

**WESTERN AUSTRALIA**

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**WESTERN AUSTRALIAN FINANCIAL  
INSTITUTIONS AUTHORITY ACT  
1992**

**(No. 29 of 1992)**

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WESTERN AUSTRALIA

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**WESTERN AUSTRALIAN  
FINANCIAL INSTITUTIONS  
AUTHORITY ACT 1992**

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**No. 29 of 1992**

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**AN ACT to establish the Western Australian Financial  
Institutions Authority.**

*[Assented to 19 June 1992.]*

The Parliament of Western Australia enacts as follows:

## PART 1 — PRELIMINARY

### Short title

1. This Act may be cited as the *Western Australian Financial Institutions Authority Act 1992*.

### Commencement

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

### Definitions

3. In this Act —

“**Authority**” means the Western Australian Financial Institutions Authority established by this Act;

“**Board**” means the board of directors of the Authority;

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

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

“**deputy chairperson**” means the deputy chairperson of the Board;

“**director**” means a director of the Board, and includes the chairperson and the deputy chairperson;

“**employee**”, in relation to the Authority, includes —

- (a) a person whose services are made available to the Authority; and

- (b) a person engaged by the Authority on a contract for services;

**“scheme legislation of Western Australia”** has the meaning given to that expression by the *Financial Institutions (Western Australia) Act 1992*.

### **Interpretation**

4. Unless the contrary intention appears, expressions used in this Act that are defined in the scheme legislation of Western Australia have the respective meanings given by those definitions.

**PART 2 — THE AUTHORITY AND ITS BOARD*****Division 1 — Establishment and general functions  
and powers of the Authority*****Establishment of Authority**

5. A body called the Western Australian Financial Institutions Authority is established.

**Functions**

6. The Authority has the functions conferred on it by the scheme legislation of Western Australia and this Act.

**General powers**

7. (1) The Authority may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the Authority has such powers as are conferred on it under the scheme legislation of Western Australia.

(3) Without limiting subsection (1) the Authority has, for or in connection with the performance of its functions, all the powers of a natural person, including the power to —

- (a) enter into contracts; and
- (b) acquire, hold and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) make charges for services and information it supplies, and fix the terms and conditions on which it supplies services and information; and



(e) engage consultants.

(4) Without limiting subsection (1), the Authority may give indemnities to —

- (a) its directors; and
- (b) the chief executive officer; and
- (c) its employees.

### **Corporate capacity**

8. The Authority —

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

### **Independence**

9. Except as expressly provided in the scheme legislation of Western Australia or this Act, the Authority is not subject to direction by or on behalf of the Minister or the Ministerial Council.

### **Compliance with financial institutions agreement**

10. In performing its functions, the Authority is to —

- (a) comply with any applicable provisions of the financial institutions agreement; and
- (b) strive to ensure that the principal objects of the financial institutions scheme are achieved.

**Authority does not represent Crown**

11. The Authority does not represent the Crown.

**Authority exempt public authority  
under Corporations Law**

12. The Authority is an exempt public authority for the purposes of the Corporations Law.

*Division 2 — Establishment and composition of Board*

**The Board**

13. The Authority is to have a board of directors.

**Composition of the Board**

14. The Board consists of the following 3 directors —

- (a) the chairperson;
- (b) the deputy chairperson;
- (c) one other director.

**Role of the Board**

15. It is the role of the Board to ensure that the Authority performs its functions in a proper and efficient way.

## **PART 3 — THE BOARD OF THE AUTHORITY**

### ***Division 1 — Meetings of the Board***

#### **Times and places of meetings**

**16.** (1) Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The chairperson —

- (a) may at any time convene a meeting; and
- (b) is to convene a meeting when requested by the other 2 directors.

#### **Presiding at meetings**

**17.** The chairperson is to preside at all meetings.

#### **Quorum and voting at meetings**

**18.** At a meeting of the Board —

- (a) 2 directors constitute a quorum; and
- (b) a question is to be decided by a majority of votes of the directors present and voting; and
- (c) the director presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

#### **Conduct of meetings**

**19.** (1) The Board may, subject to this Division, regulate its proceedings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit directors to participate in a particular meeting, or all meetings, by —

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A director who participates in a meeting of the Board under a permission under subsection (2) is taken to be present at the meeting.

