



Western Australia

## **Western Australian Land Authority Act 1992**

Compare between:

[01 Feb 2007, 02-d0-04] and [16 Oct 2007, 02-e0-06]



Western Australia

## **Western Australian Land Authority Act 1992**

**An Act to establish an agency to provide, or promote the provision of, land, infrastructure, facilities and services for the social, economic and environmental needs of the State and for related purposes.**

*[Long title inserted by No. 60 of 1998 s. 4; amended by No. 67 of 2004 s. 4.]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Western Australian Land Authority Act 1992*<sup>1</sup>.

### **2. Commencement**

- (1) This section and sections 1 and 4 come into operation on the day on which this Act receives the Royal Assent<sup>1</sup>.
- (2) The other provisions of this Act come into operation on such day as is fixed by proclamation but in any event shall come into operation not later than 12 months after the date of Royal Assent<sup>1</sup>.

### **3. Objects**

The objects of this Act are —

- (a) the provision and development of industrial, commercial, residential and other land in a range of localities to meet the social and economic needs of the State while taking account of environmental outcomes;
  - (b) the completion of the Joondalup Centre project;
  - (c) the identification and development, or urban renewal, of centres of population and the provision or improvement of land for those centres;
- and
- (d) to facilitate the development and disposal of surplus public land.

*[Section 3 amended by No. 60 of 1998 s. 5; No. 67 of 2004 s. 5.]*

#### 4. Interpretation

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

“**acquire**” includes take on lease;

“**alternate director**” means a person appointed as such under clause 3 of Part A of Schedule 1;

“**Authority**” means the Western Australian Land Authority established by section 5(1);

“**board**” means the board of directors of the Authority provided for by section 6(1);

“**chairperson**” means the person appointed as such under section 6(2);

“**chief executive officer**” means the person appointed as such under section 10;

“**Commissioner for Public Sector Standards**” means the person holding or acting in the office created by section 16(1) of the *Public Sector Management Act 1994*;

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

“**Corporations Act**” means the *Corporations Act 2001* of the Commonwealth;

“**Crown land**” has the meaning given by the *Land Administration Act 1997*;

“**develop**” in relation to land, includes redevelop;

“**director**” means a person appointed to be a member of the board and except in section 6(2) and clauses 1, 2 and 3 of Part A of Schedule 1 includes an alternate director and a member of a committee;

“**dispose of**” includes sell, exchange, lease, let, grant a licence and grant any easement or right of way;

“**executive officer**” means a member of the staff of the Authority designated under section 14A as an executive officer;

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**“function”**, except in sections 16(1) and 17(1), includes powers, duties and authorities;

**“industrial purposes”** means —

- (a) manufacturing, production, technology advancement, fabrication of materials, packaging, processing, transport, distribution, storage, display of manufactured goods, research, development and service purposes, and the purposes of any other activity of an industrial nature; and
- (b) commercial, recreational, retail, accommodation and other purposes ancillary to purposes referred to in paragraph (a) —
  - (i) effected or to be effected in the same general vicinity as that in which purposes referred to in that paragraph are effected or to be effected; and
  - (ii) necessary or desirable for the wellbeing or convenience of businesses operating, and workforces employed, in the general vicinity referred to in subparagraph (i);

**“land”** includes —

- (a) land within the meaning of the *Land Administration Act 1997*;
- (b) any legal or equitable estate or interest in land;
- (c) buildings and other structures; and
- (d) infrastructure, facilities and services relating to land;

**“management”**, in relation to staff, includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment;

**“member of staff”** means a person engaged under section 11;

**“public authority”** means a Minister of the Crown in right of the State, Government department, State trading concern, State instrumentality, State public utility and any other person or

body, whether corporate or not, who or which, under the authority of any written law, administers or carries on for the benefit of the State a social service or public utility;

**“subsidiary”** means —

- (a) a body determined to be a subsidiary of the Authority under subsection (2); or
- (b) an interest or other rights of the Authority in a unit trust, joint venture or partnership where the interest or other rights of the Authority in connection with the unit trust, joint venture or partnership entitle the Authority to —
  - (i) control the composition of the governing body of the unit trust, joint venture or partnership;
  - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
  - (iii) control the business affairs of the unit trust, joint venture or partnership;

**“Treasurer”** means the Treasurer of the State.

- (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the Authority.

*[Section 4 amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 140(1) and 141; No. 60 of 1998 s. 6 and 27; No. 67 of 2004 s. 6; No. 77 of 2006 s. 17.]*

## **Part 2 — Western Australian Land Authority**

### **Division 1 — Establishment**

#### **5. Authority established**

- (1) A body called the Western Australian Land Authority is established.
- (2) The Authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Authority in its corporate name.
- (4) The Authority may use and operate under one or more trading names approved by the Minister, being —
  - (a) an abbreviation or adaptation of the name conferred by subsection (1); or
  - (b) a name other than that name.

*[Section 5 amended by No. 60 of 1998 s. 27; No. 67 of 2004 s. 7.]*

#### **5A. Authority is not an agent of the Crown**

The Authority is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

*[Section 5A inserted by No. 67 of 2004 s. 8.]*

#### **5B. Authority and officers not part of public sector**

- (1) The Authority is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the chief executive officer nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

*[Section 5B inserted by No. 67 of 2004 s. 8.]*

**6. Board of directors**

- (1) The Authority is to have a board of directors comprising not less than 5 nor more than 7 persons appointed in writing by the Minister.
- (1a) Of the persons appointed under subsection (1), 4 shall be persons each of them having in the opinion of the Minister, knowledge of and experience in any of the fields of town planning, housing, industry, commerce, finance, engineering and land development.
- (2) The Minister is to appoint one of the directors to be chairperson and another to be deputy chairperson of the board.
- (3) The chief executive officer shall not be appointed as a member of the board.
- (4) Schedule 1 has effect with respect to —
  - (a) the constitution and proceedings of the directors and the board; and
  - (b) the duties of the directors.

*[Section 6 amended by No. 73 of 1994 s. 4; No. 60 of 1998 s. 7(1).]*

**7. Functions of board**

The board is the Authority's governing body and, in the name of the Authority, is to perform the functions of the Authority under this Act or any other written law.

**8. Remuneration and expenses of directors**

- (1) A director is to be paid out of the funds of the Authority such remuneration and travelling and other allowances as are determined in his or her case by the Minister after consultation with the Minister for Public Sector Management.

- (2) Remuneration is not to be paid to a director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

*[Section 8 amended by No. 60 of 1998 s. 27; No. 67 of 2004 s. 9.]*

**8A. Conflict of duties**

- (1) If a person is both a public service officer and a director —
- (a) the person's duties as a director are to prevail if a conflict arises between those duties and the person's other duties as a public service officer; and
  - (b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.

- (2) In this section —

**“public service officer”** means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.

*[Section 8A inserted by No. 67 of 2004 s. 10.]*

**8B. Disclosure of material personal interests**

- (1) A director who has a notifiable interest in a matter involving the Authority must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$5 000.

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

- (3) In subsection (1) —

**“notifiable interest”** means an interest in the matter that will, under Schedule 1 Part B clause 2(1)(b), disqualify the director

from taking part in any deliberation or decision on the matter at a meeting of the board.

*[Section 8B inserted by No. 67 of 2004 s. 10.]*

*[9. Repealed by No. 67 of 2004 s. 11.]*

## **Division 2 — Staff**

### **10. Chief executive officer**

- (1) The Authority is to have a chief executive officer.
- (2) The function of the chief executive officer is, subject to the control of the board, to administer the day to day operations of the Authority.
- (3) The powers —
  - (a) to appoint and remove the chief executive officer; and
  - (b) to fix and alter the terms and conditions of service of the chief executive officer,are vested in the board.
- (4) If the *Salaries and Allowances Act 1975* applies to the chief executive officer, subsection (3)(b) has effect subject to that Act.
- (5) The board must get the Minister's written approval before it exercises any of the powers conferred by subsection (3).
- (6) The chief executive officer may resign from office by giving notice in writing to the board.
- (7) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under subsection (6) can only be exercised in accordance with those terms and conditions.
- (8) The board may appoint a person to act in the office of chief executive officer during any period when the chief executive

officer is, or is expected to be, absent from the State or on leave or unable for any other reason to carry out the duties of the office.

*[Section 10 inserted by No. 67 of 2004 s. 12(1).]*

**11. Staff**

- (1) The power to engage and manage the staff of the Authority is vested in the board.
- (2) The power conferred by subsection (1) —
  - (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
  - (b) does not preclude the delegation of any matter under section 23.
- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
  - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
  - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) There are excluded from the operation of Part II Division 2B of the *Industrial Relations Act 1979* —
  - (a) any matters dealt with by an instrument issued under section 12 except —
    - (i) rates of remuneration;
    - (ii) leave;
    - (iii) hours of duty; and
    - (iv) matters that are similar to matters prescribed for the purposes of section 99(1)(a)(iv) of the *Public Sector Management Act 1994*;

and

- (b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of section 99(1)(c) of the *Public Sector Management Act 1994*.
- (5) A matter referred to in subsection (4) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.
- (6) Nothing in this section other than subsection (5) affects the operation of Part VID of the *Industrial Relations Act 1979*.  
[Section 11 inserted by No. 67 of 2004 s. 12(1).]

**12. Minimum standards for staff management**

- (1) The board must, after consultation with the Commissioner for Public Sector Standards, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the Authority.
- (2) In complying with subsection (1) the board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.
- (3) Section 10(5) is not affected by the requirements of subsection (2).
- (4) The Commissioner for Public Sector Standards may at any time recommend to the board any amendment that the Commissioner thinks should be made to an instrument issued under this section.
- (5) The board may —
  - (a) amend an instrument issued under this section; or
  - (b) revoke it and substitute a new instrument,

but, except where subsection (4) applies, is to do so only after consultation with the Commissioner for Public Sector Standards.

*[Section 12 inserted by No. 67 of 2004 s. 12(1).]*

**13. Reports to Commissioner for Public Sector Standards**

- (1) The Commissioner for Public Sector Standards may in writing direct the board —
- (a) to report to the Commissioner on the observance of the minimum standards in force under section 12; and
  - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a direction given to it made under subsection (1).
- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on the content or observance of the minimum standards in force under section 12.

*[Section 13 inserted by No. 67 of 2004 s. 12(1).]*

**13A. Superannuation**

- (1) The Authority may grant, or make provision for the grant of, retirement benefits to members and former members of staff and their dependants and for that purpose may, subject to section 30 of the *State Superannuation Act 2000* —

- (a) establish, manage and control; or
- (b) enter into an arrangement with any body for the establishment, management and control by that body either alone or jointly with the Authority of,

any fund or scheme for the purpose of providing for such retirement benefits.

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- (2) The Authority may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) —  
**“members of staff”** includes the chief executive officer.
- (4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to the Authority or members or former members of staff or their dependants.  
*[Section 13A inserted by No. 67 of 2004 s. 12(1).]*

**14. Saving in respect of public service officer**

If a person appointed under section 10 or 11 was, immediately before being so appointed, a public service officer within the meaning of the *Public Sector Management Act 1994* —

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

*[Section 14 amended by No. 32 of 1994 s. 19.]*

**Division 3 — Conduct and integrity of staff**

*[Heading inserted by No. 67 of 2004 s. 13.]*

**14A. Duties of chief executive officer and staff**

- (1) Schedule 1A has effect in relation to the chief executive officer, former chief executive officers, members of staff and former members of staff.
- (2) For the purposes of Schedule 1A, the board may designate a member of staff as an executive officer by resolution —
- (a) passed by the board; and
- (b) notified in writing to the member of staff,

and may in the same manner revoke such a designation.

