

LIBRARY BOARD OF WESTERN AUSTRALIA.

15° and 16° Geo. VI., No. XLII.

No. 42 of 1951.

AN ACT to provide for the Constitution and Functions of a Library Board and for other purposes.

[Assented to 20th December, 1951.]

B^E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Library Board of Western Australia Act, 1951.* Short title.

2. This Act shall come into operation on a day to be fixed by Proclamation. Commencement.

3. For the purposes of shortening this Act, the following expressions, where used in this Act, have the respective meanings attributed by this section, unless the context requires otherwise— Shortening provisions. Interpretation.

“approved body” means an organisation which is not a local authority and which, pursuant to the provisions of this Act, elects and is declared by the Governor to be a body approved as suitable for participation in a scheme;

“Board” means The Library Board of Western Australia, constituted pursuant to the provisions of this Act;

“*ex officio* member” means a person holding the office of member of the Board pursuant to the provisions of paragraph (a) of subsection (3) of section five of this Act;

“Fund” means The Library Board of Western Australia Fund;

“library” includes a children’s library, but does not include a library conducted by private enterprise for profit;

“library service” does not include a library service conducted by private enterprise for profit;

“local authority” means—

a municipal council constituted pursuant to the provisions of the Municipal Corporations Act;

a road board constituted pursuant to the provisions of the Road Districts Act;

“local government Act” means—

Municipal Corporations Act;

Road Districts Act;

“Municipal Corporations Act” means the Municipal Corporations Act, 1906-1947, and any Act passed in amendment of or substitution for that Act;

“nominee member” means a person occupying office of member of the Board pursuant to the provisions of paragraph (b) of subsections (3) or (4) of section five of this Act;

“participating body” means—

- (i) a local authority;
- (ii) an approved body

which elects and is declared to be an approved body pursuant to the provisions of this Act during such time as it continues to be and to participate as such in a scheme;

“registered free library” means a library registered as a free library by the Board in pursuance of the provisions of this Act;

“Road Districts Act” means the Road Districts Act, 1919-1948, and any Acts passed in amendment of or substitution for that Act;

“scheme” means a scheme for the promotion, organisation, or supervision, generally or in any particular case, pursuant to the provisions of this Act, of free libraries and free library services.

4. (1) A local authority or an approved body— Participating
bodies.
- (a) shall become a participating body if and when the Governor makes a declaration to that effect;
 - (b) shall continue to be a participating body unless and until the Governor cancels such declaration.
- (2) Such declaration shall not be made—
- (a) unless the governing body of a local authority or an approved body elects by resolution to become a participating body;
 - (b) if the governing body of a local authority does not so resolve, unless the ratepayers by a majority vote at a poll held in manner prescribed, elect that the local authority becomes a participating body.
- (3) A local authority or approved body shall cease to be a participating body, if and when the Governor cancels such declaration.

(4) Such declaration—

- (a) may be cancelled if on consideration of a report from the Board, the Governor is satisfied that the local authority or approved body is no longer suitable to be a participating body;
- (b) shall, where applicable to an approved body, be cancelled if the governing body of the approved body, resolves that it no longer remains a participating body;
- (c) shall, where applicable to a local authority, be cancelled, if the ratepayers by a majority vote at a poll held in manner prescribed, elect that the local authority no longer remains a participating body.

(5) Such cancellation shall not affect the liability, if any, of a local authority or approved body to the Board.

The Board.

5. (1) For the purposes of this Act, there shall be constituted a board having the name of The Library Board of Western Australia.

Offices of membership.

(2) The Board shall consist of thirteen members, including the Chairman and Vice Chairman.

Appoint-ment.

(3) (a) Three of the thirteen members, each by virtue of his office, shall be—

- (i) the Director of Education;
- (ii) the Director of Adult Education; and
- (iii) the Chairman of Trustees of the Public Library, Museum and Art Gallery.

(b) The remaining ten members, who shall be appointed by the Governor to represent the respective bodies mentioned in this paragraph, shall be—

- (i) a person selected by the Minister from a panel of not more than three persons whose names are submitted by the City of Perth, a body constituted pursuant to the provisions of the *Municipal Corporations Act*;
- (ii) a person selected by the Minister from a panel of not more than three persons whose names are submitted by the Fremantle City Council;

- (iii) a person selected by the Minister from a panel of not more than three persons whose names are submitted by the Body known as the Road Board Association of Western Australia;
- (iv) a person selected by the Minister from a panel of not more than three persons whose names are submitted by the body known as The Country Municipal Councils Association of Western Australia;
- (v) a person selected by the Minister from a panel of not more than three persons whose names are submitted by the body known as the Local Government Association of Western Australia; and
- (vi) three persons selected by the Minister from a panel of six persons whose names are submitted by the body known as the Library Association of Australia, Western Australian Branch.
- (vii) two persons not holding any qualifications as outlined in the preceding paragraphs to be nominated by the Minister.

