



Western Australia

Western Australian Land Authority Amendment Act 1998

No. 60 of 1998

An Act to amend the *Western Australian Land Authority Act 1992* and for related purposes.

[Assented to 31 December 1998]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Western Australian Land Authority Amendment Act 1998*.

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2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. The Act amended

The amendments in this Act are to the *Western Australian Land Authority Act 1992**.

[* *Act No. 35 of 1992.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 251-2 and Act No. 31 of 1997.]

4. Long title replaced

The long title is repealed and the following long title is inserted instead —

“

An Act to establish an agency to provide, or promote the provision of, land, infrastructure, facilities and services for the social and economic needs of the State and to dispose of surplus Government land assets.

”

5. Section 3 amended

Section 3 is amended as follows:

- (a) by deleting “and” after paragraph (b);

(b) by deleting paragraph (c) and inserting instead —

“

(c) the identification and development or redevelopment of urban and regional centres of population and the provision or improvement of infrastructure and facilities for those centres; and

(d) the establishment of a primary agency for the development and disposal of surplus Government land assets to maximize the financial return to the State.

”

6. Section 4 amended

(1) Section 4 is amended by deleting the definition of “land” and inserting instead —

“

“land” includes —

(a) land within the meaning of the *Land Administration Act 1997*; and

(b) any legal or equitable estate or interest in land;

”

(2) Section 4 is amended by inserting in the appropriate alphabetical position —

“

“Treasurer” means the Treasurer of the State.

”

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7. Section 6 amended and transitional

- (1) Section 6(1) is repealed and the following subsections are inserted instead —

“

- (1) The Authority is to have a board of directors comprising not less than 5 nor more than 7 persons appointed in writing by the Minister.
- (1a) Of the persons appointed under subsection (1) 4 shall be persons each of them having in the opinion of the Minister, knowledge of and experience in any of the fields of town planning, housing, industry, commerce, finance, engineering and land development.

”

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

8. Section 16 amended

- (1) Section 16(1) is repealed and the following subsections are inserted instead —

“

- (1) The functions of the Authority are —
- (a) to be an agency through which the government provides, or promotes the provision of, land for the social and economic needs of the State;
- (b) to be an agency through which the Crown and public authorities may dispose of land;

- (c) to be an agency through which local governments and regional local governments may dispose of land in accordance with the *Local Government Act 1995*;
 - (d) to complete the development of the Joondalup Centre, in accordance with the plan referred to in section 18, on the land described in Schedule 2;
 - (e) to identify other potential centres of population, and centres of population in need of redevelopment, and use its powers to bring about the provision, or improvement, of infrastructure and facilities for the same; and
 - (f) for the purposes of these functions to —
 - (i) acquire, hold, deal with and dispose of land; and
 - (ii) plan, undertake, provide for, promote and coordinate the development of land.
- (1a) It is also a function of the Authority —
- (a) to do things that the board determines to be conducive or incidental to the performance of a function referred to in subsection (1); and
 - (b) to do things that it is authorized to do by any other written law.

”.

- (2) Section 16(3) is repealed.

9. Section 16A inserted

After section 16 the following section is inserted —

“

16A. Duty to act in accordance with policy instrument

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

”

10. Section 17 amended

- (1) Section 17(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) The Authority may for the purpose of performing a function —
- (a) acquire, hold, manage and dispose of land;
 - (b) subdivide, amalgamate, improve, develop, alter and extract minerals from land;
 - (c) enter into any contract or arrangement with any person, including a contract or arrangement for the doing of anything that the Authority is authorized to do under this Act —
 - (i) by that person;
 - (ii) by the Authority, for that person; or
 - (iii) by the Authority and that person on a joint venture basis;
 - (d) apply for the grant of any licence or other authority required by the Authority;
 - (e) charge fees for services provided to any person, including a Crown agency; and

- (f) carry out any investigation, survey, exploration or feasibility study.
 - (3) Subsection (2) does not limit subsection (1) or other powers of the Authority under this Act or any other written law.
- ”
- (2) Section 17(4) is amended by inserting after “vested in” —
“ , or held in fee simple by, ”.
 - (3) After section 17(4) the following subsection is inserted —
“
 - (5) In this section —
“**person**” includes a public authority, local government or regional local government.”

