



Western Australia

## **Perth International Centre for Application of Solar Energy Act 1994**

Compare between:

[03 Oct 2006, 00-d0-03] and [31 Oct 2006, 00-e0-06]



Western Australia

## **Perth International Centre for Application of Solar Energy Act 1994**

**An Act to establish a body to be called the Perth International  
Centre for Application of Solar Energy, to provide for its functions  
and financial operations, to make consequential amendments to  
certain Acts and to provide for related matters.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Perth International Centre for Application of Solar Energy Act 1994*.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

**“Account”** means Perth International Centre for Application of Solar Energy Account referred to in section 24 (2);

**“Advisory Council”** means International Advisory Council established under section 13;

**“alternate director”** means person appointed under clause 3 (1) of Part A of Schedule 1 to act temporarily in the place of an appointed director;

**“appointed director”** means person who is a member of the Board under section 5 (1) (b) and, except in section 5 (2) and clauses 1, 2 and 3 of Part A of Schedule 1, includes alternate director;

**“Board”** means board of directors referred to in section 5 (1);

**“Centre”** means Perth International Centre for Application of Solar Energy established under section 4 (1);

**“chairperson”** means person appointed to be the chairperson under section 5 (2);

**“committee”** means committee appointed under clause 6 (1) of Part A of Schedule 1;

**“Commonwealth Minister”** means Minister of State responsible for the Department of Primary Industries and Energy of the Commonwealth;

**“development”**, in relation to economic activity, includes investigation and establishment of any such activity;

**“director”** means —

- (a) Managing Director; or
- (b) appointed director,

and, except in section 5 (2) and clauses 1, 2 and 3 of Part A of Schedule 1, includes member of a committee;

**“economic activity”** means activity carried on with a view to making a profit or producing revenue;

**“function”**, except in sections 18 and 19 (1), includes authority, duty and power;

**“international development organization”** means organization which has the function of working with the private sector or public sector, or both, of any 2 or more countries in developing industry, infrastructure or health services or any 2 or all 3 of those things in developing countries;

**“Managing Director”** means person for the time being holding or acting in the office of managing director referred to in section 8 (1) (a);

**“multilateral development agency”** means international financial institution established to help developing countries promote economic growth and alleviate poverty;

**“Murdoch University”** means Murdoch University established under the *Murdoch University Act 1973*;

**“officer”** means officer appointed under section 9 (1);

**“outside assistant”** means person whose services are used under an arrangement made under section 11;

**“representative of the Centre”** means director, officer, member of the Advisory Council, member of a committee or outside assistant;

**“solar energy”** means all forms of renewable energy inherent in sunlight and in the direct and indirect results of its impact on the

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Earth, including wind, biomass, and energy derived from rivers, waves and other water in motion;

**“solar energy technology”** means technology which utilizes solar energy;

**“UNIDO”** means United Nations Industrial Development Organization.

## **Part 2 — Perth International Centre for Application of Solar Energy**

### **Division 1 — Establishment of Perth International Centre for Application of Solar Energy**

#### **4. Perth International Centre for Application of Solar Energy established**

- (1) There is established by this subsection a body to be called the Perth International Centre for Application of Solar Energy.
- (2) The headquarters and principal centre of operations of the Centre are to be in Perth.
- (3) The Centre is a body corporate with perpetual succession.
- (4) Proceedings may be taken by or against the Centre in its corporate name.
- (5) The Centre may use and operate under —
  - (a) the trading name “Perth CASE”; or
  - (b) one or more trading names approved by the Minister, being, or each being —
    - (i) an abbreviation or adaptation of; or
    - (ii) a name other than,  
the trading name referred to in paragraph (a).
- (6) The Centre is neither an agent of the Crown in right of the State nor an entity enjoying the status, immunities and privileges of that Crown.

