



Western Australia

## **State Supply Commission Act 1991**

Compare between:

[28 Jun 2010, 02-b0-02] and [11 Sep 2010, 02-c0-06]



Western Australia

## State Supply Commission Act 1991

**An Act to establish the State Supply Commission to arrange for and co-ordinate the supply of goods and services to, and disposal of goods on behalf of, public authorities and certain other persons and bodies, to regulate the supply of goods and services to public authorities, and the disposal of goods not required by public authorities, to monitor that supply and disposal, to effect the sale of government businesses that are to be sold, to repeal the *State Tender Board Act 1965* and for connected purposes.**

*[Long title amended ~~by~~: No. 97 of 1994 s. 4.]*

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *State Supply Commission Act 1991*<sup>1</sup>.

### 2. Commencement

This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

**chief executive officer** means the chief executive officer of the Commission;

**Commission** means the State Supply Commission established under section 4(1);

**efficient**, in relation to the supply or disposal of goods or services, means efficient having regard to considerations of time, economy and quality;

**member** means a member of the Commission;

**public authority** means —

- (a) a department of the Public Service of the State established or deemed to have been established under the *Public Sector Management Act 1994*<sup>2</sup>; and
- (b) an agency, authority or instrumentality of the Crown in right of the State;

**State fleet agreement** means an agreement entered into by the Commission under section 26AA(1);

**supply**, in relation to goods and services, includes —

- (a) the doing of anything described in section 5(ba); and
- (b) storage and distribution;

***supply policies*** means supply policies issued under and in accordance with section 28.

- (2) Regulations may provide —
- (a) that prescribed things are to be regarded as goods or services for the purposes of this Act either generally or in prescribed circumstances; or
  - (b) that prescribed things are not to be regarded as goods or services for the purposes of this Act either generally or in prescribed circumstances.
- (3) Regulations made under subsection (2) do not affect the generality of the terms “goods” and “services” as used in this Act.

*[Section 3 amended by: No. 97 of 1994 s. 5; No. 32 of 1995 s. 4; No. 15 of 2008 s. 4.]*

## **Part 2 — State Supply Commission**

### **Division 1 — Establishment, functions and powers**

#### **4. Commission established**

- (1) There shall be established a body to be known as the State Supply Commission.
- (2) The Commission is a body corporate with perpetual succession and common seal and, subject to this Act, is capable of—
  - (a) acquiring, holding and disposing of personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Commission is an agent of the Crown in right of the State.

#### **5. Functions of Commission**

The functions of the Commission are —

- (a) to develop, implement and review policies and practices regarding the supply of goods and services for, and by, public authorities and the efficient disposal of goods no longer required by a public authority;
- (b) to arrange for and co-ordinate the efficient supply of goods and services in accordance with this Act;
- (ba) to acquire ownership of, rights to, or other proprietary or possessory interests in respect of, goods or services and to —
  - (i) transfer ownership of goods or rights to services;  
or
  - (ii) otherwise dispose of any interest in, or rights to, goods or services (including without limitation by way of licence or bailment),  
to public authorities;

- (c) to arrange for and co-ordinate the efficient disposal of goods in accordance with this Act;
- (ca) to effect the sale of government businesses under Part 3A;
- (cb) to apply and facilitate practices, reforms and rationalization in the supply of goods and services for public authorities so as to implement policies and principles referred to in section 7(1);
- (d) to monitor the process by which goods and services are supplied and goods are disposed of for, and by, public authorities, with particular regard to efficiency; and
- (e) to provide advice on matters relating to the supply of goods or services or disposal of goods, including matters related to management and training of staff and to facilitate the exchange of information on those matters between public authorities.

*[Section 5 amended ~~by~~ No. 97 of 1994 s. 6; No. 32 of 1995 s. 5.]*

**5A. Sale and lease-back of goods**

- (1) The Commission also has the function of giving effect to a requirement under subsection (3).
- (2) The Minister may determine that certain goods used in the operations of any public authority, or goods of a particular class so used, are to be sold as part of a scheme for the sale and lease-back of those goods.
- (3) If the Minister makes a determination under subsection (2), the Minister may require the Commission to enter into a contract or contracts for the sale of the goods to which the determination applies.

- (4) A determination under subsection (2) and a requirement under subsection (3) have effect in relation to goods despite the fact that ownership of the goods is vested in a public authority.

[Section 5A inserted ~~by~~ No. 32 of 1995 s. 6.]

**6. Powers of Commission**

- (1) The Commission has power to 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), the Commission may —
- (a) enter into any contract or other arrangement, organize auctions, call for and award tenders;
  - (b) direct any public authority to furnish to the Commission documents and other information regarding the supply of goods or services or disposal of goods for, or by, that public authority; and
  - (c) act as an agent for a public authority.