*[Section 14A inserted by No. 67 of 2004 s. 13.]*

**14B. Codes of conduct**

- (1) The board must, after consultation with the Commissioner for Public Sector Standards, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff.
- (2) In complying with subsection (1) the board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- (3) The board may, after consultation with the Commissioner for Public Sector Standards, amend any code of conduct in force under subsection (1) or revoke it and substitute a new code of conduct.
- (4) In this section and in sections 14C and 14D —  
**“members of staff”** includes the chief executive officer.

*[Section 14B inserted by No. 67 of 2004 s. 13.]*

**14C. Reports to Commissioner for Public Sector Standards**

- (1) The Commissioner for Public Sector Standards may in writing direct a board —
  - (a) to report to the Commissioner on the observance by members of staff of any code of conduct in force under section 14B; and
  - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a direction given to it under subsection (1).

- (3) The Commissioner for Public Sector Standards may at any time report to the Minister on any matter relating to the observance by members of staff of a code of conduct in force under section 14B that the Commissioner thinks should be brought to the Minister's attention.

*[Section 14C inserted by No. 67 of 2004 s. 13.]*

**14D. Reports to Minister**

- (1) The board, when it delivers to the Minister its annual report under section 25BA, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 14B.
- (2) The board is to give to the Commissioner for Public Sector Standards a copy of each report under subsection (1).

*[Section 14D inserted by No. 67 of 2004 s. 13.]*

### **Part 3 — Functions and powers**

[15. *Repealed by No. 67 of 2004 s. 14.*]

#### **16. Functions**

- (1) The Authority has the following functions —
- (a) to be an agency which provides, or promotes the provision of, land for the social and economic needs of the State;
  - (b) to be an agency through which the Crown and public authorities may dispose of land;
  - (c) to be an agency through which local governments and regional local governments may dispose of land in accordance with the *Local Government Act 1995*;
  - (d) to complete the development of the Joondalup Centre, in accordance with the plan referred to in section 18, on the land described in Schedule 2;
  - (e) to identify other potential centres of population, and centres of population in need of urban renewal, and use its powers to bring about the provision, or improvement, of land, infrastructure, facilities or services for the same.
- (1a) It is also a function of the Authority —
- (a) to do things that the board determines to be conducive or incidental to the performance of a function referred to in subsection (1); and
  - (b) to do things that it is authorised to do by any other written law.
- (2) In subsection (1) —
- “Joondalup Centre”** means the project for the provision of infrastructure and facilities for a centre of population (including infrastructure and facilities for community, cultural, recreational and sporting purposes) that before the commencement of this

section was being carried on by the Joondalup Development Corporation under the Act repealed by section 50(1)(c).

- (3) The Authority may perform any of its functions in the State or, with the Minister's approval, elsewhere.

*[Section 16 amended by No. 60 of 1998 s. 8; No. 67 of 2004 s. 15.]*

**16A. Duty to act in accordance with policy instrument**

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

*[Section 16A inserted by No. 60 of 1998 s. 9.]*

**16B. Authority to consider outcomes**

The Authority is to take account of the social, economic and environmental outcomes of the performance of its functions and is to ensure that those outcomes are balanced so far as is practicable.

*[Section 16B inserted by No. 67 of 2004 s. 16.]*

**16C. Authority can act at its discretion**

The conferral of a function on the Authority does not impose a duty on the Authority to do any particular thing and, subject to any enactment and any direction given to the Authority by the Minister, it has a discretion as to how and when it performs the function.

*[Section 16C inserted by No. 67 of 2004 s. 16.]*

**17. Powers**

- (1) The Authority may do all things necessary or convenient to be done for or in connection with the performance of its functions.

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- (2) The Authority may for the purpose of performing a function —
- (a) acquire, hold, deal with or dispose of land;
  - (b) undertake, plan, provide for, promote or coordinate the subdivision, amalgamation, improvement, development, alteration or management of land, whether or not the Authority holds the land in question;
  - (ba) extract minerals from land;
  - (c) enter into any contract or arrangement with any person, including a contract or arrangement for the doing of anything that the Authority is authorised to do under this Act —
    - (i) by that person; or
    - (ii) by the Authority, for that person;
  - (d) apply for the grant of any licence or other authority required by the Authority;
  - (e) charge fees for services provided to any person, including a Crown agency;
  - (f) carry out any investigation, survey, exploration or feasibility study;
  - (g) acquire, establish or operate —
    - (i) any undertaking necessary or convenient for the performance of the function; and
    - (ii) any associated undertaking;
  - (h) produce or deal in any equipment, facilities or system associated with, the performance of the function;
  - (i) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the Authority;
  - (j) participate in any business arrangement or acquire, hold or dispose of shares, units or other interests in, or relating to, a business arrangement;

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- (k) carry out any investigation, survey, exploration or feasibility study;
- (l) collaborate in, carry out, or procure the carrying out of, research or publish information that results from research;
- (m) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- (n) promote and market the Authority and its activities.
- (3) Subsection (2) does not limit subsection (1) or other powers of the Authority under this Act or any other written law.
- (4) A contract or arrangement under subsection (2)(c) or (j) may, with the consent of the owner and the occupier, relate to land that is not vested in, or held in fee simple by, the Authority or dedicated to the purposes of this Act.
- (4a) The Authority may —
- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
- (b) make any ex gratia payment that the board considers to be in the Authority's interest;
- (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the Authority.
- (5) In this section —
- “business arrangement”** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
- “participate”** includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement;

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“*person*” includes a public authority, local government or regional local government.

*[Section 17 amended by No. 14 of 1996 s. 4; No. 60 of 1998 s. 10; No. 67 of 2004 s. 17.]*

**17A. Transactions that require Ministerial approval**

- (1) Despite sections 16 and 17, the Authority must get the Minister’s approval before a transaction to which this section applies is entered into.
- (2) This section applies to a transaction if —
  - (a) it is to be entered into by the Authority or a subsidiary of the Authority;
  - (b) it is not exempt under section 17B; and
  - (c) the Authority’s liability exceeds the relevant amount.
- (3) For the purposes of subsection (2)(c) —
  - (a) the Authority’s liability is the amount or value of the consideration or the amount to be paid or received by the Authority or a subsidiary, ascertained as at the time when the transaction is entered into;
  - (b) the relevant amount is —
    - (i) a sum equal to 5% of the value of the total reported assets of the Authority as set out in the most recent annual report of the Authority under section 25BA; or
    - (ii) if a greater sum is prescribed, that greater sum.

*[Section 17A inserted by No. 67 of 2004 s. 18(1).]*

**17B. Exemptions from section 17A**

- (1) The Minister, with the Treasurer’s concurrence, may by order exempt a transaction or class of transaction from the operation of section 17A either unconditionally or on specified conditions.

- (2) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer's concurrence.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transaction or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 45A.

*[Section 17B inserted by No. 67 of 2004 s. 18(1).]*

#### **17C. Meaning of “transaction”**

In sections 17A and 17B —

**“transaction”** —

- (a) includes a contract or other arrangement or any exercise of the power conferred by section 17(2)(j) or 20; and
- (b) does not include —
  - (i) any acquisition or transaction referred to in section 22(1);
  - (ii) any transaction under section 33, 34 or 35A; or
  - (iii) an offer or agreement to enter into a transaction if the offer or agreement is conditional on the approval of the Minister.

*[Section 17C inserted by No. 67 of 2004 s. 18(1).]*

#### **18. Joondalup Centre plan**

- (1) The Authority is to perform its functions under section 16(1)(d) in accordance with the plan for the time being in force under this section.
- (2) The plan in force under Part IV of the Act repealed by section 50(1)(c) immediately before that repeal is continued in

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force for the purposes of this section, subject to any amendments approved under subsection (4).

- (3) The Authority is to —
  - (a) keep the plan under review and if requested by the Minister is to review the plan completely; and
  - (b) submit any proposed amendment arising out of a review to the Minister for approval.
- (4) The Minister may approve a proposed amendment or may approve it with such modifications as the Minister thinks fit.
- (5) A copy of the plan for the time being in force is to be kept in the offices of the Authority and is to be available for inspection by the public during office hours free of charge.

*[Section 18 amended by No. 60 of 1998 s. 27; No. 67 of 2004 s. 19.]*

**19. Authority to act on commercial principles**

- (1) The Authority is to —
  - (a) perform its functions in a cost-efficient manner;
  - (b) endeavour to achieve or surpass the long term financial targets specified in its strategic development plan as existing from time to time; and
  - (c) ensure that no individual project undertaken by the Authority has an expected internal rate of return that is less than the minimum rate of return specified in its strategic development plan as existing from time to time.
- (2) If there is any conflict or inconsistency between —
  - (a) the duty imposed by subsection (1) and a direction given by the Minister under section 24; or
  - (b) the duty imposed by subsection (1) and the duty imposed by section 16A,

the direction given under section 24, or the duty imposed by section 16A, prevails.

*[Section 19 inserted by No. 60 of 1998 s. 12.]*

## **20. Compulsory taking of land**

- (1) The provision of land under this Act —
- (a) for industrial purposes; or
  - (b) in the performance of the Authority's functions under section 16(1)(e),

is a public work for the purposes of Parts 9 and 10 of the *Land Administration Act 1997* and the *Public Works Act 1902*, and, if necessary for any of those purposes, the Authority is to be taken to be a local authority within the meaning of the *Public Works Act 1902*.

- (2) In applying Parts 9 and 10 of the *Land Administration Act 1997* and the *Public Works Act 1902* for the purposes of this section —

*[(a) deleted]*

- (b) sections 187, 188, 189, 190 and 191 of the *Land Administration Act 1997* do not apply to land that becomes vested in the Authority by Schedule 4 being land that was taken or acquired under the *Public Works Act 1902* before the commencement of this Act.

- (3) If land referred to in subsection (2)(b) is not required for the public work for which it was taken or acquired, the land may be held or used for some other purpose authorised by this Act if such purpose is one for which the Authority would be entitled to take the land pursuant to this section.

*[Section 20 amended by No. 31 of 1997 s. 140(2)-(4); No. 60 of 1998 s. 27; No. 67 of 2004 s. 20.]*

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**21. Dedication of Crown land to purposes of Act**

- (1) The Governor may by notice published in the *Gazette* —
- (a) dedicate any Crown land to the purposes of this Act; and
  - (b) cancel any dedication of land made under this subsection,

but may only do so on the recommendation of the Minister and after the Minister has consulted with the Ministers to whom the administration of the *Land Administration Act 1997* and the administration of the *Mining Act 1978* are for the time being respectively committed by the Governor.

- (2) While any land remains dedicated under subsection (1), that land is not to be disposed of otherwise than under the *Land Administration Act 1997* as read with subsection (3).
- (3) The Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor may dispose of land dedicated under subsection (1) —
- (a) to the Authority; or
  - (b) with the consent of the Authority, to a person other than the Authority,

and any such disposition is to be taken to have been effected under that Act.

- (4) When land is disposed of under the *Land Administration Act 1997* as read with subsection (3), it ceases to be dedicated under subsection (1).
- (5) Any land —
- (a) that has ceased to be dedicated under subsection (1); but
  - (b) that has not been disposed of under the *Land Administration Act 1997* as read with subsection (3),

is to be taken to be Crown land.

