



Western Australia

## **Western Australian Exim Corporation Act 1986**

This Act was repealed by the *WADC and WA Exim Corporation Repeal Act 1998* s. 5(1) (No. 30 of 1998) as at 30 Jun 1998 (see s. 2).



## Western Australian Exim Corporation Act 1986

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Western Australia

## **Western Australian Exim Corporation Act 1986**

**An Act to establish a corporation to promote economic activity relating particularly to export and import trade, and the export of Western Australian expertise; to repeal the *Western Australian Overseas Projects Authority Act 1978*; and for related purposes.**

Be it enacted by the Queen'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: —

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Western Australian Exim Corporation Act 1986*.

### 2. Commencement

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

### 3. Interpretation

In this Act, unless the context otherwise requires —

**“associated”** with respect to a body shall be construed —

(a) in relation to the Corporation, as meaning that a form of association exists between the Corporation and that body whereby a common activity is undertaken in which the Corporation —

(i) owns not less than one-half of the property the subject of the association;

or

(ii) directly or indirectly controls not less than one-half of the voting rights; and

(b) in relation to any other person, as though it were a reference to which section 9 of the *Companies (Western Australia) Code* applies;

**“Board”** means the Board of directors of the Corporation provided for by section 10;

**“body”** includes any person, whether corporate or unincorporate, and any trust, partnership, joint venture, consortium or other entity;

**“business undertaking”** means any body, or any government agency, engaging or proposing to engage in economic activity;



**“Corporation”** means the Western Australian Exim Corporation established by this Act;

**“debt paper”** includes inscribed stock, bonds, debentures (whether or not with coupons annexed), bearer securities, notes, negotiable instruments and other documents evidencing or acknowledging indebtedness;

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

**“director”** includes —

- (a) in relation to the Corporation, the members of the Board appointed by the Governor, the Managing Director or other person to whom section 10 (1) (d) applies for the time being, and a person appointed by the Minister to act temporarily in the place of a member of the Board appointed by the Governor; and
- (b) in relation to the Corporation or any other body corporate —
  - (i) any person occupying or acting in the position of director of the body corporate, by whatever name that position is called and whether or not validly appointed to occupy or duly authorized to act in the position; and
  - (ii) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act;

**“economic activity”** means any activity carried on with a view to making a profit or producing revenue, but does not include any activity of a political party or of a trade union;

**“financial arrangements”** include arrangements that provide for, are in respect of, or are directed towards, matters related to finance;

**“liability”** includes an obligation;

**“Managing Director”** means the chief executive officer of the Corporation appointed to, or acting in, that office pursuant to section 11;

**“Scheme”** or **“Exim Transfer Scheme”** means the Scheme established pursuant to section 7 and section 41;

**“statutory authority”** means a body, corporate or unincorporate, which is established by, and constituted under, a written law, but does not include a body corporate belonging to any of the classes of body corporate for the time being specified in the Schedule to the *Western Australian Treasury Corporation Act 1986*;

**“subsidiary”** includes —

- (a) in relation to the Corporation, a body corporate which would be deemed to be a subsidiary of the Corporation under section 7 of the *Companies (Western Australia) Code* if the definition of **“corporation”** for the purposes of that Code did not exclude the Corporation as being an instrumentality or agency of the Crown; and
- (b) in relation to any other body corporate, a body corporate which is deemed to be a subsidiary of the first-mentioned body corporate under section 7 of that Code;

**“Treasurer”** means the person holding, or acting in, the office of Treasurer of the State;

**“wholly owned subsidiary”** means a subsidiary all the securities of which are owned by a body of which it is a subsidiary, or by one or more other wholly owned subsidiaries of that body, or partly by that body and partly by any wholly owned subsidiary of that body.

## **Part II — Establishment of Western Australian Exim Corporation**

### **Division 1 — The Corporation and its functions**

#### **4. Western Australian Exim Corporation established as a body corporate**

- (1) There is hereby established a body corporate to be called the Western Australian Exim Corporation.
- (2) The Corporation —
  - (a) under its corporate name has perpetual succession and a common seal;
  - (b) is capable of suing and being sued; and
  - (c) subject to this Act —
    - (i) is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer; and
    - (ii) has the legal capacity, and the rights, the powers and the privileges, of a natural person in so far as they might have been attributed to a public company incorporated pursuant to the *Companies (Western Australia) Code*.
- (3) The Corporation is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown, except where and so far as the regulations may otherwise prescribe.
- (4) The Corporation shall perform its functions and exercise its powers in accordance with prudent commercial principles and shall use its best endeavours to ensure that its revenue is sufficient both to meet its expenditure and derive a profit by earning a commercial rate of return on its capital.

- (5) The Minister may give directions in writing to the Corporation with respect to its functions and powers, either generally or with respect to a particular matter, and the Corporation shall give effect to any such direction.
- (6) The text of any direction received by the Corporation under subsection (5) shall be included in the annual report submitted by the accountable authority of the Corporation under section 66 of the *Financial Administration and Audit Act 1985*.

*[Section 4 amended by No. 5 of 1989 s.26.]*

**5. Object of this Act, and general function of the Corporation**

- (1) The object of this Act and general function of the Corporation is —
  - (a) to promote the development of the State through international and inter-State investment, trade in goods and services, and otherwise; and
  - (b) to facilitate and encourage the expansion of economic activity in the State, with particular regard to export or import opportunities.
- (2) The functions of the Corporation may be carried on, in Australia or elsewhere, under —
  - (a) the name Western Australian Overseas Projects Authority; or
  - (b) subject to the *Business Names Act 1962*, a trading name, rather than in the corporate name of the Corporation where in relation to a particular activity the Minister so approves.
- (3) The Corporation has the functions of reviewing, rationalising, and where the Board thinks fit continuing the activities formerly carried on —
  - (a) by the Western Australian Overseas Projects Authority;

(b) by the company known as The Western Australian Exim Corporation Ltd., or any body subsidiary to or associated with that company; or

(c) by or on behalf of the Crown in right of the State,

avoiding any overlapping of those activities, with a view to enhancing and co-ordinating the export of Western Australian expertise (especially as it exists in or in conjunction with the public sector) to the overseas market and its utilization by governments and authorities overseas.

(4) For the purposes of the *State Trading Concerns Act 1916* the activities of the Corporation shall be taken to have been expressly authorized by Parliament.

(5) Without prejudice to the generality of subsection (3) the functions of the Corporation shall include —

(a) providing, or assisting in the provision of, financial resources and technical, advisory or other services to industry or business undertakings, including from or through Government sources;

(b) either alone, or by way of partnership, joint venture, a consortium or otherwise with any other business undertaking, or through or as an agent or attorney, engaging in or participating in the establishment or expansion of any economic activity;

(c) assisting Western Australian private organizations or persons to participate in development projects overseas, including negotiating with governments and other authorities, organizations or persons overseas with a view to the obtaining of contracts or facilitating the carrying out of the projects;

(d) receiving financial or other contributions relating to any activity, and arranging for the disbursement or utilization of such contributions; and

- (e) generally co-operating (formally or informally) with other persons or bodies having similar objects or interests.

**6. Transfer of Western Australian Overseas Projects Authority functions**

- (1) To give effect to the objects of this Act, by virtue of the operation of this subsection —
  - (a) the corporate entity known as Western Australian Overseas Projects Authority, established by the *Western Australian Overseas Projects Authority Act 1978*, shall cease to exist;
  - (b) the offices of members of the Western Australian Overseas Projects Authority Board, established under that Act, shall terminate and that Board shall be dissolved; and
  - (c) effect shall be given to section 39,

on the day appointed pursuant to subsection (2).

- (2) The Minister on the recommendation of the Corporation may, by notice published in the *Government Gazette*, appoint a day for the purposes of subsection (1).
- (3) On and after the day appointed for the purposes of subsection (1) —
  - (a) all moneys that, immediately before that day, were standing to the credit of the account called the “Western Australian Overseas Projects Authority Account”, together with interest accrued and due thereon; and
  - (b) all other property, rights and liabilities that were immediately before that day vested in or had been incurred by the Western Australian Overseas Projects Authority,

shall devolve on and become or be vested in the Corporation by (where practicable) the operation of this subsection.

- (4) Until the day appointed for the purposes of subsection (1) the Western Australian Overseas Projects Authority and all persons connected with the operations of that Authority shall do all acts and things necessary or desirable to facilitate the transfer to the Corporation of the property, rights and liabilities of that Authority and of all documents and records pertaining to those operations, and it shall be the duty both of the persons comprising the Board of that Authority and of the directors of the Corporation to ensure that, so far as is practicable, such accounting, conveyancing or other measures as may be necessary to give effect to this section are initiated prior to the Corporation making a recommendation to the Minister for the purposes of subsection (2) and are concluded.
- (5) On and after the day appointed for the purposes of subsection (1) the provisions of section 40 apply to and in relation to the affairs of the former Western Australian Overseas Projects Authority.