**7. Directions by Minister**

- (1) The Minister may give directions in writing to the Commission with respect to its functions and powers, including a direction requiring the Commission to have regard to a particular policy or principle, either generally or with respect to a particular matter, and the Commission shall give effect to any such direction.
- (2) The text of any direction received by the Commission under subsection (1) shall be —
- (a) published in the *Gazette* within 28 days and laid before each House within 12 sitting days of its being published if Parliament is then in session or within 12 sitting days of the commencement of the next ensuing session; and



- (b) included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.

[Section 7 amended ~~by~~: No. 77 of 2006 s. 17.]

## **Division 2 — Membership, constitution, proceedings, etc.**

### **8. Membership of Commission**

The Commission shall consist of—

- (a) a chairman and not more than 8 other members appointed by the Minister; and
- (b) the chief executive officer who shall be a member of the Commission *ex officio*.

[Section 8 inserted ~~by~~: No. 97 of 1994 s. 7.]

### **9. Remuneration of members**

A member is entitled to such remuneration and allowances as the Minister from time to time determines.

### **10. Disclosure of pecuniary interests**

- (1) A member who has a direct or indirect pecuniary interest in a proposal before the Commission —
  - (a) shall, as soon as the member is aware of the proposal, disclose the nature of the interest to the Commission; and
  - (b) shall not take part in any deliberation or decision of the Commission with respect to the proposal.
- (2) A disclosure made by a member under this section shall be recorded in the minutes of the Commission.
- (3) For the purposes of this section, a member who is employed in, or a member of, a public authority shall not be regarded as having an interest in a proposal or contract only because the proposal or contract may benefit or affect the public authority.

- (4) A member who fails to comply with subsection (1) is guilty of an offence and is liable to a penalty not exceeding \$5 000.

**11. Proceedings not affected by irregularities**

An act, decision or proceeding of the Commission, or an act or decision of a member or person acting under the direction of the Commission or a member, shall not be invalid or called into question by reason only of any defect or irregularity —

- (a) in the constitution of the Commission; or
- (b) in the appointment of a member.

**12. Protection of Commission and members**

A matter or thing done by the Commission or by a member or a person acting under the direction of the Commission or a member shall not, if the matter or thing was done in good faith for the purposes of this Act, subject that member or person personally to any action, liability, claim or demand.

**13. Relationship of members to Public Service**

Appointment of a person as a member of the Commission does not —

- (a) render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service of the State applicable to that person; or
- (b) affect or prejudice the application to that person of those provisions if they applied to the person at the time of the appointment.

[Section 13 amended ~~by~~ No. 32 of 1994 s. 19.]

**14. Committees**

- (1) The Commission may from time to time —
  - (a) establish any committee and —
    - (i) prescribe the functions, membership, constitution and procedures of the committee; and
    - (ii) appoint such members of the Commission and other persons as it thinks fit to be members of the committee;
  - (b) discharge, alter or reconstitute the committee; and
  - (c) give directions to the committee with respect to the performance of its functions.
- (2) A committee shall comply with any direction of the Commission.
- (3) Subject to this Act, a committee may determine its own procedure.

**15. Members and proceedings — Schedule 1**

Schedule 1 has effect with respect to the members and proceedings of the Commission.

**Division 3 — Staff**

**16. Chief executive officer**

- (1) A chief executive officer of the Commission shall be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) The office of chief executive officer of the Commission is an office included in the Special Division of the Public Service.
- (3) Subject to the control of the Commission, the chief executive officer is to administer the day to day operations of the Commission.

*[Section 16 inserted ~~by~~ No. 97 of 1994 s. 8.]*

**16A. Other staff**

- (1) The Commission may, under Part 3 of the *Public Sector Management Act 1994*, employ such persons as may be necessary to enable the Commission to perform its functions.
- (2) The Commission may engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as it considers necessary to enable the Commission to perform its functions.

[Section 16A inserted ~~by~~ by No. 97 of 1994 s. 8.]

**16B. Use of other government staff etc.**

- (1) The Commission may by arrangement 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.
- (2) An arrangement under subsection (1) is to be made between the Commission and the relevant employing authority within the meaning of the *Public Sector Management Act 1994* and is to be made on such terms as they agree.

[Section 16B inserted ~~by~~ by No. 97 of 1994 s. 8.]

## **Part 3 — Supply of goods and services**

### **Division 1 — General**

*[Heading inserted ~~by~~ No. 15 of 2008 s. 5.]*

#### **17. Public authorities to comply with supply policies**

- (1) Subject to this Act, all public authorities, including all employees, members and officers of public authorities and all officers of the Public Service of the State, shall comply with supply policies.
- (2) Subsection (1) applies notwithstanding any exemption granted under section 20 or 21.