*[Section 21 amended by No. 31 of 1997 s. 141.]*

**22. Subsidiaries**

- (1) Despite sections 16 and 17, the Authority must get the Minister's approval before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.
- (3) The Authority must ensure that the constitution of every subsidiary of the Authority that under a written law or the Corporations Act is required to have a constitution —
  - (a) contains provisions to the effect of those required by Schedule 3;
  - (b) is consistent with this Act; and
  - (c) is not amended in a way that is inconsistent with this Act.
- (4) The Authority must, to the maximum extent practicable, ensure that every subsidiary of the Authority complies with its constitution and with this Act.
- (5) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of the Authority.
- (6) A director, the chief executive officer or a member of staff may with the approval of the Authority become —
  - (a) a member of the committee of an incorporated association; or
  - (b) a director of a company,that is or is to be a subsidiary of the Authority and may represent the interests of the Authority on that committee or the board of directors of that company.
- (7) Neither subsections (3) and (4), nor provisions referred to in subsection (3)(a) included in the constitution of a subsidiary,

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make the Authority or the Minister a director of a subsidiary for the purposes of the Corporations Act.

- (8) This section and Schedule 3 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the Corporations legislation as defined in section 9 of the Corporations Act.

*[Section 22 inserted by No. 67 of 2004 s. 21.]*

**23. Delegation**

- (1) The Authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
- (a) a director or directors;
  - (b) the chief executive officer;
  - (c) a member of staff;
  - (d) a committee; or
  - (e) any other person.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.
- (4) A function performed by a delegate is to be taken to be performed by the Authority.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of the Authority to act through its officers and agents in the normal course of business.

- (7) This section does not apply to the execution of documents but authority to execute documents on behalf of the Authority can be given under section 45.

*[Section 23 inserted by No. 60 of 1998 s. 14.]*

**23A. People dealing with Authority may make assumptions**

- (1) A person having dealings with the Authority is entitled to make the assumptions mentioned in section 23C.
- (2) In any proceedings in relation to the dealings, any assertion by the Authority that the matters that the person is entitled to assume were not correct must be disregarded.

*[Section 23A inserted by No. 67 of 2004 s. 22.]*

**23B. Third parties may make assumptions**

- (1) A person (the **“third party”**) having dealings with a person (the **“new owner”**) who has acquired, or purports to have acquired, title to property from the Authority (whether directly or indirectly) is entitled to make the assumptions mentioned in section 23C.
- (2) In any proceedings in relation to the dealings, any assertion by the Authority or the new owner that the matters that the third party is entitled to assume were not correct must be disregarded.

*[Section 23B inserted by No. 67 of 2004 s. 22.]*

**23C. Assumptions that may be made**

The assumptions that a person is, because of section 23A or 23B, entitled to make are —

- (a) that, at all relevant times, this Act has been complied with;
- (b) that a person who is held out by the Authority to be a director, the chief executive officer, an executive officer, a member of staff or an agent of a particular kind —

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- (i) has been properly appointed; and
  - (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive officer, a member of staff or an agent of that kind, as the case may require;
- (c) that a member of staff or agent of the Authority who has authority to issue a document on behalf of the Authority has authority to warrant that the document is genuine;
- (d) that a member of staff or agent of the Authority who has authority to issue a certified copy of a document on behalf of the Authority has authority to warrant that the copy is a true copy;
- (e) that a document has been properly sealed by the Authority if —
- (i) it bears what appears to be an imprint of the Authority's seal; and
  - (ii) the sealing of the document appears to comply with section 45;
- and
- (f) that the directors, chief executive officer, members of staff and agents of the Authority have properly performed their duties to the Authority.

*[Section 23C inserted by No. 67 of 2004 s. 22.]*

**23D. Exception to sections 23A and 23B**

- (1) Despite sections 23A and 23B, a person is not entitled to assume a matter mentioned in section 23C if —
- (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the Authority, the person ought to know that the assumption would be incorrect.

- (2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with the Authority, section 23A(2) does not apply to any assertion by the Authority in relation to the assumption.
- (3) If, because of subsection (1), the third party is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from the Authority of title to property, section 23B(2) does not apply to any assertion by the Authority or the new owner in relation to the assumption.

*[Section 23D inserted by No. 67 of 2004 s. 22.]*

## **Part 3A — Provisions about accountability**

*[Heading inserted by No. 60 of 1998 s. 15.]*

### **Division 1 — Ministerial directions and provision of information**

*[Heading inserted by No. 60 of 1998 s. 15.]*

#### **23E. Independence of Authority**

(1) In this section —

“**administrative policy requirement**” means a direction or administrative request given or made by or on behalf of the government to public authorities generally.

(2) The Authority does not have to comply with an administrative policy requirement unless —

- (a) directed to do so by the Minister under section 24; or
- (b) required to do so under any other written law.

*[Section 23E inserted by No. 67 of 2004 s. 23.]*

#### **24. Minister may give directions**

(1) The Minister may give directions in writing to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to subsection (3), the Authority is to give effect to any such direction.

(2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 45A —

- (a) within 14 days after the direction is given; or
- (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.

- (3) A direction under subsection (1) becomes effective —
- (a) on the expiry of 7 days after its receipt by the board or of any longer period that the Minister may, at the request of the board, determine; or
  - (b) if it is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, on its being confirmed under that section.
- (4) If the board asks the Minister to extend the 7 day period under subsection (1), the Minister must decide whether or not to agree to the request and notify the board of that decision before the 7 day period has expired.

*[Section 24 inserted by No. 67 of 2004 s. 24.]*

**24A. Consultation**

- (1) The board and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operations of the Authority or a subsidiary.
- (2) The board must consult the Minister before the Authority or a subsidiary enters upon a course of action that in the opinion of the board —
- (a) amounts to a major initiative; or
  - (b) is likely to be of significant public interest,

whether or not the course of action involves a transaction to which section 17A applies or an acquisition mentioned in section 22.

*[Section 24A inserted by No. 60 of 1998 s. 17; amended by No. 67 of 2004 s. 25.]*

**24B. Minister to be kept informed**

The Authority must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Authority and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the Authority and its subsidiaries;
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the opinion of the board may prevent, or significantly affect, achievement of the Authority's —
  - (i) objectives outlined in its statement of corporate intent; or
  - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

*[Section 24B inserted by No. 60 of 1998 s. 17; amended by No. 67 of 2004 s. 26.]*

**24C. Notice of financial difficulty**

- (1) The board must notify the Minister in the manner prescribed if the board forms the opinion that the Authority or a subsidiary is unable to, or will be unlikely to be able to, satisfy any financial obligation of the Authority or the subsidiary from the financial resources available or likely to be available to the Authority or the subsidiary at the time the financial obligation is due.
- (2) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the Authority or subsidiary is able to satisfy the relevant financial obligation when it is due; and

- (b) initiate such action as is required to ensure that the Authority or subsidiary is able to satisfy the relevant financial obligation when it is due.

*[Section 24C inserted by No. 60 of 1998 s. 17; amended by No. 67 of 2004 s. 27.]*

**24D. Protection from liability**

- (1) The Authority or a person performing functions under this Act is not liable —
  - (a) in respect of any claim arising as a consequence of the disclosure of information or documents under this Act; or
  - (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under this Act.
- (2) Subsection (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted contrary to section 9 or 10 of the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Section 24D inserted by No. 60 of 1998 s. 17.]*

**25. Minister to have access to information**

- (1) For the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Authority or a subsidiary and to have and retain copies of documents.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the chief executive officer or the board to furnish information to the Minister;
  - (b) request the chief executive officer or the board to give the Minister access to information;

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- (c) for the purposes of paragraph (b) make use of the staff of the Authority or a subsidiary to obtain the information and furnish it to the Minister.
- (3) The chief executive officer or the board is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (3a) Where the chief executive officer or the board furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the chief executive officer or the board the public disclosure of the information would adversely affect the commercial interests of the Authority or a subsidiary or of any other person.
- (4) In this section —
- “**document**” includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;
- “**information**” means documents or other information relating to the functions of the Authority being information, as so defined, specified, or of a description specified, by the Minister.
- [Section 25 amended by No. 60 of 1998 s. 27; No. 67 of 2004 s. 28.]*

**Division 2 — Strategic development plans and statements of corporate intent**

*[Heading inserted by No. 60 of 1998 s. 18(1).]*

**25A. Strategic development plan and statement of corporate intent**

- (1) The board must, in each year, prepare and submit to the Minister —

- (a) a draft strategic development plan for the Authority and any subsidiary; and
  - (b) a draft statement of corporate intent for the Authority and any subsidiary.
- (1a) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board —
- (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); and
  - (b) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1).
- (1b) The Minister may, with the concurrence of the Treasurer, by written notice to the board, cancel a notice given under subsection (1a).
- (1c) Each draft strategic development plan is to be submitted not later than —
- (a) the day fixed under subsection (1a)(a); or
  - (b) if there is for the time being no day so fixed — the period prescribed by the regulations before the start of the next financial year.
- (1d) Each draft statement of corporate intent is to be submitted not later than —
- (a) the day fixed under subsection (1a)(b); or
  - (b) if there is for the time being no day so fixed — the period prescribed by the regulations before the start of the next financial year.
- (2) Regulations are to make provision for the following —
- (a) the manner and form in which the board is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;

- (b) the period a strategic development plan or statement of corporate intent is to cover;
  - (c) the matters to be set out in a strategic development plan or statement of corporate intent, including matters related to any community service obligations that are to be performed;
  - (d) the functions of the board, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
  - (e) the operation of a strategic development plan or statement of corporate intent.
- (3) In subsection (2)(c) —
- “community service obligation”** means a commitment that arises because —
- (a) the Minister specifically requests the Authority to do something or specifically approves of the Authority doing something;
  - (b) the Authority could not do the thing and comply with section 19(1)(c); and
  - (c) things of that kind are not required to be done by businesses in the public or private sector generally.
- (4) If a regulation referred to in subsection (2) enables the Minister to give directions to the Authority, the Minister must within 14 days after a direction is given under the regulation cause a copy of the direction to be laid before each House of Parliament or dealt with in accordance with section 45A.
- (5) Regulations referred to in subsection (2) are not to be made except with the Treasurer’s concurrence.

*[Section 25A inserted by No. 60 of 1998 s. 18(1); amended by No. 67 of 2004 s. 29; No. 77 of 2006 s. 15.]*

### **Division 3 — Reporting requirements**

*[Heading inserted by No. 60 of 1998 s. 18(1).]*

#### **25B. Half-yearly reports**

- (1) The Authority must, for the first half of a financial year, give to the Minister a report on the operations of the Authority and of each subsidiary.
- (1a) A half-yearly report is to be prepared on a consolidated basis.
- (2) A half-yearly report —
  - (a) is to include any information prescribed for inclusion in the report or required to be included in the report by a relevant statement of corporate intent under Division 2; and
  - (b) must be given to the Minister within the prescribed period or within the period agreed between the Minister and the board.
- (3) The board must give a copy of each half-yearly report to the Treasurer.

*[Section 25B inserted by No. 60 of 1998 s. 18(1); amended by No. 67 of 2004 s. 30.]*

#### **25BA. Annual reports**

- (1) The Authority must prepare and deliver to the Minister in each year separate annual reports on the operations of the Authority and of each subsidiary.
- (2) The annual report of the Authority is to be sent to the Minister on or before a day prescribed, or provided for, in Schedule 3A and the other reports are to be sent to the Minister at the same time.
- (3) The Minister must within 21 days after the day on which a copy of an annual report of the Authority is delivered to the Minister

cause a copy of the report to be laid before each House of Parliament or dealt with under section 45A.