**7. The Exim Transfer Scheme**

- (1) The Board is charged with the duty of preparing to the satisfaction of the Treasurer a Scheme (in this Act referred to as “the Exim Transfer Scheme”) for the purpose of securing or facilitating the transfer to the Corporation of the property, rights and liabilities of the company known as The Western Australian Exim Corporation Ltd., its wholly owned subsidiaries, and any other subsidiary or associated body to which the Treasurer directs that the Scheme should apply.
- (2) The Board shall —
  - (a) submit to the Treasurer, before the end of such period as he may direct, written proposals for the Exim Transfer Scheme and seek the approval of the Treasurer to its provisions; and
  - (b) complete the implementation of the provisions of that Scheme before such day and in such manner as the

Treasurer may, in giving his approval, specify or otherwise directs.

- (3) The provisions of section 41 apply, and shall be given effect, to and in relation to —
- (a) the company known as The Western Australian Exim Corporation Ltd.; and
  - (b) the Exim Transfer Scheme.

**8. Effect of transfers of functions proposed**

Where any dealing or transaction is entered into by the Corporation with any person in relation to or in connection with any property, right, liability or function that was vested in or imposed on —

- (a) the Western Australian Overseas Projects Authority prior to the day appointed for the purposes of section 6 (1); or
- (b) The Western Australian Exim Corporation Ltd. or a body subsidiary to or associated with that company prior to the day appointed pursuant to section 7 for the completion of the implementation of the Exim Transfer Scheme,

it shall be deemed in favour of that person that the Corporation has full power and authority to enter into that dealing or transaction as if the property, right, liability or function had been vested in or imposed on the Corporation notwithstanding that a transfer to that effect under this Act in favour of the Corporation had not at that time been concluded.



**9. General financial powers, etc.**

- (1) In the exercise of its functions, and subject to the requirements of, or limitations imposed by, this Act, the Corporation —
- (a) may provide, or bring together and co-ordinate, financial resources for the purposes of —
    - (i) private investment and increasing the availability of capital and export finance to business undertakings; and
    - (ii) promoting Western Australian and other Australian ownership of, or participation in, business undertakings engaging or intending to engage in the developing of economic activity;
  - (b) shall use its best endeavours to increase the opportunities for Western Australians to invest and participate in such business undertakings and the development of economic activity;
  - (c) may borrow subject to section 25, or lend or accept money on deposit;
  - (d) may issue, draw, make, accept, endorse or discount bills of exchange, promissory notes or other negotiable instruments or debt paper;
  - (e) may form or establish, participate in the formation or establishment of, or participate in, any business undertaking by way of joint venture, consortium, partnership, arrangement for the sharing of profits, or otherwise;
  - (f) may exercise any right to appoint a director of, or hold office in, a business undertaking;
  - (g) may enter into arrangements directed to the granting of financial accommodation by or to a business undertaking, whether or not the business undertaking is a party to the arrangements, and enter into and perform deferred payment or credit arrangements as debtor,

creditor, guarantor or otherwise and may engage in forward cover or other arrangements intended to diminish any financial risk;

- (h) may enter into covenants, undertakings, agreements, promises, guarantees or indemnities to meet liabilities incurred by or to a business undertaking whether or not the business undertaking is a party to those covenants, undertakings, agreements, promises, guarantees or indemnities;
- (j) may underwrite issues of shares in, or debentures or other securities of, a business undertaking;
- (k) may acquire, hold, deal with, or dispose of —
  - (i) shares in any body corporate, company debentures, bonds, stock or other securities;
  - (ii) land, buildings, plant, machinery, equipment and any other property and any interest therein or charge in respect thereof;or
  - (iii) foreign currency,and incur and discharge liabilities concerning foreign currency;
- (l) may enter into leases or tenancies of land, buildings, plant, machinery, equipment and any other property as lessee, lessor, owner or tenant;
- (m) may incur liabilities as the purchaser or as the seller of, and purchase or sell, as the case may be, any output or other product, commodity or service of any kind;
- (n) may appoint agents and attorneys or act as agent for other persons;
- (o) may maintain an account or accounts with any bank or other financial institution, whether in Australia or elsewhere;

- (p) may require a person or body receiving financial accommodation pursuant to this Act to pay to the Corporation at such times as are specified in that requirement —
    - (i) such fees, if any, as the Board considers appropriate in that case for the purpose of meeting the cost of any fees required to be paid to the Treasurer in respect of a State guarantee given in relation to the obligation;
    - (ii) such fees as the Board from time to time determines for the purpose of meeting wholly or in part the estimated costs of the Corporation; and
    - (iii) such other fees or charges as the Board thinks fit, having regard to particular circumstances; and
  - (q) grant, or make provision for the grant of, retirement benefits to or in respect of the services of its officers or employees.
- (2) Notwithstanding any exemption or immunity that may exist, the Corporation shall be liable for and shall pay all local government rates and charges and all land tax, metropolitan region improvement tax, water rates, pay-roll tax, stamp duties (other than stamp duties in relation to the Exim Transfer Scheme), and all other taxes, fees and charges imposed by the Government of the State, its instrumentalities or agencies.

**9A. Liquidation of affairs of Corporation**

- (1) Notwithstanding anything in this Act or any other written law, it is a functions of the Corporation to liquidate the affairs of the Corporation if, and to the extent that, the Minister directs it to do so.
- (2) Without limiting the generality of section 9, the Corporation has power to do all things necessary or convenient to be done for or

in connection with the liquidation of the affairs of the Corporation.

*[Section 9A inserted by No. 5 of 1989 s.27.]*

**9B. Minister to have reports, etc.**

- (1) The Corporation shall furnish the Minister with —
  - (a) all documents and information required under any Act or any order or resolution of either House of Parliament;  
and
  - (b) full information on all business of the Corporation as to which the Minister requires information —
    - (i) for the proper conduct of the Minister's public business;
    - (ii) to enable answers to be made to all questions asked in Parliament concerning the Corporation;  
or
    - (iii) to enable the Minister to furnish returns required by Parliament.
- (2) The Minister shall be entitled —
  - (a) at all times to see all documents in the possession or control of the Corporation that the Minister requires to see for any purpose mentioned in subsection (1) (b);
  - (b) to be supplied with copies of documents referred to in paragraph (a); and
  - (c) to make use of the services of any employee of the Corporation for the purposes of obtaining access to or copies of documents referred to in paragraph (a).

*[Section 9B inserted by No. 5 of 1989 s.27.]*

## **Division 2 — The Board, and committees**

### **10. The Board of Directors**

- (1) The Corporation shall be governed by a Board of directors with authority, in the name of the Corporation, to perform the functions vested in the Corporation, and that Board shall be constituted by —
- (a) a Chairman;
  - (b) 2 Deputy Chairmen;
  - (c) not less than 2 nor more than 8 other persons;
- and
- (d) the person who, pursuant to section 11, holds or acts in the office of, or represents, the Managing Director of the Corporation,

but a body corporate or body of persons is not eligible as such to be appointed a member of the Board.

- (2) The members of the Board (other than the Managing Director or other person to whom subsection (1) (d) applies for the time being) shall be appointed by the Governor on the nomination of the Minister.
- (3) Appointment as a director does not render the provisions of Part 3 of the *Public Sector Management Act 1994*, or of any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to that person of those provisions if they applied at the time of the appointment.
- (4) A director (other than the Managing Director) shall be paid out of the funds of the Corporation such remuneration and travelling and other allowances as are determined in his case by the Board and approved by the Minister, and any such determination may take in to account whether the director is or is not required to act in a full time executive capacity.

- (5) Subject to this Act and the *Interpretation Act 1984*, the provisions of Schedule 1 apply to, or in relation to, the constitution of the Board and the acts, conduct, proceedings and determinations of the Board and any committee of the Board.

