

WESTERN AUSTRALIA

**WATER AND RIVERS COMMISSION
ACT 1995**

(No. 71 of 1995)

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**WATER AND RIVERS
COMMISSION ACT 1995**

No. 71 of 1995

AN ACT to establish a Commission with functions relating to water resources, including functions under various written laws, and for connected purposes.

[Assented to 27 December 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY**Short title**

1. This Act may be cited as the *Water and Rivers Commission Act 1995*.

Commencement

2. This Act comes into operation on the day on which Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* comes into operation, that is, on the day fixed by proclamation made under section 2 (2) of that Act.

Interpretation

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

“**Account**” means the account referred to in section 26;

“**appointed member**” means a member of the board appointed under section 7 (1);

“**board**” means the board of management provided for by section 6 and in Division 2 of Schedule 1 includes a committee;

“**chairperson**” means the chairperson of the board;

“**chief executive officer**” means the person appointed as such for the purposes of section 22;

“**Commission**” means the Water and Rivers Commission established by section 4 (1);

“**committee**” means a committee established under clause 15 of Schedule 1;

“function”, except in sections 10 and 11, includes powers, duties and authorities;

“member” means a member of the board and includes a person appointed under clause 5 of Schedule 1 and a member of a committee;

“member of staff” means the chief executive officer or a person referred to in section 23 (1) or (2) or 24;

“watercourse” means —

- (a) any river, creek, stream or brook, whether artificially improved or altered or not;
- (b) any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of that river, creek, stream or brook; or
- (c) any natural collection of water into, through, or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not,

in which water flows or is contained whether permanently, intermittently or occasionally;

“water resources” includes —

- (a) watercourses, reservoirs, lakes, wetlands, estuaries and inlets, together with their beds and banks;
- (b) aquifers and underground water; and
- (c) drainage, surface and surplus water.

(2) Notes included in this Act do not form part of the Act.

PART 2 — WATER AND RIVERS COMMISSION**Water and Rivers Commission established**

4. (1) There is established a body called the Water and Rivers Commission.

(2) The Commission is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Commission in its corporate name.

Agent of Crown

5. The Commission is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

Board of management

6. (1) The Commission is to have a board of management comprising —

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) the chief executive officer for the time being; and
- (d) 4 other members.

(2) The board, in the name of the Commission is to perform the functions of the Commission under this Act or any other written law.

Appointment of board

7. (1) The members of the board, other than the chief executive officer, are to be appointed by the Minister.

(2) The Minister is to ensure that each person so appointed has expertise that in the Minister's opinion is relevant to the functions of the Commission.

(3) A person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994* is not to be appointed under this section or under clause 5 of Schedule 1.

Constitution and proceedings of board

8. Schedule 1 has effect.

Remuneration of members

9. A member, other than the chief executive officer, is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

PART 3 — FUNCTIONS AND POWERS

Functions

10. (1) The Commission has water resources conservation, protection and management functions vested in it by various written laws.

Note: Under the *Country Areas Water Supply Act 1947* the Commission —

- under Part II, may make by-laws for the prevention of pollution in catchment areas or water reserves;
- under Part IIA, administers a scheme for clearing licences for certain controlled land.

Under Part IX of the *Metropolitan Water Authority Act 1982* the Commission is responsible for planning for and the administration of arterial drainage and for the declaration of drainage courses.

Under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* the Commission —

- under Part IV, may make by-laws for the prevention of pollution in catchment areas or water reserves;
- under Part VI —
 - may make by-laws for underground water pollution control areas in the metropolitan area; and
 - is responsible for licensing wells in public water supply areas in the metropolitan area.

Under Part III of the *Rights in Water and Irrigation Act 1914* the Commission is responsible for —

- licensing, or giving directions as to, the use of surface waters; and
- licensing artesian wells and, in certain areas, non-artesian wells.

Under the *Waterways Conservation Act 1976* the Commission has a conservation function, and associated powers, in respect of waterways and adjoining land in management areas under that Act.