(4) Without limiting subsection (1), the Board may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

20. (1) If at least 2 directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the second of the directors signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the Board, each director is to be immediately advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

## Minutes

21. The Board is to keep minutes of its proceedings.

## Disclosure of interests

22. (1) If —

- (a) a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the director's duties in relation to consideration of the matter,

the director is, as soon as practicable after the relevant facts come to the director's knowledge, to disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting and, unless the Board otherwise determines, the director is not to —

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a director who has made a disclosure under subsection (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not to —

- (a) be present during any deliberation of the Board for the purpose of making the determination; or

- (b) take part in the making by the Board of the determination.

**Exclusion of chief executive officer  
from certain deliberations**

23. (1) The chief executive officer is not to be present during any deliberation of the Board, or at the time the Board makes a decision, in relation to —

- (a) the appointment of a person as chief executive officer; or
- (b) the determination or application of any terms or conditions on which the chief executive officer holds office; or
- (c) the termination of the appointment of the chief executive officer.

(2) A person appointed to act as chief executive officer is not to be present during any deliberation of the Board, or at the time the Board makes a decision, in relation to —

- (a) the appointment of a person to act as chief executive officer; or
- (b) the determination or application of any terms or conditions on which a person appointed to act as chief executive officer holds office; or
- (c) the termination of the appointment of the person.

***Division 2 — Provisions relating to directors***

**Appointments made by Minister**

24. The directors are to be appointed by the Minister.

**Restriction on appointments**

25. A person who holds an office or appointment with a financial institution is not to be appointed as a director.

**Term of appointment**

26. A director holds office, subject to this Act, for such term, not longer than 5 years, as is specified by the Minister in the instrument of appointment.

**Conditions of appointment**

27. (1) A director is to be paid such remuneration and allowances as the Minister, on the recommendation of the Public Service Commissioner, from time to time determines.

(2) A director holds office on such conditions in relation to matters not provided for by this Act as are determined by the Minister.

(3) The conditions determined by the Minister may include conditions relating to superannuation.

**Leave of absence**

28. The Board may grant leave of absence to a director on such conditions as the Board, subject to any determination of the Minister, considers appropriate.

### **Resignation**

**29.** A director may resign by signed notice given to the Minister.

### **Termination of appointment**

**30.** The Minister may terminate the appointment of a director if the director —

- (a) is guilty of misbehaviour; or
- (b) is, in the opinion of the Minister, physically or mentally incapable of continuing as a director; or
- (c) is an insolvent under administration within the meaning of that expression in the Corporations Law; or
- (d) contravenes this Act without reasonable excuse; or
- (e) is absent, without the Board's leave and without reasonable excuse, from 3 consecutive meetings of the Board; or
- (f) accepts an office or appointment with a financial institution; or
- (g) ought, in the opinion of the Minister, to cease to be a director because of incompetence or inappropriate behaviour of the director.

### **Deputy chairperson**

**31.** (1) When —

- (a) the office of chairperson is vacant; or



- (b) the chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office,

then, subject to section 32, the deputy chairperson is to act as chairperson.

(2) While the deputy chairperson is acting as chairperson —

- (a) the deputy chairperson has all the powers and functions of the chairperson; and
- (b) this Act applies to the deputy chairperson as if the deputy chairperson were the chairperson.

(3) Anything done by or in relation to the deputy chairperson while the deputy chairperson is purporting to act as chairperson is not invalid merely because the occasion for the deputy chairperson to act had not arisen or had ceased.

### **Acting appointments**

**32.** The Minister may appoint a person to act as chairperson, deputy chairperson or other director —

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

**PART 4 — THE STAFF OF THE AUTHORITY**

*Division 1 — Provisions relating to the  
chief executive officer*

**Appointment**

33. The chief executive officer is to be appointed by the Board.

**Restriction on appointment**

34. (1) A director is not to be appointed as chief executive officer.

(2) A person who holds an office or appointment with a financial institution is not to be appointed as chief executive officer.

**Appointment not invalid because  
of appointment defect etc.**

35. The appointment of a person as chief executive officer is not invalid merely because of a defect or irregularity in relation to the appointment.

**Term of appointment etc.**

36. (1) The chief executive officer holds office, subject to subsection (2), for such term, not longer than 5 years, as is specified by the Board in the instrument of appointment.

(2) The chief executive officer holds office during the Board's pleasure.