*[Section 10 amended by No. 32 of 1994 s.19.]*

**11. Managing Director**

- (1) There shall be an office of Managing Director of the Corporation.
- (2) The Managing Director shall, subject to the approval of the Minister, be appointed by such other members of the Board as are —
- (a) appointed; or
  - (b) deemed, otherwise than pursuant to subsection (5), to be a director.
- (3) A reference in this Act to the Managing Director shall be construed as including a reference to a person acting in that office.
- (4) The Managing Director is the chief executive officer of the Corporation, and —
- (a) subject to the control of the Board, shall administer the day to day activities of the Corporation;
  - (b) shall be appointed, and may from time to time be re-appointed, for such term as is specified in the instrument by which that person is appointed or re-appointed;
  - (c) shall be paid such remuneration and allowances, and be subject to such conditions of service, as are determined by the Board and approved by the Treasurer;
  - (d) is liable, at any time, to be removed from office by the Minister on the recommendation of the Board for any reason for which an appointed director might be removed from office by the Governor; and

- (e) may resign the office by notice in writing given in accordance with the relevant conditions of service.
- (5) The Board may appoint a person to act in the office of the Managing Director during any period when there is a vacancy in the office of Managing Director or when the Managing Director is absent or unable to carry out his duties, but where no such person is appointed the Managing Director may, in writing delivered to the Chairman, nominate a senior officer of the Corporation to act as the representative of the Managing Director at any meeting which the Managing Director is unable to attend by reason of sickness, absence or other cause, and while so attending that person is deemed to be acting as a director.

**12. Common seal, and the use of facsimiles**

- (1) The common seal of the Corporation shall —
  - (a) be in a form determined by the Board;
  - (b) be kept in such custody as the Board directs; and
  - (c) not be used except as authorized by the Board.
- (2) When a document purporting to bear the common seal of the Corporation is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —
  - (a) that document bears that common seal; and
  - (b) that common seal was duly affixed to that document.
- (3) For the purposes of this Act, the Board may make use of a facsimile of —
  - (a) the common seal of the Corporation; or
  - (b) the signature of an agent or attorney empowered to execute deeds or other instruments on its behalf under section 13 (1),

and a deed or other instrument purporting to enter into an obligation on the part of the Corporation and to be endorsed with such a facsimile seal or facsimile signature shall, until the contrary is shown, be deemed to have been sealed by it, or signed by that agent or attorney, as the case requires.

**13. Delegation by the Board**

- (1) The Board may, by writing under the common seal of the Corporation, empower the Managing Director or some other person (either generally or in respect of a specified matter or specified matters) as its agent or attorney to execute deeds or other instruments on its behalf, and a deed or other instrument executed by such an agent or attorney on behalf of the Board binds the Corporation and has the same effect as if it were under the common seal of the Corporation.
- (2) The Board, in the name and on behalf of the Corporation, may either generally or as otherwise provided by the instrument of delegation, delegate, by an instrument in writing approved by resolution, to any committee or any agent, broker or other person of whose services it is making use all or any of its powers and duties under this Act, other than this power of delegation, and for the purposes of this Act, the exercise of a power or the performance of a duty by such a delegate shall be deemed to be the exercise of the power or the performance of the duty by the Corporation.
- (3) A committee or person purporting to exercise a power or perform a duty under a delegation under this section is presumed to do so, in the absence of evidence to the contrary, in accordance with the terms of that delegation.

**14. Committees**

- (1) The Board may from time to time, by resolution, appoint committees of such directors, or such directors and other persons, as it thinks fit and may discharge, alter, continue or reconstitute any committee so appointed.



- (2) Subject to Schedule I, the directions of the Board and to the terms of any delegation under section 13, each committee may determine its own procedures.

## **Part III — Staff and facilities**

### **Division 1 — Officers and employees**

#### **15. Former employment with W.A.O.P.A. or Exim**

- (1) This section applies to every person who was, immediately prior to the coming into operation of this Part —
  - (a) a person appointed, employed or engaged for the purposes of that Act pursuant to section 20 of the *Western Australian Overseas Projects Authority Act 1978*; or
  - (b) a person appointed, employed or engaged in the service of the company known as The Western Australian Exim Corporation Ltd.
- (2) Subject to subsection (4), on the coming into operation of this Part each of the persons to whom this section applies shall be deemed to be appointed, employed or engaged in the service of the Corporation —
  - (a) as successor to the previous employer of that person, that previous service being hereby terminated; and
  - (b) upon conditions, including remuneration, corresponding to the conditions of the appointment, employment or engagement applying immediately prior thereto.
- (3) The appointment, employment or engagement in the service of the Corporation under this Part of a person to whom this section applies and the previous service of that person with a body to which subsection (1) refers shall be taken to constitute throughout a continuous service and no compensation or other payment is payable by reason only of the termination of, or a change in the nature of, the appointment, employment or engagement occasioned by the operation of this Act.
- (4) In the exercise of the power conferred on the Corporation by section 9 (1) (q) to grant, or make provision for the grant of, retirement benefits to its officers and employees the Corporation

shall have regard to any existing and any accruing rights which a person to whom this section applies would have been entitled to by way of retirement benefits by reason of the previous service of that person to which this section applies had that service not been affected by the enactment of this Act, and when pursuant to subsection (6) the Corporation negotiates the rights such a person should be offered in respect of retirement benefits by reason of the future service of that person with the Corporation those existing and accruing rights in respect of such previous service shall be taken into account in a manner which the Board considers equitable as though they had related to a preceding period of service with the Corporation.

- (5) The service with the Corporation deemed to be entered into pursuant to subsection (2) shall terminate —
- (a) on engagement of that person in the service of the Corporation upon conditions to which subsection (6) (a) refers;
  - (b) on that person becoming subject to Part 3 of the *Public Sector Management Act 1994* or employed in a permanent capacity by any Crown instrumentality or other body which is, or is deemed to be, a department for the purposes of the *Superannuation and Family Benefits Act 1938*;
  - (c) on the termination of that service —
    - (i) by the officer or employee;
    - (ii) in accordance with its terms; or
    - (iii) by reason of misconduct; or
  - (d) on the day appointed under subsection (6), whichever is the earlier.

- (6) On being satisfied that reasonable arrangements have been made whereby persons to whom this section applies and who so wish have —
- (a) entered into engagements with the Corporation for service —
    - (i) in an office or capacity similar to, or whereby that person would not be disadvantaged had he remained in;  
and
    - (ii) at a remuneration, and on terms and conditions, not less favourable to that person than applied to, the office or capacity in which the person was appointed, employed or engaged immediately prior to the coming into operation of this Part;
  - (b) obtained other employment; or
  - (c) been made a reasonable offer of employment of the kind referred to in subsection (5) (b), the Minister may by notice published in the *Government Gazette*, appoint a day for the purposes of subsection (5) (d).
- (7) Where, after the coming into operation of this Part but prior to the day appointed for the purposes of subsection (5) (d), a person ceases to be employed in the service of the Corporation but has an accrued entitlement to leave under this section that person —
- (a) if the person thereupon becomes subject to the *Public Service Act 1978*, shall be deemed to have been in continuous service and to have accrued such a leave entitlement under that Act; and
  - (b) otherwise, shall be entitled to payment by the Corporation in lieu of that leave at a rate of remuneration not less than that which the person would have received in respect of that leave had this Act not been enacted and the previous service of that person had

continued until the date on which the employment in the service of the Corporation ceased.

- (8) In this section a reference to “**leave**” means leave of absence for any reason including long service leave, sick leave, and holidays, and includes pro rata entitlement to leave and payment in lieu of leave.
- (9) Where there is no sufficient provision in this Part in respect of any matter or thing necessary or convenient to ensure an orderly transition to give effect to this Act in relation to persons appointed, employed or engaged by a body to which subsection (1) refers and their entitlements arising therefrom, regulations made under this Act may make that provision.

*[Section 15 amended by No. 32 of 1994 s.19.]*

## **16. Employees of the Corporation**

- (1) The Corporation may, subject to any relevant industrial agreement or award, appoint and employ, either on a permanent whole time basis or otherwise and upon such terms and conditions as the Board determines, as many persons as the Board from time to time considers necessary to enable the Corporation and any body subsidiary to or associated with the Corporation to carry out their respective functions under this Act.
- (2) Where a person becomes an employee of the Corporation and immediately prior to his employment as such —
- (a) the person occupied an office under the *Public Service Act 1978*, that person shall for the purposes of retaining any leave entitlement under that Act be taken to be in continuous service; or
  - (b) the person was a contributor to units of pension or to the Provident Account under the *Superannuation and Family Benefits Act 1938*, that person shall for the

purpose of any existing or accruing entitlement under that Act be taken to be in continuous service,

and to that extent those Acts, or that Act as the case requires, continue to have effect in relation to the person to enable that entitlement to be utilized or preserved, but those Acts do not otherwise apply to, or in relation to, an employee of the Corporation.

- (3) Where a person who is a contributor to the superannuation scheme established pursuant to the *Superannuation and Family Benefits Act 1938* is seconded to service with the Corporation, the Board shall, if so directed by the Treasurer, cause the Treasurer on behalf of the Crown in right of the State to be reimbursed to be credited to the Consolidated Fund the proportion of the State share of the liability in respect of that scheme in relation to the period of secondment.