- (2) In addition the Commission has the functions of —
- (a) advising the Minister on all aspects of policy in relation to water resources;
 - (b) assessing water resources, and carrying out works under Part 4;
 - (c) planning for the use of water resources;
 - (d) promoting the efficient use of water resources;
 - (e) undertaking, co-ordinating, managing, and providing practical and financial assistance to, activities and projects for the conservation, management or use of water resources;
 - (f) developing plans for and providing advice on flood management;
 - (g) carrying out, collaborating in or procuring research or investigations relating to water resources; and
 - (h) publishing information and material relating to water resources.

Powers

11. (1) The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1) or the other powers conferred on the Commission by this Act or any other written law the Commission may, subject to section 12 —

- (a) acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property; and
- (b) act in conjunction with —
 - (i) any person or firm, or a public or local authority; or
 - (ii) any department of the Public Service or any agency of the State or the Commonwealth.

Transactions which require Ministerial approval

12. (1) The Commission must obtain the approval of the Minister before a transaction to which this section applies is entered into.

(2) This section applies to —

- (a) an acquisition or disposal of real property under section 11 (2) (a) that exceeds in value \$1 000 000 or such amount as is prescribed; and
- (b) a contract or arrangement, other than one to which paragraph (a) applies, in respect of which the amount to be paid or received by the Commission exceeds \$250 000 or such amount as is prescribed.

(3) The Commission must also obtain the approval of the Treasurer to any exercise of the power conferred by section 11 (2) (b).

Delegation

13. (1) The Commission 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 —

- (a) to a member or members of the board;
- (b) to a member or members of staff;
- (c) with the approval of the Minister, to a committee or any other person.

(3) A function performed by a delegate is to be taken to be performed by the Commission.

(4) 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.

(5) Nothing in this section is to be read as limiting the ability of the Commission to act through its officers and agents in the normal course of business.

Minister may give directions

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

(2) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

15. (1) The Minister is entitled —

- (a) to have information in the possession of the Commission; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Commission to furnish information to the Minister;
- (b) request the Commission to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of a member of staff of the Commission to obtain the information and furnish it to the Minister.

(3) The Commission is to comply with a request under subsection (2) and make its facilities and members of staff available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Commission.

PART 4 — INVESTIGATION OF WATER RESOURCES

Definitions

16. In this Part —

“authorized person” means a member of the staff authorized in writing by the Commission for the purposes of section 17;

“assessment” means any activity that is necessary for the investigation of water resources, and includes —

- (a) the conduct of surveys;
- (b) the taking and testing of geological and water samples; and
- (c) the examination of geological and hydrogeological features;

“investigative works” means any works that are necessary for the investigation of water resources, and includes —

- (a) the drilling of bore holes;
- (b) the construction of gauging weirs; and
- (c) the making of excavations and trenches.

Power of entry

17. (1) An authorized person may from time to time enter on any land for the purpose of —

- (a) making assessments of water resources; or
- (b) carrying out, maintaining or inspecting investigative works.

(2) An authorized person may be accompanied by assistants and may take such equipment as he or she considers necessary.

(3) An authorized person and his or her assistants are to do as little damage as is practicable in exercising the powers conferred by this section.

Notice

18. (1) Before an authorized person enters on any land under section 17 he or she must give not less than 48 hours' notice to the owner or occupier of his or her intention to do so.

(2) A notice is to specify the purpose of the entry.

(3) Successive entries for the purpose specified in a notice are taken to be entries covered by the notice.

(4) Subsection (1) does not apply if it is not reasonably practicable to comply with that subsection because the identity of the owner or occupier is not known or the owner or occupier cannot reasonably be located.

Production of authority

19. An authorized person must, if requested by the owner or occupier, produce a copy of the authorization given to him or her by the Commission.

Offences

20. A person must not —

- (a) wilfully obstruct, hinder, or interfere with any person exercising powers under this Part;

- (b) without lawful authority damage, remove, destroy or interfere with any investigative works.

Penalty: \$5 000.