- (4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with under section 45A.

*[Section 25BA inserted by No. 67 of 2004 s. 31.]*

**25BB. Contents of annual reports**

- (1) The annual report in respect of the Authority or a subsidiary must —
- (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the Authority or the subsidiary;
  - (b) include a commentary on any significant issues relating to the performance of the Authority or the subsidiary that were raised in any relevant statement of corporate intent under Division 2;
  - (c) include particulars of any directions given by the Minister under section 24(1) or 38(3) or (6) or referred to in section 25A(4) that —
    - (i) apply to the Authority or the subsidiary; and
    - (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;
  - (d) include particulars of the impact on the financial position, profits and losses and prospects of the Authority or the subsidiary of any directions that were given by the Minister under section 24(1) during the relevant financial year;
  - (e) include total value of payments and details of remuneration made to directors of the board of the Authority; and

- (f) include the information required to be included in the report by a relevant statement of corporate intent under Division 2.
- (2) The requirements of section 25BA and this section are in addition to those of Schedule 3A.

*[Section 25BB inserted by No. 67 of 2004 s. 31.]*

**25C. Deletion of commercially sensitive matters from reports**

- (1) The board may request the Minister to delete from the copies of a report under section 25B or 25BA (and accompanying documents) that are to be made public, a matter that the board believes, on reasonable grounds, to be of a commercially sensitive nature.
- (1a) The Minister may comply with a request under subsection (1) unless the matter is one that is required under clause 32 of Schedule 3A to be included in the report.
- (2) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter of a commercially sensitive nature has been deleted from it.

*[Section 25C inserted by No. 60 of 1998 s. 18(1); amended by No. 67 of 2004 s. 32.]*

*[Part 4 heading and s. 26-30 repealed by No. 60 of 1998 s. 19(1) <sup>2</sup>.]*

## Part 5 — Financial provisions

### 31. Accounts

(1) In this section —

“*account*” means —

- (a) an agency special purpose account established under section 16 of the *Financial Management Act 2006*; or
- (b) an account held, with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

(2) The Authority is to maintain one or more accounts.

(3) Money received by the Authority is to be credited to, and expenditure of the Authority is to be paid from, an account maintained by it.

*[Section 31 inserted by No. 67 of 2004 s. 33; amended by No. 77 of 2006 s. 17.]*

### 32. Liability of Authority for duties, taxes, rates etc.

*[(1) repealed]*

(2) Subject to subsection (3), land vested in or acquired by the Authority is not rateable land for the purposes of the *Local Government Act 1995*.

(3) If the Authority leases or lets land vested in or acquired by the Authority, or holds land jointly with another person who is not a public authority, the land is, by reason of the lease, tenancy or joint holding, rateable land for the purposes of the *Local Government Act 1995* in the hands of the lessee, tenant or joint holder.

(4) The Authority is to pay to the Treasurer in respect of each financial year an amount equivalent to the sum of all local government rates and charges that, but for subsection (2) and section 6.26(2)(a)(i) of the *Local Government Act 1995*, the

Authority would have been liable to pay in respect of that financial year.

- (5) Subsection (4) does not apply in relation to land that is rateable under subsection (3).
- (6) An amount payable under subsection (4) —
- (a) is to be determined in accordance with such principles; and
  - (b) is to be paid at such time or times,
- as the Treasurer may direct.
- (7) The first payment under subsection (4) is to be in respect of the next full financial year after the commencement of the *Western Australian Land Authority Amendment Act 1998*<sup>1</sup>.

*[Section 32 inserted by No. 60 of 1998 s. 20(1)<sup>3</sup>; amended by No. 67 of 2004 s. 34.]*

### **33. Investment**

Funds of the Authority that are not in an agency special purpose account established under section 16 of the *Financial Management Act 2006* and are not being used for the performance of the Authority's functions may be invested in such investments as the board determines.

*[Section 33 inserted by No. 67 of 2004 s. 35; amended by No. 77 of 2006 s. 17.]*

### **34. Borrowing**

- (1) The Authority may, subject to section 35 —
- (a) borrow or re-borrow moneys;
  - (b) obtain credit; or
  - (c) otherwise arrange for financial accommodation to be extended to the Authority.

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- (2) The Authority is to keep such registers for the purposes of this section as may be prescribed.

*[Section 34 inserted by No. 67 of 2004 s. 35.]*

**35. Borrowing restrictions**

- (1) The Authority is not to exercise the power conferred by section 34(1)(a) except with, and in accordance with, the Treasurer's approval.
- (2) Without limiting subsection (1), the Treasurer's approval may be given by way of a notice under subsection (3).
- (3) The Treasurer may, by notice to the Authority, impose monetary limits on the exercise of the power conferred by section 34(1)(a).
- (4) A monetary limit is to be determined for the exercise of that power in a financial year specified by the Treasurer and may relate to —
- (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of that power; or
  - (b) the total liabilities that can be incurred during that year as a result of the exercise of that power.
- (5) A monetary limit for the time being in force may be varied for a subsequent financial year by the Treasurer by a further notice under subsection (3).
- (6) A monetary limit for the time being in force continues to apply until it is so varied.
- (7) The Treasurer may, by notice to the Authority, impose other conditions on the exercise of the power conferred by section 34(1)(a) or vary a condition for the time being in force.
- (8) The Authority must comply with any monetary limit or other condition for the time being in force in relation to it.

- (9) A liability of the Authority is not unenforceable or in any way affected by a failure of the Authority to comply with this section.
- (10) No person dealing with the Authority is bound or concerned to enquire whether the Authority has complied or is complying with this section.

*[Section 35 inserted by No. 67 of 2004 s. 35.]*

### **35A. Hedging transactions**

- (1) The Authority may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 34 —
- (a) enter into an agreement or arrangement to effect any of the following transactions —
    - (i) a foreign exchange transaction;
    - (ii) a forward foreign exchange transaction;
    - (iii) a currency swap;
    - (iv) a forward currency swap;
    - (v) a foreign currency cap, a foreign currency collar or a foreign currency floor;
    - (vi) a forward interest rate agreement;
    - (vii) an interest rate swap;
    - (viii) a forward interest rate swap;
    - (ix) an interest rate cap, an interest rate collar or an interest rate floor;
    - (x) an option for interest rate or currency management purposes;
    - (xi) a futures contract or a futures option within the meaning of the Corporations Act;
    - (xii) a transaction of such other class as is approved in writing by the Minister, with the Treasurer's

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concurrence, as a class of transactions to which this paragraph applies;

or

- (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
  - (i) 2 or more transactions permitted under paragraph (a); or
  - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 34.

(2) In subsection (1)(a) —

“*interest rate*” includes coupon rate, discount rate and yield.

*[Section 35A inserted by No. 67 of 2004 s. 35.]*

**36. Guarantees**

- (1) The Treasurer, with the Minister’s concurrence, may, in the name and on behalf of the State, guarantee the performance by the Authority, in the State or elsewhere, of any financial obligation of the Authority arising under section 34.
- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
  - (a) is by this subsection 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.
- (4) The Treasurer is to cause any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

*[Section 36 inserted by No. 67 of 2004 s. 35; amended by  
No. 77 of 2006 s. 4 and 5(1).]*

**37. Charges for guarantee**

- (1) The Treasurer may, after consultation with the board, fix charges to be paid by the Authority to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 36.
- (2) Payments by the Authority to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

*[Section 37 inserted by No. 67 of 2004 s. 35; amended by  
No. 77 of 2006 s. 4.]*

**38. Dividends**

- (1) Any surplus remaining at the end of a financial year after the cost of the operations of the Authority and the amount of any interim dividend paid under subsection (7) during that financial year have been taken into account —
  - (a) may, in accordance with this section, be paid wholly or partly as a final dividend to the Consolidated Account; and
  - (b) to the extent that it is not so paid, is to be applied for the purposes of the Authority.
- (2) The board, as soon as is practicable after the end of each financial year, is to make a recommendation to the Minister as to —
  - (a) whether a final dividend is to be paid; and
  - (b) if so, the amount to be paid.
- (3) The Minister, with the Treasurer's concurrence —
  - (a) may accept a recommendation under subsection (2); or

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- (b) after consultation with the board, is to direct that the amount of the final dividend is to be some other amount.
- (4) The Authority is to pay the dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (3); and
  - (b) in any case not later than —
    - (i) 6 months after the end of the financial year to which the final dividend relates; or
    - (ii) such other time as may be agreed between the Treasurer and the board.
- (5) If the board considers that payment of an interim dividend to the Consolidated Account is justified during part of a financial year the board may make a recommendation to the Minister as to the amount of the interim dividend that the board recommends should be paid.
- (6) The Minister, with the Treasurer's concurrence —
  - (a) may accept a recommendation under subsection (5); or
  - (b) after consultation with the board, is to direct that the amount of the interim dividend is to be some other amount.
- (7) The Authority is to pay the dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (6); and
  - (b) in any case not later than the end of the financial year to which the interim dividend relates.
- (8) The Minister must, within 14 days after a direction is given under subsection (3) or (6), cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 45A.

*[Section 38 inserted by No. 60 of 1998 s. 22; amended by No. 67 of 2004 s. 36; No. 77 of 2006 s. 4.]*

**39. Limited application of *Financial Management Act 2006* or *Auditor General Act 2006***

- (1) Despite anything in the *Financial Management Act 2006* or the *Auditor General Act 2006*, those Acts, other than the provisions referred to in subsection (2) and clauses 33(2) and 34(2) of Schedule 3A, do not apply to the Authority or any person performing functions under this Act.
- (2) The Minister and the board must comply with sections 81 and 82 of the *Financial Management Act 2006* as if —
  - (a) the Authority were a statutory authority; and
  - (b) the board were its accountable authority,within the meaning of that Act.

*[Section 39 inserted by No. 67 of 2004 s. 37; amended by No. 77 of 2006 s. 17.]*

**40. Financial administration and audit**

- (1) Schedule 3A has effect in relation to the financial administration and audit of the Authority.
- (2) Schedule 3A may be amended by regulations made by the Governor in accordance with subsections (3) and (4).
- (3) If —
  - (a) a provision of Schedule 3A that set out the substance of a provision of the Corporations Act, does not accurately reflect the corresponding provision of the Corporations Act as in force for the time being;
  - (b) the Corporations Act as in force for the time being does not contain a provision that corresponds to a provision of Schedule 3A that set out the substance of a provision of the Corporations Act; or
  - (c) the Corporations Act as in force for the time being contains a provision relating to a matter provided for by

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Schedule 3A, the substance of which is not set out in Schedule 3A,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be in such form that Schedule 3A as amended will, in the opinion of the Minister, be substantially the same as the corresponding provisions of the Corporations Act, but with such modifications as are consistent with the policy of this Act.
- (5) If because of the amendment of Schedule 3A by regulations under subsection (2) it is necessary or expedient to —
  - (a) delete or alter a reference in this Act to a provision of Schedule 3A;
  - (b) include in this Act a reference to a provision of Schedule 3A; or
  - (c) make some other consequential modification to this Act,the regulations may amend this Act for the purpose of deleting, altering or including the reference or making the modification.
- (6) Regulations are not to be made under subsection (2) except with the Treasurer's concurrence.