- (4) For the purposes of this section —

“**contributor**” has the meaning given to that expression by section 6 of the *Superannuation and Family Benefits Act 1938*, and for the purpose of that definition the expressions “**employee**” and “**qualified contributor**” have the respective meanings given in that section;

“**leave**” means leave of absence for any reason, and includes long service leave, sick leave and holidays and *pro rata* entitlement to leave and payment in lieu of leave; and

“**service**” has the meaning given to that expression by section 6 of the *Superannuation and Family Benefits Act 1938*.

[Section 16 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

**Division 2 — Other staff and facilities**

**17. Use of staff and facilities of Departments and instrumentalities, and contracts for services**

- (1) The Corporation may, by arrangement made between the Board and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full time or part time, of—
  - (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in right of the State; or
  - (b) any facilities of a Department of the Public Service of the State or of a State instrumentality.
- (2) Any such arrangement shall provide for an agreed amount by way of payment at commercial rates for the use of the services or facilities.
- (3) The Corporation may engage under contract for services such professional and technical or other assistance as the Board considers expedient.

*[Section 17 amended by No. 32 of 1994 s.19.]*

## **Part IV — Financial matters, etc.**

### **Division 1 — Accounts and audit**

#### **18. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities and their subsidiaries apply to and in respect of the Corporation and its operations.

*[Section 18 inserted by No. 5 of 1989 s.28.]*

#### **19. Delegation by Treasurer of power of approval**

- (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to a person any power of approval conferred on him by this Act.
- (2) For the purposes of this Act, the giving of an approval under this Act by a delegate under this section shall be deemed to be the giving of the approval under this Act by the Treasurer.
- (3) A person purporting to give an approval under a delegation under this section is presumed to do so, in the absence of evidence to the contrary, in accordance with the terms of that delegation.

#### **20. Evidence of Treasurer's approval, etc.**

- (1) Where under this Act the approval of the Treasurer is required in relation to any transaction or any matter is or may be affected by a direction or instruction given by the Treasurer, if the person for the time being holding or acting in the office of Under Treasurer of the State is satisfied that the Corporation has complied with this Act and any such direction or instruction of the Treasurer and any requirements of the Treasury as to —
  - (a) the disclosure to the Treasury of relevant information;
  - (b) the terms and conditions applicable and the manner by which the transaction is to be effected; and



- (c) the form and content of any security or other document required to be executed relating to the proposals,

and that the approval required by this Act in respect thereto has been given, he may by writing under his hand give a certificate in a form agreed with the parties to the relevant transaction, expressed to have been prepared in respect of that transaction and to be given for the purposes of this section, as to the matters referred to in this subsection.

- (2) A certificate given under subsection (1) shall be conclusive evidence of the facts therein stated as between the parties to the original transaction or their successors or assignees in any proceedings arising from or relating to that transaction.

**21. Payment in lieu of income tax, etc.**

- (1) In lieu of the liability which the Corporation, if it had been a public company liable for tax, would have had to pay tax on income or profits under any Act of the Commonwealth in any year, the Corporation shall pay to the Treasurer within 6 months after the end of each financial year ending on 30 June, beginning with the period ending on 30 June 1987 such amount as the Treasurer may determine to be credited to the Consolidated Fund being an amount not less than the amount calculated under subsection (2).
- (2) The amount required to be calculated for the purposes of subsection (1) shall be determined and certified, by a person who is a registered company auditor for the purposes of the *Companies (Western Australia) Code* and who is appointed by the Corporation with the approval of the Treasurer, as being the amount of income tax in respect of that period that would have been payable to the Commonwealth by the Corporation had the Corporation been a public company liable for payment of tax.
- (3) In determining the amount required to be calculated for the purposes of subsection (1), any loss that may have accrued in a previous year or years may be carried forward, but any amount

set aside for provisions in accordance with section 18 (11) is subject to the approval of the Treasurer.

- (4) In lieu of the liability of persons carrying on business in the State to pay to the Commonwealth sales tax, excise or other charges or taxes (other than taxes to which subsection (1) applies), the Corporation, on the demand of the Treasurer and to the extent that it is exempt from making such payments to the Commonwealth, shall pay to the Treasurer to be credited to the Consolidated Fund amounts equivalent to the amounts that the Treasurer is satisfied would be payable by the Corporation but for such exemption.

*[Section 21 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

**22. Application of profit of the Corporation**

The Board shall, after consultation with the Treasurer and such other shareholders as it thinks fit and taking into account the making of provisions in accordance with section 18 (11) and the requirements of section 21 and of section 30 (11) and (12), determine whether or not a dividend should be paid, and the amount of any such dividend, in respect of any financial year, and any amount received by the Treasurer by way of dividend shall be credited to the Consolidated Fund.

*[Section 22 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

**23. Moneys to be generally available**

- (1) Subject to the maintenance of adequate records showing the sources from and purposes for which moneys are received and the manner in which moneys are used, the moneys received into or paid out of the accounts of the Corporation or a subsidiary shall be taken to have been receivable, and may be utilised or otherwise dealt with, for the general purposes of the Corporation.

- (2) All moneys, credit or other financial accommodation received by or on behalf of the Corporation or any subsidiary may be used for any purpose of this Act in carrying out any activity within the functions of the Corporation, but not otherwise.

**24. Temporary investment of moneys**

- (1) Moneys standing to the credit of the Corporation may, until required for the purpose of this Act, be temporarily invested or dealt with by the Corporation in any manner in which the Board thinks fit.
- (2) The Board, in the name and on behalf of the Corporation, may appoint a person or firm as investment manager for the Corporation and the investment manager may exercise at discretion the power of the Corporation under subsection (1).
- (3) The investment manager may be appointed for such term and at such remuneration as the Board thinks fit.

**Division 2 — Borrowing and financial accommodation**

**25. Power to borrow etc., and debt paper**

- (1) Subject to this Act, the Corporation may —
- (a) borrow, or re-borrow, moneys from any bank, institution or other person;
  - (b) obtain credit; or
  - (c) otherwise arrange for financial accommodation to be extended to the Corporation,

inside Australia or elsewhere and whether in Australian currency or any other currency or medium of exchange, national or international, upon and subject to such terms and conditions and at such rate of interest, and in such manner, whether by the creation of debt paper or otherwise, as the Board thinks fit.

- (2) Notwithstanding the generality of the powers conferred by this Act the Corporation shall not be empowered to borrow moneys, or to re-borrow money —
- (a) where, as a result of the transaction, the total amount borrowed by the Corporation and not repaid would exceed 8 times the sum of —
    - (i) the amount of the issued and paid up capital of the Corporation for the time being; and
    - (ii) any amount set aside by the Corporation for reserves,unless the transaction is expressly authorized by the prior approval of Parliament, expressed in a resolution of both Houses originated in either House;
  - (b) in excess of such aggregate amount as the Treasurer may from time to time approve; or
  - (c) outside Australia, except with the approval of the Treasurer.
- (3) Notice of any resolution passed pursuant to subsection (2) (a) shall be published in the *Government Gazette* within 21 days of the passing of the resolution.
- (4) Any moneys borrowed by, credit obtained by, or financial accommodation extended to the Corporation under this section may be raised or entered into by way of one loan or transaction or by way of several loans or transactions whether or not associated loans or transactions.
- (5) The Corporation may give security for the purposes of this section, and may create and execute such mortgages, charges, liens, bills or other debt paper and may encumber the property or revenues of the Corporation, or any part thereof, as the Board thinks fit.

- (6) The powers of the Corporation in relation to its debt paper include power —
- (a) to enter into agreements for varying the terms and conditions on which moneys have been borrowed, and to create debt paper for the purposes of any such agreement;
  - (b) to create debt paper for the purpose of carrying out any arrangement made by the Corporation for the exchange, whether on or before maturity and whether with or without any further payment, of any other debt paper;
  - (c) to cancel any debt paper surrendered to the Corporation and to undertake to make payments, on such terms and conditions as the Board thinks fit, to holders of debt paper so surrendered, or otherwise as part of an agreement entered into or arrangement made under this section;
  - (d) to purchase, resell, hold or otherwise deal in debt paper created by the Corporation on such terms and conditions as the Board thinks fit, and to cancel any debt paper so purchased;
  - (e) on such terms and conditions as the Board thinks fit, to enter into an agreement with a financial institution or other person, being an agreement whereby the financial institution or other person acts as underwriter, broker, manager or trustee, or paying, fiscal or other agent, for or in connection with the borrowing of moneys, the obtaining of credit, the arranging of financial accommodation, or matters relating to debt paper, in Australia or elsewhere;
  - (f) within the State or elsewhere, to establish and conduct, or arrange for the establishment and conduct of, registries, marking facilities, agencies and other offices for dealing in debt paper created by the Corporation; and

- (g) within the State or elsewhere, to appoint persons to act as registrars, deputy registrars, agents or otherwise for the purposes of this section.
- (7) A person extending financial accommodation to the Corporation is not bound to inquire into the application of the money lent or credit provided, or the use to which the financial accommodation is put, or be in any way responsible for its non-application or misapplication.
- (8) Regulations made under this Act may make provision by reference to a Code within the meaning of section 38 (3) or otherwise, in respect of debt paper created under this Act and for the cancellation, exchange, redemption, registration, surrender, transfer or transmission of debt paper or for any other procedure or matter relating to debt paper.