#### **18. Commission may advise and recommend**

- (1) The Commission shall provide advice or make recommendations to the Minister regarding any matter referred to it by the Minister, or any matter in respect of which the Commission is of the opinion it should provide advice to the Minister, in relation to —
  - (a) policies and practices regarding the supply of goods and services or disposal of goods; or
  - (b) the process by which goods and services are supplied and goods are disposed of for, and by, public authorities.
- (2) The Commission may, if it thinks fit, provide advice or make recommendations to the Minister responsible for a public authority regarding any matter relating to —
  - (a) policies and practices regarding the supply of goods and services or disposal of goods for the use of, or used by, the public authority;
  - (b) the process by which goods and services are supplied and goods are disposed of for, or by, the public authority.

- (3) All public authorities, including all employees, members and officers of public authorities and all officers of the Public Service of the State, shall comply with any direction given, on the advice or recommendation of the Commission, by the Minister responsible for the public authority.

**19. Duty of Commission to arrange for supply of goods and services**

- (1) Subject to subsections (2) and (3), the Commission is responsible for arranging and co-ordinating the supply of all goods and services necessary for the operation of each public authority including, where the Commission thinks fit, supply in the manner described in section 5(ba).
- (2) The Commission is not responsible for arranging and co-ordinating the supply of goods and services where an exemption exists in respect of those goods and services under section 20 or 21.
- (3) The Commission is not responsible for arranging and co-ordinating the supply of goods and services that are to be supplied by a Minister under a State fleet agreement.

*[Section 19 amended-by: No. 97 of 1994 s. 9; No. 32 of 1995 s. 7; No. 15 of 2008 s. 6.]*

**20. Total exemptions from section 19(1)**

An exemption from section 19(1) exists in respect of all goods and services necessary for the operation of each public authority that is prescribed in the regulations for the purposes of this section as a public authority that is totally exempt from section 19(1).

**21. Partial exemptions from section 19(1)**

- (1) An exemption from section 19(1) exists in respect of goods and services necessary for the operation of a public authority to the

extent, on the conditions and for the period of time that the Commission specifies in writing given to the public authority.

- (2) The Commission may cancel an exemption granted under subsection (1), in writing given to the public authority concerned.

**22. Public authority may exercise powers of Commission, in certain circumstances**

Where a public authority that is a body corporate does not possess sufficient powers to take advantage of an exemption under section 20 or 21 in respect of goods or services necessary for its operation, that public authority may exercise such powers of the Commission as are necessary or convenient to enable the public authority to take advantage of the exemption, as if those powers were powers conferred on the public authority.

**23. Commission may arrange for supply of goods and services to approved persons and bodies**

The Commission may arrange for and co-ordinate the supply of any goods and services, including where the Commission thinks fit supply in the manner described in section 5(ba), necessary for the operation of any person or body approved by the Commission for the purposes of this section and section 24 on the request of that person or body.

*[Section 23 amended ~~by~~: No. 32 of 1995 s. 8.]*

**24. Disposal of goods**

Where goods are no longer required by a public authority or any other person or body approved by the Commission for the purposes of this section and section 23 the public authority, person or body may request the Commission to arrange for and co-ordinate the disposal of the goods on its behalf and, if the Commission agrees to do so, it shall dispose of the goods by auction or otherwise.

**25. Commission to monitor supply**

- (1) The Commission shall monitor and keep records regarding the process by which goods and services are supplied and goods are disposed of for, or by, public authorities, with particular regard to efficiency.
- (2) The Commission shall collect such information as is necessary for it to monitor and keep records in accordance with subsection (1), including information regarding —
  - (a) changes to the supply of goods and services and disposal of goods over time;
  - (b) the efficiency with which the process of the supply of goods and services and disposal of goods is carried out;
  - (c) the compliance by public authorities with supply policies; and
  - (d) the use of management, technological and procurement techniques in the supply and management of goods and services and the disposal of goods.

**26. Public authority to provide information at request of Commission**

Each public authority shall provide the Commission with such information as the Commission requests to enable it to carry out its functions under section 25.

**Division 2 — State fleet agreement**

*[Heading inserted-by: No. 15 of 2008 s. 7.]*

**26AA. Commission may enter into an agreement relating to supply and disposal of vehicles**

- (1) The Commission may enter into an agreement (a *State fleet agreement*) with a Minister for the Minister to perform or exercise, in accordance with any terms, conditions or restrictions specified in the agreement, any function or power of



the Commission under this Act that may be performed or exercised in, or in relation to —