11. Section 17A inserted

After section 17 the following section is inserted —

“

17A. Transactions that require Ministerial approval

- (1) Despite sections 16 and 17, the Authority must get the Minister’s approval before it enters into a transaction to which this section applies.
- (2) This section applies to a transaction to be entered into by the Authority if the Authority’s liability exceeds \$1 000 000 or the prescribed amount, whichever is the greater.
- (3) For the purposes of subsection (2) the Authority’s liability is the amount or value of the consideration or the amount to be paid or received by the Authority

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ascertained as at the time when the transaction is entered into.

- (4) The Minister must, within 14 days after an approval is given under subsection (1), cause the text of the approval to be laid before each House of Parliament or dealt with in accordance with section 45A.
- (5) In this section —
- “transaction”** —
- (a) includes a contract or other arrangement referred to in —
 - (i) section 17(2)(c); or
 - (ii) section 20; and
 - (b) does not include —
 - (i) a transaction under section 33, 34 or 35; or
 - (ii) an offer or agreement to enter into a transaction if the offer or agreement is conditional on the approval of the Minister.

”.

12. Section 19 replaced

Section 19 is repealed and the following section is inserted instead —

“

19. Authority to act on commercial principles

- (1) The Authority is to —
- (a) perform its functions in a cost-efficient manner;

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

”.

13. Section 22 amended

Section 22(1)(a) is amended by inserting after “administer” —
“ industrial, commercial or ”.

14. Section 23 replaced

Section 23 is repealed and the following section is inserted instead —

“

23. Delegation

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

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

”

15. Headings inserted

After section 23 the following headings are inserted —

“

Part 3A — Provisions about accountability

Division 1 — Ministerial directions and provision of information

”

16. Section 24 amended

Section 24(3)(a) and (b) are deleted and the following paragraphs are inserted instead —

“

- (a) published in the *Gazette* —
- (i) within 28 days after the direction is given; or
 - (ii) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 28 days after it is confirmed under that section; and
- (b) within 14 days after the direction is published laid before each House of Parliament or dealt with under section 45A; and

”

17. Sections 24A, 24B, 24C and 24D inserted

After section 24 the following sections are inserted —

“

24A. Consultation

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

whether or not the course of action involves a transaction to which section 17A applies.

24B. Minister to be kept informed

The Authority must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Authority, including the assets and liabilities, profits and losses and prospects of the Authority;
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and

- (c) if matters arise that in the opinion of the board may prevent, or significantly affect, achievement of the Authority's —
 - (i) objectives outlined in its statement of corporate intent; or
 - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

24C. Notice of financial difficulty

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

24D. Protection from liability

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

”

18. Divisions inserted and transitional

- (1) After section 25 the following Divisions are inserted —

“

Division 2 — Strategic development plans and statements of corporate intent

25A. Strategic development plan and statement of corporate intent

- (1) The board must, at the prescribed times, prepare and submit to the Minister —
 - (a) a strategic development plan for the Authority; and
 - (b) a statement of corporate intent for the Authority.

- (2) Regulations are to make provision for the following:
- (a) the manner and form in which the board is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
 - (b) the period a strategic development plan or statement of corporate intent is to cover;
 - (c) the matters to be set out in a strategic development plan or statement of corporate intent, including matters related to any community service obligations that are to be performed;
 - (d) the functions of the board, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
 - (e) the operation of a strategic development plan or statement of corporate intent.
- (3) In subsection (2)(c) —
- “community service obligation”** means a commitment that arises because —
- (a) the Minister specifically requests the Authority to do something or specifically approves of the Authority doing something;
 - (b) the Authority could not do the thing and comply with section 19(1)(c); and
 - (c) things of that kind are not required to be done by businesses in the public or private sector generally.

