause 104 — Section 5 replaced —**

This clause repeals and replaces the reference to the Commissioner of Titles under the *Transfer of Land Act 1893*.

This amendment is required for two reasons – both administrative. The first is because the person who performs the role of Commissioner of Titles is currently a staff member of the department, and needs to similarly be a staff member of the Authority.

The second is because of a change in drafting practice, which now dictates that a person is *designated* to perform a statutory function, rather than *appointed* to a statutory office. This does not change the substance of the current provisions for the Commissioner of Titles in (2)(b) to be suitably experienced and qualified. Similar amendments to other positions have been proposed in the *Machinery of Government (Miscellaneous Amendments) Bill 2005*.

The proposed subsection (3) ensures that the person who is the existing Commissioner of Titles will automatically be designated as the Commissioner of Titles when the Authority commences.

**Clause 105 — Section 6 amended —**

This section provides for a Deputy Commissioner of Titles. Like amendments proposed in clause 104, changes to this section are minor and include the “designation” rather than “appointment” of a Deputy Commissioner of Titles.

Subclause 105(1)

The purpose of subclause 105(1) is to repeal sections 6(1), (1a), (2) and (3) and replace them with new provisions which provide for the:

- designation, rather than the appointment, of two or more Deputy Commissioner of Titles; and
- any Deputy Commissioner of Titles to be a member of the Authority’s staff.

This does not change the substance of the current provisions for the Deputy Commissioner of Titles to be suitably experienced and qualified.

**Subsection 6(2)(a) of the TLA**

This paragraph as amended enables existing Deputy Commissioners of Title to continue after the enactment of this Bill for the balance of their terms of appointment.

**Subsection 6(3) of the TLA**

The Commissioner of Titles may nominate in writing a Deputy Commissioner of Titles to replace him when he is unable to perform the Commissioner’s duties. This amendment reflects a restructuring of the current provision and does not change the substance of the current provisions.

**Subsection 6(3)(a) of the TLA**

This paragraph provides that if there is no Commissioner of Titles, a Deputy Commissioner nominated by the former Commissioner of Titles is to act as, and in the place of, the Commissioner. This amendment reflects a restructuring of the current provision and does not change the substance of the current provisions.

**Subsection 6(3)(b) of the TLA**

This paragraph provides that if the Commissioner has not nominated a Deputy Commissioner before he ceases to be Commissioner, the Minister may nominate a Deputy Commissioner. This is a new provision that ensures a Deputy Commissioner can be appointed to act in the place of the Commissioner by the Minister, but only if the Commissioner fails to do so for whatever reason.

Subclause 105(2)

The deletion of reference to subsection 5 and its replacement with section 15 is a consequential amendment arising from clause 112, which inserts a new section 15 into the TLA. The new section 15 deals with delegations by the Commissioner of Titles which have been moved from this section and expanded.

Subclause 105(3)

This subclause repeals section 6(5) and 6(6) as they are now covered under the new section 15 provided for by clause 112.

**Clause 106 — Section 7 replaced —**

This clause replaces section 7 which provides for the establishment of a Registrar of Titles. Like amendments proposed in clauses 104 and 105, these amendments are minor and deal with how the Registrar of Titles is designated.

The new section 7 provides that –

- the Governor may designate, rather than appoint, a person to be the Registrar of Titles;
- the Registrar of Titles must be a member of the Authority's staff; and
- when this Bill comes into effect, the person who is the Registrar of Titles at that time will automatically be designated as the Registrar of Titles under the proposed section 7(1).

**Clause 107 — Section 7A amended —**

Subclause 107(1)

This subclause replaces the existing section 7A(1) with language which is in clearer terms. As with amendments proposed in clauses 104, 105 and 106, this change removes references to people being “appointed” to perform statutory functions.

Subclause 107(2)

Similarly, this amendment removes reference to “appointed to both offices” and replaces it with a reference to the role of the Registrar of Titles and the Commissioner of Titles.

**Clause 108 — Section 8 replaced —**

This clause replaces the existing section 8 which currently provides for the appointment and removal of officers, namely Examiners of Titles and Assistant Registrars of Titles.

The proposed amendments mirror those in clauses 104, 105 and 106 and are required primarily because of the change in drafting practice from “appointing” a person to an office, to designating a person to perform certain statutory functions. The clause provides that –

- the Governor may designate a single person or two or more persons to be an Examiner of Titles;
- the Governor may designate (rather than appoint) a single person or two or more persons to be an Assistant Registrar of Titles;
- a person cannot be an Examiner of Titles or an Assistant Registrar of Titles unless they are a member of the Authority’s staff;
- an Examiner of Titles must be a legal practitioner or a Barrister or Solicitor of a Supreme Court of another State or Territory. This requirement is unchanged from the definition in the Act currently; and
- when the Bill comes into effect, the existing Assistant Registrars of Titles are automatically designated as such under section 8(2).<sup>2</sup>

**Clause 109 — Section 8A inserted —**

This clause inserts a new section 8A into the Act which supports the provisions of the revised section 8.

**Subsections 8A(1) and 8A(2) of the TLA**

These are procedural amendments which mirror provisions in section 52 of the *Interpretations Act 1984*. It clarifies that the Governor’s power to designate a person includes the power to revoke the designation. It also provides a power to designate someone else to temporarily perform the functions if the current officer/s is unable to do so.

**Clause 110 — Section 11 amended —**

This clause adds a proviso to the existing section 11 of the Act that an Assistant Registrar may not delegate the powers given by the Registrar of Titles under section 15A. This is to ensure that the Registrar of Titles has control over the delegation of the Registrar’s statutory powers.

**Clause 111 — Section 13 amended —**

Subclause 111(a)

This amends section 13 by deleting the reference to “herein after appointed” because officers will now be designated to perform statutory functions rather than appointed to statutory offices.

Subclause 111(b)

This deletes reference to the “duties of his office” and inserts a reference to the duties of the Registrar of Titles or an Assistant Registrar of Titles. The purpose is to remove the reference to the duties of the “office”, as it is more appropriate to refer to the duties of the position.

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<sup>2</sup> There are currently no Examiner of Titles appointed, so no transition provision is required.

#### Subclause 111(c)

This amendment removes the reference to “office” of the Registrar of Titles for the same reasons as referred to in the explanation of subclause 111(b).

#### **Clause 112 — Sections 15 and 15A inserted —**

This clause adds a new section 15 to the Act. This section is intended to consolidate and extend the delegation powers currently contained in sections 6 and 8.

#### **Section 15(1) of the TLA**

This new section provides for the Commissioner of Titles to delegate any power or duty to:

- a Deputy Commissioner of Titles;
- an Examiner of Titles; and
- a legal practitioner or a Barrister or Solicitor of a Supreme Court of another State or Territory who is an employee of the Authority.

(a) and (b) mirror provisions already within the Act. (c) is new and designed to enable the Commissioner of Titles to delegate some of his workload to other suitably qualified legal officers within the Authority.

#### **Section 15(2) of the TLA**

This provides that the delegation under subsection (1) by the Commissioner of Titles must be in writing.

#### **Section 15(3) of the TLA**

This prevents a person, receiving a delegated power or duty from the Commissioner of Titles, further delegating that power or duty. This ensures that the Commissioner retains control of his functions.

#### **Section 15(4) of the TLA**

This provides that any person performing a delegated power or duty is to be taken as having done so in accordance with the delegation. This is to enable third parties to assume that the person exercising the power or duty is doing so in accordance with the delegation.

#### **Section 15(5) of the TLA**

This permits the Commissioner of Titles to perform his functions through an officer or agent. It is a standard delegation provision which is used across a number of Acts in the statute books.