**26. Guarantees by the Corporation**

- (1) Subject to subsections (2) and (3), the Corporation for the purposes of this Act may —
  - (a) guarantee the payment of any moneys payable by, or the discharge of any indebtedness or liability of, any business undertaking;
  - (b) give an indemnity against the failure of a business undertaking to pay moneys or discharge any indebtedness or liability; or
  - (c) enter into any other financial arrangement with a business undertaking whereby the Corporation assumes a contingent risk.
- (2) The Corporation shall not provide a guarantee or an indemnity or enter into any other financial arrangement pursuant to subsection (1), for a sum or sums greater in the aggregate than the prescribed amount.
- (3) The Corporation shall not provide a guarantee or an indemnity or enter into any other financial arrangement pursuant to subsection (1), if the aggregate actual or contingent liability of

the Corporation under all such financial arrangements at any time exceeds the prescribed amount.

- (4) The execution by the Corporation either alone or jointly with some other person of a financial arrangement under subsection (1) in favour of a creditor shall be conclusive evidence that the requirements of this Act with respect to the financial arrangement have been complied with.
- (5) In respect of any guarantee or indemnity under subsection (1) —
  - (a) the guarantee or indemnity may include any interest charges and expenses chargeable by the creditor against the debtor and the expenses of enforcing or obtaining or endeavouring to enforce or obtain payment of the debt and those interest charges and expenses;
  - (b) the creditor shall, if required to do so by the Corporation, obtain, take and hold or retain and hold securities of such nature as the Corporation may require for the payment of the debt or the discharge of the liability to which the guarantee or indemnity refers;
  - (c) the guarantee or indemnity shall not be enforceable against the Corporation unless and until the creditor has exercised to the satisfaction of the Board his rights and remedies under all securities (if any) held by or for him in respect of the debt or liability to which the guarantee or indemnity refers other than the guarantee or indemnity; and
  - (d) the creditors shall not, without the consent in writing of the Corporation, assign or encumber the benefit of the guarantee or indemnity.

**27. Specific State guarantees**

- (1) The Treasurer on behalf of the State may guarantee the performance by the Corporation, in the State or elsewhere, of

any obligation of the Corporation, however or wherever arising, entered into or to be entered into by the Corporation.

- (2) An instrument of guarantee even pursuant to subsection (1) shall be executed by —
  - (a) the Treasurer; or
  - (b) a person authorized —
    - (i) by the Treasurer in writing; or
    - (ii) by operation of law.
- (3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Corporation of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Corporation any any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.
- (4) The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act is hereby authorized, and the due payment of moneys payable thereunder with all interest thereon shall be charged to the Consolidated Fund which is hereby to the extent necessary appropriated accordingly, and any sums received or recovered by the Treasurer from the Corporation or otherwise in respect of payment so charged shall be credited to the Consolidated Fund.
- (5) The Treasurer may in writing served on the Corporation require the Corporation to pay to him such fees, if any, in respect of a guarantee arising by virtue of subsection (1) as he thinks fit, and shall credit any such fees recovered or received by him from the Corporation to the Consolidated Fund.

*[Section 27 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*



**28. Charge on Corporation assets**

- (1) By virtue of this section any sum paid by the Treasurer under any guarantee given by him on behalf of the State under this Act constitutes a floating charge upon the revenue and assets of the Corporation, and such revenue and those assets are charged with the performance and observance by the Corporation of the terms and the conditions which the Treasurer may have imposed or approved in relation to that guarantee.
- (2) Notwithstanding subsection (1) any sum arising out of a guarantee to which that subsection refers may be specifically charged against a specified source of revenue or a specified asset and to the extent that it is so charged and is recoverable effect shall not be given to subsection (1).

**29. Notice of trusts, etc.**

Neither a person to whom or which financial accommodation is extended by the Corporation nor any officer or employee of the Corporation or person of whose services the Corporation is making use —

- (a) shall receive notice of any trust, whether express, implied or constructive, in relation to any debt paper created under this Act, or shall be required to enter any such notice in a stock ledger or other book kept by that person; or
- (b) be bound to see to the execution of any trust, whether express, implied or constructive, to which any debt paper created under this Act may be subject.

**Division 3 — Capital and securities of the Corporation**

**30. Capital of the Corporation, and securities, etc.**

- (1) The authorized capital of the Corporation shall in the first instance be \$30 000 000 which —
  - (a) may be increased pursuant to regulations made under this Act, by the Governor on a recommendation of the Board made with the approval of the Treasurer;  
and
  - (b) shall initially comprise 30 000 shares of \$1 000 each, but may be divided or constituted otherwise by reference to different classes of shares or other securities pursuant to the regulations.
- (2) As soon as is practicable after the commencement of this section, the Treasurer shall pay to the Corporation an amount of \$7 000 000 in respect of which 7 000 shares at par shall be issued to the Treasurer constituting the initial issued capital of the Corporation.
- (3) Securities, whether or not shares, to which this Division applies shall not be —
  - (a) issued or made available by the Corporation, except in accordance with a resolution of the Board and with the approval of the Treasurer;  
or
  - (b) allotted or made available to, or held by, a person other than —
    - (i) the Treasurer; or
    - (ii) a statutory authority authorized in accordance with subsection (6).
- (4) The Treasurer is authorized to acquire —
  - (a) the shares representing the initial issued capital of the Corporation pursuant to subsection (2) out of the

General Loan and Capital Works Fund, which is to the extent necessary hereby appropriated; and

- (b) further securities issued or made available by the Corporation, with moneys appropriated by Parliament for the purpose,

on behalf of the Crown in right of the State and in that behalf is empowered to exercise any power attaching thereto and, subject to this Act, to dispose of such securities.

- (5) Any dividends or sums received by the Treasurer in right of, or on the disposal of, any securities acquired under this section shall be credited to the Consolidated Fund.
- (6) A statutory authority is authorized by virtue of this subsection, and notwithstanding any enactment to the contrary, to acquire and hold securities issued or made available by the Corporation subject to —
  - (a) the prior approval of the Treasurer, in the case of securities taken up directly from the Corporation; and
  - (b) in the case of securities acquired by transfer from an authorized holder, the prior approval of the Treasurer where the proposed transfer would result in that statutory authority holding securities of the Corporation, or securities of a class, in excess of such limit as may be prescribed.
- (7) The amount to be paid to the Corporation for securities issued or made available by the Corporation may include a payment by way of premium.
- (8) A holder of securities to which this subsection applies —
  - (a) is liable only to the extent of any amount unpaid on the securities held by that holder;
  - (b) is entitled to receive any dividend or other entitlement declared by the Board in respect of those securities; and

- (c) subject to subsection (6), may, by instrument executed by the transferor and the transferee in a form approved by the Board and delivered to the Corporation, transfer the securities to another person authorized by this Act to hold such securities.
- (9) Subsection (8) applies to any share issued by the Corporation and to such other classes of security as may be prescribed.
- (10) The Corporation shall cause a register to be kept, in such form and containing such details as the Treasurer may approve or require, of the holders of securities issued or otherwise made available by the Corporation.
- (11) Dividends in respect of securities issued or made available by the Corporation shall be payable in accordance with the principles generally applied in commercial practice.
- (12) Dividends shall not be paid, entitlements declared in relation to securities, or securities issued or made available by the Corporation otherwise than in respect of grounds upon which a public company might have so acted in accordance with the *Companies (Western Australia) Code*.
- (13) In this section, a reference to “**securities**” is a reference to any share or debenture, or any unit, right or interest, of a kind which, if it were a kind made available by a corporation within the meaning of the *Companies (Western Australia) Code*, would for the purposes of that Code have been within the meaning assigned to the term “**securities**” by section 5 of that Code.

*[Section 30 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

#### **Division 4 — Financial management**

### **31. Management responsibility, and moneys available to the Corporation**

- (1) The Board is charged with the duty of managing the finances of the Corporation, having regard to section 4 (4).