(4) (a) For the purpose of enabling the Minister to select the persons referred to in paragraph (b) of the last preceding subsection, the Minister shall request the bodies mentioned in that subsection to submit to him the panels of names within twenty-eight days of the service of the request.

(b) If a body does not submit a panel of names in response to the request within that time, the Governor shall appoint the number of persons required by the appropriate provisions of the last preceding subsection to represent the body as members of the Board notwithstanding that the panel is not submitted to the Minister.

(5) Nominee members shall hold office for the term of three years from the date of appointment and shall be eligible for re-appointment.

(6) The office of a nominee member of the Board shall become vacant—

- (a) at the expiration of his term of office;
- (b) if he dies;

- (c) if he is incapable of continuing a member;
- (d) if he resigns in writing under his hand addressed to the Governor in Council;
- (e) if without leave granted by the Minister he fails to attend three successive meetings of the Board;

but the office of a nominee member of the Board shall not become vacant by reason only that if when appointed to the office he was a member of the governing body of a local authority, he ceases to be such.

(7) If the office of a nominee member of the Board becomes vacant otherwise than by the retirement of such member at the expiration of his term of office, a person shall, in accordance with the provisions of this section, be appointed to fill the extraordinary vacancy.

(8) Any person appointed to fill an extraordinary vacancy shall, subject to the provisions of this section be entitled to hold office for the remainder of the term of office of the person in whose place he is appointed.

(9) (a) The Governor may, in respect of each member of the Board, appoint a person as deputy of and to represent the same interests as that member, subject to the provisions of the next succeeding paragraph, and a person so appointed shall, in the event of the absence of the member, have all the powers of that member during his absence, and no appointment of and no act done in that capacity by a deputy shall be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

(b) (i) In the event of the absence of the Chairman, the Vice Chairman shall have all the powers of the Chairman.

(ii) In the event of the absence of the Chairman and the Vice Chairman, then the members of the Board present may choose out of their number a member who shall for the purposes of that meeting and until its conclusion, have all the powers of the Chairman.

(10) The first meeting of the Board shall be convened by the Minister and, until a Chairman is elected, a person nominated by the Minister shall act as a chairman and thereafter meetings of the Board shall be held at such times and places as may be determined, or until determined, as convened by the Chairman.

(11) The Chairman and Vice Chairman shall be elected annually by the members of the Board from among their number and shall be entitled to hold office for a period of twelve months, and shall on the expiration of any term of office, be eligible, subject to the provisions of this Act, for re-election.

(12) The Board shall conduct its proceedings in such manner as may be prescribed, and until prescribed, as the Board shall determine, but in any case—

seven members shall constitute a quorum for the conduct of business;

all matters shall be determined by a majority of the votes of the members present, and where there is an equality of votes, the question shall be regarded as determined in the negative;

each member, including the Chairman, shall be entitled to one vote only on the determination of any matter.

(13) The Board may act and exercise all of its powers, notwithstanding any vacancy in membership, and no act or proceeding of the Board shall be invalid or illegal in consequence only of any vacancy in membership existing at the time of any act or proceeding.

(14) Acceptance of, or acting in the office of member or deputy member of the Board by any person shall not of itself render the provisions of the *Public Service Act, 1904-1950*, the *Superannuation Act, 1871-1947*, or the *Superannuation and Family Benefits Act, 1938-1950*, applicable to him, nor affect the application of those provisions to him if they apply to him at the time of the acceptance of or acting in the office.

(15) Every member of the Board shall be entitled to such travelling and other out-of-pocket expenses as the Governor thinks fit.

(16) The Board shall cause to be kept minutes of all its proceedings in such manner and form as the Minister may direct or approve.

Appoint-
ment of
Secretary
and officers.

6. (1) The Board may appoint a Secretary, who shall be a qualified librarian and the executive officer of the Board, and such other officers as are required for the purpose of carrying out the Board's functions in pursuance of the provisions of this Act.

(2) The Secretary and other officers shall not be appointed pursuant to the provisions of the *Public Service Act, 1904-1950*, but shall be entitled to such leave of absence and to such rights prescribed by or pursuant to the provisions of the *Superannuation and Family Benefits Act, 1938-1950*, as would apply if they were appointed under the provisions of the firstmentioned Act.

Board a body
corporate.

7. The Board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued and may, subject to the provisions of this Act, acquire, purchase, hold, sell, lease, exchange, mortgage and dispose of real and personal property.

Contracts.

8. In relation to contracts to which the Board is a party, the following provisions shall apply:—

Mode of
determining
disputes,
etc.

(a) Every contract made by the Board may, if the Board thinks fit, specify the person to whose satisfaction the contract is to be completed and the mode of determining any dispute which arises concerning or in consequence of the contract.

