

WESTERN AUSTRALIA

**PILBARA DEVELOPMENT
COMMISSION ACT 1992**

(No. 59 of 1992)

ARRANGEMENT

PART 1 — PRELIMINARY

| Section | Page |
|-------------------|------|
| 1. Short title | 2 |
| 2. Commencement | 2 |
| 3. Interpretation | 2 |

PART 2 — PILBARA DEVELOPMENT COMMISSION

Division 1 — Establishment of Commission

| | |
|--|---|
| 4. Establishment of Pilbara Development Commission | 4 |
| 5. Board of management of Commission | 4 |
| 6. Membership of Board | 5 |
| 7. Constitution and proceedings of Board | 5 |

Pilbara Development Commission Act 1992

| Section | Page |
|---|------|
| 8. Remuneration and allowances of certain Board members and members of committees | 5 |
| 9. Protection of Board members and members of committees | 5 |
| 10. Disclosure of pecuniary interests | 6 |
| 11. Execution of documents by Commission | 7 |

Division 2 — Functions and powers of Commission

| | |
|--|----|
| 12. Functions of Commission | 8 |
| 13. Powers of Commission | 9 |
| 14. Minister may give directions | 9 |
| 15. Minister to have access to information | 10 |

Division 3 — Director and other staff of Commission

| | |
|---|----|
| 16. Appointment and functions of Director and other staff and engagement of consultants | 11 |
| 17. Use of staff and facilities of departments, agencies and instrumentalities | 11 |
| 18. Secrecy | 12 |

Division 4 — Financial provisions

| | |
|---|----|
| 19. Funds of Commission | 13 |
| 20. Borrowing by Commission from Treasurer | 14 |
| 21. Application of <i>Financial Administration and Audit Act 1985</i> | 14 |

PART 3 — GENERAL

| | |
|--|----|
| 22. Regulations | 15 |
| 23. Review of Act | 15 |
| 24. Expiry | 15 |
| 25. Consequential amendments to other Acts | 16 |

Pilbara Development Commission Act 1992

| Section | | Page |
|---------|--|------|
| | SCHEDULE 1 | |
| | PILBARA REGION | 17 |
| | SCHEDULE 2 | |
| | CONSTITUTION AND PROCEEDINGS OF BOARD | |
| 1. | Term of office of appointed member | 18 |
| 2. | Vacation of office by appointed member | 18 |
| 3. | Temporary members | 19 |
| 4. | Meetings of Board | 19 |
| 5. | Delegation by Board | 20 |
| 6. | Committees | 20 |
| 7. | Resolution may be passed without meeting | 21 |
| 8. | Leave of absence | 21 |
| 9. | Board to determine own procedures | 21 |
| | SCHEDULE 3 | |
| | CONSEQUENTIAL AMENDMENTS | 22 |

WESTERN AUSTRALIA

**PILBARA DEVELOPMENT
COMMISSION ACT 1992**

No. 59 of 1992

AN ACT to establish a Pilbara Development Commission to implement the recommendations of the Pilbara 21 Report, and co-ordinate, market and promote the economic and social development of the Pilbara Region of Western Australia, to amend certain Acts and for related purposes.

[Assented to 11 December 1992.]

The Parliament of Western Australia enacts as follows:

s. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Pilbara Development Commission Act 1992*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation

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

“**appointed member**” means a member of the Board appointed under section 6 (1) and includes a temporary member;

“**Board**” means the board of management referred to in section 5 (1);

“**Board member**” means the Director or an appointed member;

“**chairperson**” means the chairperson of the Board appointed under section 6 (1);

“**committee**” means a committee appointed under clause 6 (1) of Schedule 2;

“**deputy chairperson**” means the deputy chairperson of the Board appointed under section 6 (1);

“Director” means the person holding or acting in the office of the Director of the Commission referred to in section 16 (1);

“district” has the meaning given by section 6 of the *Local Government Act 1960*;

“local authority” means municipality within the meaning of the *Local Government Act 1960*;

“temporary member” means a person appointed to act temporarily in the place of an appointed member under clause 3 (1) of Schedule 2;

“the Commission” means the Pilbara Development Commission established under section 4 (1);

“the Account” means the Pilbara Development Commission Account referred to in section 19 (2);

“the Pilbara Region” means the region constituted by the combined districts of the local authorities referred to in Schedule 1;

“the Pilbara 21 Report” means the report entitled “Pilbara 21 Final Strategy Report (June 1992)” issued by the Pilbara 21 Steering Committee.