#### **5. Board of directors**

- (1) The Centre is to have a board of directors comprising —
  - (a) the Managing Director by virtue of his or her office; and
  - (b) 7 persons appointed by the Governor on the nomination of the Minister, of whom —

- (i) 2 shall be representative of the Government of the State;
  - (ii) 2 shall be representative of the Government of the Commonwealth and proposed by the Commonwealth Minister;
  - (iii) one shall be representative of Murdoch University;
  - (iv) one shall be a person possessing knowledge of both solar energy technology and the energy market in developing countries; and
  - (v) one shall be a person possessing both a commercial background and knowledge of the operations of international development organizations or multilateral development agencies or both.
- (2) The Minister shall appoint one of the appointed directors to be the chairperson of the Board for such period as is specified in the instrument of that appointment.
- (3) Schedule 1 has effect with respect to —
  - (a) the constitution and proceedings of the Board; and
  - (b) the duties of the directors.

**6. Functions of Board**

The Board is the governing body of the Centre and, in the name of the Centre, is to perform the functions of the Centre under this Act or any other written law.

**7. Remuneration and allowances of appointed directors**

An appointed director is to be paid out of the funds of the Centre such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Centre.



## **Division 2 — Staff**

### **8. Managing Director and acting Managing Director**

- (1) The Board shall —
  - (a) appoint a person to be the managing director of the Centre; and
  - (b) subject to the *Industrial Relations Act 1979*, determine the remuneration and other terms and conditions of service of the Managing Director.
- (2) The function of the Managing Director is, subject to the control of the Board, to administer the day to day operations of the Centre.
- (3) The Board may appoint a person to act in the place of the Managing Director while —
  - (a) the Managing Director is unable to act by reason of sickness, absence or other cause; or
  - (b) there is a vacancy in the office of Managing Director,and, while so acting, the person is taken to be the Managing Director.
- (4) An act or omission of a person acting in the place of the Managing Director under an appointment under subsection (3) is not to be questioned on the ground that the occasion for his or her acting had not arisen or had ceased.

*[Section 8 amended in Gazette 15 Aug 2003 p. 3689.]*

### **9. Officers**

- (1) The Managing Director may appoint such officers as may be necessary to enable the Centre to perform its functions.
- (2) Subject to the *Industrial Relations Act 1979*, the Managing Director may determine the remuneration and other terms and conditions of service of officers appointed under subsection (1).

- (3) The Managing Director may engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as he or she considers necessary to enable the Centre to perform its functions.

*[Section 9 amended in Gazette 15 Aug 2003 p. 3689.]*

**10. Managing Director outside Senior Executive Service**

Notwithstanding anything in the *Public Service Act 1978*, the Managing Director is not to be a member of the Senior Executive Service within the meaning of that Act.

**11. Use of other government staff, etc.**

The Centre may, by arrangement made between the Centre and the Minister concerned and on such terms as they agree, make use, either full-time or part-time, of —

- (a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service or of a State agency or instrumentality.

**12. Saving in respect of public service officers**

If a person appointed under section 8 or 9 was, immediately before being so appointed, an officer under the *Public Service Act 1978*—

- (a) he or she retains his or her existing and any accruing rights; and
- (b) his or her service as such an officer is to be taken into account as if it were service with the Centre for the purpose of determining the rights referred to in paragraph (a).

### **Division 3 — International Advisory Council**

#### **13. International Advisory Council established**

There is established by this section a council to be called the International Advisory Council.

#### **14. Membership of Advisory Council**

- (1) The Advisory Council is to consist of —
  - (a) the Managing Director;
  - (b) such individuals as are from time to time invited by the Centre to be members of the Advisory Council; and
  - (c) such representatives of —
    - (i) the governments of foreign countries as are nominated from time to time by those governments;
    - (ii) international development organizations as are nominated from time to time by those organizations; and
    - (iii) multilateral development agencies as are nominated from time to time by those agencies,to be members of the Advisory Council at the invitation of the Centre.
- (2) The Managing Director is to be the chairperson of the Advisory Council.

#### **15. Functions of Advisory Council**

The functions of the Advisory Council are —

- (a) to review the past performance, and advise on the future direction, of the Centre; and
- (b) to report to the Centre on a matter referred to it by the Centre within such period as the Centre directs.

**16. Advisory Council procedures**

- (1) The Advisory Council is to meet at least once in each year.
- (2) Subject to the directions of the Centre, the Advisory Council may determine its own procedures.