Form of
contracts.

(b) The powers granted to the Board under this or any other Act to make contracts may be exercised as follows:—

(i) Any contract which, if made between private persons would be required by law to be in writing under seal, may be made on behalf of the Board in

writing under the common seal of the Board, and may in the same manner be varied or discharged.

- (ii) Any contract which, if made between private persons would be required by law to be in writing signed by the parties to be charged therewith, may be made on behalf of the Board in writing signed by any person acting under its authority express or implied and may, in the same manner, be varied or discharged.
- (iii) Any contract which, if made between private persons would be valid in law, although made by parol only and not reduced into writing, may be made by parol on behalf of the Board by any person acting under its authority express or implied and may in the same manner be varied or discharged.
- (c) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the Board and all other parties thereto, their successors, heirs, executors or administrators, as the case may be, and in the case of default in the execution of any such contract either by the Board or by any other party thereto, such actions or suits or other proceedings may, subject to the provisions of this Act, be instituted either by or against the Board in its corporate name or by or against the other parties making the default, and such damages and costs recovered as might be instituted and recovered had the like contract been made between private persons. Effect of contracts.
- (d) Subject to the provisions of paragraph (c) of section nineteen of this Act, no contract other than a contract for the services of a person as Secretary or an officer of the Board, made by the Board the consideration of which exceeds one thousand pounds or the performance of which may extend over Sanction of Governor for certain contracts.

a period exceeding three years, shall have any force or effect unless sanctioned by the Governor.

Power to compound for breach of contract.

- (e) The Board may compound and agree with any person or firm who has entered into any contract with it or against whom any action or suit is brought for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond or security for such sum of money or other recompense as the Board thinks proper.

Protection of members of Board, officers, etc.

9. No matter or thing done by any member of The Board or by any officer or other person appointed or employed under the provisions of this Act, if done *bona fide* in the exercise of his powers or in the performance of his duties under this or any other Act, shall subject him to any personal liability in respect thereof.

Judicial notice of common seal.

10. All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to any deed and shall presume that such seal was properly affixed thereto.

Documents, how authenticated.

11. Every notice, order, summons or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the Chairman or officer of the Board authorised to sign it.

Power of officer to represent Board.

12. In all proceedings before justices or in any Court of Petty Sessions, any officer of the Board appointed by the Chairman in writing under his hand for that purpose may represent the Board in all respects as though such officer was the party concerned.

Proof of certain matters not required.

13. (1) In any prosecution or legal proceeding under the provisions of this Act or the regulations instituted by or under the direction of the Board, no proof shall be required, until evidence is given to the contrary, of—

- (a) the constitution of the Board;
 - (b) any order of the Board to prosecute;
 - (c) the particular or general appointment of any officer or the Board to take proceedings against any person;
 - (d) the powers of the officer to prosecute;
 - (e) the appointment of the Chairman or of any member or officer of the Board; or
 - (f) the presence of a quorum at any meeting at which any order is made or any act is done by the Board.
- (2) The production of—
- (a) a copy of the *Government Gazette* containing any regulation, declaration, order, or notice purporting to have been made or given under any of the provisions of this Act; or
 - (b) a copy purporting to be a true copy of any such regulation, declaration, order or notice certified as such under the hand of the Chairman or an authorised officer of the Board,

shall be evidence until the contrary is proved of the due making, existence, confirmation, approval and giving of such regulation, declaration, order or notice and of all preliminary steps necessary to give full force and effect to the same.

14. All documents whatever purporting to be issued or written by or under the direction of the Board and purporting to be signed by the Chairman or an authorised officer, shall be received as evidence in all courts and before all persons acting judicially, and shall without proof be deemed to have been issued or written by or under the direction of the Board until the contrary is shown.

Evidence of documents issued by the Board.

15. (1) It shall be the duty of the Board to—

Functions of the Board.

- (a) assist participating bodies in any scheme;
- (b) advise the Minister and participating bodies on matters of general policy relating to any scheme;

- (c) register as free libraries such libraries as are approved by the Board and as are controlled by participating bodies;
- (d) inspect or cause to be inspected libraries and library services, the controlling bodies of which apply for allocations in the distribution of any grant of money made available by Parliament to assist free libraries and free library services and to recommend to the Minister the allocation of any such grant as between respective applicants;
- (e) carry out such other functions in connection with registered free libraries as the Governor from time to time directs.

(2) The Board—

- (a) may provide, control and manage libraries and library services;
- (b) may provide for the training of persons to carry out the duties of librarians and library assistants, such training to conform to the requirements of the Library Association of Australia.

Financial provisions.