*[Section 40 inserted by No. 67 of 2004 s. 37.]*

*[Part 6 (s. 41-44) repealed by No. 60 of 1998 s. 23.]*

## Part 7 — Miscellaneous

### 45. Execution of documents

- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority if —
  - (a) the common seal of the Authority is affixed to it in the presence of 2 directors or of a director and the chief executive officer; or
  - (b) it is signed on behalf of the Authority by a person or persons referred to in subsection (4).
- (3) The common seal of the Authority is not to be affixed to a document except in accordance with this section.
- (4) The Authority may, by authorisation in writing under its common seal, authorise a director, the chief executive officer or a member of staff to execute documents on its behalf.
- (5) An authorisation under subsection (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;and
  - (b) may be presumed by a person dealing with the Authority to continue —
    - (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authorisation is given to the person so dealing.
- (6) A document executed by a person under an authorisation under subsection (4) is not to be regarded as a deed unless the person

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executes it as a deed and is permitted to do so by the authorisation.

- (7) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

*[Section 45 inserted by No. 67 of 2004 s. 38.]*

**45AA. Contract formalities**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of the Authority may make, vary or discharge a contract in the name of or on behalf of the Authority in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the Authority and other parties to the contract.
- (3) Subsection (1) does not prevent the Authority from making, varying or discharging a contract under its common seal.

*[Section 45AA inserted by No. 67 of 2004 s. 38.]*

**45A. Supplementary provision about laying documents before Parliament**

- (1) If—
- (a) at the commencement of a period referred to in section 17B(4), 24(2), 25A(4), 25BA(3) or 38(8), Schedule 1 Part B clause 2(10) or Schedule 3A clause 28(5) or 33 in respect of a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

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

- (2) A copy of a document transmitted to the Clerk of a House is to be —
- (a) taken to have been laid before that House; and
  - (b) taken to be a document published by order or under the authority of that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

*[Section 45A inserted by No. 60 of 1998 s. 24; amended by No. 67 of 2004 s. 39.]*

*[46. Repealed by No. 60 of 1998 s. 19(2).]*

#### **47. 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) and (3) repealed]*

*[Section 47 amended by No. 60 of 1998 s. 27.]*

#### **48. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 6 months after every 5th anniversary of the commencement of the *Western Australian Land Authority Amendment Act 2004*<sup>1</sup>.
- (2) In the course of that review the Minister is to consider and have regard to —

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- (a) the effectiveness of the operations of the Authority;
  - (b) the need for the continuation of the functions of the Authority; and
  - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report on the review within 6 months after the review is carried out and cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

*[Section 48 inserted by No. 60 of 1998 s. 25; amended by No. 67 of 2004 s. 40.]*

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

**50.     Repeals, savings and transitional**

- (1) The following Acts are repealed —
- (a) the *Industrial Lands Development Authority Act 1966* \*;
  - (b) the *Industrial Development (Resumption of Land) Act 1945* \*\*;
  - (c) the *Joondalup Centre Act 1976* \*\*\*.
- (2) Schedule 4 has effect for the purpose of the transition to the provisions of this Act from those of the Acts repealed by subsection (1).

*[\* Reprinted as approved 12 Mar 1981 and amended by Acts Nos. 63 of 1981, 57 and 98 of 1985, 32 of 1987 and 52 of 1990.*

*\*\* Reprinted as approved 25 Jul 1962 and amended by Acts Nos. 63 of 1981 and 57 of 1985.*

*\*\*\* Act No. 88 of 1976; amended by Acts Nos. 11 and 98 of 1985, 113 of 1987 and 5 of 1989.]*

**51. Transfer of certain assets etc. of WADC**

- (1) The Authority may agree to acquire property from the WADC if it is of the opinion that such property is suitable for its functions in respect of residential land.
- (2) The price of such property shall be the sum agreed by the Authority and WADC as being the market value of the property and being —
  - (a) in the case of land, not greater than an amount certified by a licensed valuer as being the value of the land, less the agreed value of any liabilities relating to the land; and
  - (b) in the case of any other property not greater than the depreciated value of the property as carried in the accounts of the WADC.
- (3) If the liabilities relating to any land agreed to be acquired under subsection (1) exceed the value of the land, the WADC is liable to the Authority for the amount of the difference.
- (4) Any amount owing by the Authority to the WADC by operation of this section is payable by the Authority on demand by the WADC; but the WADC is not to make such demand unless the Minister consents to its doing so.
- (5) If at the time when all WADC assets have been converted into money there is any debt owing by the Authority to the WADC by operation of this section, the Minister to whom the administration of the *Western Australian Development Corporation Act 1983*<sup>4</sup> is committed by the Governor may by instrument cancel that debt.
- (6) The Ministers shall by order published in the *Gazette* allocate to the Authority the property agreed to be acquired under subsection (1) and, in the case of land, the liabilities of the WADC relating to that land; and shall include in the order a sufficient description to enable the property and liabilities to be identified.

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- (7) On the publication of an order under subsection (6) —
- (a) the property to which the order relates vests in the Authority together with all claims, rights and remedies that the WADC had in respect of the property;
  - (b) the Authority becomes liable to pay, bear or discharge all the liabilities that are allocated under the order; and
  - (c) the Authority is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the WADC so far as the records relate to property or liabilities allocated to the Authority under the order.
- (8) The transfer of any liability of the WADC under this section to the Authority does not affect any guarantee under section 21 of the *Western Australian Development Corporation Act 1983*<sup>4</sup> in force immediately before the transfer and subsection (2) of section 21 of that Act is to be taken to continue to apply after that transfer and notwithstanding that that subsection may be repealed.
- (9) Any agreement or instrument subsisting immediately before the publication of an order under this section to which the WADC was a party or which contains a reference to the WADC or a trading name used by the WADC has effect after that publication as if —
- (a) the Authority were substituted for the WADC as a party to the agreement or instrument; and
  - (b) any reference in the agreement or instrument to the WADC were (unless the context otherwise requires) a reference to the Authority,

but in this subsection “*WADC*” means the WADC only in relation to agreements or instruments in respect of any property or liability allocated to the Authority under this section.

- (10) Any legal or other proceedings or any remedies that might, but for this section, have been commenced, continued, discontinued or available by or against or to the WADC in relation to any property or liability allocated to the Authority under this section, may be commenced, continued, discontinued, and shall be available, by or against or to the Authority.
- (11) In this section —
- “Ministers”** means the Ministers to whom the administration of this Act and the *Western Australian Development Corporation Act 1983*<sup>4</sup> are respectively committed by the Governor, acting jointly;
- “property”** and **“liabilities”** have the respective meanings assigned by clause 1 of Schedule 4;
- “WADC”** means the Western Australian Development Corporation established by the *Western Australian Development Corporation Act 1983*<sup>4</sup>.

[52. Repealed by No. 60 of 1998 s. 27.]

## Schedule 1

[section 6(4)]

### Part A

#### Constitution and proceedings of directors and board

**1. Term of office**

- (1) Except as otherwise provided by this Act, a 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 re-appointed.
- (2) A director, unless he or she sooner resigns, is removed from office or his or her office becomes vacant under clause 2(b), continues in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

**2. Resignation, removal, etc.**

The office of a director becomes vacant if he or she —

- (a) resigns the 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;
- (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.

*[Clause 2 amended by No. 10 of 2001 s. 212(a).]*

**3. Alternate directors**

- (1) Where a 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 that other person is to be taken to be a director.

- (2) Where the director who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subclause (1), appoint another person to act in his or her place as director.
- (3) No act or omission of a person acting in place of another under this clause is 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 may be terminated at any time by the Minister.

**4. Chairperson and deputy chairperson**

- (1) The office of chairperson or deputy chairperson becomes vacant if —
  - (a) the person holding the office resigns the office by notice in writing to the Minister;
  - (b) the person holding the office ceases to be a director; or
  - (c) the Minister declares the office to be vacant.
- (2) During any vacancy in the office of chairperson or while he or she is unable to act by reason of sickness, absence or other cause, the deputy chairperson is to perform the functions of the chairperson.
- (3) No act or omission of the deputy chairperson acting as the chairperson is to be questioned on the ground that the occasion for his or her so acting 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 are to be held 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 deputy chairperson are absent from a meeting the directors present are to appoint one of their number to preside.

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- (5) A quorum for a meeting of the board is a simple majority of 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 and voting on a question are equally divided, the chairperson, deputy chairperson or other person presiding is to have a casting vote in addition to his or her deliberative vote.
- (8) The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

*[Clause 5 amended by No. 67 of 2004 s. 41(1).]*

**5A. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(5) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is able to communicate with every other participating director instantaneously at all times while participating in the proceedings.

*[Clause 5A inserted by No. 60 of 1998 s. 26.]*

**6. Committees**

- (1) The board may from time to time appoint committees of such directors, or 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 board and to the terms of any delegation under section 23, 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, telegram, 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**

**Duties of directors**

**1. Interpretation**

- (1) In this Part “*near relative*”, in relation to a director, means a 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 that committee.

*[Clause 1 amended by No. 28 of 2003 s. 208.]*

**2. Conflict of interest**

- (1) Subject to subclauses (3) and (6), 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 or in respect of any proposed resolution under subclause (6) in relation to the proposal, whether in relation to that or a different director.
- (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) No disclosure is 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

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within the meaning of the *Corporations Act 2001* of the Commonwealth) in a public company; 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 Authority.
- (6) Subclause (1)(b) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the proposal; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the proposal.
- (7) Despite Part A clause 5(5), if a director is disqualified under subclause (1)(b) in relation to a proposal, a quorum is present during the consideration of that proposal if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that proposal.
- (8) The Minister may deal with a proposal in so far as the board cannot deal with it because of subclause (7).
- (9) The Minister may by writing declare that subclauses (1)(b) and (7) do not apply in relation to a specified proposal either generally or in voting on particular resolutions.
- (10) The Minister must within 14 days after a declaration under subclause (9) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 45A.

*[Clause 2 amended by No. 10 of 2001 s. 212(b); No. 67 of 2004 s. 41(2)-(4).]*

*[3-5. Repealed by No. 41 of 1996 s. 3.]*

**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 1A — Provisions about duties of chief executive officer and staff

*[Heading inserted by No. 67 of 2004 s. 42.]*

[s. 14A]

### Division 1 — General duties of chief executive officer

*[Heading inserted by No. 67 of 2004 s. 42.]*

#### 1. Duties of chief executive officer

- (1) It is declared that the chief executive officer has —
- (a) the same fiduciary relationship with the Authority; and
  - (b) the same duties to the Authority to act with loyalty and in good faith,
- as a director of a company incorporated under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the board of the Authority and not otherwise.

*[Clause 1 inserted by No. 67 of 2004 s. 42.]*

### Division 2 — Particular duties stated

*[Heading inserted by No. 67 of 2004 s. 42.]*

#### 2. Interpretation

- (1) In this Division —
- “**officer**” means —
    - (a) the chief executive officer; or
    - (b) an executive officer or other member of staff of the Authority;
  - “**summary conviction penalty**”, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.

- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- (3) For the chief executive officer, the duties provided for by this Division are in addition to those in clause 1.  
*[Clause 2 inserted by No. 67 of 2004 s. 42.]*

**3. Duty to act honestly**

- (1) The chief executive officer or an executive officer must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A person who contravenes subclause (1) —
  - (a) with intent to deceive or defraud —
    - (i) the Authority; or
    - (ii) creditors of the Authority or of any other person;
  - or
  - (b) for any other fraudulent purpose,is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.
- (3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.  
*[Clause 3 inserted by No. 67 of 2004 s. 42.]*

**4. Duty to exercise reasonable care and diligence**

The chief executive officer or an executive officer must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Authority's circumstances.

Penalty: \$5 000.