**17. Remuneration and allowances of Advisory Council members**

A member of the Advisory Council (other than the Managing Director) is to be paid out of the funds of the Centre such remuneration and travelling and other allowances, if any, as are determined in his or her case by the Minister on the recommendation of the Centre.

## **Part 3 — Functions of Centre**

### **18. Functions**

- (1) Subject to this section, the functions of the Centre are —
- (a) to encourage the development of the solar energy industry within the State and elsewhere in Australia;
  - (b) to assist developing countries in matters relating to the application of solar energy technology;
  - (c) to co-operate with organizations and individuals in the private sector in managing and participating in projects involving solar energy technology in developing countries, using for that purpose expertise from the public sector, or expertise and equipment from the private sector, or both, whether inside or outside Australia;
  - (d) to make available to the solar energy industry within the State and elsewhere in Australia information about the opportunities which exist, or may exist, from time to time for Australian involvement in overseas development projects or other projects —
    - (i) which employ solar energy technology; and
    - (ii) which become known as a result of, or during the course of, the activities of the Centre;
  - (e) to promote the use of solar energy technology as a means of assisting the communities in developing countries to improve their economic and industrial development; and
  - (f) to collaborate with UNIDO in the implementation of the project entitled “Programme to promote applications for, and commercialization of, solar energy technologies in developing countries” and in the implementation of other projects.
- (2) It is not a function of the Centre —

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- (a) to undertake basic research in solar energy technology;
  - (b) to duplicate the activities of research institutions or business enterprises in the State; or
  - (c) to engage in the manufacture of products incorporating solar energy technology.
- (3) In performing its functions under this Act, the Centre is to endeavour to avoid any overlapping between its own activities and those of —
  - (a) any other State agency or instrumentality or of any department of the Public Service; or
  - (b) any agency or instrumentality of the Commonwealth or of any department of the Public Service of the Commonwealth.

**19. Powers**

- (1) The Centre may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1) or the powers conferred by other provisions of this Act, the Centre may —
  - (a) acquire, manage and dispose of land;
  - (b) enter into any contract or arrangement with any person, including any government, governmental agency or governmental instrumentality, whether within or outside Australia, for the doing of anything that the Centre is authorized to do under this Act —
    - (i) by such a person;
    - (ii) by the Centre, for such a person; or
    - (iii) by the Centre and such a person on a partnership, joint venture, consortium or other like basis;
  - (c) charge fees for services provided to any person, including any government, governmental agency or governmental instrumentality, whether inside or outside Australia; and

- (d) give directions in relation to the procedures of the Advisory Council or a committee.

**20. Centre to act on commercial principles**

Subject to any direction given under section 22, the Centre is to perform its functions in accordance with prudent commercial principles.

**21. Delegation**

The Centre may, by instrument in writing, delegate to a representative of the Centre or a committee the exercise or performance of any of the powers or duties of the Centre, other than this power of delegation.

**22. Centre subject to directions of Minister**

- (1) The Minister may give directions in writing to the Centre with respect to the performance of its functions, either generally or in relation to a particular matter, and the Centre is to give effect to any such direction.
- (2) Nothing in this section authorizes the Minister to give a direction which would require the Centre to act in a manner which is unlawful or beyond the power of the Centre or for an improper purpose.
- (3) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Centre under section 66 of the *Financial Administration and Audit Act 1985*.

**23. Minister to have access to information**

- (1) For the proper conduct of the public business of the Minister or for the purpose of complying with a request made by the Commonwealth Minister for information concerning the Centre, the Minister is entitled to have information in the possession of the Centre and to have and retain copies of documents.

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- (2) For the purposes of subsection (1), the Minister may —
- (a) request the Centre to furnish information to the Minister;
  - (b) request the Centre to give the Minister access to information; and
  - (c) for the purposes of paragraph (b), make use of the staff and facilities of the Centre to obtain information and furnish it to the Minister.
- (3) The Centre is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “document”** includes data that are recorded or stored electronically, mechanically or photographically and any tape, disc or other device or medium on which data are recorded or stored;
- “information”** means documents or other information relating to the functions of the Centre, being information, as so defined —
- (a) specified; or
  - (b) of a description specified,  
by the Minister.