Without subsection (5) there is a risk that the statutory power of the Commissioner to delegate might exclude the Commissioner from doing a function through an officer without the need to formally delegate it to the officer. In essence, it means that the Commissioner does not personally have to undertake administrative matters or functions that are routine. It is not a delegation of the Commissioner’s powers or duties.

#### **Section 15(6) of the TLA**

This provides that any delegations that had been made by the Commissioner of Titles to the Deputy Commissioner of Titles before the Authority commences will continue in effect.

### **Section 15A(1) of the TLA**

This permits the Registrar of Titles to administratively delegate any power or duty under the *Transfer of Land Act 1893* to a member of the Authority's staff. It provides the Registrar with greater flexibility by permitting him to delegate functions to staff who have specialist skills, but are not designated as Assistant Registrars of Titles.

### **Section 15A(2) of the TLA**

A delegation made by the Registrar must be in writing and signed.

### **Section 15A(3) of the TLA**

This prevents the person delegating any powers given to them by the Registrar of Titles and ensures that the Registrar retains control of delegations of his powers.

### **Section 15A(4) of the TLA**

This provides that any person performing a delegated power or duty is to be taken as having done so in accordance with the delegation. This is to protect third parties and to permit them to assume that the person exercising the power or duty is doing so in accordance with the delegation.

### **Section 15A(5) of the TLA**

This permits the Registrar of Titles to perform his functions through an officer or agent.

It is a standard delegation provision which is used across a number of Acts. It enables the Registrar to be provided with administrative assistance. It is not a delegation of the Registrar's powers or duties.

### **Clause 113 — Section 181 amended —**

#### Subclause 113(1)

This removes the power of the Commissioner of Titles to make regulations under the existing *Transfer of Land Act 1893* and gives that power to the Governor. This is consistent with current practice for regulation making powers in Western Australian legislation. The Commissioner's power to make regulations is an historic arrangement which has been supplanted by modern practices of government.

#### Subclause 113(2)

This clause inserts a new provision continuing the effect of any regulations made by the Commissioner of Titles under section 181(1) before the commencement of the *Land Information Authority Bill 2006*.

#### Subclause 113(3)

This clause inserts a new provision permitting the Governor to amend regulations previously made by the Commissioner of Titles.

### **Subclause 114 — Section 188 amended —**

This clause amends section 188(iv) by removing the reference to the Department and substituting a reference to the Authority.

### **Clause 115 — Section 190 replaced —**

This clause repeals and replaces section 190 with one change, which is that the Registrar is to pay any money received by him under the *Transfer of Land Act 1893* to the Authority. This reflects current arrangements between the Department and the Registrar of Titles, and is consistent with the Authority's responsibilities under the *Financial Administration and Audit Act 1985* and its financial and business model.

**Clause 116 — Section 239 amended —**

This clause adds a further provision to section 239(1) of the *Transfer of Land Act 1893*. It is intended to enable people to inspect and obtain copies of documents and information that are derived from records and dealings in relation to land under the Act, and which are subject to existing regulated fees. This amendment is necessary because of the proposed replacement of section 239(A), which is where the head of power for providing and charging a prescribed fee previously resided for activities such as the following:

- names index searches;
- status reports;
- search for the number of a certificate of title crown lease, crown title permit or license;
- check searches;
- search of the Crown reserves data base, including the printout of the hard copy;
- delivery of a search request for the search of a survey lot file, strata lot file;
- provision of a search of the names index;
- provision of response to search request via a privately owned facsimile machine for the results of searches; and
- arranging for the postal delivery of any material arising from searches.

**Clause 117 — Section 239A repealed —**

This clause repeals section 239A of the *Transfer of Land Act 1893*. Section 239A of the Act currently enables the Registrar to provide “land related information”.

The provision of land related information is a by-product of the Registrar of Titles’ statutory functions related to maintaining the land titles Register. It is a discretionary function which is appropriate to transfer to the Authority given its proposed role as the Government’s provider of land information goods and services, including information derived from activities under the *Transfer of Land Act 1893*.

The repeal of this section is required because the Authority has a general head of power in its Bill that is sufficient for it to provide and charge for land information and related goods and services (see, for example, subclauses 9(5)(b) and 12(2)(h) and clause 16).

Matters currently covered by section 239A that are to be transferred to section 239(1) through the amendments made by clause 116 will continue to be subject to prescribed fees.

**Clause 118 — Various references to department amended —**

This clause deletes various references to the Department and substitutes these with the Authority, which will replace the Department.

**Clause 119 — Certain references in other Acts to plans and diagrams amended —**

The purpose of this clause is to amend the Acts referred to in the Table by deleting the references to the “Department within the meaning of the *Transfer of Land Act 1893* Plan” and substituting them with a reference to “Land Titles Office Plan” or “Land Titles Office Diagram”. This will ensure that the wording used in these Acts is consistent with the wording on the actual plans and diagrams (the documents and plans themselves do not have “Department within the meaning of the *Transfer of Land Act 1893* Plan”, rather, they use the term “Land Titles Office Plan or Diagram”).

Clauses 95 and 97 of the Bill will have the effect of clarifying that it is the Authority that holds the plans or diagrams.

Clauses 120-165 deal with amendments to other Acts that are related to the provisions of the *Transfer of Land Act 1893*. Amendments have been kept to a minimum and agreed to by relevant departments. In the main, amendments:

- remove historic references to offices and departments that have not existed for some time (for example the Lands and Surveys Department and Office of Titles);
- replace references to the “Department” assisting in the administration of the *Transfer of Land Act 1893* (as the department is being replaced by the new Land Information Authority created by this Bill); and
- fix historic anomalies such as incorrect references to “Deputy” Registrars of Title (as no such position exists).

**Clause 120 — Administration Act 1903 amended —**

The purpose of the clause is to remove the outdated reference to the office of the Registrar of Deeds or Registrar of Titles in section 19(2) and insert in its place a reference to the WA Land Information Authority. This is because the Authority will be the place where all land title documents are lodged for processing and registration by the Registrar of Titles or the Registrar of Deeds.

**Clause 121 — Agriculture and Related Resources Protection Act 1976 amended**

The amendments proposed to this Act address historic references to former departments or positions.

Subclause 121(2)

The provisions of section 92(4)(b) of this Act provide for notices being served under the Act and deem when those notices have been served. The purpose of this clause is to remove the outdated references in section 92(4)(b) to the:

- Department with the meaning of the *Transfer of Land Act 1893*;
- Department of Lands and Surveys;
- Department of Mines; and
- Register of Deeds.

The above references are replaced by “a register or other records referred to in section 94(1)(b)” of the Act. This saves repetition in this Act by referring back to the registers and records in section 94(1)(b).

Subclause 121(3)(a)

The purpose of this clause is to correct an error in section 94(1)(b)(i). This removes reference to a “Deputy” Registrar of Titles as there are no such officers under the *Transfer of Land Act 1893*.

Subclause 121(3)(b)

The purpose of this clause is to repeal the existing section 94(1)(b)(iii) and create new sections 94(1)(b)(iii) and (iiia).

The new sub-paragraph (iii) now refers to the CEO of the Department principally assisting in the administration of the *Land Administration Act 1997*. It also removes historic references to the Under Secretary for Lands or the Under Secretary for Mines, and the former Department of Lands and Surveys or the Department of Mines.

The new sub-paragraph (iiia) now refers to the CEO of the Department assisting in the administration of the *Mining Act 1978*.

In summary the effect of these amendments is that the certificate that is required to be given as proof of ownership or occupation of land under both the *Land Administration Act 1997* and the *Mining Act 1978* is now being given by the CEOs of the relevant agencies.