- (2) The moneys available to the Corporation for the purposes of this Act are —
- (a) moneys from time to time appropriated by Parliament for the purpose;
  - (b) moneys derived from the issued share capital of the Corporation, from the disposal of or dealing with real or personal property vested in or acquired by the Corporation or the income of investments by the Corporation, or otherwise derived in the performance of its functions;
  - (c) moneys borrowed under this Act, or derived from other financial accommodation entered into under and subject to the provisions of this Act; and
  - (d) other moneys lawfully standing to the credit of the Corporation.

**32. Substantial shareholdings**

Division 4 of Part IV of the *Companies (Western Australia) Code* shall be given effect to by the Board as though the Corporation had been declared pursuant to section 134 (2) (b) of that Code to be a company for the purposes of the Division.

## Part V — Offences

### 33. Duty and liability of directors and officers

- (1) A director of the Corporation shall at all times exercise a reasonable degree of care and diligence in the exercise of his powers and the discharge of his duties.

Penalty: \$5 000.

- (2) An officer of the Corporation shall at all times act honestly in the exercise of his powers and the discharge of the duties of his office.

Penalty —

- (a) in a case to which paragraph (b) does not apply — \$5 000; or
- (b) where the offence was committed with intent to deceive or defraud the Corporation or creditors of the Corporation, or creditors of any other person, or for any other fraudulent purpose — \$20 000 and imprisonment for 5 years.
- (3) For the purposes of subsection (2), “**officer**”, in relation to the Corporation, means —
- (a) a director;
- (b) any person, holding or acting in an office under the Corporation by whatever name called, who is concerned, or takes part, in the management of the Corporation or a subsidiary;
- (c) any person who enters into possession or assumes control of property of the Corporation for the purposes of enforcing any charge; and or
- (d) a trustee or other person administering a compromise or arrangement made between the Corporation or a subsidiary and another person or persons.

**34. Improper use of position or information**

- (1) A person who was or is an officer or employee of —
- (a) the Corporation;
  - (b) a body subsidiary to or associated with the Corporation;
  - (c) The Western Australian Exim Corporation Ltd. or a subsidiary; or
  - (d) the Western Australian Overseas Projects Authority,

shall not make improper use of his position as such an officer or employee, or of information acquired by virtue of that position, to gain, directly or indirectly, an advantage for himself or any other person or to cause detriment to the Corporation or to a body subsidiary to or associated with the Corporation.

Penalty: \$20 000 and imprisonment for 5 years.

- (2) In relation to the Corporation, a reference in subsection (1) to an **“officer”** means —
- (a) a director;
  - (b) any person, holding or acting in an office under the Corporation by whatever name called, who is concerned, or takes part, in the management of the Corporation or a subsidiary;
  - (c) any person who enters into possession or assumes control of property of the Corporation for the purposes of enforcing any charge; and
  - (d) a trustee or other person administering a compromise or arrangement made between the Corporation or a subsidiary and another person or persons.
- (3) In relation to a body corporate other than the Corporation, a reference in subsection (1) to an **“officer”** means a person who, had that body been or if it is a corporation within the meaning of that term as used in section 229 of the *Companies (Western*

*Australia) Code*, would be a person holding an office to which subsection (5) of that section refers.

**35. Consequences of contravention of s.33 or s.34.**

- (1) An offence against section 33 or section 34 is punishable on indictment, save that where proceedings for such an offence are brought in a court of summary jurisdiction and the prosecutor requests the court to hear and determine the proceedings the offence is punishable summarily and that court shall hear and determine the proceedings.
- (2) Where —
  - (a) a person is convicted in a court of competent jurisdiction of an offence against section 33 or section 34; and
  - (b) the court is satisfied that the Corporation, or a body subsidiary to or associated with the Corporation, has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which he is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the Corporation or that body of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

- (3) Where a person contravenes or fails to comply with a provision of section 33 or section 34, the Corporation, or a body subsidiary to or associated with the Corporation which has suffered loss or damage as a result may, whether or not the person so contravening or failing to comply has been convicted of an offence under that section in relation to that contravention or failure to comply, recover from that person as a debt due to the Corporation or that body, as the case requires, by action in any court of competent jurisdiction —
  - (a) if the person so contravening or failing to comply or any other person made a profit as a result of the



contravention or failure, an amount equal to that profit;  
and

- (b) if the Corporation or that body has suffered loss or damage as a result of the contravention or failure, an amount equal to that loss or damage.
- (4) Where a person who contravenes or fails to comply with section 33 or section 34 has been found by a court to be liable to pay to the same other person an amount by reason of a contravention of Part X of the *Securities Industry (Western Australia) Code*, or of the provisions of a law in force in a State or Territory that is a participating State or participating Territory for the purposes of that Code being provisions that correspond with that Part of the Code, that arose out of or was constituted by the same act or transaction as the contravention of or failure to comply with that section, the amount of the liability under this section shall be reduced by the firstmentioned amount.
- (5) For the purposes of subsection (4), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction as that from which another liability arose lies on the person liable to pay the amount.
- (6) This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of his office or employment and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

### **36. Secrecy**

- (1) Except in the performance of a function or duty under or in connection with this Act, a person to whom section 34 applies shall not, either directly or indirectly —
- (a) make a record of, or divulge to any person, any information concerning the business affairs of another person acquired by reason or as a result of the office,

employment or associations of that person under or for the purposes of this Act; or

- (b) produce to any person any document relating to the business affairs of another person furnished for the purposes of this Act,

unless the prior permission of the person owning or operating the business to which that information or document relates has been obtained or subsection (2) applies.

Penalty: \$5 000 and imprisonment for 2 years.

- (2) Nothing in this section precludes a person from —

- (a) divulging to a court in the course of criminal proceedings, or proceedings under this Act or a prescribed Act, any information coming under the notice of that person in the performance of official duties, or the performance of a function, under this Act;
- (b) producing a document to a court in the course of criminal proceedings, or proceedings under this Act or a prescribed Act; or
- (c) divulging information or producing a document that the person is required to so divulge or produce by any other Act.

- (3) In this section —

**“information”** includes any record relating to information;

**“record”** includes any document, accounts or accounting records and any other method of compiling information however prepared, recorded or stored;

**“to divulge”** includes to communicate by any means whatsoever, or to produce or furnish any record, or any copy of or extract from a record; and

**“to produce”** includes to permit access to, obtain for or make available.

*[Section 36 amended by No. 5 of 1989 s.29.]*

**37. Offences by bodies corporate**

- (1) Where an offence under this Part is found to have been committed by a body corporate and is proved —
- (a) to have been committed with the consent or connivance of; or
  - (b) to be attributable to any failure to take all reasonable steps to secure compliance by the body corporate with this Act on the part of,

any director, manager, executive officer, secretary or other person concerned in the management of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## **Part VI — Regulations, repeal, consequential amendments, transitional and review provisions**

### **38. 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) Without limiting the generality of subsection (1) regulations may make provision for the application, either with or without modification, to the Corporation, the directors, and the officers or employees of the Corporation and of any subsidiary or associated body of the provisions of a Code or of a written law other than this Act which would not, unless so applied, be binding on the Corporation, the directors, or those officers or employees.
- (3) In this section, a reference to “**a Code**” is a reference to a Code that is a relevant Code within the meaning and for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* as that Code may from time to time be amended.

### **39. Repeal of Western Australian Overseas Projects Authority Act, etc.**

On the day appointed pursuant to section 6 (2) —

- (a) the *Western Australian Overseas Projects Authority Act 1978* shall be repealed; and
- (b) Schedule I to the *Financial Administration and Audit Act 1985* shall be amended by deleting “Western Australian Overseas Projects Authority”.

**40. Provisions relating to Western Australian Overseas Projects Authority**

- (1) On and after the day appointed pursuant to section 6 (2) —
- (a) section 27 shall be taken to have effect in relation to any guarantee given under section 32 of the repealed Act on behalf of the former Authority as though that guarantee had been given by the Treasurer under this Act and the obligation to which the guarantee refers had been an obligation of the Corporation;
  - (b) all contracts, agreements, undertakings, guarantees, indemnities or securities given by or on behalf of or to the former Authority and in force immediately before that appointed day shall be deemed to have been entered into or, as the case may require, given by or to the Corporation and may be enforced against or by the Corporation accordingly;
  - (c) any legal or other proceedings or any remedies that might, before that appointed day, have been commenced, continued, discontinued, or available by or against or to the former Authority under the repealed Act may be commenced, continued, discontinued, and shall be available, by or against or to the Corporation, as the case requires; and
  - (d) a reference in any written law, document or record to the former Authority shall, unless the context otherwise requires, be construed as a reference to the Corporation.
- (2) In this section a reference —
- (a) to the former Authority is a reference to the Western Australian Overseas Projects Authority established by the repealed Act; and
  - (b) to “the repealed Act” is a reference to the *Western Australian Overseas Projects Authority Act 1978* as in force prior to the coming into operation of section 39.