- (4) If a regulation referred to in subsection (2) enables the Minister to give directions to the Authority, the Minister must within 14 days after a direction is given under the regulation cause a copy of the direction to be laid before each House of Parliament or dealt with in accordance with section 45A.
- (5) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

Division 3 — Reporting requirements

25B. Half-yearly reports

- (1) In addition to the reporting requirements referred to in section 39, the board must, for the first half of a financial year, give to the Minister a report on the operations of the Authority.
- (2) A half-yearly report —
 - (a) is to include any information prescribed for inclusion in such reports; and
 - (b) must be given to the Minister within the prescribed period or within the period agreed between the Minister and the board.
- (3) The board must give a copy of each half-yearly report to the Treasurer.

25C. Deletion of commercially sensitive matters from reports

- (1) The board may request the Minister to delete from the copies of a report under section 25B or under the *Financial Administration and Audit Act 1985* (and

accompanying documents) that are to be made public, a matter that is of a commercially sensitive nature.

- (2) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter of a commercially sensitive nature has been deleted from it.

”

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

19. Part 4 and section 46 repealed and transitional

- (1) Part 4 is repealed.
- (2) Section 46 is repealed.

- (3) Despite subsections (1) and (2), on and from the commencement of this Act —
- (a) a memorial registered or deemed to be registered under Part 4 before the commencement of this Act remains of effect, and may be withdrawn and registered again under Part 4, as if the Part had not been repealed;
 - (b) the functions of a relevant official under Part 4 in relation to memorials are to be performed as if the Part had not been repealed;
 - (c) a pending memorial —
 - (i) may be registered under Part 4;
 - (ii) has effect after registration as if Part 4 had not been repealed; and
 - (iii) may be withdrawn and registered again under Part 4,as if the Part had not been repealed; and
 - (d) Part 4 and section 46 continue to apply and have effect in relation to any memorial referred to in paragraph (a) or (c) and to offences and other matters related to the memorial.
- (4) In subsection (3) —
- “pending memorial”** means a memorial in respect of any land disposed of by the Authority pursuant to a transaction entered into before the commencement of this Act;
- “relevant official”** has the same meaning as it had under the *Western Australian Land Authority Act 1992* immediately before the commencement of this Act.

20. Section 32 replaced and transitional

- (1) Section 32 is repealed and the following section is inserted instead —

“

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

- (1) Despite section 5(5) or any other written law —
- (a) the Authority; and
 - (b) deeds or other instruments to which it is a party,
- are liable to and chargeable with duties, taxes or other imposts under any written law.
- (2) Despite subsection (1) and section 15, but subject to subsection (3), land vested in or acquired by the Authority is not rateable land for the purposes of the *Local Government Act 1995*.
- (3) If the Authority leases or lets land vested in or acquired by the Authority, or holds land jointly with another person who is not a public authority, the land is, by reason of the lease, tenancy or joint holding, rateable land for the purposes of the *Local Government Act 1995*.
- (4) The Authority is to pay to the Treasurer in respect of each financial year an amount equivalent to the sum of all local government rates and charges that, but for subsection (2) and section 6.26(2)(a)(i) of the *Local Government Act 1995*, the Authority would have been liable to pay in respect of that financial year.
- (5) Subsection (4) does not apply in relation to land that is rateable under subsection (3).

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- (6) An amount payable under subsection (4) —
 - (a) is to be determined in accordance with such principles; and
 - (b) is to be paid at such time or times,
as the Treasurer may direct.
- (7) The first payment under subsection (4) is to be in respect of the next full financial year after the commencement of the *Western Australian Land Authority Amendment Act 1998*.

”.

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

21. Section 36 amended

Section 36(8) is repealed and the following subsection is inserted instead —

“

- (8) The Treasurer shall —
 - (a) within 28 days of giving a guarantee under subsection (1), cause the text of the guarantee to be published in the *Gazette*; and

- (b) within 14 days of publication cause the text of the guarantee to be laid before each House of Parliament or dealt with in accordance with section 45A as if a reference in that section to the Minister were a reference to the Treasurer.

