

**STATE SUPPLY COMMISSION  
AMENDMENT ACT (No. 2) 1994**

---

**No. 97 of 1994**

---

**AN ACT to amend the *State Supply Commission Act 1991*  
and for related purposes.**

*[Assented to 30 December 1994.]*

The Parliament of Western Australia enacts as follows:

**Short title**

1. This Act may be cited as the *State Supply Commission Amendment Act (No. 2) 1994*.

### **Commencement**

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Sections 5 (b) and (c), 7, 8, 15 and 16 come into operation on such day as is fixed by proclamation.

### **Principal Act**

3. In this Act the *State Supply Commission Act 1991\** is referred to as the principal Act.

[\* *Act No. 5 of 1991.*

*For subsequent amendments see Act No. 32 of 1994.]*

### **Long title amended**

4. The long title to the principal Act is amended by inserting after "**supply and disposal,**" the following —

“            **to effect the sale of government businesses that  
              are to be sold,**

”.

### **Section 3 amended**

5. Section 3 of the principal Act is amended —

(a) by inserting after the section designation “**3.**” the subsection designation “(1)”;

(b) by inserting before the definition of “Commission” the following definition —

“            **“chief executive officer”** means the chief  
   executive officer of the Commission;

”.

- (c) by deleting the definition of "Department"; and
- (d) by inserting the following subsections —

“

(2) Regulations may provide —

- (a) that prescribed things are to be regarded as goods or services for the purposes of this Act either generally or in prescribed circumstances; or
- (b) that prescribed things are not to be regarded as goods or services for the purposes of this Act either generally or in prescribed circumstances.

(3) Regulations made under subsection (2) do not affect the generality of the terms "goods" and "services" as used in this Act.

”.

### **Section 5 amended**

**6.** After section 5 (c) of the principal Act the following paragraphs are inserted —

“

- (ca) to effect the sale of government businesses under Part 3A;
- (cb) to apply and facilitate practices, reforms and rationalization in the supply of goods and services for public authorities so as to implement policies and principles referred to in section 7 (1);

”.

**Section 8 repealed and a section substituted, transitional provisions**

7. (1) Section 8 of the principal Act is repealed and the following section is substituted —

“            **Membership of Commission**

8. The Commission shall consist of —

- (a) a chairman and not more than 8 other members appointed by the Minister; and
- (b) the chief executive officer who shall be a member of the Commission *ex officio*.

(2) If the appointment of a person as a member under section 8 of the principal Act as enacted before the commencement of this section is still in effect immediately before that commencement, that appointment continues after that commencement under and subject to the principal Act.

(3) In subsection (2) “**member**” has the same meaning as in the principal Act.

**Section 16 repealed and sections 16 to 16B substituted**

8. Section 16 of the principal Act is repealed and the following sections are substituted —

“            **Chief executive officer**

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

(2) The office of chief executive officer of the Commission is an office included in the Special Division of the Public Service.

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

**Other staff**

**16A.** (1) The Commission may, under Part 3 of the *Public Sector Management Act 1994*, employ such persons as may be necessary to enable the Commission to perform its functions.

(2) The Commission may engage under a contract for services or other arrangement such consultants and professional or technical or other assistance as it considers necessary to enable the Commission to perform its functions.

**Use of other government staff etc.**

**16B.** (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 employing authority within the meaning of the *Public Sector Management Act 1994* and is to be made on such terms as they agree.

**Section 19 amended**

9. Section 19 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) The Commission is not responsible for arranging and co-ordinating the supply of goods and services where an exemption exists in respect of those goods and services under section 20 or 21.

”

**Part 3A inserted**

10. After Part 3 of the principal Act the following Part is inserted —

“

**PART 3A — SALE OF GOVERNMENT  
BUSINESSES**

*Division 1 — Authority for sale*

**Interpretation**

26A. In this Part, unless the contrary intention appears —

“**company**” means a company formed or acquired under section 26D;

“**government business**” means a business or undertaking carried on by a public authority, but does not include a business or undertaking that is specifically established by a written law;

“**property**” means personal property of any kind, whether corporeal or incorporeal or tangible or intangible, and any interest in personal property;

**“responsible Minister”**, in relation to a government business, means the Minister responsible for the public authority that carries on that business.

### **Property may be sold**

**26B.** (1) The responsible Minister in relation to a government business may, with the approval of the Treasurer, in writing determine that property that constitutes or forms part of that government business is to be sold under this Part.

(2) The responsible Minister may also determine that the transfer of any liability relating to that business is to form part of the transaction.

(3) A determination is to identify the property and any liability to which it applies.

(4) A sale of property under this Part is to be made under section 26C unless the determination specifies that Division 2 is to apply.

### **Power of Commission to sell**

**26C.** (1) Where —

(a) a determination has been made under section 26B in respect of any property or liability; and

(b) the determination does not specify that Division 2 is to apply,

the Commission is to endeavour to sell the property and has authority to enter into a contract of sale for that purpose in its own name.

(2) The Commission may also take necessary steps to transfer any liability to the purchaser of any property in accordance with a determination under section 26B.

***Division 2 — Sale by formation of company and sale of shares***

**Company to be formed or acquired**

**26D.** (1) Where a determination under section 26B (4) so requires, the Commission is to form or acquire a proprietary company incorporated under the Corporations Law.

(2) A company is to be limited by shares and all of the shares are to be held on behalf of the State.