**Clause 122 — Anglican Church of Australia (Diocese of North West Australia) Act 1961 amended —**

Section 5(3) of this Act refers to the place of registration of the change of the church name on titles and documents.

This clause deletes an historic reference to the Office of Titles, Registrar of Deeds and Department of Land and Surveys and replaces it with a more generic (and enduring) reference to actions under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*.

**Clause 123 — Anglican Church of Australia Diocesan Trustees and Lands Act 1918 amended —**

Section 11 of this Act refers to the place of registration of the change of the church name on titles and documents.

This clause deletes the historic reference to the “*the Office of Titles, Registrar of Deeds or the Department of Land and Surveys*” and replaces it with a more generic (and enduring) reference to actions under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*.

**Clause 124 — Anglican Church of Australia Lands Act 1914 amended —**

This amendment removes the reference to the Department in section 5 and replaces it with the WA Land Information Authority as being the place where a plan of subdivision of land is to be deposited.

**Clause 125 — Argentine Ant Act 1968 amended —**

The purpose of section 15(1) of the Act is to provide for certificates given in evidence as proof of certain matters in courts. In this case, it is proof of a person registered in the relevant Department as lessee or occupier of premises under both the *Land Administration Act 1997* and the *Mining Act 1978*.

Subclause 125(2)(a)

The purpose of this clause is to correct an error in section 15(1)(b)(ii). This removes reference to a “Deputy” Registrar of Titles as there are no such officers.

Subclause 125(2)(b)

The purpose of this clause is to delete paragraph (iii) and insert a new paragraph in its place. The new sub-paragraph (iii) now refers to the CEO of the Department principally assisting in the administration of the *Land Administration Act 1997* or the *Mining Act 1978*, and removes historic references to the Under Secretary for Lands or the Under Secretary for Mines, and the former Department of Lands and Surveys or the Department of Mines.

**Clause 126 — Bush Fires Act 1954 amended —**

Section 66 of the Act generally provides for certificates given in evidence as proof of certain matters in courts.

Subclause 126(2)

The purpose of this clause is to replace section 66(1)(b)(iii) to provide for an up-to-date reference to the relevant officers under the relevant legislation who give the required certificate. The certificate is proof of a person being registered in the relevant department as the owner, lessee or occupier of land or premises or the holder of a timber lease, concession or permit under the *Land Administration Act 1997*, the *Mining Act 1978* or the *Conservation and Land Management Act 1984*.

The amendment removes historic references to entities such as the Department of Land Administration and Director General for Mines and replaces them with the CEO of the Department principally assisting in the administration of the aforementioned Acts.

The amendments in subclause 126(2)(c) to subsection 66(1)(b)(iii) make it clear that certificates can be given as evidence for a person being an owner, lessee, or occupier of land or the holder of a timber lease, concession or permit as is appropriate. This amendment was required because the existing clause could have been interpreted as enabling the Department of Land Administration (and now the Authority) to provide certificates for timber leases, concessions or permits which it has never done. These certificates are given by other agencies.

**Clause 127 — *City of Perth (Leederville Park Lands) Act 1950* amended —**

Section 2 of this Act refers to a particular piece of land, which is registered at the Department within the meaning of the *Transfer of Land Act 1893*.

Subclause 127(2)

This amendment removes the reference to the Department in section 2 and replaces it with a more generic (and enduring) reference to registration having occurred under the *Transfer of Land Act 1893*.

**Clause 128 — *Control of Vehicles (Off-road Areas) Act 1978* amended —**

Section 19 of this Act generally deals with the definition of land used for the purposes of the Act. It does this by reference to agencies, including a predecessor to the Department of Land Information. In this case, it refers to the Lands and Surveys Department.

Subclause 128(2)

This amendment to section 19(1)(a)(i) removes the reference to the former Lands and Surveys Department and inserts a reference to the WA Land Information Authority.

**Clause 129 — *Country Areas Water Supply Act 1947* amended**

**Section 85 of the *Country Areas Water Supply Act 1947***

The purpose of section 85 is to provide that, before the Corporation under the *Country Areas Water Supply Act 1947*, enters land or takes possession of it, it must first determine the ownership or occupation of the land under the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or the *Mining Act 1978*.

The following amendments generally address historic references to former departments or offices.

Subclause 129(2)

The purpose of this clause is to remove the historic references to the Department within the meaning of the *Transfer of Land Act 1893*, the Registry of Deeds and the Department of Mines in section 85(1), and inserting in their place a reference to the new Authority and the correct reference to the Department principally assisting in the administration of the *Mining Act 1978*. The new Authority will have the administration of the registers under the *Transfer of Land Act 1893* and the Registry of Deeds, therefore a reference to the records of the Authority will include a reference to these registers.

Subclause 129(3)

The purpose of Section 90 of the Act is to impose a requirement on the corporation to give notice to persons who are registered as owners of land under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856* before it exercises its power of sale.

This clause deletes the historic references to the Office of the Registrar of Deeds in sections 90(1)(b) and (c), and inserts a reference to the Deed being registered under the *Registration of Deeds Act 1856*. The WA Land Information Authority is the place where these Deeds will be lodged.

**Section 102 of the Country Areas Water Supply Act 1947**

This section deals with the sale of land for unpaid water rates and the transfer of the land into the name of the Crown if the land cannot be sold or is passed in at auction. The section refers to the change of ownership of the land effected in the Office of the Registrar of Deeds or in the Department within the meaning of the *Transfer of Land Act 1893*.

Subclauses 129(4)(a) and (b)

This clause removes the reference to the Office of the Registrar of Deeds in section 102(3) and instead inserts a reference to the Deed registered under the *Registration of Deeds Act 1856*.

The clause also removes, in section 102(4), historic references to the Department or the Office of the Registrar of Deeds and replaces it with a reference to registration occurring under the *Registration of Deeds Act 1856*.

Subclause 129(5)(a) and (b)

The purpose of this clause is to correct an error in section 120 of the Act. This removes reference to a "Deputy" Registrar of Titles as there are no such officers.

Subclause 129(5)(c)

Section 120 of the Act deals with the certificates required to be given as to proof that a person is an:

- owner, occupier or lessee of land under the *Land Administration Act 1997*; and
- a person being a lessee, holder of a mining lease or other mining tenement under the *Mining Act 1978*.

The purpose of this clause is to provide for the correct up-to-date reference to the relevant officers giving the required certificate in section 120(1)(b). That certificate is proof of a person registered in the relevant department as a lessee or occupier of land under the *Land Administration Act 1997* and the person being a lessee, holder of a mining lease or other mining tenement under *Mining Act 1978*.

The amendments to sections 120(1)(b)(iii) and (iv) remove the historic references to the former offices and positions of the Under Secretary for Lands, or the Permanent Head of Mines and the former Department of Lands and Surveys or the Department of Mines.

**Clause 130 — *Country Housing Act 1998* amended —**

Subclause 130(2)

This clause removes an incorrect reference in Schedule 2, clause 8(1) of the Act to the *Land Act 1933* and substitutes it with a reference to the *Land Administration Act 1997* which replaced it.

**Clause 131 — *Country Towns Sewerage Act 1948* amended —**

Subclause 131(2)

Section 84 of the Act generally deals with the process of sale of land for unpaid water rates and the notices that must be sent out to persons who are registered under the *Registration of Deeds Act 1856* and the *Transfer of Land Act 1893* as owners of the land.

This clause deletes the historic reference to the Office of the Registrar of Deeds in sections 84(1)(b) and (c) and instead inserts a reference to Deeds registered under the *Registration of Deeds Act 1856*.