## **Part 4 — Financial Provisions**

### **24. Funds of Centre**

- (1) The funds available for the purpose of enabling the Centre to perform its functions consist of —
  - (a) moneys from time to time appropriated by the Parliament of the Commonwealth or the Parliament of the State;
  - (b) moneys from time to time contributed by UNIDO;
  - (c) fees charged under section 19 (2) (c);
  - (d) moneys borrowed by the Centre under section 25 or 26; and
  - (e) any other moneys lawfully received by, made available to or payable to the Centre.
- (2) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at a bank approved by the Treasurer to be called the “Perth International Centre for Application of Solar Energy Account”.
- (3) There shall be paid from the moneys from time to time in and standing to the credit of the Account —
  - (a) interest on and repayments of moneys borrowed by the Centre under section 25 or 26 and any other fees or charges payable in respect of any such borrowing;
  - (b) the remuneration and allowances payable to representatives of the Centre;
  - (c) the expenses incurred by the Advisory Council and any committee in performing their respective functions; and
  - (d) any other expenditure lawfully incurred by the Centre in performing its functions.

**25. Borrowing by Centre from Treasurer or bank or other financial institution**

(1) The Centre may borrow moneys from —

- (a) the Treasurer; or
- (b) any bank or other financial institution —
  - (i) approved by the Treasurer; and
  - (ii) carrying on business within the State,

to enable the Centre to defray expenditure incurred by the Centre under this Act at any time when the moneys standing to the credit of the Account are not sufficient to meet that expenditure in full.

(2) The Centre shall pay —

- (a) to the Treasurer in respect of moneys borrowed from him or her under subsection (1) (a) interest at such rate and at such times as the Treasurer determines; or
- (b) to a bank or other financial institution referred to in subsection (1) (b) in respect of moneys borrowed from it under that subsection interest at such rate and at such times as are —
  - (i) agreed between the Centre and that bank or other financial institution; and
  - (ii) approved by the Treasurer.

(3) Moneys borrowed under subsection (1) and the interest and any other fees or charges payable in respect of that borrowing are a charge on —

- (a) the moneys standing to the credit of the Account; and
- (b) the property of the Centre,

and, in the case of moneys so borrowed from a bank or other financial institution, the due repayment of those moneys, including the interest and any other fees or charges payable in

respect of that borrowing, is by virtue of this subsection guaranteed by the Treasurer on behalf of the State.

**26. Borrowing by Centre generally**

- (1) This section is in addition to, and not in derogation of, the provisions of section 25.
- (2) The Centre may, with the prior approval of the Treasurer in writing and on such terms and conditions as the Treasurer approves, borrow moneys for the purposes of performing its functions.
- (3) Section 25 (3) applies to and in relation to moneys borrowed by the Centre under subsection (2) as if those moneys were borrowed under section 25 (1).
- (4) Any moneys borrowed by the Centre under subsection (2) may be raised as one or more loans and in such manner as the Treasurer approves, but the amount of the moneys so borrowed shall not at any one time exceed in the aggregate such amount as the Treasurer approves.

**27. Payment of guarantee moneys**

- (1) The due performance of a guarantee given by the Treasurer on behalf of the State under section 25 (3), or under that section as read with section 26 (3), as the case requires, is by virtue of this subsection authorized, and the due payment of moneys payable under such a guarantee with all interest thereon is payable out of the Consolidated Fund, which is by this subsection to the necessary extent appropriated accordingly.
- (2) Any sums received or recovered by the Treasurer from the Centre or otherwise in respect of payment made under subsection (1) shall be paid to the credit of the Consolidated Fund.

**28. Charges for guarantees**

- (1) The Treasurer may fix charges to be paid by the Centre to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 25 (3), or under that section as read with section 26 (3), as the case requires.
- (2) Payment of any charges fixed under subsection (1) is to be made at such time or times as the Treasurer determines.

**29. Application of *Financial Administration and Audit Act 1985***

Subject to this Part, the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Centre and its operations.