- (a) the supply of vehicles to public authorities; or
  - (b) the disposal of those vehicles.
- (2) For the purposes of sections 26AB(1), 30(6) and 32(2), a department of the Public Service is to be specified in a State fleet agreement.
- (3) A department of the Public Service may be specified in a State fleet agreement if the department principally assists the Minister who enters into the agreement with the administration of a written law.
- (4) For the purposes of this Act and any other written law, an act or thing that is done by, to, by reference to, or in relation to a Minister, in connection with the performance or exercise by the Minister of a function or power of the Commission under a State fleet agreement, is as effectual as it would be if it were done by, to, by reference to, or in relation to the Commission.
- (5) Any State fleet agreement shall include a condition requiring the Minister, or department of the Public Service principally assisting the Minister, to —
- (a) minimise, so far as practicable, the net greenhouse gas emissions associated with vehicles used by public authorities by —
    - (i) maximising, so far as practicable, the fuel efficiency of the vehicle fleet; and
    - (ii) offsetting greenhouse gas emissions of the vehicle fleet;
- and
- (b) report annually on the greenhouse gas emissions associated with vehicles used by public authorities.

*[Section 26AA inserted ~~by~~ No. 15 of 2008 s. 7.]*

**26AB. Delegation**

- (1) A Minister who enters into a State fleet agreement may delegate to the chief executive officer of the department of the Public Service specified in the agreement under section 26AA(2) any function or power that the Minister may perform or exercise under the agreement.
- (2) The delegation is to be in writing signed by the Minister.
- (3) If a function or power is delegated under subsection (1) to a chief executive officer of a department of the Public Service, the delegation may expressly authorise the chief executive officer to further delegate the function or power to one or more other officers of the department.
- (4) A person performing or exercising a function or power that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the power of the Minister to perform a function through an officer or agent.

*[Section 26AB inserted ~~by~~ No. 15 of 2008 s. 7.]*

## **Part 3A — Sale of government businesses**

*[Heading inserted-by: No. 97 of 1994 s. 10.]*

### **Division 1 — Authority for sale**

*[Heading inserted-by: No. 97 of 1994 s. 10.]*

#### **26A. Terms used in this Part**

In this Part, unless the contrary intention appears —

**company** means a company formed or acquired under section 26D;

**government business** means a business or undertaking carried on by a public authority, but does not include a business or undertaking that is specifically established by a written law;

**property** means personal property of any kind, whether corporeal or incorporeal or tangible or intangible, and any interest in personal property;

**responsible Minister**, in relation to a government business, means the Minister responsible for the public authority that carries on that business.

*[Section 26A inserted-by: No. 97 of 1994 s. 10.]*

#### **26B. Property may be sold**

- (1) The responsible Minister in relation to a government business may, with the approval of the Treasurer, in writing determine that property that constitutes or forms part of that government business is to be sold under this Part.
- (2) The responsible Minister may also determine that the transfer of any liability relating to that business is to form part of the transaction.
- (3) A determination is to identify the property and any liability to which it applies.

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**Part 3A** Sale of government businesses

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- (4) A sale of property under this Part is to be made under section 26C unless the determination specifies that Division 2 is to apply.

*[Section 26B inserted-by: No. 97 of 1994 s. 10.]*

**26C. Power of Commission to sell**

- (1) Where —
- (a) a determination has been made under section 26B in respect of any property or liability; and
  - (b) the determination does not specify that Division 2 is to apply,

the Commission is to endeavour to sell the property and has authority to enter into a contract of sale for that purpose in its own name.

- (2) The Commission may also take necessary steps to transfer any liability to the purchaser of any property in accordance with a determination under section 26B.

*[Section 26C inserted-by: No. 97 of 1994 s. 10.]*

**Division 2 — Sale by formation of company and sale of shares**

*[Heading inserted-by: No. 97 of 1994 s. 10.]*

**26D. Company to be formed or acquired**

- (1) Where a determination under section 26B(4) so requires, the Commission is to form or acquire a proprietary company incorporated under the *Corporations Act 2001* of the Commonwealth.
- (2) A company is to be limited by shares and all of the shares are to be held on behalf of the State.

(3) The responsible Minister, with the approval of the Treasurer, is to give directions, not inconsistent with the *Corporations Act 2001* of the Commonwealth, as to —

- (a) the name;
- (b) the contents of the memorandum and articles; and
- (c) who are to be the shareholders and officers,

of a company, and the Commission and the shareholders and officers of the company are to see that the directions are complied with.

*[Section 26D inserted-by: No. 97 of 1994 s. 10; amended-by: No. 10 of 2001 s. 220.]*

**26E. Status of company**

- (1) A company is an agent of the Crown until the completion of a contract of sale made under section 26H.
- (2) For the purposes of the *Financial Management Act 2006* and the *Auditor General Act 2006*, a company is a subsidiary body of the public authority which carries on the relevant business.