Subclauses 131(3)(a) and (b)

Section 96 of the Act deals with, amongst other things, the sale of land for unpaid water rates and the transfer of the land into the name of the Crown if the land cannot be sold or is passed in at auction. The section refers to the change of ownership of the land done in the Office of the Registrar of Deeds or in the Department within the meaning of the *Transfer of Land Act 1893*.

This clause removes historic references to the Office of the Registrar of Deeds and the Department in sections 96(3) and 96(4). The registration of documents now occurs under the relevant legislation being the *Registration of Deeds Act 1856* or the *Transfer of Land Act 1893*.

Subclauses 131(4)(a) and (b)

The purpose of this subclause is to remove errors in section 118(1)(b), subparagraphs (i) and (ii) of the Act. It removes reference to a "Deputy" Registrar of Titles as there are no such officers.

Subclause 131(4)(c)

Sections 118(1)(b)(iii) and (iv) of the Act deal with the certificates required to be given as to proof of a person being:

- an owner, occupier or lessee of land under the *Land Administration Act 1997*; and
- a person being a lessee, holder of a mining lease or other mining tenement under the *Mining Act 1978*.

This clause removes references to the Under Secretary of Lands and other historic references and replaces them with up-to-date references to the relevant officers who give the required certificates. These are the CEOs of the departments principally assisting in the administration of the *Land Administration Act 1997* or the *Mining Act 1978*.

**Clause 132 — *Dog Act 1976* amended —**

Section 3(1) of the Act is the definitions provision and refers to the Department within the meaning of the *Transfer of Land Act 1893* and the *Land Act 1933*. This clause replaces references to the former departments with references to the new Land Information Authority, and also amends an incorrect reference to the *Land Act 1933* which was repealed and replaced by the *Land Administration Act 1997*.

**Clause 133 — Evidence Act 1906 amended —**

Under section 61 of the Act, the Fifth Schedule sets out the Name of Officer, Department, Body or Board who can certify, for the purposes of evidence in court, copies of any proclamation, order, regulation, or notice made by them under their relevant legislation.

This clause removes the old reference to the “Department of Land and Surveys” and replaces it with the Department assisting the Minister in the administration of the *Land Administration Act 1997*. It also replaces “The Minister for Lands and Under Secretary for Lands” with a reference to the Minister responsible for the administration of that Act (being the *Land Administration Act 1997*) and the CEO of the Department.

**Clause 134 — Geraldton Foreshore and Marina Development Act 1990 amended**

Section 3(2) of the Act deals with the reference to a miscellaneous diagram held in the Graphic Bank Section within the former Department of Land Administration. This clause replaces this historic reference and refers instead to the diagram being held within the WA Land Information Authority.

**Clause 135 — Health Act 1911 amended —**

Subclause 135(2)

Section 372 of this Act deals with, amongst other things, the service of a notice of intention to sell land under that Act.

Section 372 of the Act makes reference to the department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds. This clause replaces these historic references and refers instead to records of the WA Land Information Authority.

Subclause 135(3)

Section 375 of the Act gives a right to a public health official to make a search in the registers held by the “department” within the meaning of the *Transfer of Land Act 1893* and the *Registration of Deeds Act 1856* or in the former Department of Lands and Surveys or the Department of Mines.

This clause corrects these references to the records of the:

- new Land Information Authority in the case of freehold land and registered Crown land;
- department assisting in the administration of the *Land Administration Act 1997* in the case of unregistered Crown land; and
- department assisting in the administration of the *Mining Act 1978* in the case of mineral tenures.

**Clause 136 — Heritage of Western Australia Act 1990 amended —**

This clause updates references in the Table in the Act to the Department of Land Administration (the current Department’s predecessor) to the Chief Executive of the Department assisting in the administration of the *Land Administration Act 1997*.

The reason that the Authority is not referred to here is that the relevant parts of the Act that are referred to in this clause, apply to functions related to the management of Crown land. These functions were performed by the former Department of Land Administration but were transferred to the Department for Planning and Infrastructure in 2003.

**Clause 137 — *Housing Act 1980* amended —**

Section 24(2) of the Act defines the meaning of subdivided land for the purpose of that section. It does this by reference to a plan or diagram deposited in the Department of Land Information being the relevant department under the *Transfer of Land Act 1893*.

This clause deletes reference to the Department within the meaning of the *Transfer of Land Act 1893* and substitutes it with a reference to the new Land Information Authority.

**Clause 138 — *Kalgoorlie and Boulder Racing Clubs Act 1904* amended —**

Section 2 of this Act deals with the interpretation provisions. This clause amends the definition of the Minister for Lands by removing the reference to the Department of Lands and Surveys, which has not existed for some time as an agency within government.

**Clause 139 — *Land Boundaries Act 1841* amended —**

Section 5 of the *Land Boundaries Act 1841* establishes for survey purposes the Avon Base Line. It refers to the base line being marked and known in the books of the Department within the meaning of the *Land Administration Act 1997*. The Department of Land Administration (DOLA) was the relevant agency up until 2003. DOLA was replaced in 2003 by the Department of Land Information and DOLA's functions of Crown land management were transferred to the Department for Planning and Infrastructure. However, the books holding the Avon base line were retained by the Department of Land Information.

The purpose of this clause is to amend Section 5 to remove the reference to the Department within the meaning of the *Land Administration Act 1997* and insert a reference to the WA Land Information Authority, which is the successor to the Department of Land Information.

**Clause 140 — *Land Administration Act 1997* amended —**

Section 3 of the *Land Administration Act 1997* is the definitional provision under that Act. This clause seeks to amend the definition of the Registrar of Titles in section 3(1), removing the reference to the Registrar being "appointed" under the *Transfer of Land Act 1893* and substituting it with a reference to the Registrar of Titles as referred to in the *Transfer of Land Act 1893*. This is because the Registrar will, under the changes provided in this Bill, be designated by the Governor rather than appointed by the Governor.

**Clause 141 — *Land Drainage Act 1925* amended —**

The purpose of section 173(1)(b) of the Act is to provide for a certificate given as proof of ownership or occupation of land under both the *Land Administration Act 1997* and the *Mining Act 1978*. This certificate is given by the CEOs of the relevant agencies.

Subclause 141(2)(a)(i)

The purpose of this clause is to correct an error in section 173(1)(b)(ii) of the Act. This removes reference to a "Deputy" Registrar of Titles as there are no such officers.

Subclause 141(2)(a)(ii)

The purpose of this clause is to delete the reference to "Department" within the meaning of the *Transfer of Land Act 1893* in section 173(1)(b)(ii), and substitute it with a reference to the new Land Information Authority established under this Bill.

Subclause 141(2)(b)

The purpose of this clause is to replace sub-paragraph (iii) in section 173(1)(b)(ii). The new sub-paragraph refers to the relevant officers as the CEOs of the Departments principally assisting in the administration of the *Land Administration Act 1997* and the *Mining Act 1978*. The previous reference to the Department within the meaning of the *Transfer of Land Act 1893* has been amended because particulars about unregistered Crown land are now held by the Department for Planning and Infrastructure (DPI) under the *Land Administration Act 1997*. Responsibility for Crown land administration transferred from the Department of Land Information to DPI in 2003.

**Clause 142 — *Land Tax Assessment Act 2002* amended —**

Subclauses 142(2) and 142(3)(a), 142(3)(b)

These clauses amend references in the Glossary provisions of this Act (clause 1, clause 2, and subclause 2(e)). References to the Department of Land Administration, the Department within the meaning of the *Transfer of Land Act 1893* and the Registry of Deeds are removed and replaced with a reference to the new Land Information Authority.

