

PERTH INTERNATIONAL CENTRE FOR THE APPLICATION OF SOLAR ENERGY AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

The purpose of this Bill is to facilitate the wind up of the Centre for the Application of Solar Energy (CASE). The Bill amends the *Perth International Centre for Application of Solar Energy Act 1994* (the "CASE Act"), which legislates the functions and financial operations of CASE. The Bill provides for the phasing out and expiry of that Act and makes consequential amendments to certain other Acts and for related purposes.

The winding up of CASE, through the Repeal Bill, is consistent with the Government's election commitments, the Review of the Perth International Centre for the Application of Solar Energy Act 1994 (April 2001) initiated by the previous Government and the Machinery of Government Taskforce's recommendation that CASE be abolished as a stand-alone statutory authority.

In broad terms, on proclamation the Bill will abolish the CASE Board and the position of Managing Director and will permit the Minister for Energy to appoint an administrator who will become the governing body of CASE and will have all of the functions and powers of CASE and such additional powers and functions necessary for the purpose of winding-up the affairs of CASE in preparation for the Act to expire.

When the administrator has completed the wind up, he or she shall notify the Minister for Energy, who by Order published in the Gazette, shall repeal the Act.

Clause 1 Short title

Provides that the Act may be cited as the *Perth International Centre for The Application of Solar Energy Amendment Bill 2002*

Clause 2 Commencement

Subclause (1) Provides for Section 1 of the amended Act to come into operation on the day the Act receives Royal Assent.

Subclause (2) Provides for the Act, (except for some provisions relating to the expiry of the Act) to come into operation on a day fixed by Proclamation.

Subclause (3) Provides for clauses 22 to 24 to come into operation immediately after the *Perth International Centre for the Application of Solar Energy Act 1994* expires. These are consequential amendments to the *Constitutional Acts Amendment Act 1899*, the *Financial Administration and Audit Act 1985* and the *Freedom of Information Act 1992*.

Clause 3 The Act Amended

Provides that the amendments in this Bill are to the *Perth International Centre for the Application of Solar Energy Act 1994*.

Clause 4 Section 3 (Interpretation) amended

Provides for the definition of the administrator and removes and amends definitions that are a consequence of the positions of the Board and Managing Director being abolished.

Clause 5 Part 1A inserted

After section 3 Inserts a new Part 1A Expiry of Act

Sec 3A Expiry of the Act

Provides for expiry of the Act on a day fixed by the Minister by an Order published in the Gazette.

Clause 6 Repeals sections 5, 6, 7 and 8

Provides for the repeal of provisions relating to the Board of Directors, functions of the Board, remuneration and allowances paid to directors of the Board and provisions relating to the Managing Director.

Clause 7 Section 9 amended

Provides for the administrator to replace the Managing Director with respect to powers relating to the employment and remuneration of staff and the engagement of consultants and external assistance as outlined in sections 9 (1), 9 (2) and 9 (3).

Clause 8 Section 10 repealed

A consequential amendment to the repeal of the position of Managing Director which provides for the repeal of the provision that excludes the position of Managing Director from the Senior Executive Service under the Public Service Act 1978.

Clause 9 Part 2 Division 3 repealed

Provides for the repeal of provisions relating to the International Advisory Council, its establishment, its membership, functions, procedures and remuneration of its members.

(The International Advisory Council of CASE has never been established – Editor's note)

Clause 10 Section 19 amended.

This is a consequential amendment relating to the repeal of the International Advisory Council and consequential editorial changes.

Clause 11 Section 21 repealed

This provision provides for repeal of the ability of CASE to delegate its powers or duties to a representative of CASE.

Clause 12 Section 24 amended

Provides for the Minister to remunerate the administrator from the funds of CASE.

Clause 13 Section 29 amended

This provides for the administrator to be the accountable officer under the *Financial Administration and Audit Act 1985*.

Clause 14 Section 30 amended

These provisions are consequential amendments relating to the administrator being appointed with the powers and functions of the Board and the Board being repealed. They provide for the administrator to replace the Board with respect to the execution of documents and use of the common seal.

Clause 15 Section 31 amended

This is a consequential amendment relating to the repeal of the Board of Directors. As there will be no Board of Directors the duties of directors is not relevant to protection of representatives of CASE.

Clause 16 Section 32 amended

Provides for the replacement of the Board with the Minister in provisions relating to secrecy. The administrator, except in legal proceedings, will require the Minister's approval to divulge information acquired as a representative of CASE.

Clause 17 Section 33 amended

Enables the Governor to make regulations necessary or convenient for the purpose of winding up CASE in preparation for its expiry and may make provisions similar to those in the *Corporations Act 2001* provided that they are not inconsistent with winding up the affairs of CASE as outlined in Part 6.

Clause 18 Sections 34 and 35 repealed

Repeals provisions relating to Review of the Act and Consequential Amendments.

Clause 19 Part 6 inserted

Provides for a new Part 6 Winding-up affairs of the Centre and new sections 34 to 38 to be inserted in the Act.