”

22. Section 38 replaced

Section 38 is repealed and the following section is inserted instead —

“

38. Dividends

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

- (b) after consultation with the board, is to direct that the amount of the final dividend is to be some other amount.
- (4) The Authority is to pay the dividend —
 - (a) as soon as practicable after the amount is fixed under subsection (3); and
 - (b) in any case not later than —
 - (i) 6 months after the end of the financial year to which the final dividend relates; or
 - (ii) such other time as may be agreed between the Treasurer and the board.
- (5) If the board considers that payment of an interim dividend to the Consolidated Fund is justified during part of a financial year the board may make a recommendation to the Minister as to the amount of the interim dividend that the board recommends should be paid.
- (6) The Minister, with the Treasurer's concurrence —
 - (a) may accept a recommendation under subsection (5); or
 - (b) after consultation with the board, is to direct that the amount of the interim dividend is to be some other amount.
- (7) The Authority is to pay the dividend —
 - (a) as soon as practicable after the amount is fixed under subsection (6); and

- (b) in any case not later than the end of the financial year to which the interim dividend relates.

”

23. Part 6 repealed

Part 6 is repealed.

24. Section 45A inserted

After section 45 the following section is inserted —

“

45A. Supplementary provision about laying documents before Parliament

- (1) If—
 - (a) at the commencement of a period referred to in section 17A(4), 24(3)(b), 25A(4) or 36(8) in respect of a document a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,the Minister is to transmit a copy of the document to the Clerk of that House.
- (2) A copy of a document transmitted to the Clerk of a House is to be —
 - (a) taken to have been laid before that House; and
 - (b) taken to be a document published by order or under the authority of that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House

on the first sitting day of the House after the receipt of the copy by the Clerk.

”

25. Section 48 replaced

Section 48 is repealed and the following section is inserted instead —

“

48. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 6 months after every 5th anniversary of the commencement of the *Western Australian Land Authority Amendment Act 1998*.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) the effectiveness of the operations of the Authority;
 - (b) the need for the continuation of the functions of the Authority; and
 - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report on the review within 6 months after the review is carried out and cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

”

26. Schedule 1 amended

After clause 5 of Part A of Schedule 1 the following clause is inserted —

“

5A. Telephone and video meetings

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

”

27. Miscellaneous amendments

Amendments are made as set out in Schedule 1.

Schedule 1 — Miscellaneous amendments

[s. 27]

1. Section 4

- (1) In the definition of “dispose of” delete “of right of way” and insert instead —

“ or right of way ”.

- (2) Delete the definition of “relevant official”.

2. Section 5(5)

Delete “section 15” and insert instead —

“ sections 15 and 32 ”.

3. Section 8

Delete “on the recommendation of the Public Service Commissioner” and insert instead —

“

after consultation with the Minister for Public Sector
Management

”.

4. Section 10(1)(b)

Delete “on the recommendation of the Public Service Commissioner” and insert instead —

“

after consultation with the Minister for Public Sector
Management

”.

- 5. Section 11(2)**
Delete “Public Service Commissioner” and insert instead —
“ Minister for Public Sector Management ”.
- 6. Section 18(1)**
Delete “section 16 (1) (c)” and insert instead —
“ section 16(1)(d) and related functions under section 16(1)(f) ”.
- 7. Section 20(1)(b)**
Delete “section 16 (1) (d)” and insert instead —
“ section 16(1)(e) ”.
- 8. Section 20(2)(b)**
Delete “does” and insert instead —
“ do ”.
- 9. Section 25(2)(a) and (b) and (3)**
Delete “Authority” in the 3 places where it occurs and insert
instead —
“ chief executive officer or the board ”.
- 10. Section 25(3)**
Delete “its”.
- 11. Section 31(1)(b)**
Delete “section 17 (2) (d)” and insert instead —
“ section 17(2)(e) ”.

Schedule 1 Miscellaneous amendments

12. Section 47(2) and (3)

Repeal the subsections.

13. Section 52

Repeal the section.

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