**Clause 143 — *Licensed Surveyors Act 1909* amended —**

Subclause 143(2)

Section 3(1) of the Act is a definition provision dealing with the definition of “authorised survey”. The purpose of this amendment is to expand the reference to the plan of an authorised survey being lodged with a government department (for acceptance or adoption by that department) to include also a plan being lodged with the Land Information Authority (for acceptance and adoption by the latter body).

Subclause 143(3)

Section 18 of the Act requires that government departments shall not accept or adopt an authorised survey (except of a type defined in section 18) unless a plan of such survey has been approved by either the Surveyor General or a person appointed by the Governor to approve plans of authorised surveys.

The amendment will expand the reference to “any Government department” to also include the Land Information Authority. In other words, the Authority, along with any government department, will not be able to accept or adopt an authorised survey unless the plan of the survey has been lodged with and approved by the Surveyor General or a person appointed by the Governor to approve such plans.

**Clause 144 — *Local Government Act 1995* amended —**

Subclause 144(2)

The purpose of this clause is to correct an error in section 9.41(1)(b) of the Act. This removes reference to a “Deputy” Registrar of Titles as there are no such officers.

Subclause 144(3)(a)

Section 9.69 of the Act deals with land descriptions and the certification of documents for evidentiary purposes. This clause removes the reference to “Department” assisting with the administration of the *Transfer of Land Act 1893* in section 9.69(1) and replaces it with a reference to the Land Information Authority.

Subclause 144(3)(b)

This clause amends section 9.69(2) and (4) by deleting references to plans or diagrams deposited in the “Department” and replacing it with a reference to the Land Information Authority.

Subclause 144(4)

Schedule 6.3 of the Act deals with the sale and transfer of land where rates or charges are unpaid. In particular, clauses 1(1)(a) and (3) in this schedule deal with the requirements for notices given to owners of land who are subject to sale procedures.

The purpose of this clause is to amend the Schedule by deleting references to documents and records being kept by the Registrar of Deeds and replacing them with a reference to the documents and records being held under the *Registration of Deeds Act 1856*.

**Clause 145 — Metropolitan Water Supply, Sewerage, and Drainage Act 1909 amended —**

Subclause 145(2)

This amends section 114 of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*, which deals with the powers of the Corporation to take possession of land for non payment of charges and the requirement to first give notice to the owners of the land of the intention to take possession of it.

This amendment deletes reference to the Department within the meaning of the *Transfer of Land Act 1893* and substitutes it with a reference to the new Land Information Authority.

Subclause 145(3)

Section 165(2) of the Act provides for certificates of ownership of land or interests in land provided for evidentiary purposes. Paragraphs (a) and (b) of the amending clause correct errors in subsection 165(2)(a) and (b) of the Act. They remove references to a “deputy” Registrar of Titles and a “deputy” Registrar of Deeds as there are no such officers.

Subclause 145(3)

Part (c) of the amending clause does not strictly relate to the formation of the Authority and arises from the break-up of the Department of Land Administration in 2003.

The amendment replaces subsection 165(2)(c) of the Act to remove the reference to the former Under Secretary of Lands and the Department of Lands. These are to be both replaced with a reference to the Chief Executive Officer of the Department assisting in the administration of the *Land Administration Act 1997*. The result is that the Chief Executive of that Department will give the certificate as to proof of ownership, occupation or the lessee of the land.

**Subclause 146 — Morley Shopping Centre Redevelopment Agreement Act 1992 amended —**

Subclause 146(2)

This subclause amends the definition provision within subsection 3(1) of the Act by deleting the definition of the Department of Land Administration, which no longer exists.

Subclause 146(3)

This amends subsection 3(2) of the Act which refers to certain diagrams held in the Graphic Bank Section within the former Department of Land Administration. Neither the Graphic Bank Section nor the Department exist today and the amending subclause establishes that these diagrams will be held by the Authority created under this Bill.

**Clause 147 — *Planning & Development Act 2005* amended —**

Subclause 147(2)(a)

Paragraph (a) of the subclause adds a new definition of “Authority” to the definition provisions within subsection 4(1) of the Act. “Authority” is to mean the Authority established by this Bill.

This provides a definition for subsequent amendments made to the Act within clause 147, which replace the term “TLA Department” with “Authority”. These other amendments are listed below.

Subclause 147(2)(b)

Paragraph (b) of the subclause amends the definition in subsection 4(1) of “lot”. It amends the reference in (a) to a plan or diagram (of a lot) being available from the Authority rather than the TLA Department.

The subclause also deletes the definition of “lot” provided at subsection (c)(iv) to replace a reference to a diagram or plan of a part-lot being deposited with the Authority instead of the TLA Department.

Subclause 147(2)(c)

This clause deletes from subsection 4(1) the definition of TLA Department (meaning the department assisting in the administration of the *Transfer of Land Act 1893*).

The department is to be replaced by the Authority established by this Bill (as defined by the amendment in subclause 147(2)(a)).

Subclause 147(3)

This subclause replaces a reference to “TLA Department” with “Authority” in subsection 146(3)(d).

Subclause 147(4)(a)(b)(c)

Subclauses (a) and (b) make minor typographical amendments, and subclause (c) replaces the reference to “TLA Department” with “Authority”, within Section 150(3)(a) of the Act. The latter subsection has not come into operation yet.

Subclause 147(5)

This subclause replaces references to “TLA Department” with “Authority” in subsections 165(2) and (4).

Subclause 147(6)

Subclauses (a) and (b) make minor typographical amendments, and subclause (c) replaces the reference to “TLA Department” with “Authority”, within section 167(1)(a) of the Act.

Subclause 147(7)(a)

Subclauses (i) and (ii) make minor typographical amendments, and subclause (iii) replaces the reference to “TLA Department” with “Authority”, within subsection 168(1) of the Act.

Subclause 147(7)(b)

Subclauses (i) and (ii) make minor typographical amendments, and subclause (iii) replaces the reference to “TLA Department” with “Authority”, within subsection 168(3) of the Act.

Subclause 147(7)(c)

This subclause amends subsection 168(5) of the Act by deleting the reference to “TLA Department”, as it is not necessary.

Subclause 147(7)(d)

This subclause amends subsection 168(6) of the Act by replacing the reference to “TLA Department” with “Authority”.

Subclause 147(8)

This subclause amends Schedule 3 of the Act. The schedule describes the boundaries of the Metropolitan region, and does so in part by reference to plans and diagrams that are described in the Act by reference to the “Department as defined in the *Transfer of Land Act 1893*” and a number.

The amendment replaces this reference to Department with a reference to “Land Titles Office”. This is because the plans and diagrams in question have written on them the words, “Land Titles Office” and a number, and are identified by this reference.

Clauses 95 and 97 of this Bill will ensure that the amended reference to Land Titles Office in Schedule 3 will be understood to be a reference to the Authority being established through this Bill, and make it clear that the Authority holds the relevant plans and diagrams.

**Clause 148 — *Plant Diseases Act 1914* amended —**

Subclause 148(2)(a)

This amendment corrects an error in subparagraph 38(1)(b)(ii) of the Act by removing references to a “deputy” Registrar of Titles as there are no such officers.

Subclause 148(2)(b)

This deletes subparagraph 138(1)(b)(iii) of the Act and inserts another in its place. The new subparagraph (iii) provides the correct titles for the officers giving an evidentiary certificate of land ownership or occupation under the *Land Administration Act 1997* and *Mining Act 1978*.

**Clause 149 — *Redemption of Annuities Act 1909* amended —**

This amendment corrects an error in Section 2 of the Act by removing references to a “deputy” Registrar of Titles as there are no such officers.