Compensation

21. (1) The owner and occupier of land are entitled to compensation from the Commission, according to their respective interests, for damage to the land caused by the exercise of any power under this Part.

(2) Section 83C (2), (3) and (4) of the *Public Works Act 1902* apply, with all necessary changes, for the purposes of subsection (1).

PART 5 — STAFF

Chief executive officer

22. (1) A chief executive officer of the Commission is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

(2) Subject to the control of the Commission, the chief executive officer is to administer the day to day operations of the Commission.

Other staff

23. (1) Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Commission to perform its functions.

(2) The Commission may engage persons as wages staff otherwise than under the *Public Sector Management Act 1994*.

(3) Persons referred to in subsection (2) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the Commission determines.

(4) Nothing in subsection (3) affects the operation of the *Workplace Agreements Act 1993*.

(5) Subsections (1) and (2) do not affect the power of the Commission to engage a person under a contract for services under section 100 of the *Public Sector Management Act 1994*.

Use of other government staff etc.

24. (1) The Commission may by arrangement make use, either full-time or part-time, of —

- (a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or

otherwise in the service of the Crown in right of the State; or

- (b) any facilities of a department of the Public Service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Commission and the relevant employer, and is to be made on such terms as they agree.

PART 6 — FINANCIAL PROVISIONS**Funds of Commission**

25. The funds available for the purpose of enabling the Commission to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Commission in the performance of its functions;
- (c) moneys borrowed by the Commission under section 27 or 28; and
- (d) other moneys lawfully received by, made available to or payable to the Commission.

Water and Rivers Commission Account

26. (1) The funds referred to in section 25 are to be credited to an account called the “Water and Rivers Commission Account” —

- (a) at the Treasury; or
- (b) with the approval of the Treasurer, at a bank,

and if paragraph (a) applies the Account is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

(2) The Account is to be charged with —

- (a) the remuneration and allowances payable under section 9;

- (b) interest on and repayment of moneys borrowed by the Commission under section 27 or 28; and
- (c) all other expenditure lawfully incurred by the Commission in the performance of its functions.

Borrowing from Treasurer

27. The Commission may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

Other borrowing

28. (1) In addition to its powers under section 27, the Commission may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.

(2) Any moneys borrowed by the Commission under subsection (1) may be raised —

- (a) as one loan or as several loans; and
- (b) in such manner as the Treasurer approves.

(3) The total amount of the moneys so borrowed in any one financial year is not to exceed such amount as the Treasurer approves.

Guarantee by Treasurer

29. (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any

moneys payable by the Commission in respect of moneys borrowed by it under section 28.

(2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

(3) Before a guarantee is given, the Commission is to —

- (a) give to the Treasurer such security as the Treasurer requires; and
- (b) execute all instruments that are necessary for the purpose.

Effect of guarantee

30. (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 29 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

(3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Commission or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 29.

Application of *Financial Administration and Audit Act 1985*

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

PART 7 — MISCELLANEOUS

Protection from liability

32. (1) An action in tort does not lie against a person, other than the Commission, for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(3) This section does not relieve the Commission or the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

Execution of documents by Commission

33. (1) The Commission is to have a common seal.

(2) A document is duly executed by the Commission, if —

- (a) the common seal of the Commission is affixed to it in accordance with subsections (3) and (4); or
- (b) it is signed on behalf of the Commission by a person or persons authorized to do so under subsection (5).

(3) The common seal of the Commission is not to be affixed to any document except as authorized by the board.

(4) The common seal of the Commission is to be affixed to a document in the presence of 2 members of the board, and each of them is to sign the document to attest that the common seal was so affixed.

(5) The Commission may, by writing under its seal, authorize a member or members of the board or a member or members of staff to sign documents on behalf of the Commission, either generally or subject to such conditions or restrictions as are specified in the authorization.

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

(7) When a document is produced bearing a seal purporting to be the common seal of the Commission, it shall be presumed that that seal is the common seal of the Commission until the contrary is shown.

Confidentiality

34. A person who is or has been a member of the board or of a committee or a member of staff must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

Regulations

35. 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.