PART 2 — PILBARA DEVELOPMENT COMMISSION

Division 1 — Establishment of Commission

Establishment of Pilbara Development Commission

4. (1) There is hereby established a body to be called the Pilbara Development Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and, subject to this Act, is capable of —

- (a) acquiring, holding and disposing of property, other than real property;
- (b) suing and being sued; and
- (c) doing and suffering all that bodies corporate may do or suffer.

(3) The Commission is an agent of the Crown in right of the State.

Board of management of Commission

5. (1) The Commission shall have a board of management comprising a chairperson, a deputy chairperson, the Director *ex officio* and 4 other members.

(2) The Board is the governing body of the Commission with authority, in the name of the Commission, to exercise the powers and perform the functions of the Commission.

Membership of Board

6. (1) The chairperson, deputy chairperson and other Board members referred to in section 5 (1), except the Director, shall be appointed by the Minister.

(2) Appointment as a Board member under subsection (1) does not render the provisions of the *Public Service Act 1978* or of any other Act applying to persons as officers of the Public Service of the State applicable to the person so appointed, or affect or prejudice the application to that person of those provisions if they applied to that person immediately before his or her appointment.

(3) The Minister shall cause each appointment under subsection (1) to be notified in the *Gazette*.

Constitution and proceedings of Board

7. Schedule 2 has effect with respect to the constitution and proceedings of the Board.

Remuneration and allowances of certain Board members and members of committees

8. A Board member or a member of a committee, other than the Director or a person who is an officer of the Public Service of the State, shall be paid such remuneration and travelling and other allowances as the Minister from time to time after consultation with the Public Service Commissioner determines in respect of that member.

Protection of Board members and members of committees

9. A Board member or a member of a committee is not personally liable for any act done or omitted to be done in good faith by the Commission, the Board, a committee or by that person acting as a Board member or as a member of a committee.

s. 10

Disclosure of pecuniary interests

10. (1) A Board member or a member of a committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board or a committee shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Board or the committee (as the case requires).

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board or the committee concerned (as the case requires) and, unless the Minister or the Board or that committee otherwise determines, the Board member or member of a committee shall not —

- (a) be present during any deliberation; or
- (b) take part in any decision,

of the Board or that committee with respect to the matter to which the disclosure relates.

(3) For the purpose of the making of a determination by the Board or the committee concerned (as the case requires) under subsection (2) in relation to a member of the Board or that committee who has made a disclosure under subsection (1), a Board member or member of a committee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not —

- (a) be present during any deliberation of the Board or that committee for the purpose of making that determination; or
- (b) take part in the making of that determination by the Board or that committee.

(4) A Board member or member of a committee who contravenes or fails to comply with a provision of this section commits an offence.

Penalty: \$5 000 and imprisonment for 3 months.

Execution of documents by Commission

11. (1) A document is duly executed by the Commission, if —
- (a) the common seal of the Commission is affixed to the document in accordance with subsections (2) and (3); or
 - (b) the document is signed on behalf of the Commission by a Board member or members or an officer or officers of the Commission in accordance with authorization given under subsection (4).
- (2) The common seal of the Commission shall not be affixed to any document except by resolution of the Board.
- (3) The common seal of the Commission shall be affixed to a document in the presence of the chairperson and one other Board member and each of them shall sign the document to attest that the common seal was so affixed.
- (4) The Board may, in writing under its common seal, authorize a Board member or members or an officer or officers of the Commission to sign documents on behalf of the Commission, either generally or subject to such conditions or restrictions as may be specified by the Board in the authorization.
- (5) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (6) 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.