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**41. Provisions relating to the Exim Transfer Scheme**

- (1) In this section a reference to “the Company” is a reference to Western Australian Exim Corporation Ltd.
- (2) The Exim Transfer Scheme shall provide for the preservation of the existence, and may provide for the continuance of certain of the activities, of The Western Australian Exim Corporation Ltd. for the purpose only of carrying out such functions or activities of the Corporation —
  - (a) as are required by reason of the *Companies (Western Australian) Code* or any corresponding law, or of the law applying in the place at which the function is to be exercised, to be carried out by a body corporate that is a company; or
  - (b) as may be approved by the Treasurer.
- (3) The provisions of the Scheme shall ensure that —
  - (a) the Company is constituted as if it were a wholly owned subsidiary and subject to the control of the Corporation;
  - (b) the bodies that are subsidiary to the Company are constituted in such a manner that had the Corporation (notwithstanding that it is an agency of the Crown, whereby by reason of paragraph (a) of the definition of the expression “**corporation**” in section 5 of the *Companies (Western Australia) Code* it is deemed not to be a corporation for the purposes of that Code) in fact been a corporation within the meaning of that Code the Corporation would have been the ultimate holding company of each subsidiary of the Company; and
  - (c) where the Treasurer so directs, the Auditor General (or a person or firm qualified to act as a registered company auditor and who, or a firm on behalf of which a member, has consented to act in terms of section 280 of that Code, being a person or firm nominated by the Auditor General) is appointed under that section as auditor of the

Company or of any other company subsidiary to the Corporation.

(4) The whole of the issued share capital of the Company (those shares being presently held by persons who are not beneficially interested and act on behalf of the Crown) shall by the operation of the Scheme and by virtue of the power conferred by this section —

(a) be divested without payment of consideration from the Treasurer, Western Australian Government Holdings Ltd., or any other persons who, immediately prior to the date appointed for the purpose by the Scheme, were the respective holders of those shares (those persons being hereby required to execute an appropriate form of transfer to give effect to the Scheme and to lodge the instrument of transfer with the Corporation); and

(b) vested in the Corporation,

and the Board thereafter shall ensure that, unless the Treasurer otherwise approves, the share capital of the Company continues to be held by the Corporation or by other nominees on behalf of the Crown in right of the State.

(5) Notwithstanding anything in the Memorandum or Articles of Association of the Company —

(a) any person who, immediately prior to the coming into operation of this section, held office as a director of the Company shall not by reason of subsection (4) be taken to have ceased to hold his qualification; and

(b) a director of the Company shall not thereafter be required to hold a specified share qualification.

(6) The Scheme shall require that the composition of the board of directors of the Company contains a sufficient representation of the interests of the Corporation.

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- (7) The Company, notwithstanding that it is subsidiary to or is otherwise controlled by the Corporation, shall not be taken to be a public authority or an instrumentality or agency of the Crown.
- (8) Pursuant to the Scheme, or where the Treasurer otherwise approves, the services of persons appointed, employed or engaged by the Corporation may be utilised in the service of the Company or a body subsidiary to or associated with the Company or the Corporation.
- (9) The Scheme shall make provision whereby the property, rights and liabilities of the Company, and of any body subsidiary to or associated with the Company which is a body specified for that purpose in the Scheme, shall be and become vested in the Corporation, and may provide that by virtue of the power conferred by this section any such property or right may be so vested without payment of consideration, or shall be transferred as between the Company and a subsidiary or between one such subsidiary and another.
- (10) For so long as the Scheme subsists, the Company and all persons connected with the affairs or operations of the Company, or any body subsidiary to or associated with the Company, shall do all acts and things necessary or desirable to facilitate the transfer to the Corporation or otherwise pursuant to the Scheme of the property, rights and liabilities of the Company, or of any body subsidiary to or associated with the Company and specified for that purpose in the Scheme, and of all documents and records pertaining to those affairs or operations, as may be required under the Scheme.
- (11) Provisions of the Scheme may define the property, rights or liabilities to be transferred —
  - (a) by specifying the property, right or liability in question; or
  - (b) by referring to all the property, rights or liabilities comprised in a specified class,



- and on the Treasurer signifying in writing his approval to a provision of the Scheme the Board shall ensure that such measures are taken as will cause any property, right or liability affected by that provision to be transferred and vested in accordance with that provision.
- (12) Where in the case of any transfer to which the Scheme applies any property or rights cannot be properly vested in the transferee by the operation of this Act (whether because the transfer is governed otherwise than by the law of the State, or for any other reason) the transferor shall take all practicable steps for the purpose of securing that the ownership of that property or, as the case may be, the right is effectively transferred.
- (13) The provisions of the Scheme shall not have effect on, or in relation to, any rights or obligations under an agreement for the rendering of personal services unless specific provision is made to that effect.
- (14) The Scheme may, so far as is expedient, provide for the granting of indemnities or the giving of guarantees in connection with its implementation.
- (15) A transfer effected pursuant to the Scheme shall be binding on all persons, notwithstanding that apart from this subsection it would have required the consent or concurrence of any other person, but if any person applies to the Treasurer and satisfies him that in relation to any transaction the Scheme operates or operated unfairly against that person the Treasurer may give directions for varying the Scheme as regards that transaction.
- (16) The Treasurer pursuant to the Scheme may provide for all or any of the matters that might be provided for by the court in an order made pursuant to section 317 of the *Companies (Western Australia) Code* had the Scheme been an arrangement within the meaning of that section.

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- (17) On the transfer to the Corporation of any property, right or liability taking effect pursuant to the Scheme —
- (a) the property, right or liability devolves in accordance with the Scheme and any guarantee given by the Treasurer on behalf of the State in relation thereto shall have effect as though that guarantee had been given under section 27 (1) and the obligation to which the guarantee refers had been an obligation of the Corporation;
  - (b) all contracts, agreements, undertakings, guarantees, indemnities or securities given by or on behalf of or to the Company, or a body subsidiary to or associated with the Company, in force at the time of and affected by that transfer shall be deemed to have been entered into or, as the case may require, given by or to the Corporation and may be enforced against or by the Corporation accordingly; and
  - (c) any legal or other proceedings or any remedies that might, immediately before that transfer, have been commenced, continued, discontinued or available by or against or to the Company, or a body subsidiary to or associated with the Company, may be commenced, continued, discontinued, and shall be available, by or against or to the Corporation, as the case requires.
- (18) Where the Treasurer so directs in relation to any company that is subsidiary to the Company or would, if the Corporation were a corporation for the purposes of section 7 of the *Companies (Western Australia) Code* be deemed to be a subsidiary of that corporation, that company shall cease to carry on business, and in any such case the Commissioner for Corporate Affairs on the written request of the Treasurer may publish a notice under section 459 (2) of the *Companies (Western Australia) Code* with a view to the cancellation of the registration of that company.

- (19) A direction given by the Treasurer under subsection (18) may require that the board of directors of the company, the directors of the Company, or the Board, as the case may be —
- (a) shall not exercise any power in relation to that company under the *Companies (Western Australia) Code* or a law corresponding with that Code except in so far as is requisite to comply with a requirement of the Commission under that Code or of a body that corresponds to the Commission in relation to any such other law; and
  - (b) shall make provision for the safe keeping of the records relating to the affairs of that company in such manner and for such period as the Treasurer may require.
- (20) Effect shall not be given to the *Stamp Act 1921* in relation to any instrument prepared for the purpose of the Scheme or to give effect to this section, and any question arising pursuant to this subsection may be determined by the Under Treasurer of the State.
- (21) The Registrar of Titles, the Registrar of Deeds, the Minister administering the *Land Act 1933*, the Commissioner for Corporate Affairs, and any other person authorized 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, may take cognizance of this section and is empowered to record and register in the appropriate manner such matters as are necessary to give effect to this section.
- (22) Where there is no sufficient provision in this section in respect of any matter or thing necessary or convenient to give effect to the Scheme, or for the purposes of this section in relation to the transfer of any property, right, liability or function, regulations made under this Act may make that provision.

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**42. Consequential amendments**

The Acts specified in Schedule 2 are respectively amended in the manner therein specified.