## **Part 5 — Miscellaneous**

### **30. Execution of documents**

- (1) The Centre is to have a common seal.
- (2) A document is duly executed by the Centre if —
  - (a) the common seal of the Centre is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Centre by persons —
    - (i) authorized by the Board to do so; and
    - (ii) referred to in subsection (5).
- (3) The common seal of the Centre is not to be affixed to any document except as authorized by the Board.
- (4) The common seal of the Centre is to be affixed to a document in the presence of such persons and such number of persons as are determined by the Board, and each of those persons is to sign the document to attest that the common seal was so affixed.
- (5) A person authorized under subsection (2) (b) is to be a director or an officer.
- (6) A document purporting to be executed under this section is to be taken to be duly executed until the contrary is shown.
- (7) All courts and persons acting judicially are to take notice of the common seal of the Centre.

### **31. Protection of representatives of the Centre**

- (1) A representative of the Centre is not personally liable for any act done or omitted to be done in good faith by the Centre in the performance, or purported performance, of any function under this Act.
- (2) Subsection (1) does not —
  - (a) limit the operation of Part B of Schedule 1; or

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- (b) relieve the Centre of any liability that, but for that subsection, it might have for the acts or omissions of a representative of the Centre.

**32. Secrecy**

A representative of the Centre shall not, either directly or indirectly, except in legal proceedings, in the exercise or performance of a function under this Act or with the written approval of the Board, make a record of, or divulge or communicate to any person, any information concerning the affairs of the government, or any agency or instrumentality, of —

- (a) any State or Territory;
- (b) the Commonwealth; or
- (c) any foreign country,

acquired by the representative of the Centre by reason of the office held, or work performed, by him or her under or for the purposes of this Act.

Penalty: \$20 000.

**33. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Regulations made under this section may create offences and provide in respect of any such offence a penalty not exceeding \$1 000.

**34. Review of Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement and, in any event, not later

than one year after that expiry, and in the course of that review the Minister shall consider and have regard to —

- (a) the effectiveness of the operations of the Centre;
  - (b) the need for the continuation of the functions of the Centre; and
  - (c) such other matters as appear to him or her to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on his or her review made under subsection (1) and shall, as soon as is practicable after completing that preparation, cause that report to be laid before each House of Parliament.

**35. Consequential amendments**

The Acts referred to in the second column of Schedule 2 are amended in the manner set out in the third column of that Schedule.

## Schedule 1

### Part A

[sections 3 and 5 (3) (a)]

#### CONSTITUTION AND PROCEEDINGS OF BOARD

**1. Term of office of appointed director**

- (1) Except as otherwise provided by this Act, an appointed director holds office for such term not exceeding 3 years as is specified in the instrument of his or her appointment, but may from time to time be reappointed.
- (2) An appointed director, unless his or her office sooner becomes vacant under clause 2, continues in office until his or her successor comes into office, even if the term for which he or she was appointed may have expired.

**2. Resignation, removal, etc. of appointed director**

The office of an appointed director becomes vacant if he or she —

- (a) resigns that office by written notice addressed to the Minister;
- (b) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (c) is removed from office by the Minister on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his or her duties and proved to the satisfaction of the Minister.

**3. Alternate directors**

- (1) If an appointed director other than the chairperson is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, the other person is to be taken to be an appointed director.
- (2) If the appointed director appointed under clause 4 (2) is performing the functions of the chairperson, the Minister may, under



subclause (1), appoint another person to act as director in the place of that appointed director.

- (3) An act or omission of a person acting in place of another under this clause is not to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.
- (4) The appointment of a person as an alternate director under this clause may be terminated at any time by the Minister.

**4. Chairperson and deputy chairperson**

- (1) The office of chairperson becomes vacant if —
  - (a) the person holding that office resigns it by notice in writing to the Minister;
  - (b) the person holding that office ceases to be an appointed director; or
  - (c) the Minister declares that office to be vacant.
- (2) During any vacancy in the office of chairperson or while the chairperson is unable to act by reason of sickness, absence or other cause, the other directors shall forthwith appoint one of their number who is an appointed director to perform the functions of the chairperson and the person so appointed has all the functions and attributes of the chairperson during the period in question.
- (3) An act or omission of a person appointed under subclause (2) and performing the functions of the chairperson is not to be questioned on the ground that the occasion for his or her appointment had not arisen or had ceased.