Division 2 — Functions and powers of Commission

Functions of Commission

12. The functions of the Commission are to implement the strategies and recommendations set out in the Pilbara 21 Report and to co-ordinate and promote the economic and social development of the Pilbara Region, and for that purpose —

- (a) to co-ordinate the actions of statutory bodies and State government agencies, and to co-operate with representatives of industry and commerce, employer and employee organizations, education and training institutions and other sections of the community within the Pilbara Region in a manner which is consistent with the economic and social development of the Pilbara Region;
- (b) to market and promote the Pilbara Region;
- (c) to encourage investment in the processing of minerals and other products in the Pilbara Region;
- (d) to co-operate with —
 - (i) departments of the Public Service of the State and the Commonwealth, and other agencies, instrumentalities and statutory bodies of the State and the Commonwealth; and
 - (ii) local authorities;and
- (e) generally to take steps to encourage, promote, facilitate or assist economic and social development in the Pilbara Region.

Powers of Commission

13. (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 under this Act.

(2) Without limiting the generality of subsection (1), the powers of the Commission referred to in that subsection include power —

- (a) to purchase, sell, lease, take on lease, exchange or otherwise acquire, deal in or dispose of property, other than real property;
- (b) to appoint agents and attorneys;
- (c) to give directions to the Director and other officers referred to in section 16 (1); and
- (d) to do anything incidental to any of its powers under this Act.

(3) In performing its functions and exercising its powers, the Commission may act in conjunction with —

- (a) any person, firm or body corporate; or
- (b) any department of the Public Service, or other agency or instrumentality, of the State or the Commonwealth.

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 shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall 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 and published in the *Gazette* within 28 days and laid before each House within 14 sitting days of being published if Parliament is in session or within 14 sitting days of the commencement of the next ensuing sitting.

Minister to have access to information

15. (1) For the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Commission and to have and retain copies of documents.

(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 the staff of the Commission to obtain the information and furnish it to the Minister.

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

(4) In this section —

“document” includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

“information” means documents or other information relating to the functions of the Commission being information, as so defined, specified, or of a description specified, by the Minister.

Division 3 — Director and other staff of Commission

**Appointment and functions of
Director and other staff and
engagement of consultants**

16. (1) There shall be appointed under and subject to the *Public Service Act 1978* a Director of the Commission and such other officers as may be necessary to enable the Commission to exercise its powers and perform its functions.

(2) The functions of the Director are to administer the day to day operations of the Commission and generally to exercise the powers and perform the functions conferred or imposed on the Director under this Act.

(3) The Director or another officer referred to in subsection (1) shall comply with any direction given to him or her under section 13 (2) (c).

(4) The Commission may, with the prior approval of the Minister, engage under contracts for services such consultants and professional or technical or other assistance as it considers necessary to enable the Commission to exercise its powers and perform its functions.

**Use of staff and facilities of departments,
agencies and instrumentalities**

17. The Commission may, by arrangement made between it and the Minister concerned, and on such terms and conditions as may be agreed between the Commission and the Minister and the Public Service Commissioner, make use of —

- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or

s. 18

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

Secrecy

18. (1) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a function under or in connection with this or any other Act —

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him or her by reason of his or her office or employment under or for the purposes of this Act; or
- (b) produce to any person any document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2 500.

(2) This section applies to every person who is or has been a Board member, a member of a committee or an officer, employee or contractor referred to in section 16 or 17.

Division 4 — Financial provisions

Funds of Commission

19. (1) The funds available for the purpose of enabling the Commission to exercise and perform its powers, functions and duties under this Act consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys advanced to the Commission from moneys referred to in paragraph (a);

- (c) all moneys received by the Commission from performing any of its functions under this Act;
- (d) all moneys borrowed by the Commission under section 20; and
- (e) any other moneys lawfully received by, made available to, or payable to the Commission.

(2) The funds referred to in subsection (1) shall be credited to an account at the Treasury to be called the “Pilbara Development Commission Account”, which shall form a part of the Trust Fund established under the *Financial Administration and Audit Act 1985*.