*[Clause 4 inserted by No. 67 of 2004 s. 42.]*

**5. Duty not to make improper use of information**

(1) An officer or a former officer of the Authority must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Authority.

(2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

*[Clause 5 inserted by No. 67 of 2004 s. 42.]*

**6. Duty not to make improper use of position**

(1) An officer must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Authority.

(2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

*[Clause 6 inserted by No. 67 of 2004 s. 42.]*

**Division 3 — Compensation**

*[Heading inserted by No. 67 of 2004 s. 42.]*

**7. Payment of compensation may be ordered**

(1) Where —

- (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and
- (b) the court is satisfied that the Authority has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the Authority of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

*[Clause 7 inserted by No. 67 of 2004 s. 42.]*

**8. Civil proceedings for recovery**

Where a person contravenes clause 3, 4, 5 or 6, the Authority may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the Authority by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the Authority has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

*[Clause 8 inserted by No. 67 of 2004 s. 42.]*

**Division 4 — Relief from liability**

*[Heading inserted by No. 67 of 2004 s. 42.]*

**9. Relief from liability**

For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- (a) is, or may be, liable under that section;
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

*[Clause 9 inserted by No. 67 of 2004 s. 42.]*

**10. Application for relief**

- (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

*[Clause 10 inserted by No. 67 of 2004 s. 42.]*

**11. Case may be withdrawn from jury**

Where a case to which clause 9 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 person ought under that section to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

*[Clause 11 inserted by No. 67 of 2004 s. 42.]*

**12. Compliance with directions**

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

*[Clause 12 inserted by No. 67 of 2004 s. 42.]*

**Division 5 — Restrictions on indemnities and exemptions**

*[Heading inserted by No. 67 of 2004 s. 42.]*

**13. Indemnification and exemption of chief executive officer and executive officers**

- (1) The Authority or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to the Authority incurred as the chief executive officer or an executive officer.
- (2) The Authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the chief executive officer or an executive officer —
  - (a) a liability owed to the Authority or a subsidiary;
  - (b) a liability that is owed to someone other than the Authority or a subsidiary and did not arise out of conduct in good faith.
- (3) Subclause (2) does not apply to a liability for legal costs.
- (4) The Authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the chief executive officer or an executive officer if the costs are incurred —
  - (a) in defending or resisting a proceeding in which the person is found to have a liability for which the person could not be indemnified under subclause (2);
  - (b) in defending or resisting criminal proceedings in which the person is found guilty; or
  - (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.
- (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

*[Clause 13 inserted by No. 67 of 2004 s. 42.]*

**14. Insurance premiums for certain liabilities of chief executive officer and executive officers**

- (1) The Authority or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the chief executive officer or an

**Schedule 1A** Provisions about duties of chief executive officer and staff

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executive officer against a liability (other than one for legal costs) arising out of —

- (a) conduct involving a wilful breach of duty in relation to the Authority; or
  - (b) a contravention of clause 5 or 6.
- (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

*[Clause 14 inserted by No. 67 of 2004 s. 42.]*

**15. Certain indemnities, exemptions, payments and agreements not authorised and certain documents void**

- (1) Clauses 13 and 14 do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.

*[Clause 15 inserted by No. 67 of 2004 s. 42.]*

## Schedule 2

[section 16(1)(c)]

### Area comprising Joondalup Centre

All that portion of land bounded by lines starting at the western corner of Swan Location 7898 and extending westerly and northerly along boundaries of Location 3324 and onwards to a point situate 200 metres north of the northern side of Road Number 3590; thence north-easterly to a point on the western boundary of the northern severance of Location 3323, situate 300 metres from the northern side of Road Number 3590; thence north-easterly to a point on the eastern boundary of the northern severance of Location 3323, situate 150 metres from the northern side of Road Number 3590; thence north-easterly to the north-western corner of Lot 4 of Location 1149; as shown on Land Titles Office<sup>12</sup> Diagram 40753; thence southerly along the easternmost boundary of Perthshire Location 107 to a northern boundary of Class A Reserve 31048; thence generally north-westerly, generally south-easterly, westerly and again generally south-easterly along boundaries of that reserve to the south-eastern corner of Swan Location 2734; thence south-westerly 475.8 metres along the south-easterly boundary of that location; thence 204 degrees 20 minutes, 14.43 metres; thence 211 degrees 29 minutes, 63.709 metres; thence 218 degrees 39 minutes, 63.709 metres; thence 225 degrees 49 minutes, 63.709 metres; thence 232 degrees 55 minutes, 63.522 metres; thence 237 degrees 53 minutes, 46.984 metres to the northern-most south-western boundary of Perthshire Location 101, as shown on Main Roads Department Plan 7631-305-1; thence south-easterly and south-westerly along boundaries of that location and onwards to the southern side of Mullaloo Drive; thence generally south-westerly along that side to the northern-most north-western corner of Swan Location 8278; thence north-easterly to and along the north-western boundary of Location 7811 to the south-eastern corner of Lot 1 of Location 1370, as shown on Land Titles Office<sup>12</sup> Diagram 50288; thence generally westerly along southern boundaries of that lot to the prolongation south-westerly of the north-western boundary of Lot 597, as shown on Land Titles Office<sup>12</sup> Plan 10951; thence north-easterly to and north-easterly and north-westerly along boundaries of that lot to a north-easterly boundary of Location 1370; thence north-westerly along that boundary to the starting point, as shown on Town Planning Department Plan 2.0169.

*[Schedule 2 amended by No. 81 of 1996 s. 153(3); No. 60 of 2006 s. 119.]*

### Schedule 3 — Provisions to be included in constitution of subsidiaries

*[Heading inserted by No. 67 of 2004 s. 43.]*

[s. 22]

#### 1. Disposal of shares

- (1) The Authority is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the Authority.

*[Clause 1 inserted by No. 67 of 2004 s. 43.]*

#### 2. Directors

- (1) The directors of the subsidiary are to be appointed by the Authority, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the Authority and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 3A and in the constitution of the subsidiary.

*[Clause 2 inserted by No. 67 of 2004 s. 43.]*

#### 3. Further shares

Shares may not be issued or transferred except with the prior written approval of the Minister.

*[Clause 3 inserted by No. 67 of 2004 s. 43.]*

#### 4. Subsidiaries of subsidiary

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.

- (2) The subsidiary must ensure that the constitution of each of its subsidiaries at all times comply with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

*[Clause 4 inserted by No. 67 of 2004 s. 43.]*

## Schedule 3A — Financial administration and audit

*[Heading inserted by No. 67 of 2004 s. 43.]*

[s. 40(1)]

### Division 1 — Preliminary

*[Heading inserted by No. 67 of 2004 s. 43.]*

#### 1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —  
“**financial year**” has the meaning given by clause 23(1);  
“**regulations**” means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions “**accounting standard**”, “**company**” and “**financial records**”) have the respective meanings given to those terms in Part 1.2 of the Corporations Act.

*[Clause 1 inserted by No. 67 of 2004 s. 43.]*

### Division 2 — Financial records

*[Heading inserted by No. 67 of 2004 s. 43.]*

#### 2. Obligation to keep financial records

(cf. s. 286 Corporations Act)

- (1) The Authority must keep written financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

*[Clause 2 inserted by No. 67 of 2004 s. 43.]*

**3. Physical format**

(cf. s. 288 Corporations Act)

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

*[Clause 3 inserted by No. 67 of 2004 s. 43.]*

**4. Place where records are kept**

(cf. s. 289 Corporations Act)

- (1) The Authority may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) The Authority must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct the Authority to produce specified financial records that are kept outside Australia.
- (5) The direction must —
  - (a) be in writing;
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

*[Clause 4 inserted by No. 67 of 2004 s. 43.]*

**5. Director access**

(cf. s. 290 Corporations Act)

- (1) A director has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.

**Schedule 3A** Financial administration and audit

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- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
  - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

*[Clause 5 inserted by No. 67 of 2004 s. 43.]*

**Division 3 — Financial reporting**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**Subdivision 1 — Annual financial reports and directors' reports**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**6. Preparation of annual financial reports and directors' reports**

(cf. s. 292 Corporations Act)

A financial report and a directors' report must be prepared for each financial year by the Authority before 30 September.

*[Clause 6 inserted by No. 67 of 2004 s. 43.]*

**7. Contents of annual financial report**

(cf. s. 295 Corporations Act)

- (1) The financial report for a financial year consists of —
  - (a) the financial statements for the year;
  - (b) the notes to the financial statements; and
  - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
  - (a) a profit and loss statement for the year;
  - (b) a balance sheet as at the end of the year;

- (c) a statement of cash flows for the year; and
  - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (3) The notes to the financial statements are —
- (a) disclosures required by the regulations;
  - (b) notes required by the accounting standards; and
  - (c) any other information necessary to give a true and fair view.
- (4) The directors' declaration is a declaration by the directors —
- (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards;
  - (b) that the financial statements and notes give a true and fair view;
  - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the Authority will be able to pay its debts as and when they become due and payable; and
  - (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
    - (i) clause 8 (compliance with accounting standards and regulations); and
    - (ii) clause 9 (true and fair view).
- (5) The declaration must —
- (a) be made in accordance with a resolution of the directors;
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by at least 2 directors.

*[Clause 7 inserted by No. 67 of 2004 s. 43.]*

**8. Compliance with accounting standards and regulations**

(cf. s. 296 Corporations Act)

- (1) The financial report for a financial year must comply with the accounting standards.

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- (2) The financial report must comply with any further requirements in the regulations.

*[Clause 8 inserted by No. 67 of 2004 s. 43.]*

**9. True and fair view**

(cf. s. 297 Corporations Act)

- (1) The financial statements and notes for a financial year must give a true and fair view of —
- (a) the financial position and performance of the Authority; and
  - (b) if consolidated financial statements are required under clause 7(2)(d) — the financial position and performance of the consolidated entity of which the Authority is part.
- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

*[Clause 9 inserted by No. 67 of 2004 s. 43.]*

**10. Annual directors' report**

(cf. s. 298 Corporations Act)

- (1) The Authority must prepare a directors' report for each financial year.
- (2) The report must include —
- (a) the general information required by clause 11; and
  - (b) the specific information required by clause 12.
- (3) The report must —
- (a) be made in accordance with a resolution of the directors;
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

*[Clause 10 inserted by No. 67 of 2004 s. 43.]*

**11. Annual directors' report — general information**

(cf. s. 299 Corporations Act)

- (1) The directors' report for a financial year must —

- (a) contain a review of operations during the year of the Authority and the results of those operations;
  - (b) give details of any significant changes in the Authority's state of affairs during the year;
  - (c) state the Authority's principal activities during the year and any significant changes in the nature of those activities during the year;
  - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
    - (i) the Authority's operations in future financial years;
    - (ii) the results of those operations in future financial years; or
    - (iii) the Authority's state of affairs in future financial years;
  - (e) refer to likely developments in the Authority's operations in future financial years and the expected results of those operations; and
  - (f) if the Authority's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the Authority's performance in relation to environmental regulation.
- (2) If consolidated financial statements are required under clause 7(2)(d), the report must be on the consolidated entity of which the Authority is part.
- (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —
- (a) the Authority; or
  - (b) if consolidated financial statements are required under clause 7(2)(d) — the consolidated entity or any entity (including the Authority) that is part of the consolidated entity.
- (4) If material is omitted from the report, the report must say so.