**Clause 150 - *Registration of Deeds Act 1856* amended —**

Subclause 150(2)

This amends Section 2 of the Act. The amendment in paragraph (2)(a) establishes that the Authority is to maintain a public office for the registration of deeds. This is because the Authority is where the Registrar, as a member of its staff via clause 106 of the Bill, will process any documents under the Act.

Paragraph (2)(b) removes an historic reference to the Registrar “at the time of the passing of this Act” (1856). It does not change the ongoing provision for the Registrar of Titles under the *Transfer of Land Act 1893* to be the Registrar of Deeds and Transfers under this Act or to register land dealings under this legislation.

Subclause 150(3)

Section 2A of the Act provides that Assistant Registrars of Title under the *Transfer of Land Act 1893* are deemed to be Assistant Registrars under this Act. Paragraphs 150(3)(a) and (b) amend references to Assistant Registrars being 'appointed', as by virtue of clause 108 of this Bill, they will be designated rather than appointed.

Subclause 150(4)

The subclause amends section 6 to provide that the Authority, rather than 'the Registrar's office', is where documents are to be lodged under the Act. This is consistent with subclause 150(2).

Subclause 150(5)

Section 9 of the Act deals in part with the order of time at which a memorial is lodged. The amendment deletes a reference to the 'Registry Office', in accord with subclause 150(2), but provides for the Registrar to continue to issue a receipt stating the time, date and number of the delivery of the document.

Subclauses 150(6), (7), (8) and (9)

These amendments follow on from subclauses 150(2) and remove further references from sections 10, 11, 12 and 13 to the 'office' of the Registrar and replace these, where necessary and appropriate, with references to the Authority.

Subclause 150(10)

This subclause amends section 22 of the Act. It removes the power of the Commissioner of Titles (with the approval of the Governor) to make regulations under the Act and transfers the regulation-making function to the Governor. This is consistent with current legislative practice of having the Governor responsible for making regulations.

Paragraph 150(10)(c) provides that regulations made by the Commissioner prior to subclause 150(10) of the Bill coming into operation would have the same effect as if made by the Governor, and that the Governor may amend regulations previously made by the Commissioner.

The amendments in this subclause are consistent with those made to the *Transfer of Land Act 1893* by subclause 113(1) of the Bill.

**Clause 151 — *Rights in Water and Irrigation Act 1914* amended —**

This clause amends section 79(2) of the Act by deleting references to a 'deputy' Registrar of Titles, an office which does not exist.

It also removes references to the Department of Land Administration and the Department of Minerals and Energy, which no longer exist, and replaces them respectively with references to the chief executives of the Departments principally assisting in the administration of the *Land Administration Act 1997* and the *Mining Act 1978*.

**Clause 152 *Roman Catholic Bishop of Broome Property Act 1957*, section 6 amended —**

**Clause 153 *Roman Catholic Bunbury Church Property Act 1955* section 6 amended —**

**Clause 154 *Roman Catholic Church Property Act 1911* section 11 amended —**

**Clause 155 *Roman Catholic Geraldton Church Property Act 1925* section 7 amended —**

**Clause 156 *Roman Catholic New Norcia Church Property Act 1929* section 10 amended —**

These clauses amend similar sections in these Acts that deal with the registration of any land vested under these Acts. The amending clauses remove historic references to the Office of Titles, the Office of the Registrar of Deeds and the Department of Lands and Surveys and replace these by stating that vested land is to be registered under the *Transfer of Land Act 1893* and the *Registration of Deeds Act 1856*, as the case may require.

Clause 154 deletes in addition a reference to the Department within the meaning of the *Transfer of Land Act 1893*, and states that vested land is to be registered under the *Transfer of Land Act 1893* and the *Registration of Deeds Act 1856*, as the case may require.

**Clause 157 — *Sale of Land Act 1970* amended —**

Subclause 157(2)

Section 13(2) of the *Sale of Land Act 1970* provides for, amongst other things, the restriction of the sale of land via a subdivision. This subclause deletes reference to the Department and substitutes the Authority, as the Authority will be the successor to the Department under the Bill.

Subclause 157(3)(a)

This corrects an error existing in subsection 13(3) of the Act, which refers to applications being registered or registrable. Applications are not registered under the *Transfer of Land Act 1893*. A registration or action occurs as a result of an application. The use of the term 'registrable' in section 13(3) is incorrect insofar as it relates to applications and the amendment removes the reference to an application being registrable and substitutes it with a reference to the application providing an entitlement for the proprietor to be registered via an action by the Registrar.

Subclause 157(3)(b)

This amends subsection 13(3) by removing the reference to the Department within the meaning of the *Transfer of Land Act 1893*, as the Department will be disbanded once the land information Authority is established through this Bill. In its place reference is made to an instrument or application as 'having being withdrawn from the registration process' within the meaning of the *Transfer of Land Act 1893*.

**Clause 158 — *Settlement Agents Act 1981* amended —**

Schedule 2(1) of the *Settlement Agents Act 1981* deals with functions performed by a licensed settlement agent relating to the searching of titles and dealings, and the lodgement and uplifting of documents, in relation to the *Transfer of Land Act 1893*. The clause amends various references within Schedule 2 to the Department within the meaning of the *Transfer of Land Act 1893* and replaces these with the land information Authority to be established through this Bill.

**Clause 159 — *Standard Survey Marks Act 1924* amended —**

The clause deletes, from Section 3 of the Act, historic references to the former Department of Land Administration and the Under Secretary for Public Works and replaces these respectively with the Authority, and the Chief Executive Officer of the Department principally assisting in the administration of the *Public Works Act 1902*.

**Clause 160 — *Strata Titles Act 1985* amended —**

Subclause 160(2)(a) inserts into the definitions in subsection 3(1) of the Act a definition of the Authority created under this Bill.

Subclause 160(2)(b) amends the definition in subsection 3(1) of the Registrar of Titles by deleting the reference to the Registrar being appointed, as the Governor will designate rather than appoint the Registrar under clause 106 of this Bill.

Subclause 160(3) deletes a reference in sections 18(2) to the Office of the Registrar of Titles, and substitutes this with a reference to the Authority's office.

Subclauses 160(4) and (5) delete references in sections 21Z(2) and 31K(2) to the Office of Titles and substitute these with references to the Authority's office. This is because documents dealt with under the *Strata Titles Act 1985* will be lodged with the new Authority, of which the Registrar will be a member of staff.

Subclauses 160(6), (7) and (8) delete references in sections 40(2)(b), 41(2)(b) and 115(1) to the Office of the Registrar of Titles, and substitute these with references to the Authority's office.

Subclause 160(9) inserts three new sections into the *Strata Titles Act 1985* to follow the existing section 129A. The proposed new sections are 129B, 129C and 129D.

The proposed section 129B provides the Commissioner of Titles with the same powers of delegation provided in the *Transfer of Land Act 1893* via clause 112 of this Bill. This gives the Commissioner of Titles the power to delegate powers to any of the Authority's staff who are legal practitioners or barristers or solicitors of the Supreme Court of another State or Territory.

The persons to whom the Commissioner has delegated his powers and duties cannot delegate the powers and duties any further. This is to enable the Commissioner to control the delegation of his powers.

The proposed section 129B also provides that a person may assume that the person is performing the delegated power in accordance with the delegation provided by the Commissioner and is not required to make any further enquiries.

The proposed section 129C provides the Registrar of Titles with the same powers of delegation provided in the *Transfer of Land Act 1893* via clause 112 of this Bill. In essence, this gives the Registrar of Titles the power to delegate in writing powers to any of the Authority's staff. The person to whom the power or duty of the Registrar has been delegated cannot further delegate that power or duty.