**5. Meetings**

- (1) The first meeting of the Board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings of the Board are to be held —
    - (a) on at least 4 occasions —
      - (i) in the year beginning on the day on which this clause comes into operation; and
      - (ii) in each subsequent year;
- and

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- (b) at such times and places as the Board determines.
- (2) A special meeting of the Board may at any time be convened by the chairperson.
- (3) The chairperson is to preside at all meetings of the Board at which he or she is present.
- (4) If both the chairperson and the person, if any, appointed under subclause 4 (2) are absent from a meeting of the Board, the directors present are to appoint one of their number who is an appointed director to preside at that meeting.
- (5) A quorum for a meeting of the Board is a simple majority of the directors.
- (6) Questions arising at a meeting of the Board are to be decided by a majority of the votes of the directors present.
- (7) If the votes of the directors present at a meeting of the Board and voting on a question are equally divided, the question is lost.
- (8) The Board is to cause accurate minutes to be kept of the proceedings at its meetings.

**6. Committees**

- (1) The Board may from time to time appoint committees of —
  - (a) such directors; or
  - (b) such directors and other persons,as it thinks fit and may discharge or alter any committee so appointed.
- (2) Subject to the directions of the Centre and to the terms of any delegation under section 21, each committee may determine its own procedures.

**7. Resolution may be passed without meeting**

A resolution in writing signed or assented to by each director by letter, telex or facsimile transmission is as valid and effectual as if it had been passed at a meeting of the Board.

**8. Leave of absence**

The Board may grant leave of absence to a director on such terms and conditions as the Board thinks fit.

**9. Board to determine own procedures**

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

**Part B**

[sections 5 (3) (b) and 31 (2) (a)]

**DUTIES OF DIRECTORS**

**1. Interpretation**

- (1) In this Part —  
“**near relative**”, in relation to a director, means spouse, de facto partner, parent or child of the director.
- (2) In the application of this Part to members of a committee, references to the Board are to be read as references to the committee.

**2. Conflict of interest**

- (1) Subject to subclause (3), a director who has a direct or indirect pecuniary interest in a proposal before the Board —
  - (a) is to disclose the nature of that interest to the Board as soon as he or she becomes aware of that proposal; and
  - (b) is not to take part in any deliberation or decision of the Board in respect of that proposal.
- (2) Without limiting the generality of subclause (1), a director is to be taken to have a direct or indirect pecuniary interest in a proposal for the purposes of that subclause if his or her near relative has such an interest.
- (3) Disclosure is not required under subclause (1) in respect of an interest that —
  - (a) arises because the director concerned or his or her near relative has a shareholding (not being a substantial holding within the meaning of the *Corporations Act 2001* of the

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Commonwealth) in a public company as defined by that Act;  
and

- (b) is shared in common with the other shareholders in the public company referred to in paragraph (a).
- (4) A disclosure made under this clause is to be recorded in the minutes of the Board.
- (5) If a director discloses his or her interest in a proposal under this clause, or his or her interest in a proposal is not such as need be disclosed under this clause, a transaction resulting from the proposal is not liable to be avoided on any ground arising from the fiduciary relationship between the director and the Centre.

**3. General duties of directors**

- (1) A director is at all times required to act honestly and diligently in performing his or her functions under this Act.
- (2) A director is not to disclose any information acquired by virtue of the performance of any function of the director unless the disclosure is made —
  - (a) under a legal duty or in connection with the carrying out of this Act; or
  - (b) for the purposes of any proceedings arising out of this Act or any report of such proceedings.
- (3) A director is not to make use of any information acquired by virtue of the performance of his or her functions to gain directly or indirectly an improper advantage for himself or herself or to cause detriment to the Centre.
- (4) This clause is in addition to, and not in derogation of, the provisions of section 32.

**4. Sanctions for breach of clauses 2 and 3**

A director who commits a breach of any provision of clause 2 or 3 —

- (a) is liable to the Centre for any profit made by him or her or for any damage suffered by the Centre as a result of the breach of that provision; and

- (b) commits an offence against this Act and is liable to a fine of \$5 000.