*[Clause 11 inserted by No. 67 of 2004 s. 43.]*

**12. Annual directors' report — specific information**

(cf. s. 300 Corporations Act)

- (1) The directors' report for a financial year must include details of —
  - (a) dividends or distributions paid during the year;
  - (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
  - (c) the name of each person who has been a director of the Authority at any time during or since the end of the year and the period for which they were a director.
- (2) The report must also include details of —
  - (a) each director's qualifications, experience and special responsibilities;
  - (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
  - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.
- (3) Details do not have to be included in the directors' report for a financial year if they are included in the financial report for that financial year.

*[Clause 12 inserted by No. 67 of 2004 s. 43.]*

**13. Annual directors' report — other specific information**

(cf. s. 300A Corporations Act)

The directors' report for a financial year must also include —

- (a) discussion of board policy for determining the nature and amount of emoluments of senior executives of the Authority;
- (b) discussion of the relationship between such policy and the Authority's performance; and
- (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the Authority receiving the highest emolument.

*[Clause 13 inserted by No. 67 of 2004 s. 43.]*

**14. Audit of annual financial report**

(cf. s. 301 Corporations Act)

The Authority must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 33 and 34 and obtain an auditor's report.

*[Clause 14 inserted by No. 67 of 2004 s. 43.]*

**Subdivision 2 — Audit and auditor's report**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**15. Audit opinion**

(cf. s. 307 Corporations Act)

The Auditor General must form an opinion about —

- (a) whether the financial report is in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and
  - (ii) clause 9 (true and fair view);
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit;
- (c) whether the Authority has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the Authority has kept other records and registers as required by this Schedule.

*[Clause 15 inserted by No. 67 of 2004 s. 43.]*

**16. Auditor General's report on annual financial report**

(cf. s. 308 Corporations Act)

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —

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- (a) clause 8 (compliance with accounting standards and regulations); and
  - (b) clause 9 (true and fair view).
- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
- (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

*[Clause 16 inserted by No. 67 of 2004 s. 43.]*

**17. Auditor General's power to obtain information**

(cf. s. 310 Corporations Act)

The Auditor General —

- (a) has a right of access at all reasonable times to the books of the Authority; and
- (b) may require any officer to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

*[Clause 17 inserted by No. 67 of 2004 s. 43.]*

**18. Assisting Auditor General**

(cf. s. 312 Corporations Act)

An officer of the Authority must —

- (a) allow the Auditor General access to the books of the Authority; and
- (b) give the Auditor General any information, explanation or assistance required under clause 17.

*[Clause 18 inserted by No. 67 of 2004 s. 43.]*

**Subdivision 3 — Special provisions about consolidated financial statements**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**19. Directors and officers of controlled entity to give information**

(cf. s. 323 Corporations Act)

If the Authority has to prepare consolidated financial statements, a director or officer of a controlled entity must give the Authority all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

*[Clause 19 inserted by No. 67 of 2004 s. 43.]*

**20. Auditor General's power to obtain information from controlled entity**

(cf. s. 323A Corporations Act)

- (1) Where the financial report includes consolidated financial statements, the Auditor General —
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.
- (2) Any information, explanation or other assistance required under subclause (1)(b) is to be given at the expense of the Authority.

*[Clause 20 inserted by No. 67 of 2004 s. 43.]*

**21. Controlled entity to assist the Auditor General**

(cf. s. 323B Corporations Act)

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If the Authority has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and
- (b) give the Auditor General any information, explanation or assistance required under clause 20.

*[Clause 21 inserted by No. 67 of 2004 s. 43.]*

**22. Application of subdivision to entity that has ceased to be controlled**

(cf. s. 323C Corporations Act)

Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the Authority when its financial report is being prepared or audited.

*[Clause 22 inserted by No. 67 of 2004 s. 43.]*

**Subdivision 4 — Financial years of the Authority and the entities it controls**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**23. Financial years**

(cf. s. 323D Corporations Act)

- (1) The financial year of the Authority is the 12 month period ending on 30 June.
- (2) Where the Authority has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

*[Clause 23 inserted by No. 67 of 2004 s. 43.]*

**Division 4 — Accounting standards**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**24. Accounting standards**

(cf. s. 334 Corporations Act)

- (1) An accounting standard applies to —
  - (a) periods ending after the commencement of the standard; or
  - (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) The Authority may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors.

*[Clause 24 inserted by No. 67 of 2004 s. 43.]*

**25. Equity accounting**

(cf. s. 335 Corporations Act)

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

*[Clause 25 inserted by No. 67 of 2004 s. 43.]*

**26. Interpretation of accounting standards**

(cf. s. 337 Corporations Act)

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

*[Clause 26 inserted by No. 67 of 2004 s. 43.]*

**27. Evidence of text of accounting standard**

(cf. s. 339 Corporations Act)

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —

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- (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
  - (b) a specified provision of a standard of that kind.
- (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
- (a) the specified standard was in force at that time under that section; and
  - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

*[Clause 27 inserted by No. 67 of 2004 s. 43.]*

**Division 5 — Exemptions and modifications**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**28. Treasurer's power to make specific exemption orders**

(cf. s. 340 Corporations Act)

- (1) On an application made in accordance with subclause (3) in relation to the Authority, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
- (a) the directors;
  - (b) the Authority;
  - (c) the Auditor General.
- (2) The order may —
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The application must be —
- (a) authorised by a resolution of the directors;
  - (b) in writing and signed by a director; and
  - (c) lodged with the Treasurer.

- (4) The Treasurer must give the Authority written notice of the making, revocation or suspension of the order.
- (5) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 45A within 14 days after the order is made.

*[Clause 28 inserted by No. 67 of 2004 s. 43.]*

**29. Criteria for specific exemption orders and class orders**

(cf. s. 342 Corporations Act)

To make an order under clause 28, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

- (a) make the financial report or other reports misleading;
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

*[Clause 29 inserted by No. 67 of 2004 s. 43.]*

**Division 6 — Sanctions for contraventions of this Schedule**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**30. Compliance with Divisions 2 and 3**

(cf. s. 344 Corporations Act)

- (1) A director of the Authority must take all reasonable steps to comply with, or to secure compliance with, Divisions 2 and 3.
- (2) A person who contravenes subclause (1) with intent to deceive or defraud the Minister or the Treasurer or creditors of the Authority, is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

- (3) In subclause (2) —

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“*summary conviction penalty*” has the same meaning as in section 5 of *The Criminal Code*.

- (4) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.
- (5) Subclause (1) does not apply to clause 17, 18, 20 or 21.  
*[Clause 30 inserted by No. 67 of 2004 s. 43.]*

**Division 7 — Miscellaneous**

*[Heading inserted by No. 67 of 2004 s. 43.]*

**31. Deadline for reporting to the Minister**

(cf. s. 315 Corporations Act)

- (1) In subclause (2) —  
“*the prescribed day*” means the fifth working day after receipt by the directors under clause 16 of the Auditor General’s report.
- (2) The Authority must as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 25BA.  
*[Clause 31 inserted by No. 67 of 2004 s. 43.]*

**32. Annual financial reporting to the Minister**

(cf. s. 314 Corporations Act)

The annual report of the Authority under section 25BA is to contain the following documents —

- (a) the financial report for the year;
- (b) the directors’ report for the year;
- (c) the Auditor General’s report on the financial report;
- (d) a copy of any order of the Treasurer under clause 28.

*[Clause 32 inserted by No. 67 of 2004 s. 43.]*

**33. Audit**

- (1) If the Auditor General cannot complete the audit of the Authority by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his or her inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament or dealt with under section 45A within 7 sitting days of receiving that report.
- (2) Section 21 of the *Auditor General Act 2006* applies to the audit of the Authority.

*[Clause 33 inserted by No. 67 of 2004 s. 43; amended by No. 77 of 2006 s. 17.]*

**34. Powers and duties of the Auditor General**

- (1) If the Auditor General in the course of the performance of duties as auditor of the Authority and its subsidiaries, is satisfied that —
  - (a) there has been a contravention of any provision of this Schedule; and
  - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board,

the Auditor General is to forthwith report the matter to the Minister in writing.

- (2) The provisions of sections 14, 16 to 18, 24 to 37, 45 and 46 of the *Auditor General Act 2006* apply to the Authority as if it were a statutory authority named in Schedule 1 to the *Financial Management Act 2006*.

*[Clause 34 inserted by No. 67 of 2004 s. 43; amended by No. 77 of 2006 s. 17.]*

**35. Extension of time**

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on

**Schedule 3A** Financial administration and audit

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application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.

- (2) Where the Minister grants an extension of time under subclause (1), clause 28(5) applies to the memorandum evidencing the extension as if it were an order under clause 28(1).

*[Clause 35 inserted by No. 67 of 2004 s. 43.]*

## Schedule 4

[section 50(2)]

### Transitional and savings provisions

#### 1. Interpretation

In this Schedule, unless the contrary intention appears —

**“commencement day”** means the day on which section 50 comes into operation;

**“former body”** means the Industrial Lands Development Authority established by the Act repealed by section 50(1)(a) and the Joondalup Development Corporation provided for by the Act repealed by section 50(1)(c);

**“liability”** includes any obligation, claim or demand, present or future, certain or contingent, ascertained or sounding only in damages;

**“property”** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action and a power of disposition over property.

#### 2. Staff

- (1) All persons who were employed or engaged by a former body immediately before the commencement day are to be taken to be employed or engaged by the Authority under section 11 on the same terms and conditions, including the salary payable, as those on which they were employed or engaged immediately before the commencement day.
- (2) Subclause (1) applies to the General Manager holding office immediately before the commencement day under section 31 of the Act repealed by section 50(1)(c) but after the commencement day he or she does not by virtue of that subclause become the chief executive officer of the Authority.
- (3) On the publication of an order under section 51 such persons as the Minister determines who were employed or engaged immediately before that publication under section 15 of the *Western Australian Development Corporation Act 1983*<sup>4</sup> in performing duties relating exclusively to property allocated to the Authority under that order are

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to be taken to have been employed or engaged by the Authority under section 11 on the same terms and conditions, including the salary payable, as those on which they were employed immediately before the publication of the order.

- (4) A person to whom subclause (1) or (3) applies retains all his or her existing and accruing rights (including rights under the *Superannuation and Family Benefits Act 1938*) as if his or her employment or engagement under this Act were a continuation of his or her employment or engagement immediately before the commencement day.
- (5) Nothing in this clause prevents the exercise by the Authority after the commencement day of its powers in relation to the management of the staff of the Authority.

**3. Assets, liabilities etc., to vest in Authority**

- (1) On the commencement day —
  - (a) any property, whether within or outside the State, which was vested in a former body or, to which a former body was entitled immediately before that day vests in the Authority together with all claims, rights and remedies that the former body then had in respect of the property;
  - (b) the Authority becomes liable to pay, bear or discharge all the liabilities of a former body that are properly payable; and
  - (c) the Authority is to take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of a former body.
- (2) Anything commenced by a former body before the commencement day may be continued by the Authority, so far as it is authorised by this Act.

**4. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which a former body was a party; or
- (b) which contains a reference to a former body,

has effect after that day as if—

- (c) the Authority were substituted for the former body as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to a former body were (unless the context otherwise requires) a reference to the Authority.

**5. Registration of documents**

- (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Administration Act 1997*<sup>5</sup> and the *Mining Act 1978*, and any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take note of the provisions of this Schedule and section 51 and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Schedule and section 51.
- (2) Without limiting subclause (1) a statement in an instrument executed by the Authority that any estate or interest in land or other property has become vested in it under this Schedule or section 51 is evidence of that fact.