As with the Commissioner's delegations, the proposed new section 129C also provides that a person may assume that the person is performing the delegated power in accordance with the delegation provided by the Registrar and is not required to make any further enquiries.

The proposed section 129C will require the Registrar of Titles to pay to the Authority any money paid to the Registrar under the *Strata Titles Act 1985*. This reflects what current practice in respect of money paid to the Registrar under the *Strata Titles Act 1985*, which is automatically paid to the account of the Department of Land Information.

Subclause 160(10)

The purpose of this clause is to delete the reference to the Office of the Registrar of Titles in Schedule 3, Clause 7(1) of the Act. The deleted reference is replaced by referring instead to the documents being lodged for registration under the *Strata Titles Act 1985*.

**Clause 161 — *Tamala Park Land Transfer Act 2001* amended —**

This clause deletes the reference in section 3 of the Act to the Registrar of Titles being appointed, to make it consistent with clause 106 of this Bill by which the Registrar is to be designated by the Governor.

**Clause 162 — *The Salvation Army (Western Australia) Property Trust Act 1931* amended —**

The clause deletes several outdated references to the former position of Under Secretary for Lands, found in the Act at sections 6(4), 17(1), 17(2) and 22. These references are replaced with the title of the position now carrying out the relevant functions, namely the Chief Executive Officer of the Department principally assisting in the administration of the *Land Administration Act 1997*.

**Clause 163 — *Toodyay Cemeteries Act 1939***

The clause amends section 5 of the Act to remove the reference to the Office of Land Titles and replace it with the Authority. The Authority will be the successor to the Office of Land Titles.

**Clause 164 — *Transfer of Land Amendment Act 2003* amended —**

The purpose of section 56 of the *Transfer of Land Amendment Act 2003* is to insert a new section (166C) into the *Transfer of Land Act 1893*. This will provide for an alternative method of subdivision, whereby existing landowners may use disposition statements to request the Registrar to create new certificates of title to the land. Section 56 has not yet come into operation.

The purpose of clause 164 of the Bill is to delete the reference to the Department in section 56 and substitute it with a reference to the Authority. This is because the Authority will be the successor to the Department.

**Clause 165 — *Water Boards Act 1904* amended —**

Subclause 165(2) amends section 158 of the Act, which allows the Water Board to search certain public registers of land without payment of fee. The clause deletes historic references to the Office of Land Titles, Registry of Deeds, Department of Lands and Department of Mines and inserts in their place a reference to the new Authority and an up-to-date reference to the Department assisting in the administration in the *Mining Act 1978* and the Department assisting in the administration of the *Land Administration Act 1997*.

Subclause 165(3) amends subsection 160(2) of the Act in two ways. It removes an incorrect reference to a 'deputy' Registrar of Titles, as this office does not exist.

The subclause also deletes historic references to the Office of Land Titles, Registry of Deeds, Department of Lands and Department of Mines and inserts in their place a reference to the new Authority and an up-to-date reference to the Department assisting in the administration in the *Mining Act 1978* and the Department assisting in the administration of the *Land Administration Act 1997*.

## **Part 8 — Division 2 — Valuation of Land Act 1978 and related provisions**

The *Valuation of Land Act 1978* (VLA) provides for the valuation of land for use by authorities legally entitled to assess rates or taxes on land. The main authorities are local government, the Office of State Revenue, the Water Corporation and the Fire and Emergency Services Authority. The VLA also establishes the statutory position of Valuer-General.

The Bill will enable the Valuer-General and the Authority to operate 'side by side'. In broad terms, the Valuer-General will oversee the integrity of valuations and the Authority will provide valuation services. This type of arrangement has been in place since the merger of the Office of the Valuer-General and the Department in 2001.

As the Authority will provide the staff, systems, services and other supports that underpin the delivery of valuation services under the Bill, some minor amendments to the VLA are required to transfer certain administrative and operational functions from the Valuer-General to the Authority. This includes, for example, the employment of staff and the provision of information, goods and services.

Importantly, the Bill makes no change to the processes for valuing land, or the Valuer-General's role in ensuring that valuations are made independently and impartially. The proposed amendments do not affect the Valuer-General's independence and freedom from direction in valuing land. This exists, unchanged, in section 7(2) of the Act. The amendments made by the Bill to the VLA have been accepted by the Valuer-General.

### **Clause 166 — The Act amended —**

Amendments included in this division are to the *Valuation of Land Act 1978* unless otherwise stated.

### **Clause 167 — Section 4 amended —**

As the Land Information Authority is referred to in the Act, a definition of "Authority" has been included to aid interpretation.

### **Clause 168 — Section 6 replaced —**

This section removes previous references to the appointment of 'other officers', as staff performing functions under the Act will be appointed by the Authority under the *Western Australian Land Information Authority Act*.

### **Section 6(1) of VLA**

This amends the existing section in two ways. The first is a procedural amendment which enables the designation, rather than the appointment of, a Valuer-General. As explained at clause 104, this reflects a change in drafting practice. The second is that the designation as Valuer-General will be undertaken by the Governor to reinforce the distinction between statutory appointments and administrative appointments made by the Authority. This is consistent with current practice for other officers such as the Commissioner and Registrar of Titles.

### **Section 6(2) of VLA**

The person designated to perform the duties of Valuer-General is currently a member of the Department's staff. The purpose of (2)(a) is to continue this arrangement. The continued co-location of the Valuer-General with valuation service delivery was a strong feature of stakeholder feedback during consultation on the future of the office. There is no change to the requirements for the Valuer-General in (2)(b) to be suitably experienced and qualified.

### **Section 6(3) of VLA**

This is a procedural amendment which mirrors provisions in section 52 of the *Interpretations Act 1984*. It clarifies that the Governor's power to designate a Valuer-General includes the power to revoke the designation. It also provides a power to designate someone else to temporarily perform the duties of the Valuer-General if the Valuer-General is unable to do so.

**Section 6(4)** of the VLA enables the continuation of the person currently appointed as Valuer-General when the Authority commences.

### **Clause 169 — Section 9 amended —**

This minor consequential amendment removes obsolete references to former offices and Departments.

### **Clause 170 — Section 13 amended —**

This amendment ensures that existing secrecy requirements within this section are extended to all members of the Authority's staff and its board.

### **Clause 171 — Section 14 amended —**

Section 14(2) currently enables the Minister to authorise the Valuer-General to release information collected under the Act, if the Minister determines it to be in the public interest. This is a rarely exercised power and has been used twice only to authorise the release of sales evidence and property information for general public and industry use.

This amendment does not alter the Minister's power, only the processes which are undertaken in exercising it. The Minister's authorisation to release information will now be given to the Authority, after the Minister has consulted with the Valuer-General. This change is consistent with the Authority's information provision role.

### **Clause 172 — Section 16 amended —**

Section 16 currently gives the Valuer-General the power to engage assistance under contracts for service. However, in practical terms, the Valuer-General is not an employing authority, nor an accountable officer under the *Financial, Administration and Audit Act 1985*, and contracts for service are engaged under delegated authority from the Department's CEO.

The amendment to subsection 16(1) recognises that the Authority is ultimately responsible for contracts. The clause is structured to require the Authority to act on the advice of the Valuer-General, thereby ensuring that the Valuer-General will continue to determine when a contract is required for the purposes of this section.

Amendments to subsections 16(2), (3) and (4) are procedural and necessary because the Authority will be responsible for engaging a person to assist the Valuer-General.