Review of Act

36. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

(2) In the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the Commission;
- (b) the need for the continuation of the functions of the Commission; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

SCHEDULE 1

[Section 8]

*Division 1 — Provisions as to constitution and proceedings of board***Term of office**

1. (1) Subject to clause 2, an appointed member holds office for such term, not exceeding 3 years, as is specified in the instrument of his or her appointment, but may from time to time be re-appointed.

(2) An appointed member whose term of office expires by the passage of time continues in office until he or she is re-appointed or his or her successor comes into office.

Resignation, removal, etc.

2. (1) The office of an appointed member becomes vacant if he or she —

- (a) resigns the office by written notice addressed to the Minister;
- (b) is an insolvent under administration as that expression is defined in the Corporations Law; or
- (c) is removed from office by the Governor under subclause (2).

(2) The Governor may remove an appointed member from office if the Governor is satisfied that the member —

- (a) has neglected his or her duty;
- (b) has misbehaved;
- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions.

Leave of absence

3. The board may grant leave of absence to a member on such terms and conditions as it thinks fit.

Chairperson unable to act

4. If the chairperson is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairperson is to perform the functions of the chairperson.

Appointed member unable to act

5. (1) If an appointed member other than the chairperson is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the board.

(2) If the member who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subclause (1), appoint another person to act in his or her place as a member.

(3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

Chief executive officer unable to attend

6. The chief executive officer may, in writing delivered to the person presiding at a meeting of the board, nominate a senior officer of the Commission to represent him or her at that meeting if he or she is unable to attend by reason of sickness, absence or other cause; and while so attending the person so nominated is to be taken to be a member of the board.

Saving

7. No act or omission of a person acting in place of another under clause 4, 5 or 6 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

Calling of meetings

8. (1) Subject to subclause (2), meetings are to be held at the times and places that the board determines.

(2) A special meeting of the board may at any time be convened by the chairperson.

(3) The first meeting of the board is to be convened by the chairperson.

Presiding officer

9. (1) The chairperson is to preside at all meetings of the board at which he or she is present.

(2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

Quorum

10. A quorum for a meeting of the board is 4 members.

Voting

11. (1) At any meeting of the board each member present has a deliberative vote.

(2) Subject to subclause (3), if the votes cast on a question are equally divided, the question remains unresolved until a subsequent meeting of the board.

(3) If the votes cast on a question at a meeting of the board were equally divided and the votes cast on the question at a subsequent meeting of the board are again equally divided, the question is to be taken to have been resolved in the negative.

Minutes

12. The board is to cause accurate minutes to be kept of the proceedings at its meetings.

Resolution without meeting

13. A resolution in writing signed or assented to by each member by letter, telegram or facsimile is as effectual as if it had been passed at a meeting of the board.

Telephone or video meetings

14. A communication between not less than 4 members by telephone or audio-visual means is a valid meeting of the board if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

Committees

15. (1) The board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

(2) A committee may include persons who are not members of the board but, unless the Minister approves, must include at least one person who is —

- (a) a member of the board; or
- (b) an officer or other person referred to in section 23.

(3) Subject to the directions of the board and to the terms of any delegation under section 13, a committee may determine its own procedures.

Board to determine own procedures

16. Subject to this Act, the board is to determine its own procedures.

Division 2 — Disclosure of interests etc.

Disclosure of interests

17. (1) A member who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$1 000 or imprisonment for 3 months, or both.

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

Voting by interested members

18. A member who has a material personal interest in a matter that is being considered by the board —

- (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) on a proposed resolution under clause 19 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a) (ii),is being considered at a meeting.

Clause 18 may be declared inapplicable

19. Clause 18 does not apply if the board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

Quorum where clause 18 applies

20. (1) Despite clause 10, if a member of the board is disqualified under clause 18 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

(2) The Minister may deal with a matter insofar as the board cannot deal with it because of subclause (1).

Minister may declare clauses 18 and 20 inapplicable

21. (1) The Minister may by writing declare that clause 18 or 20 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

(2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.