(3) The responsible Minister, with the approval of the Treasurer, is to give directions, not inconsistent with the Corporations Law, as to —

(a) the name;

(b) the contents of the memorandum and articles; and

(c) who are to be the shareholders and officers,

of a company, and the Commission and the shareholders and officers of the company are to see that the directions are complied with.



### **Status of company**

**26E.** (1) A company is an agent of the Crown until the completion of a contract of sale made under section 26H.

(2) For the purposes of the *Financial Administration and Audit Act 1985*, a company is a subsidiary body of the public authority which carries on the relevant business.

### **Order for transfer of property etc. to the company**

**26F.** (1) The responsible Minister may by order transfer to a company that has been formed or acquired under section 26D for the purpose the property and any liability to which a determination under section 26B applies.

(2) An order under subsection (1) may be amended by the responsible Minister before it comes into force but, if a contract of sale has been entered into under section 26H, an amendment may be made only with the consent of the purchaser under that contract.

(3) An order under subsection (1) comes into force immediately before the completion of a contract of sale made under section 26H.

### **Effect of transfer order**

**26G.** (1) On the coming into force of an order under section 26F —

- (a) the property to which it applies vests in the relevant company, and any liability to

which it applies becomes the liability of that company, by virtue of this subsection without the need for any transfer; and

- (b) a reference in an instrument of any kind to any government body or official is to be read, so far as it relates to the ownership of the property or any liability transferred, as a reference to the company.

(2) The operation of this section does not —

- (a) constitute a breach of contract or a civil wrong;
- (b) constitute a breach of any contractual provision prohibiting or restricting transfer of any asset, right or liability; or
- (c) give rise to any remedy by a party to an instrument, or cause or permit the termination of any instrument.

### **Commission may sell shares**

**26H.** (1) The Commission may, with the approval of the responsible Minister, enter into a contract in writing for the sale of the shares in a company.

(2) A contract under subsection (1) —

- (a) may contain such incidental and ancillary provisions as are required to give effect to this Part; and
- (b) is binding on the company's shareholders.

***Division 3 — General***

**Proceeds of sale**

**26I.** (1) Subject to subsection (2), the proceeds of sale of —

- (a) property sold under section 26C; or
- (b) the shares in a company sold under section 26H,

are to be credited to the Consolidated Fund.

(2) There may be deducted from the proceeds of sale, and credited to the funds of the Commission, such amount as the Treasurer approves to meet the expenses incurred by the Commission in giving effect to this Part.

**Stamp duty**

**26J.** (1) Stamp duty is not chargeable under the *Stamp Act 1921* on the transfer of property or any liability under section 26G.

(2) Nothing in this Part is to be read as affecting stamp duty that is payable on any transaction under section 26C or 26H.

”.

**Section 27 amended**

11. After section 27 (h) of the principal Act the following paragraph is inserted —

- “
- (ha) measures that may be taken to ensure that public authorities comply with the regulations,

and with supply policies and directions supplementing supply policies, and actions that may be taken in the event of non-compliance;

”.

**Section 29 amended**

12. (1) Section 29 (1) of the principal Act is amended by inserting after “this Act” the following —

“ other than Part 3A ”.

(2) Section 29 (2) of the principal Act is amended by inserting after “which is not a party to the contract” the following —

“ (including a contract entered into under Part 3A) ”.

**Section 30 amended**

13. After section 30 (1) (b) of the principal Act the following paragraph is inserted —

“

(ba) borrowings by the Commission under section 31 (2);

”.

**Section 31 amended**

14. Section 31 of the principal Act is amended —

(a) by inserting after the section designation “31.” the subsection designation “(1)”; and

(b) by inserting the following subsections —

“

(2) For the purposes of performing its functions the Commission may also borrow moneys from persons other than the Treasurer.

(3) Borrowings under subsection (2) can only be made with the prior approval of the Treasurer in writing and on such terms and conditions as the Treasurer approves.

(4) Any moneys borrowed by the Commission under subsection (2) may be raised as one or more loans and in such manner as the Treasurer approves, but the amount of the moneys so borrowed shall not in any one financial year exceed in the aggregate such amount as the Treasurer approves.

(5) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee, in the form and subject to the terms and conditions that the Treasurer determines, the payment of any moneys payable by the Commission in respect of moneys borrowed by it under subsection (2).

(6) The due payment of moneys payable by the Treasurer under a guarantee given under subsection (5) —

(a) is guaranteed by the State; and

(b) is to be made by the Treasurer and charged to the Consolidated Fund and this subsection appropriates that Fund accordingly.

”

**Schedule 1 amended**

**15. Schedule 1 to the principal Act is amended —**

- (a) in clause 1, by inserting before the definition of “chairman” the following definition —

“  
    **“appointed member”** means a member other  
    than the chief executive officer;  
”;

- (b) in clauses 2 (1), 2 (2), 4 (1) and 4 (2), by deleting “A member” and substituting in each case the following —

“    An appointed member    ”;

- (c) by deleting clause 3 (1) (c) and substituting the following paragraph —

“  
    (c) any officer or employee of the Commission  
    or person whose services are used under  
    section 16B (1) (a),  
”;

and

- (d) in clause 5 (2), by deleting “a member” and substituting the following —

“    an appointed member    ”.

**Consequential amendment**

**16.** Schedule 2 to the *Public Sector Management Act 1994* is amended by inserting after item 47 the following item —

“

**47A** State Supply Commission established under the *State Supply Commission Act 1991*

”.