*[Section 26E inserted-by: No. 97 of 1994 s. 10; amended-by: No. 77 of 2006 s. 17.]*

**26F. Order for transfer of property etc. to the company**

- (1) The responsible Minister may by order transfer to a company that has been formed or acquired under section 26D for the purpose the property and any liability to which a determination under section 26B applies.
- (2) An order under subsection (1) may be amended by the responsible Minister before it comes into force but, if a contract of sale has been entered into under section 26H, an amendment may be made only with the consent of the purchaser under that contract.

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- (3) An order under subsection (1) comes into force immediately before the completion of a contract of sale made under section 26H.

*[Section 26F inserted-by: No. 97 of 1994 s. 10.]*

**26G. Effect of transfer order**

- (1) On the coming into force of an order under section 26F —
- (a) the property to which it applies vests in the relevant company, and any liability to which it applies becomes the liability of that company, by virtue of this subsection without the need for any transfer; and
  - (b) a reference in an instrument of any kind to any government body or official is to be read, so far as it relates to the ownership of the property or any liability transferred, as a reference to the company.
- (2) The operation of this section does not —
- (a) constitute a breach of contract or a civil wrong;
  - (b) constitute a breach of any contractual provision prohibiting or restricting transfer of any asset, right or liability; or
  - (c) give rise to any remedy by a party to an instrument, or cause or permit the termination of any instrument.

*[Section 26G inserted-by: No. 97 of 1994 s. 10.]*

**26H. Commission may sell shares**

- (1) The Commission may, with the approval of the responsible Minister, enter into a contract in writing for the sale of the shares in a company.
- (2) A contract under subsection (1) —
- (a) may contain such incidental and ancillary provisions as are required to give effect to this Part; and

(b) is binding on the company's shareholders.

*[Section 26H inserted ~~by~~: No. 97 of 1994 s. 10.]*

### **Division 3 — General**

*[Heading inserted ~~by~~: No. 97 of 1994 s. 10.]*

#### **26I. Proceeds of sale**

- (1) Subject to subsection (2), the proceeds of sale of —
  - (a) property sold under section 26C; or
  - (b) the shares in a company sold under section 26H,are to be credited to the Consolidated Account.
- (2) There may be deducted from the proceeds of sale, and credited to the funds of the Commission, such amount as the Treasurer approves to meet the expenses incurred by the Commission in giving effect to this Part.

*[Section 26I inserted ~~by~~: No. 97 of 1994 s. 10; amended ~~by~~: No. 77 of 2006 s. 4.]*

*[26J. Deleted ~~by~~: No. 70 of 2003 s. 49.]*

## **Part 4 — Miscellaneous**

### **27. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and, in particular, for and with respect to —

- (a) the efficient supply of goods and services for the use of public authorities and efficient disposal of goods no longer required by a public authority;
- (b) the conditions upon which contracts to supply goods and services to public authorities are to be made;
- (c) the preparation by public authorities of documents regarding supply procedures;
- (d) the procedures and practices to be followed when tenders are called, received, awarded and finalized;
- (e) the collection and provision of information to enable the Commission to monitor the process by which goods and services are supplied and goods are disposed of in accordance with section 25;
- (f) the disclosure of any pecuniary interest by persons involved in the process by which goods and services are supplied and goods are disposed of under this Act and the consequences of that disclosure;
- (g) the procedure for reviewing total and partial exemptions under sections 20 and 21;
- (h) facilitating the exchange of information between public authorities on matters relating to the supply of goods and services or disposal of goods, including matters relating to management and training of staff;
- (ha) measures that may be taken to ensure that public authorities comply with the regulations, and with supply policies and directions supplementing supply policies,



and actions that may be taken in the event of non-compliance;

- (i) forms to be used for the purposes of this Act; and
- (j) fees for the purposes of this Act.

*[Section 27 amended ~~by~~ No. 97 of 1994 s. 11.]*

**28. Supply policies**

- (1) The Commission may prepare, issue, amend and revoke policies to be known as “supply policies” with respect to policies and practices relating to the supply of goods and services and the disposal of goods under this Act for, or by, a public authority, but those policies shall not be inconsistent with this Act or the regulations.
- (2) Supply policies may be issued —
  - (a) so as to apply —
    - (i) at all times or at a specified time;
    - (ii) to all public authorities and their subsidiary and related bodies or to specified public authorities or subsidiary or related bodies;
  - (b) so as to require a matter affected by the supply policies to be —
    - (i) in accordance with a specified standard or specified requirement;
    - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
  - (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body;
  - (d) so as to empower the Commission by written direction issued generally or in a particular case to supplement the requirements of supply policies; and
  - (e) so as to provide, or to empower the Commission to provide by written direction, in a specified case or class

of case for the exemption of persons or things or a class of persons or things from the provisions of supply policies, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.

- (3) The Commission shall cause to be published in the *Gazette* notice of the making, amendment or revocation of supply policies, but such a notice need not include the text of supply policies or the amendments.
- (4) In subsection (2), *specified* means specified in the supply policies.