**6. Funds**

On the commencement day the fund under section 6B of the *Industrial Lands Development Authority Act 1966* and the account under section 41(2) of the *Joondalup Centre Act 1976* are to be closed and the moneys placed to the credit of the Account referred to in section 31(2).

**7. Particular transitional provisions for *Industrial Lands Development Authority Act 1966***

- (1) In this clause ~~“the repealed Act”~~ means the *Industrial Lands Development Authority Act 1966*.

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- (2) On and after the commencement day, the matters referred to in subclause (3) continue to be governed by the repealed Act (except section 14), notwithstanding its repeal, but —
- (a) the functions under that Act are to be performed, for the purposes of this clause, by the Authority established under this Act; and
  - (b) references in that Act to the Fund are to be read as references to the Account referred to in section 31(2).
- (3) Those matters are —
- (a) land to which section 7B(1) of the repealed Act applied immediately before the commencement day other than such land as is freehold land under the *Transfer of Land Act 1893* unless in respect of such last-mentioned land —
    - (i) a memorial remained registered under section 7D(1) of the repealed Act on the commencement day; or
    - (ii) immediately before the commencement day, a caveat under Part V of the *Transfer of Land Act 1893* by the Industrial Lands Development Authority or its predecessors or the relevant Minister or a caveat under section 182(iii) of the *Transfer of Land Act 1893* by the Registrar of Titles was in force;
  - (b) any memorial that remained registered under section 7D(1) of the repealed Act on the commencement day in respect of land under the operation of the *Transfer of Land Act 1893*;
  - (c) any injunction or interim injunction granted under section 8 of the repealed Act and in force immediately before the commencement day;
  - (d) any land referred to in —
    - (i) Part V of the Schedule to the repealed Act and not acquired by or transferred to the Industrial Lands Development Authority; or
    - (ii) Part VI of the Schedule to the repealed Act and not acquired by or transferred to that Authority from the State Planning Commission,

under section 12A of the repealed Act before the commencement day;

- (e) any advance made, or guarantee given, by the Treasurer under section 13 of the repealed Act and not repaid, or still in force, as the case may be, immediately before the commencement day.
- (4) For the purposes of subclause (3)(e), section 13(3) of the repealed Act is to be taken to continue to apply after the commencement day notwithstanding the repeal.

**8. Guarantees under *Joondalup Centre Act 1976***

The repeal of the *Joondalup Centre Act 1976* by section 50(1)(c) does not affect any guarantee under section 43 of that Act in force immediately before the commencement day and section 43(8) of that Act is to be taken to continue in force for the purposes of this clause.

**9. Particular transitional provisions for *Industrial Development (Resumption of Land) Act 1945***

- (1) In this clause **“the repealed Act”** means the *Industrial Development (Resumption of Land) Act 1945*.
- (2) Land that was, immediately before the commencement day, dedicated under section 11 of the repealed Act is to be taken, on and after that day, to be land dedicated under section 21.
- (3) If a person was, immediately before the commencement day, a proprietor, purchaser or lessee of land to whom section 13 of the repealed Act applied, that section continues, after that day, to apply to the person while he or she continues to be the proprietor, purchaser or lessee of the land in question.
- (4) All land —
  - (a) to which section 14 of the repealed Act applied immediately before the commencement day; and
  - (b) in respect of which immediately before that day a caveat under Part V of the *Transfer of Land Act 1893* by the Industrial Lands Development Authority or its predecessors or the relevant Minister or a caveat under section 182(iii) of

**Schedule 4** Transitional and savings provisions

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the *Transfer of Land Act 1893* by the Registrar of Titles was in force,

shall on the commencement day be taken to be land in respect of which a memorial is for the time being registered under section 26.

- (5) Any such caveat shall on and after the commencement day be deemed to be a memorial registered under section 26 in respect of that land and to have ceased to be a caveat in force under Part V or section 188(iii) of the *Transfer of Land Act 1893*.

**10. Annual report for part of a year**

- (1) The “accountable authority”, within the meaning in the *Financial Administration and Audit Act 1985*, of a former body is to report in respect of that body as required by section 66 of that Act, but limited to the period from the preceding 1 July to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.
- (2) A former body and its accountable authority as constituted immediately before the commencement day continues in existence for the purpose of subclause (1) and for that purpose only.
- (3) The Authority is to arrange for the provision of such clerical and other assistance as is reasonably required for the purpose of subclause (1).

**11. Interpretation Act to apply**

With respect to the repeals effected by section 50, this Act is supplementary to, and does not displace the operation of, the *Interpretation Act 1984*.

### Notes

<sup>1</sup> This is a compilation of the *Western Australian Land Authority Act 1992* 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>Western Australian Land Authority Act 1992</i>	35 of 1992	23 Jun 1992	s. 1, 2 and 4: 23 Jun 1992 (see s. 2(1)); balance: 1 Jul 1992 (see s. 2(2) and <i>Gazette</i> 30 Jun 1992 p. 2869)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> s. 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996</i> s. 153(3)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2)
<i>Western Australian Land Authority Amendment Act 1997</i>	28 of 1997	26 Sep 1997	26 Sep 1997 (see s. 2)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 67 and s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)

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Short title	Number and year	Assent	Commencement
<i>Western Australian Land Authority Amendment Act 1998</i> <sup>2, 3, 6, 7</sup>	60 of 1998	31 Dec 1998	31 Dec 1998 (see s. 2)
<b>Reprint of the <i>Western Australian Land Authority Act 1992</i> as at 16 Apr 1999</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 55	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)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 61	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 129	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Western Australian Land Authority Amendment Act 2004</i> Pt. 2 <sup>8, 9</sup>	67 of 2004	8 Dec 2004	25 Dec 2004 (see s. 2 and <i>Gazette</i> 24 Dec 2004 p. 6247)
<b>Reprint 2: The <i>Western Australian Land Authority Act 1992</i> as at 4 Feb 2005</b> (includes amendments listed above)			
<i>Land Information Authority Act 2006</i> s. 119	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1), 15 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

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<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. 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>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 72 <sup>10</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<a href="#"><u>State Superannuation Amendment Act 2007</u></a> s. 88 <sup>12</sup>	<a href="#"><u>25 of 2007</u></a>	<a href="#"><u>16 Oct 2007</u></a>	<a href="#"><u>Operative on publication of an order under the State Superannuation Act 2000 s. 56 (“transfer time”) (see s. 2(1)(c))</u></a>

<sup>2</sup> The *Western Australian Land Authority Amendment Act 1998* s. 19(3) and (4) read as follows:

“

- (3) Despite subsections (1) and (2), on and from the commencement of this Act —
- (a) a memorial registered or deemed to be registered under Part 4 before the commencement of this Act remains of effect, and may be withdrawn and registered again under Part 4, as if the Part had not been repealed;
  - (b) the functions of a relevant official under Part 4 in relation to memorials are to be performed as if the Part had not been repealed;
  - (c) a pending memorial —
    - (i) may be registered under Part 4;
    - (ii) has effect after registration as if Part 4 had not been repealed; and
    - (iii) may be withdrawn and registered again under Part 4,
 as if the Part had not been repealed; and
  - (d) Part 4 and section 46 continue to apply and have effect in relation to any memorial referred to in paragraph (a) or (c) and to offences and other matters related to the memorial.
- (4) In subsection (3) —
- “**pending memorial**” means a memorial in respect of any land disposed of by the Authority pursuant to a transaction entered into before the commencement of this Act;

“**relevant official**” has the same meaning as it had under the *Western Australian Land Authority Act 1992* immediately before the commencement of this Act.

<sup>3</sup> The *Western Australian Land Authority Amendment Act 1998* s. 20(2) reads as follows:

“

- (2) Section 32 as inserted by subsection (1) —
- (a) does not apply to a deed or other instrument that —
    - (i) has been signed or sealed by or on behalf of all parties that are required to do so; or
    - (ii) evidences a transaction that was completed, before the commencement of this Act; and
  - (b) subject to paragraph (a), applies in respect of any duty, tax, rate or other impost the Authority becomes liable to and chargeable with after the commencement of this Act but not otherwise.

”.

<sup>4</sup> Repealed by the *WADC and WA Exim Corporation Repeal Act 1998*.

<sup>5</sup> Under the *Land Administration Act 1997* s. 281(3), a reference to the *Land Act 1933* in a written law is, unless the contrary is intended, to be read and construed as a reference to the *Land Administration Act 1997*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

<sup>6</sup> The *Western Australian Land Authority Amendment Act 1998* s. 7(2) reads as follows:

“

- (2) The persons who were directors of the board immediately before the commencement continue in office under and subject to the *Western Australian Land Authority Act 1992*.

”.

<sup>7</sup> The *Western Australian Land Authority Amendment Act 1998* s. 18(2), (3) and (4) read as follows:

“

- (2) The board must prepare and submit to the Minister for the Minister’s agreement, as soon as is practicable after the commencement of this Act, a draft interim strategic development plan and a draft interim statement of corporate intent.

- (3) When the board and the Minister, with the concurrence of the Treasurer, reach agreement on the draft interim strategic development plan and the draft interim statement of corporate intent, they become the strategic development plan and the statement of corporate intent for the remainder of the financial year in which this Act comes into operation, or until agreement is reached on a draft strategic development plan and draft statement of corporate intent, whichever is the later.
- (4) The first half-yearly report by the board is to be in respect of the first half of the next full financial year after the commencement of this Act.

8 The *Western Australian Land Authority Amendment Act 2004* s. 12(2)-(8) read as follows:

“

- (2) The person who was the chief executive officer immediately before the commencement of this section continues in office, under and subject to the WALA Act, as the chief executive officer as if that person had been appointed by the board.
- (3) Other people who were in the employment of the Authority immediately before the commencement of this section continue, under and subject to the WALA Act, as members of staff of the Authority.
- (4) Except as otherwise agreed by the chief executive officer or member of staff, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the chief executive officer or a member of staff of the Authority are not affected, prejudiced or interrupted by —
  - (a) the operation of subsection (2) or (3); or
  - (b) the Authority ceasing to be an SES organisation under the *Public Sector Management Act 1994*.
- (5) A person mentioned in subsection (2) or (3) is to be regarded as an employee of an organisation for the purposes of Part 6 of the *Public Sector Management Act 1994*.
- (6) Subsection (5) ceases to apply at the expiration of 2 years after the commencement of this section.
- (7) A person mentioned in subsection (3) is to be regarded as having been engaged under section 11 of the WALA Act.
- (8) Where this section uses a term that is given a meaning in the WALA Act, the term has that meaning in this section.

<sup>9</sup> The *Western Australian Land Authority Amendment Act 2004* s. 18(2) reads as follows:

“

- (2) Until the first annual report under section 25BA of the WALA Act as inserted by section 31, the reference in section 17A(3)(b) of the WALA Act to an annual report includes a reference to an annual report under the *Financial Administration and Audit Act 1985*.

”

<sup>10</sup> As at the date on which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 72 had not come into operation. It reads as follows:

“

**72. *Western Australian Land Authority Act 1992* amended**

Clause 2(4) in Schedule 4 to the *Western Australian Land Authority Act 1992* is amended by deleting “(including rights under the *Superannuation and Family Benefits Act 1938*)”.

”

<sup>11</sup> Lands Titles Office diagrams are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

<sup>12</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Act 2007* s. 88 had not come into operation. It reads as follows:

“

**88. *Western Australian Land Authority Act 1992* amended**

(1) The amendments in this section are to the *Western Australian Land Authority Act 1992*.

(2) Section 13A(1) is amended by deleting “section 30” and inserting instead —

“ section 76 ”.

”