(3) The funds standing to the credit of the Account shall be applied to —

- (a) interest on and repayments of moneys borrowed by or advanced to the Commission under this Act;
- (b) the remuneration and travelling and other allowances payable under section 8; and
- (c) any other expenditure lawfully incurred by the Commission in the performance of its functions.

Borrowing by Commission from Treasurer

20. (1) The Commission may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment and payment of interest as the Treasurer imposes.

(2) The Account and the assets of the Commission are charged with the due performance by the Commission of all obligations arising from any advance made under this section.

s. 21

Application of *Financial Administration and Audit Act 1985*

21. 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 3 — GENERAL

Regulations

22. 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

23. (1) Subject to section 24, the Minister shall appoint a panel to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 4 years from its commencement and in the course of that review the panel shall consider and have regard to —

- (a) the effectiveness of the operations of the Commission;
- (b) the need for the establishment of a replacement body to continue the functions of the Commission after the expiry of this Act under section 24; and
- (c) such matters, other than those referred to in paragraphs (a) and (b), as appear to the panel to be relevant to the operation and effectiveness of this Act.

(2) The panel appointed under subsection (1) shall report to the Minister, who shall prepare a report based on the review made under that subsection and shall, as soon as is practicable after that preparation, cause that report to be laid before each House of Parliament.

Expiry

24. (1) Notwithstanding section 23, this Act shall only continue in operation until the expiry of 5 years after it first comes into operation.

s. 25

(2) The expiry of this Act shall not affect the previous operation of the Act or the validity of any action taken under the Act, or any penalty, punishment, debt or liability incurred by the Commission in respect of the carrying out of its functions under this Act, or incurred by any person in respect of any contravention of or failure to comply with this Act or any proceedings or remedy in respect of such penalty, punishment, debt or liability.

(3) At the time of expiry of this Act, the Account shall be closed and the balance of moneys standing to the credit of the Account shall be applied first in payment of any debts outstanding in respect of the Account, and any balance shall be credited —

- (a) where, under section 23, there is found to be a need for a replacement body to continue the functions of the Commission after the expiry of this Act, to an account for that replacement body, if so specified by the Minister; or
- (b) if no account is so specified, to the Consolidated Revenue Fund or the General Loan and Capital Works Fund as may be directed by the Treasurer.

Consequential amendments to other Acts

25. The Acts referred to in the first column of Schedule 3 are amended in the manner set out in the second column of that Schedule.

SCHEDULE 1

[Section 3]

PILBARA REGION

**Combined districts of local authorities
which constitute the Pilbara Region**

The Shires of Ashburton, Roebourne and East Pilbara, and the Town of Port Hedland.

SCHEDULE 2

[Sections 3 and 7]

CONSTITUTION AND PROCEEDINGS OF BOARD

Term of office of appointed member

1. (1) An appointed member shall hold office for such term, being not more than 3 years, as is specified in the member's instrument of appointment, but he or she may from time to time be reappointed.

(2) An appointed member, unless the member sooner dies or resigns or is removed from office, shall continue in office until a successor comes into office or until this Act expires, notwithstanding that the term for which the member was appointed may have expired.

Vacation of office by appointed member

2. (1) An appointed member may resign from that office by notice in writing delivered to the Minister.

(2) An appointed member may be removed from that office at any time by the Minister —

- (a) for mental or physical incapacity, incompetence, neglect of duty or misconduct that impairs the performance of his or her functions as a member and is proved to the satisfaction of the Minister;
- (b) if the member is an insolvent under administration, as that term is defined in the Corporations Law;
- (c) if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice; or
- (d) for any other act or omission that, in the opinion of the Minister, may cause prejudice or injury to the Board.

Temporary members

3. (1) If an appointed member is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in the member's place, and while so acting according to the tenor of his or her appointment the other person has all the functions of a Board member.

(2) An act or omission of a person acting in place of another under this clause may not be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

(3) The appointment of a person as a temporary member may be terminated at any time by the Minister.