**29.        Contracts made by Commission**

- (1) In any contract made by the Commission for the purposes of this Act other than Part 3A, the Commission does not act as agent for any public authority unless —
  - (a) the contract expressly provides that the Commission acts as agent for a public authority; and
  - (b) the Commission is authorised so to act by the public authority.
- (2) Notwithstanding any rule of law to the contrary, for the purposes of any legal action taken in respect of a contract entered into by the Commission for the benefit, whether wholly or partly, of a public authority or other person or body who or which is not a party to the contract (including a contract entered into under Part 3A) —
  - (a) the Commission may recover damages for any loss suffered due to a breach of that contract as if the loss was suffered by the Commission, notwithstanding that the loss was suffered by the public authority or other person or body;
  - (b) any moneys paid to the Commission in respect of loss suffered by the public authority or other person or body

due to a breach of that contract shall be paid without any deductions, other than costs, to that public authority, person or body; and

- (c) any moneys for which the Commission would, but for this paragraph, be liable in respect of loss suffered by another party to the contract due to the actions of the public authority or other person or body shall be paid by the public authority, person or body.

*[Section 29 amended-by: No. 97 of 1994 s. 12.]*

**30. Funds of Commission**

- (1) The funds available for the purpose of enabling the Commission to exercise and perform its powers, functions and duties under this Act consist of —
  - (a) moneys from time to time appropriated by Parliament;
  - (b) moneys advanced by the Treasurer in any case in which the moneys standing to the credit of the account referred to in subsection (2) would be insufficient;
  - (ba) borrowings by the Commission under section 31(2);
  - (c) moneys received by the Commission from a public authority, or other person or body approved by the Commission for the purposes of sections 23 and 24, in respect of goods or services supplied or to be supplied, to the public authority, person or body; and
  - (d) any moneys, other than moneys referred to in paragraph (a), (b) or (c), lawfully received by, made available to, or payable to the Commission.
- (2) An agency special purpose account called the State Supply Commission Account is established under section 16 of the *Financial Management Act 2006* to which, subject to subsection (4), the funds referred to in subsection (1) are to be credited.

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- (3) There shall be chargeable against the moneys from time to time standing to the credit of the account referred to in subsection (2) —
  - (a) the remuneration and allowances payable to members in accordance with section 9; and
  - (b) all costs and expenses incurred by the Commission for the purpose of giving effect to this Act.
- (4) Any funds made available under subsection (1) for the purposes of the performance or exercise of a function or power of the Commission that is to be performed or exercised by a Minister under a State fleet agreement are to be credited to an agency special purpose account established under the *Financial Management Act 2006* section 16 for the purposes of this subsection.
- (5) All costs and expenses incurred in the performance or exercise of a function or power of the Commission that is performed or exercised by a Minister under a State fleet agreement are to be charged to the account referred to in subsection (4).
- (6) For the purposes of the *Financial Management Act 2006* section 52, the administration of the account referred to in subsection (4) is to be regarded as a service under the control of the department of the Public Service specified in the State fleet agreement under section 26AA(2).

[Section 30 amended-by: No. 97 of 1994 s. 13; No. 49 of 1996 s. 64; No. 28 of 2006 s. 436; No. 77 of 2006 s. 17; No. 15 of 2008 s. 8.]

**31. Power to borrow from Treasurer**

- (1) For the purposes of section 30(1)(b), the Commission may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment, payment of interest or any other matter as the Treasurer imposes.
- (2) For the purposes of performing its functions the Commission may also borrow moneys from persons other than the Treasurer.

- (3) Borrowings under subsection (2) can only be made with the prior approval of the Treasurer in writing and on such terms and conditions as the Treasurer approves.
- (4) Any moneys borrowed by the Commission 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 in any one financial year exceed in the aggregate such amount as the Treasurer approves.
- (5) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee, in the form and subject to the terms and conditions that the Treasurer determines, the payment of any moneys payable by the Commission in respect of moneys borrowed by it under subsection (2).
- (6) The due payment of moneys payable by the Treasurer under a guarantee given under subsection (5) —
  - (a) is guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Account and this subsection appropriates that Account accordingly.

*[Section 31 amended by: No. 97 of 1994 s. 14; No. 77 of 2006 s. 4 and 5(1).]*

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

- (1) Subject to subsection (2), the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of Statutory Authorities apply to and in respect of the Commission.
- (2) Any acts or things done by a Minister in the performance or exercise of a function or power of the Commission under a State fleet agreement are to be regarded as —
  - (a) services under the control of the department of the Public Service specified in the State fleet agreement

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under section 26AA(2) for the purposes of the *Financial Management Act 2006* section 52; and

- (b) part of the operations of that department for the purposes of Part 5 of that Act.