**5. Court may grant relief to director**

- (1) If, in any civil proceedings against a director for a breach of any provision of clause 2 or 3, it appears to the court before which those proceedings are brought that the director —
  - (a) is or may be liable in respect of that breach; but
  - (b) has acted honestly and that, having regard to all the circumstances of the case, the director ought fairly to be excused for that breach,that court may relieve the director either wholly or partly from liability on such terms as that court thinks fit.
- (2) A director who has reason to believe that any claim will or might be made against the director in respect of any breach referred to in subclause (1) may apply to the Supreme Court for relief, and the Supreme Court has the same power to relieve the director as it would have had under subclause (1) if it had been a court before which civil proceedings had been brought against the director for that breach.
- (3) When a case to which subclause (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought under that subclause to be relieved either wholly or partly from the liability sought to be enforced against the defendant, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms concerning costs or otherwise as the judge thinks proper.

**6. Saving**

The provisions of this Part are in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

*[Schedule 1 amended by No. 10 of 2001 s.155; No. 3 of 2002 s.59.]*

Sch. 2

**Schedule 2**

[section 35]

**CONSEQUENTIAL AMENDMENTS TO VARIOUS ACTS**

| <i>Item</i> | <i>Short title of Act</i>                               | <i>Amendment</i>   |
|-------------|---|--|
| 1.          | <i>Constitution Acts<br/>Amendment Act 1899</i>         | In Part 3 of Schedule V, insert in the appropriate alphabetical position the following –<br>“ The board of directors of the Perth International Centre for Application of Solar Energy established under the <i>Perth International Centre for Application of Solar Energy Act 1994</i> . ”. |
| 2.          | <i>Financial Administration<br/>and Audit Act 1985</i>  | In Schedule 1, insert in the appropriate alphabetical position the following –<br>“ Perth International Centre for Application of Solar Energy ”.  |
| 3.          | <i>Freedom of Information Act<br/>1992</i>              | In Schedule 2, insert after “The State Government Insurance Corporation.” the following –<br>“ The Perth International Centre for Application of Solar Energy. ”.  |
| 4.          | <i>Government Employees<br/>Superannuation Act 1987</i> | In Schedule 1, Part B, insert in the appropriate alphabetical position the following –<br>“ Perth International Centre for Application of Solar Energy ”.  |
| 5.          | <i>Parliamentary<br/>Commissioner Act 1971</i>          | In the Schedule, insert in the appropriate alphabetical position the following –<br>“ Perth International Centre for Application of Solar Energy established under the <i>Perth International Centre for Application of Solar Energy Act 1994</i> . ”.                                       |

6. *Public Service Act 1978*

In the Schedule, insert after item 25 the following item –

“ 25A. Perth International  
Centre for Application  
of Solar Energy  
established under the  
*Perth International  
Centre for Application  
of Solar Energy  
Act 1994.* ”.

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## Notes

- 1 This is a compilation of the *Perth International Centre for Application of Solar Energy Act 1994* and includes all amendments effected by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

| Short title  | Number and Year | Assent      | Commencement  |
|--|-----------------|-------------|---|
| <i>Perth International Centre for Application of Solar Energy Act 1994</i>   | 36 of 1994      | 8 Jul 1994  | 22 Jul 1994 (see <i>Gazette</i> 22 Jul 1994 p. 3727)  |
| <i>Corporations (Consequential Amendments) Act 2001</i> Pt. 44   | 10 of 2001      | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285) |
| <i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002</i> s. 59  | 3 of 2002       | 17 Apr 2002 | 21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)   |
| <i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 11 (see <i>Gazette</i> 15 Aug 2003 p. 3685-92)   |                 |             | 15 Sep 2003 (see r. 2)  |
| <u><a href="#">This Act was repealed by the Perth International Centre for Application of Solar Energy Repeal Act 2006 s. 2 (No. 43 of 2006) as at 31 Oct 2006</a></u> |                 |             |   |

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

| Short title   | Number and Year | Assent     | Commencement |
|---|-----------------|------------|--------------|
| <i>Perth International Centre for Application of Solar Energy Repeal Act 2006</i> s. 2 and 3 <sup>2</sup> | 43 of 2006      | 3 Oct 2006 | 31 Oct 2006  |

- <sup>2</sup> On the date as at which this compilation was prepared, the *Perth International Centre for Application of Solar Energy Repeal Act 2006* s. 2 and 3, which gives effect to Sch. 1, had not come into operation. They read as follows:



“

**2. The Act repealed**

The *Perth International Centre for Application of Solar Energy Act 1994* is repealed.