Meetings of Board

4. (1) The first meeting of the Board shall be convened by the chairperson and thereafter, subject to subclause (2), meetings of the Board 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 chairperson.

(3) At a meeting of the Board —

(a) the chairperson;

(b) in the absence of the chairperson, the deputy chairperson; or

(c) in the absence of the chairperson and the deputy chairperson, a person elected by the Board members present at the meeting from among their number,

shall preside.

(4) At any meeting of the Board, 4 Board members constitute a quorum.

(5) At any meeting of the Board —

(a) each Board member present is entitled to a deliberative vote;

sch. 2

- (b) subject to paragraph (c), if the votes cast on a question are equally divided, the question shall remain unresolved until a subsequent meeting of the Board; and
- (c) 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 shall be taken to have been resolved in the negative.

(6) The Board shall cause accurate minutes to be kept of the proceedings at its meetings.

Delegation by Board

5. (1) The Board may, by resolution, delegate to an appointed member, the Director or another officer referred to in section 16 (1) or a committee (in this clause called "**the delegate**"), either generally or otherwise as provided by the instrument of delegation, all or any of its functions (except this power of delegation).

(2) A function delegated under this clause may be exercised or performed by the delegate in accordance with the instrument of delegation and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.

Committees

6. (1) The Board may from time to time by resolution appoint a committee, in accordance with subclause (2), for the purpose of assisting or advising the Board on any aspect of the functions of the Board and may discharge, alter, continue or reconstitute any committee so appointed.

(2) For the purpose of appointing the committee members referred to in subclause (1) —

- (a) the Minister, or if so delegated the chairperson, shall —
 - (i) cause advertisements calling for the submission to the chairperson of the names of persons who are able and willing to be candidates for appointment as committee members to be placed in newspapers circulating in both the Pilbara Region and the State generally;

- (ii) invite such economic or social organizations, or individuals, as the Minister or the chairperson think fit to submit to him or her the names of persons who are able and willing to be candidates for appointment as committee members;
- (iii) select a panel of the names of persons referred to in subparagraphs (i) and (ii) from the names of persons submitted in response to the advertisements and invitations referred to in those subparagraphs, which panel should, if possible, contain the names of twice as many persons as there are vacancies for committee members; and
- (iv) submit the panel of names referred to in subparagraph (iii) to the Minister;

and

- (b) the Minister shall appoint from the panel of names submitted under this subclause a sufficient number of persons to fill the committee membership vacancies.

(3) Subject to the directions of the Board, each committee may determine its own procedures.

(4) A committee shall report to the Board on a matter referred to it by the Board within such period as the Board directs.

Resolution may be passed without meeting

7. A resolution in writing signed or assented to by letter, facsimile or telegram by each Board member shall be as valid and effectual as if it had been passed at a meeting of the Board.

Leave of absence

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

Board to determine own procedures

9. Subject to this Act, the Board shall determine its own procedures.

SCHEDULE 3

[Section 25]

CONSEQUENTIAL AMENDMENTS

| <i>Short title of Act</i> | <i>Amendment</i> |
|--|---|
| 1. <i>Constitution Acts Amendment Act 1899</i> | In Part 3 of Schedule V, insert in the appropriate alphabetical position the following — “ The Board of management of the Pilbara Development Commission constituted under the <i>Pilbara Development Commission Act 1992</i> . ”. |
| 2. <i>Parliamentary Commissioner Act 1971</i> | In the Schedule, insert in the appropriate alphabetical position the following — “ Pilbara Development Commission established by the <i>Pilbara Development Commission Act 1992</i> . ”. |
| 3. <i>Public Service Act 1978</i> | In the Schedule, insert after item 26 the following item — “ 26A. Pilbara Development Commission established by the <i>Pilbara Development Commission Act 1992</i> . ”. |

4. *Financial Administration
and Audit Act 1985*

In Schedule 1, insert in the
appropriate alphabetical position
the following —

“ Pilbara Development
Commission. ”.