**43. Review of the Act**

- (1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as is practicable after the expiration of 5 years from the coming into operation of section 4, and in the course or as a consequence of such review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Corporation;
  - (b) the need for the continuation of the functions of the Corporation; and
  - (c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on his review of this Act and shall as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

## Schedule 1

[Section 10]

### Provisions as to the constitution and proceedings of the Board and committees of the Board

#### 1. Term of office

- (1) Subject to this Act, a director shall hold office for 3 years or such lesser term as may be specified in the instrument by which that person is appointed, and may be reappointed.
- (2) A director shall, unless that person sooner resigns or is removed from office, continue in office, notwithstanding that the term for which the appointment was made has expired, until a successor assumes office.
- (2) A director shall, unless that person sooner resigns or is removed from office, continue in office, notwithstanding that the term for which the appointment was made has expired, until a successor assumes office.
- (3) A director may resign from office by notice in writing delivered to the Minister.
- (4) A director may be removed from office by the Governor on the recommendation of the Minister —
  - (a) if the Governor is satisfied that the person suffers from an incapacitating mental or physical disability, or is incompetent, or has been guilty of neglect of duty or misconduct;
  - (b) if the person is an undischarged bankrupt, or a person who is an insolvent under administration, or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
  - (c) if the person is absent without leave of the Board from 3 consecutive meetings of the Board of which the person has had notice.
- (5) This clause does not apply to or in relation to the Managing Director, except in so far as section 11 (4) (d) may require.

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**2. Acting Director**

- (1) Where a director (other than the Chairman or the Managing Director) is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in the place of that director, and while so acting that other person is deemed to be a director.
- (2) No act or omission of a person acting in place of another under this clause or section 11 (5) shall be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**3. Deputy Chairmen**

- (1) The Board shall, for the purposes of this clause, determine the respective seniority of the Deputy Chairmen as between themselves.
- (2) During any vacancy in the office of Chairman or if the Chairman is unable to act by reason of sickness, absence or other cause, the exercise and performance of the powers, functions and duties of the Chairman shall devolve upon the Deputy Chairmen in order of seniority.
- (3) No act or omission of a Deputy Chairman acting as the Chairman shall be questioned on the ground that the occasion for his so acting had not arisen or had ceased.

**4. Meetings of the Board**

- (1) The first meeting of the Board shall be convened by the Chairman and thereafter, subject to subclause (2), meetings shall 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 Chairman.
- (3) Except as provided in subclauses (4) and (5), the Chairman shall preside at all meetings of the Board.
- (4) A Deputy Chairman shall preside at a meeting at which a Deputy Chairman, but not the Chairman, is present.
- (5) Where the Chairman and both Deputy Chairman are absent from a meeting the directors present shall appoint one of their number to preside.

- (6) A resolution in writing signed or assented to by letter, telex or telegram by each of the directors shall be as valid and effectual as if it had been passed unanimously at a meeting of the Board.
- (7) The Board may grant leave of absence to a director on such terms and conditions as it thinks fit.
- (8) A record of the proceedings of every meeting shall be kept and shall be amended as necessary and certified correct by the person presiding at that or the next succeeding meeting.
- (9) The Board shall ensure that the Minister and the Treasurer are respectively furnished with such further or other information and reports on the activities of the Corporation as may be requested.
- (10) Subject to this Act, the Board shall determine its own procedures and, with the prior approval of the Minister, may determine that a quorum shall be constituted otherwise than in the manner provided by section 54 of the *Interpretation Act 1984*.

**5. Voting**

- (1) In relation to any matter before the Board a resolution may be passed —
  - (a) unanimously; or
  - (b) subject to subclause (2), by a majority of the votes of the directors present at the meeting at which the resolution is put.
- (2) In the case of equality of votes the Chairman or other person presiding at a meeting of the Board shall have a casting vote as well as a deliberative vote.
- (3) In relation to any matter before a committee, a resolution which is not passed by a majority of the persons present and entitled to vote shall be taken to have been lost.

**6. Conflict of interest**

- (1) A director, or a member of a committee of the Board —
  - (a) who has in any way, whether directly or indirectly, a material pecuniary interest in any matter before the meeting for consideration or in any other matter that arises or is likely to

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arise out of a matter before the meeting for consideration, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of that interest at the meeting; and

- (b) on being requested to do so by the person presiding at the meeting, shall disclose whether or not he has, and the nature of, any pecuniary interest in a matter before the meeting or any other matter arising or likely to arise out of that matter as to which the person presiding may inquire.
- (2) Every disclosure made pursuant to subclause (1), and particulars of any request made under subclause (1) (b), shall be recorded in the record of the proceedings of the meeting at which it is made.
- (3) Where —
- (a) disclosure is made of a pecuniary interest or likely pecuniary interest; or
  - (b) the person presiding at the meeting is of the opinion that a disclosure requested has not been adequately made,

the person presiding at that meeting may put to the meeting the question as to whether or not the director or member of the committee making the disclosure or requested to make the disclosure should be present during the consideration of the matter in relation to which the pecuniary interest exists or may arise.

- (4) Where the question is put to the meeting in accordance with subclause (3), the meeting may determine that the director or member of the committee to whom the question relates —
- (a) should not be present during the consideration of the matter in relation to which the pecuniary interest exists or may arise; or
  - (b) should be permitted so to be present and —
    - (i) shall be permitted to take part in the consideration and to vote; or
    - (ii) shall be permitted to take part in the consideration, but shall not be eligible to vote,

in relation to the matter, as the case may require, and effect shall be given to the determination.



- (5) Where a meeting proposes to deliberate on the question of a determination to which subclause (4) refers the director or member of the committee to whom the question relates shall not —
- (a) unless the meeting otherwise agrees, be present during the deliberation; or
  - (b) be eligible to take part in the making of the determination.
- (6) The requirements of subclause (1) do not apply in any case where the interest of the director or member of the committee consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the Corporation if the interest of that person may properly be regarded as not being a material interest.
- (7) For the purposes of subclause (1), a general notice given to the Board or a committee by a person to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as having a pecuniary interest in any contract that may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of that interest if —
- (a) the notice states the nature and extent of the interest of the person in the corporation or firm;
  - (b) when the matter in question is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice; and
  - (c) the notice is given at a meeting of the Board or that committee or the person takes reasonable steps to ensure that it is brought up and read at the next such meeting after it is given.
- (8) For the purposes of determining whether or not a quorum is present at any meeting a director or member of a committee who is precluded under this clause from taking part in any deliberation or decision at a meeting with respect to a matter shall be deemed to be absent from the meeting while that matter is being deliberated or decided upon.

**7. Declaration of interest by Director, and Registers to be kept**

- (1) A director shall give notice to the Board of any interest held by him in any body corporate other than the Corporation, as though the

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Corporation were a company of which that person were a director and the notice were required pursuant to section 232 of the *Companies (Western Australia) Code*.

- (2) The Board shall cause registers to be kept and maintained in relation to the directors in like manner to the registers required to be kept by a company in relation to its directors pursuant to section 231 and section 238 of the *Companies (Western Australia) Code*.

**8. Committee meetings**

Unless the Board otherwise determines, subject to this Act a committee of the Board may determine its own procedures.

## Schedule 2

[Section 42]

### *PARLIAMENTARY COMMISSIONER ACT 1971*

#### Amendment to Schedule

The Schedule to the *Parliamentary Commissioner Act 1971* \* is amended by inserting, in its appropriate alphabetical sequence, the following —

“

Western Australian Exim Corporation and the Board  
established under the *Western Australian Exim Corporation  
Act 1986*

”.

[\* Reprinted as approved 19 July 1983 and amended by Acts Nos. 124 of 1984,  
69, 92, 98, 107 and 110 of 1985 and 39 of 1986.]

### *FINANCIAL ADMINISTRATION AND AUDIT ACT 1985*

#### Amendment to Schedule

Schedule 1 to the *Financial Administration and Audit Act 1985* \* is amended by inserting, in its appropriate alphabetical sequence, the following —

“

Western Australian Exim Corporation

”.

[\* Act No. 117 of 1985 as amended by Acts Nos. 3, 16 and 39 of 1986.]

**NOTES**

- <sup>1.</sup> This is a compilation of the *Western Australian Exim Corporation Act 1986* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Western Australian Exim Corporation Act 1986</i>	94 of 1986	10 Dec 1986	Act (other than section 42 and Schedule 2): 6 Feb 1987 (see <i>Gazette</i> 6 Feb 1987 p.287)
<i>Acts Amendment (Accountability) Act 1989 Pt 9</i>	5 of 1989	26 Apr 1989	Part 9: 1 Jul 1989 (see <i>Gazette</i> 30 Jun 1989 p.1893)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))

**This Act was repealed by the *WADC and WA Exim Corporation Repeal Act 1998 s. 5(1) (No. 30 of 1998) as at 30 Jun 1998 (see s. 2)***

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