Section 34 Interpretation

Provides for definitions of:

- the appointed day, which is the day the Act comes into operation;
- assets of CASE;

- liability, which is any liability, duty or obligation of CASE whether actual, contingent or prospective, liquidated or unliquidated; and
- right, which means any right, power, privilege or immunity whether actual, contingent or prospective.

Section 35 Administrator of affairs of the Centre

Subsection (1) provides for the Minister to appoint the administrator.

Subsection (2) provides for the administrator to hold office at the pleasure of the Minister on terms and conditions the Minister determines.

Subsection (3) provides (subject to this section) for the administrator to:

- be the governing body of CASE;
- have all functions of the CASE for the purposes of winding up the affairs of CASE in preparation for the expiry of the Act;
- engage such persons he or she considers necessary to carry out the winding up of CASE; and
- have such additional powers and functions that are necessary or desirable to wind up CASE.

Subsection (4) provides for the administrator for the purposes of subsection (3) on behalf of CASE and with the consent of the Minister to take action to:

- (a) reclaim any debts owed to CASE, make arrangements with respect to creditors' liabilities and damages, and deal with and discharge any claims against CASE and sell, or otherwise dispose of, the assets of CASE;
- (b) do all acts and execute in the name and on behalf of CASE all necessary documentation and use the common seal of CASE;
- (c) subject to the *Bankruptcy Act 1996* of the Commonwealth deal with bankruptcy of any debtor of CASE; and
- (d) take out letters of administration and any other act necessary to recover monies owed to CASE from deceased debtors and their estates.

Subsection (5) provides for the administrator to delegate his or her powers or duties other than the power of delegation.

Subsection (6) provides for the administrator to comply with any direction by the Minister in relation to the administrator's functions or powers for the purposes of winding up CASE.

Subsection (7) provides for the administrator to be entitled to remuneration as determined by the Minister.

Section 36 Steps to be taken in winding-up affairs of the Centre

Subsection (1) provides for CASE on the appointed day to cease to perform its functions other than necessary to wind up CASE in preparation of the expiry of the Act.

Subsection (2) provides for the administrator for the purposes of winding up CASE, to take control of all assets of CASE and discharge all liabilities of CASE.

Subsection (3) requires the administrator, as soon as practical to:

- publish a note in the Gazette to all creditors of CASE; and
- write to all known or suspected creditors,

inviting them to submit all proof of debts and claims within 21 days.

Subsection (4) requires the administrator to deal with all proofs of debts or claims as a consequence of subsection (3) above.

Subsection (5) requires the administrator to write to any creditor submitting a claim, seeking further evidence of the claim before rejecting it wholly or in part. The creditor has 14 days to respond.

Subsection (6) provides for CASE not to be liable for claims that are:

- rejected under subsection (4) above, subject to decisions made in the Supreme Court under the appeals provisions in section 38; and
- are not submitted to the administrator within the 21 days referred to in subsection (3).

(Legitimate claims such as guarantees that arise after 21 days have lapsed or after CASE expires may be dealt with by application to the Supreme Court under Section 38. The Crown is still liable after CASE expires - Editor's note)

Subsection (7) provides that all debts payable, claims and damages against CASE are admissible as claims against CASE.

Subsection (8) provides for the amount of debt including interest to be computed from the appointed day.

Subsection (9) provides that all debts rank equally and if the assets of CASE are insufficient to meet them in full, will be paid proportionally.

Section 37 Administrator to notify date of completion of duties

Requires the administrator to write to the Minister notifying him of the day when the wind up of CASE was completed.

Section 38 Appeals from acts, omissions or decisions of administrator

Subsection (1) provides a right of appeal to the Supreme Court to any person aggrieved by any act, omission or decision of the administrator, and

Subsection (2) provides for the Supreme Court to make such orders as it sees fit in respect of an appeal.

Clause 20 Schedules 1 and 2 repealed

Repeals Schedules 1 and 2 of the Act. Schedule 1 provided the constitution and proceedings of the Board and the duties of the directors. Schedule 2 provided consequential amendments to various Acts.

Clause 21 Transitional and savings provisions

Provides for a new Schedule 1, which outlines the:

- transitional provisions that apply on the commencement day of the Amendment Act, in relation to the CASE Board and the Managing Director;
- provisions that apply in relation to the abolition of CASE, such as the devolution of CASE's assets and liabilities after the expiry of the Act,;
- transfer of remaining CASE funds to the Consolidated Fund;
- preparation of a final report; and
- continuation of immunity.

Clauses 22 – 24: These consequential amendments to other Acts will apply immediately after the expiry of the *Perth International Centre for Application of Solar Energy Act 1994*.

Clause 22: Constitution Acts Amendment Act 1899 amended

Deletes reference to the Perth International Centre for Application of Solar Energy from the *Constitution Acts Amendment Act 1899*.

Clause 23: Financial Administration and Audit Act 1985 amended

Deletes reference to the Perth International Centre for Application of Solar Energy from the *Financial Administration and Audit Act 1985*.

Clause 24: *Freedom of Information Act 1992* amended

Deletes reference to the Perth International Centre for Application of Solar Energy from the *Freedom of Information Act 1992*.