**3. Transitional and savings provisions**

Schedule 1 sets out transitional and savings provisions.

”.

Schedule 1 reads as follows:

“

**Schedule 1 — Transitional and savings provisions**

[s. 3]

**1. Terms used in this Schedule**

In this Schedule, unless the contrary intention appears —

“**assets**” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“**Board**” means the Board of Directors of the Perth International Centre for Application of Solar Energy as constituted under the Act immediately before the commencement day;

“**Centre**” means the Perth International Centre for Application of Solar Energy;

“**commencement day**” means the day on which this Act comes into operation;

“**liability**” means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

“**Minister**” means the Minister responsible for the administration of the *Energy Coordination Act 1994*;

**“right”** means any right, power, privilege or immunity whether actual, contingent or prospective;

**“the Act”** means the *Perth International Centre for Application of Solar Energy Act 1994* as in force immediately before the commencement day.

**2. Interpretation Act to apply**

This Schedule does not limit the operation of the *Interpretation Act 1984*.

**3. The Board**

At the beginning of the commencement day the Board is abolished and its members go out of office.

**4. Managing Director**

On the commencement day the person holding the office of Managing Director under the Act section 8(1)(a) ceases to hold that office.

**5. The International Advisory Council**

At the beginning of the commencement day the International Advisory Council established under the Act Part 2 Division 3 is abolished and its members go out of office.

**6. Devolution of Centre’s assets, liabilities etc.**

On and after the commencement day —

- (a) the assets and rights of the Centre that were immediately before that day vested in that body vest in the State by force of this clause;
- (b) the liabilities of the Centre immediately before that day become, by force of this clause, the liabilities of the State;
- (c) any proceedings or remedy that immediately before that day might have been brought or continued by or available against or to the Centre, may be brought or continued and are available, by or against or to the State; and
- (d) all records and data of the Centre pass to the Minister.

**7. Agreements and instruments generally**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the Centre is a party; or
- (b) which contains a reference to the Centre,

has effect on and after the commencement day as if —

- (c) the State were substituted for the Centre as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the Centre were (unless the context otherwise requires) amended to be or include a reference to the State.

**8. Funds**

On the commencement day the account referred to in the Act section 24(2) is to be closed by the Treasurer and the moneys in the account credited to the Consolidated Fund.

**9. Financial reporting**

- (1) In this clause —

**“FAA Act”** means the *Financial Administration and Audit Act 1985*;

**“reporting officer”** means the person appointed under the FAA Act section 65A(2) as applied by subclause (2);

**“the final period”** means the period that —

- (a) starts immediately after the end of the last financial year of the Centre to have ended before the commencement day; and
- (b) ends immediately before the commencement day.

- (2) The FAA Act section 65A applies in relation to the preparation and submission of a final report in respect of the Centre, as if —

- (a) references in that section to a department were references to the Centre; and
- (b) references in that section to provisions of the FAA Act sections 62 to 65 were references to the equivalent provisions of the FAA Act sections 66 to 70,

except that the period to which the final report is to relate is the final period and the references in sections 66(1), 68, and 70(1) to the end of the financial year are to be read as references to the end of the final period.

- (3) If, immediately before the commencement day, any duty imposed by the FAA Act Part II Division 14 on the accountable authority of the Centre remains unfulfilled in relation to the Centre for any financial year that expired before the commencement day, that duty subsists and is to be performed by the reporting officer as if the reporting officer were the accountable authority.
- (4) The time within which the reporting officer is to perform a duty referred to in subclause (3) is extended until the end of the day that is 2 months after the day on which the reporting officer is

appointed, but this subclause does not prevent the time from being extended again under the FAA Act section 70.

**10. Immunity continues**

Despite the repeal of the *Perth International Centre for Application of Solar Energy Act 1994*, where the Centre had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the State.

**11. Registration of documents**

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Schedule.

**12. Saving**

The operation of any provision of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

”.