16. (1) The funds necessary for the effectual exercise by the Board of the powers conferred and duties imposed upon it by this Act shall be—

- (a) such moneys as are, from time to time, appropriated by Parliament for that purpose;
- (b) such moneys as the Board may borrow pursuant to the provisions of this Act;
- (c) the proceeds of any sale, lease, mortgage, exchange, or other disposal of real or personal property which the Board is authorised to effect and which may properly be so used;
- (d) the proceeds of investment of any part of the Fund which is not required for an immediate use; and

(e) all gifts, devises and bequests made to the Board.

(2) All such moneys shall be placed to the credit of an account to be kept at the Treasury and called The Library Board of Western Australia Fund and shall be applied to the purposes of this Act.

(3) The Fund shall be operated upon in such manner as may be prescribed.

(4) Without other authorisation than this Act, the sum of five thousand pounds is hereby appropriated from the Consolidated Revenue Fund for payment to the Board for carrying out the provisions of this Act during the first year of the operation of this Act.

17. All moneys standing to the credit of the Fund may, until required by the Board in connection with the exercise of its powers or the discharge of its duties under this Act, be temporarily invested as the Treasurer may direct in any securities in which moneys in the Public Account may lawfully be invested, and all interest derived from such investment shall be paid to the credit of the Fund.

Temporary investment.

18. The Board may—

Financial assistance.

- (a) subsidise a registered free library conducted by a participating body to the extent of one pound for each pound expended by the participating body on its maintenance, including the costs of library services and salaries, but subject to such conditions as may be prescribed;
- (b) recommend to the Minister the payment of additional grants over and above the subsidy referred to in the last preceding paragraph to participating bodies for initial stocking in special cases, having regard among other things to the area of the district of a local authority which is a participating body, the population of that area, the rateable land in that area, and the potential revenue available to the local authority apart from the provisions of this Act;

- (c) subject to the approval of the Governor and to such conditions as the Governor thinks fit to impose, borrow money for the purposes of this Act.

Rating
powers of
local
authorities.

19. (1) A local authority may exercise the provisions relating to rates of the local government Act under which it is constituted to make and levy, in addition to any other rate which it is thereby authorised to levy, a rate to be called the free library services rate, on all rateable land in the district of which it is constituted the local authority.

(2) The free library services rate made on rateable land in a district in any financial year shall not exceed—

- (a) in the case of land rated on unimproved capital value, the sum of one-quarter of one penny in the pound;
- (b) in the case of rateable land rated on annual rental value, a sum not exceeding two pence in the pound.

(3) Rates levied in pursuance of the provisions of this section shall be used by the local authority for the purposes of the provisions of this Act and may, on such terms and conditions as the local authority thinks fit, be appropriated for payment as contributions to any other local authority for free library services rendered by the other local authority to the ratepayers or citizens of the firstmentioned local authority.

Report.

20. (1) The Board shall, on or before the thirtieth day of September in each year, furnish to the Minister a report of the proceedings of the Board during the year ending on the preceding thirtieth day of June, and each such report shall contain a full account of the income and expenditure of the Board audited by the Auditor General.

(2) The Auditor General shall have, in respect of such account, all powers conferred on him by any law now or hereafter in force relating to the audit of public accounts.

(3) The Minister shall, on receipt of each such report, cause a copy thereof to be laid before each House of Parliament.

21. (1) The Governor may make regulations Regulations. prescribing forms, fees and other matters and things which, by this Act, are contemplated, required or permitted to be prescribed, or which appear to be necessary or convenient for the purpose of effectually carrying out the provisions and intentions of this Act, and for better effecting the objects and purposes of this Act.

(2) The regulations may—

- (a) impose a penalty not exceeding fifty pounds for a breach thereof; and
- (b) provide that, in addition to the penalty, any expense incurred in consequence of the breach, shall be paid by the offender.

(3) The regulations may be of general application or apply in particular cases, and may prescribe the cases in which, and the conditions, if any, under which any persons or things, or classes of persons or things, shall be exempted either wholly or to such extent as is specified in the regulations, from the provisions of the regulations.

(4) Regulations made pursuant to the provisions of this Act shall not be regarded as invalid on the ground that they delegate to or confer upon any person or class of persons a discretionary authority.

(5) The regulations, without limiting or otherwise prejudicing the provisions of the foregoing subsections of this section—

- (a) may provide for the conduct of any library or library service;
- (b) may regulate the use and provide for the protection of any library and its contents;
- (c) may provide for the lodging of a deposit, security or guarantee against the loss of or injury to any book, periodical, magazine, reading matter or other thing, whether of the same or a different kind from the foregoing, by any person using it;

- (d) may authorise the officers and servants of any participating body conducting free library services to exclude or remove from any premises used in connection with any library or library services, persons committing any offences against the regulations;
 - (e) may determine the number of books, magazines, periodicals, reading matter, and other things, whether of the same or a different kind from the foregoing, which may be borrowed by any persons or class of persons, and the period during which they may be so borrowed;
 - (f) may provide conditions for financial and other assistance to participating bodies.
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