[Section 32 amended ~~by~~ by: No. 77 of 2006 s. 17; No. 15 of 2008 s. 9.]

**33. Repeal**

The *State Tender Board Act 1965* is repealed.

**34. Transitional and savings provisions — Schedule 2**

Schedule 2 has effect in relation to the repeal effected by section 33.

[35. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

**36. 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 expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Commission;
  - (b) the need for the continuation of the functions of the Commission;
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and, as soon as is practicable after the preparation of the report, shall cause it to be laid before each House of Parliament.

## **Schedule 1 — Members and proceedings of the Commission**

[Sections. 15]

### **~~Members and proceedings of the Commission~~**

[Heading amended: No. 19 of 2010 s. 4.]

#### **1. Terms used in this Schedule**

In this Schedule —

*appointed member* means a member other than the chief executive officer;

*chairman* means the chairman of the Commission.

[Clause 1 amended ~~by~~: No. 97 of 1994 s. 15(a).]

#### **2. Term of office of members**

(1) An appointed member shall be appointed for such term of office not exceeding 3 years as is specified in the member's instrument of appointment on the conditions specified in that instrument.

(2) An appointed member may be reappointed from time to time on the expiration of a term of office.

[Clause 2 amended ~~by~~: No. 97 of 1994 s. 15(b).]

#### **3. Delegation by Commission**

(1) The Commission may delegate, by notice in writing, any of its powers, other than this power of delegation, as are specified in the notice to —

(a) any committee established by it under section 14 or a member of such a committee;

(b) any member; or

(c) any officer or employee of the Commission or person whose services are used under section 16B(1)(a),

and may vary or revoke any such delegation.

**cl. 4**

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- (2) The exercise of a power by a delegate under this clause shall be deemed to be the exercise of the power by the Commission.

*[Clause 3 amended ~~by~~: No. 32 of 1994 s. 19; No. 97 of 1994 s. 15(c).]*

**4. Vacation of office**

- (1) An appointed member may resign from office by notice in writing delivered to the Minister.
- (2) An appointed member may be removed from office by the Minister —
- (a) for mental or physical disability, incompetence, neglect of duty or misconduct;
  - (b) if the member is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
  - (c) if the member is absent without leave of the Commission from 3 consecutive meetings of the Commission of which the member has had notice;
  - (d) for breach of a condition of appointment; or
  - (e) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Commission.

*[Clause 4 amended ~~by~~: No. 97 of 1994 s. 15(b); No. 10 of 2001 s. 221.]*

**5. Substitute members**

- (1) The Minister shall appoint at least one but not more than 3 substitute members.
- (2) A substitute member appointed under subclause (1), when requested to do so by the chairman, shall act temporarily in the office of an appointed member, other than the chairman, while that member is unable to act through illness, absence or any other cause.
- (3) An appointment made under subclause (1) may be revoked by the Minister at any time.
- (4) While acting under subclause (2) the appointee has all the functions and entitlements of the member in whose place the appointee is acting.



- (5) No act or omission of a person acting in the place of another under this clause shall be questioned on the ground that the occasion for the acting had not arisen or had ceased.

*[Clause 5 amended ~~by~~ No. 97 of 1994 s. 15(d).]*

**6. General procedure concerning meetings**

- (1) The procedure for convening meetings of the Commission and the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.
- (2) The first meeting of the Commission shall be convened by the chairman.

**7. Presiding member**

At a meeting of the Commission —

- (a) the chairman shall preside; or
- (b) in the absence of the chairman, a person elected by the members present at the meeting from among their number shall preside.

**8. Voting**

- (1) If the votes of members present at a meeting and voting on a question are equally divided, the chairman or other person presiding shall have a casting vote in addition to a deliberative vote.
- (2) A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present shall be the decision of the Commission.

**9. Minutes**

The Commission shall cause accurate minutes of each of its meetings to be recorded and preserved.

**10. Common seal and execution of documents by Commission**

- (1) A document is duly executed by the Commission if —
- (a) the common seal of the Commission is affixed in accordance with subclauses (2) and (3); or

**cl. 10**

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- (b) it is signed on behalf of the Commission by the member or members authorised by the Commission to do so.
- (2) The common seal of the Commission shall not be affixed to any document except by resolution of the Commission.
- (3) The common seal of the Commission shall be affixed to a document in the presence of the chairman and another member and each of them shall sign the document to attest that the common seal was so affixed.
- (4) The common seal of the Commission shall —
  - (a) be in a form determined by the Commission;
  - (b) be kept in such custody as the Commission directs; and
  - (c) not be used except as authorised by the Commission.
- (5) When a document purporting to bear the common seal of the Commission is produced before any court, judge or person acting judicially, that court, judge or person shall unless the contrary is proved, presume that —
  - (a) the document bears that common seal; and
  - (b) that common seal was duly affixed to that document.