**Clause 173 — Section 16A amended —**

Amendments to Section 16A follow on from changes to Section 6. Staff assisting the Valuer-General are to be provided by the Authority as a consequence of its employing and contracting powers.

**Clause 174 — Section 16B inserted —**

The Minister for Land Information is administratively responsible for the Act under Administrative Arrangements Orders. Through the discharge of his statutory duties, the Valuer-General is largely responsible for ensuring the purposes of the Act are achieved.

This new subsection requires the Valuer-General to report annually in writing to the Minister on two key matters associated with public confidence in a fair and impartial valuation system, namely:

- the accuracy of valuation rolls; and
- objections and appeals to valuations.

This provision has been included to strengthen accountability and transparency in the performance of key statutory functions. It is intended that the Valuer-General's report be brief and a copy be given to the Authority's CEO for submission to its board. It is also intended that the first report coincide with the Authority's first full financial year of operation.

**Clause 175 — Section 25 amended —**

The amendments to subsection 25(8) are part of a suite of amendments that consolidate charging functions with the Authority rather than the Valuer-General. The amendments do not change the basis on which the charge is made, only who makes it.

**Clause 176 — Section 28 replaced —**

Although this section is being replaced, the amendments are minor in nature. They simply propose that after the Valuer-General completes a valuation roll for a district, the Authority, rather than the Valuer-General, will make true copies of it available for public inspection and to rating and taxing authorities.

As and when amendments are made to the roll by the Valuer-General, the copy of the original roll will be updated and made available for public inspection. This reflects current arrangements.

There is no change to the Valuer-General's role in making or amending a valuation roll, or to what is provided and in what form. Fees for providing copies of the roll will continue to be set by regulation. (Note that charges for performing the actual valuation work that underpins the production of the valuation rolls are covered by section 38.)

The only change created by this clause is to who provides true copies of the valuation roll or any amendments to it. The transfer of this function to the Authority is consistent with its role as the State's land information service provider.

**Clause 177 — Section 29 amended —**

As proposed in clause 176, the changes to this section transfer responsibility for providing copies of, or extracts from, valuation rolls from the Valuer-General to the Authority. There is no change to the Valuer-General's role in certifying extracts.

**Clause 178 — Section 38 inserted —**

The inclusion of this charging power for rating and taxing valuations reinstates an express power that was inadvertently removed from the Act during amendments made in 1996. It is being reinstated to remove any ambiguity within the current Act about the power to charge for the making of these valuations, which has been standard practice since the Act's inception.

The clause will allow the Authority to charge rating and taxing authorities for the provision of valuations under Part III of the Act. The costs of general and interim valuations are currently borne by the Office of State Revenue, Fire and Emergency Services Authority, Water Corporation and local government authorities.

The inclusion of this clause will not change current arrangements for these agencies or the basis on which charges are set.

**Clause 179 — Section 39 amended —**

The words "provide valuation advice to" are to be incorporated in subsection (1) to recognise that the Valuer-General provides valuation advisory and consultative services to entities performing public functions (in addition to the making of valuations). This amendment is necessary because of the proposed replacement of section 39A, which is where the head of power for this activity previously resided.

Section 39(2) provides for the Authority, rather than the Valuer-General, to charge for the provision these services. This is consistent with its administrative role.

**Clause 180 — Section 39A replaced —**

The replacement of this section is required because the Authority is to be the provider of the State's land information goods and services, including valuation related goods and services. The latter are goods and services derived from or related to the performance of the Valuer-General's function of valuing land. An example is property sales data, which is gathered while making valuations and is routinely used by the property industry and the community to monitor the market.

The provision of valuation related goods and services is a by-product of the Valuer-General's statutory function of valuing land. It is a discretionary function which is appropriate to transfer to the Authority, given its proposed role as the government's provider of land and property information.

Subsection 39A(1) can be repealed as the Authority has a general head of power in its Bill that is sufficient for it to provide and charge for valuation related goods and services (see, for example, subclauses 9(5)(b) and 12(2)(h) and clause 16).

The new subsections 39A(1) and (2) are intended to ensure that the Authority will be subject to a limitation when providing goods and services derived from the Valuer-General's functions.

The limitation proposed in subsection 39A(2) is that the exception in section 13(2) does not apply. This means that the Authority may not provide valuation related goods and services that contain any information concerning the affairs of any person acquired by the Valuer-General by reason of his office or for the purposes of this Bill. The reason for this is to ensure that existing secrecy protections in the Act are not compromised.

If circumstances arise where the Authority wishes to provide valuation related goods and services containing information that is subject to the limitation imposed through the new section 39(2), the Authority would need to request the Minister via section 14(2) of the Act, to consider releasing the relevant information on the grounds of public interest.<sup>3</sup> Reference to section 14(2) would only be required if the provision of goods and services would otherwise contravene section 13(2). This is essentially the same process in place now for the Valuer-General.

Other than this limitation, it is envisaged that the Authority may provide valuation related goods and services as it sees fit.

**Clause 181 — Section 40 replaced —**

The replacement of section 40 has the effect of requiring the Valuer-General to pay any monies received to the Authority. This reflects current arrangements between the Department and the Valuer-General and is consistent with the Authority's responsibilities under the *Financial Administration and Audit Act 1985* and its funding and business model.

**Clause 182 — Section 48 amended —**

As no legal entity of the "office of the Valuer-General" exists; section 48 is to be amended to read "office of the Authority".

**Clause 183 — Interpretation Act 1984 amended —**

The removal of the term 'appointed' is consistent with proposed amendments to section 6 of the *Valuation of Land Act 1978* which result in an officer being 'designated', rather than 'appointed' to perform the functions of the Valuer-General.

**Clause 184 — Taxation Administration Act 2003 amended —**

The definition of "Valuer-General" is being removed as it is provided for under the *Interpretations Act 1984*.

**Part 8 — Division 3 — Acts requiring minor changes**

**Clause 185 — Constitution Acts Amendment Act 1899 Schedule V amended —**

This Act generally provides that Members of Parliament may not engage in any work other than their work as a Member. Schedule 5 of this Act makes specific reference to the roles in which Members of the Legislature may not be engaged.

The inclusion of the Authority in this Schedule ensures that Members of Parliament may not hold a position with the Authority.

**Clause 186 — Financial Administration and Audit Act 1985 Schedule 1 amended —**

The *Financial Administration and Audit Act 1985* makes provision for the administration and audit of public finances. Schedule 1 of the Act defines and lists Statutory Authorities to which the Act applies.

This amendment adds the Western Australian Land Information Authority to Schedule 1.

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<sup>3</sup> On receiving such a request, the Minister would be required by the amended s.14(2) to consult with the Valuer-General and form the opinion that the release of the information would be in the public interest. The Minister may then authorise the Authority to release the information, subject to any conditions imposed by the Minister.

**Clause 187 — *Public Sector Management Act 1994* Schedule 2 amended —**

The *Public Sector Management Act 1994* provides for the administration of the public sector.

The Authority will be part of the public sector by virtue of being an organisation which employs members of the Senior Executive Service (see section 7 of this Bill).

Schedule 2 of the *Public Sector Management Act 1994* lists organisations deemed to be SES organisations and to which the Act applies. This amendment adds the Authority to this list.

**Clause 188 — *Statutory Corporations (Liability of Directors) Act 1996* Schedule 1 amended —**

As the Authority will be governed by a board of management with responsibility for commercial functions, it is appropriate for the requirements of this Act to apply. The Act deals with duties and liabilities of directors and requires, for example, that directors act honestly and with reasonable care and diligence. It also makes provisions for responding to Ministerial directions.

This amendment adds the Western Australian Land Information Authority to Schedule 1.