## **Schedule 2 — Transitional and savings**

[Sections, 34]

### ~~Transitional and savings~~

[Heading amended: No. 19 of 2010 s. 4.]

#### **1. Terms used in this Schedule**

In this Schedule —

*commencement* means the commencement of this Act;

*the Board* means the State Tender Board of Western Australia established under the *State Tender Board Act 1965*.

#### **2. Assets, liabilities etc.**

On the commencement —

- (a) all rights, property and assets that were, immediately before the commencement, vested in the Board are, by force of this paragraph, vested in the Commission;
- (b) the Commission becomes, by force of this paragraph, liable to pay and discharge all the debts, liabilities and obligations of the Board that existed immediately before the commencement;
- (c) the Commission shall take delivery of all papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the Board;
- (d) any proceedings that immediately before the commencement might have been brought or continued by or against the Board may be brought or continued by or against the Commission; and
- (e) anything lawfully commenced by the Board may, so far as it is not contrary to this Act, be carried on and completed by the Commission.

**cl. 3**

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**3. Agreements and instruments**

Unless the context indicates otherwise, any agreement or instrument which subsisted immediately before the commencement and to which the Board was a party has effect on and after the commencement as if —

- (a) the Commission were substituted for the Board as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to the Board were (except in relation to matters that occurred before the commencement) a reference to the Commission.

**4. Former Board members**

A person who was a member of the Board immediately before the commencement ceases to be a member on the commencement.

**5. References**

References to the Board and the chairman of the Board in any written law shall, unless because of the context it would be incorrect so to do, be read and construed as references to the Commission and the chairman of the Commission, respectively.

**6. *Interpretation Act 1984* not affected**

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 33.

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]*

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## Notes

- <sup>1</sup> This is a compilation of the *State Supply Commission Act 1991* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>State Supply Commission Act 1991</i>	5 of 1991	6 Jun 1991	s. 1 and 2: 6 Jun 1991; Act other than s. 1 and 2: 20 Sep 1991 (see s. 2 and <i>Gazette</i> 20 Sep 1991 p. 4855)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>State Supply Commission Amendment Act (No. 2) 1994</i> <sup>3</sup>	97 of 1994	30 Dec 1994	Act other than s. 5(b) and (c), 7, 8, 15 and 16: 30 Dec 1994 (see s. 2(1)); s. 5(b) and (c), 7, 8, 15 and 16: 18 Mar 1995 (see s. 2(2) and <i>Gazette</i> 17 Mar 1995 p. 1011)
<i>State Supply Commission Amendment Act 1995</i>	32 of 1995	29 Sep 1995	29 Sep 1995 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act 2001 s. 220 and 221</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint of the <i>State Supply Commission Act 1991</i> as at 7 Jun 2002</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Competition Policy) Act 2003 Pt. 13</i>	70 of 2003	15 Dec 2003	21 Apr 2004 (see s. 2 and <i>Gazette</i> 20 Apr 2004 p. 1297)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 17 Div. 10</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1) and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
<i>State Supply Commission Amendment Act 2008</i>	15 of 2008	14 Apr 2008	s. 1 and 2: 14 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2: 26 May 2008 (see s. 2(b) and <i>Gazette</i> 23 May 2008 p. 1987)

**Reprint 2: The State Supply Commission Act 1991 as at 11 Jul 2008** (includes amendments listed above)

~~<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>Standardisation of Formatting Act 2010 s. 4</i>	19 of 2010	28 Jun 2010	<del>To be proclaimed</del> <a href="#">11 Sep 2010</a> (see s. 2(b)) and <i>Gazette</i> <a href="#">10 Sep 2010 p. 4341</a>

<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

<sup>3</sup> The *State Supply Commission Amendment Act (No. 2) 1994* s. 7(2) and (3) are transitional provisions that are of no further effect.

~~<sup>4</sup> On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 4 had not come into operation. It reads as follows:~~

~~**4. Schedule headings reformatted**~~

~~(1) This section amends the Acts listed in the Table.~~

~~(2) In each Schedule listed in the Table:~~

~~(a) if there is a title set out in the Table for the Schedule after the identifier for the Schedule insert that title;~~

~~(b) if there is a shoulder note set out in the Table for the Schedule at the end of the heading to the Schedule insert that shoulder note;~~

~~(c) reformat the heading to the Schedule, as amended by paragraphs (a) and (b) if applicable, so that it is in the current format.~~

**Table**

<b>Act</b>	<b>Identifier</b>	<b>Title</b>	<b>Shoulder note</b>
<i>State Supply Commission Act 1991</i>	Schedule 1		
	Schedule 2		

By Authority: JOHN A. STRIJK, Government Printer