**Chief executive officer not to  
engage in other paid employment**

37. The chief executive officer is not to engage in paid employment outside the duties of the office except with the approval of the Board.

**Disclosure of interests by chief executive officer**

38. The chief executive officer is to give written notice to the chairperson of all direct or indirect pecuniary interests that the chief executive officer has or acquires in any business or in any body corporate carrying on any business.

**Conditions of appointment not provided for by Act**

39. (1) The chief executive officer holds office on such conditions in relation to matters not provided for by this Act as are determined by the Board.

(2) The conditions determined by the Board may include conditions relating to remuneration, allowances, superannuation and remuneration on termination of employment.

**Acting chief executive officer**

40. The Board may appoint a person, who is eligible for appointment as chief executive officer, to act as chief executive officer —

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

***Division 2 — Provisions relating to the other  
staff of the Authority***

**Authority employees**

41. The Authority may engage such employees as it considers necessary for the performance of its functions.

**Conditions of employment**

42. (1) Subject to any relevant award or industrial agreement, the conditions of employment of employees engaged under section 41 are as determined by the Authority.

(2) In this section, “**conditions of employment**” include conditions relating to duration of employment and termination of employment.

**Arrangements relating to staff**

43. (1) The Authority may arrange with the chief executive officer of a department or organization of the Public Service for the services of officers or employees of the department or organization to be made available to it.

(2) The Authority may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) The Authority may arrange for the services of an employee of the Authority to be made available to the Commonwealth or a State or to an authority of the Commonwealth or a State.

**PART 5 — MISCELLANEOUS**

**Prohibition of financial interests  
of directors and employees**

44. (1) In this section, “prescribed person” means a director, the chief executive officer or an employee of the Authority.

(2) For the purposes of this section —

(a) a person has a financial interest only if the person —

(i) has a relevant interest in securities of a financial institution; or

(ii) has money deposited with a financial institution; or

(iii) is in receipt of a loan from a financial institution; or

(iv) is a member of a financial institution;

and

(b) the question whether a person has a relevant interest in securities is to be determined as prescribed.

(3) A person who has a financial interest is not eligible to hold an office the holding of which would make that person a prescribed person.

(4) A prescribed person is not to have a financial interest.

Penalty: \$10 000.

**Directors and employees to act honestly etc.**

45. (1) In this section, “**prescribed person**” means a director, the chief executive officer or an employee of the Authority.

(2) A prescribed person who, in the course of official duties, is required to consider any matter concerning —

(a) a person or body —

(i) by whom the prescribed person is employed or has been employed at any time during the previous 3 years; or

(ii) with whom the prescribed person is associated;

or

(b) a related body in relation to a financial body by whom the prescribed person is employed or has been employed at any time during the previous 3 years,

is to immediately inform the Authority of that fact in writing.

Penalty: \$25 000.

(3) A prescribed person is at all times to act honestly in the exercise of the powers and the performance of the functions that the person has by virtue of being a prescribed person.

Penalty: \$25 000.

(4) A prescribed person is not to make improper use of an office held for the purposes of this Act or the scheme legislation of Western Australia —

(a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or

- (b) to cause detriment to the Authority or a financial institution.

Penalty: \$100 000 or 15 years imprisonment.

(5) A prescribed person, or a person who has at any time been a prescribed person, is not to make improper use of information acquired by virtue of an office held for the purposes of this Act or the scheme legislation of Western Australia —

- (a) to gain, directly or indirectly, an advantage for himself, herself or any other person; or
- (b) to cause detriment to the Authority or a financial institution.

Penalty: \$100 000 or 15 years imprisonment.

(6) It is a defence to a charge of contravening subsection (2) if the defendant establishes that, when required to consider the matter to which the contravention relates, the defendant was not aware of the fact the existence of which required that the Authority be informed.

(7) A prescribed person is associated with a person or body for the purposes of this section if associated with the person or body within the meaning of section 4 of the Financial Institutions (Western Australia) Code.

### **Liability of directors**

46. (1) A director incurs no liability for an honest act or omission in the performance or purported performance of functions under this Act.

(2) A liability that would, but for this section, attach to a director attaches to the Authority.

- (3) This section does not apply to —
- (a) wilful misconduct; or
  - (b) wilful neglect; or
  - (c) wilful failure to comply with this Act.

### **Liability of staff**

47. (1) The chief executive officer incurs no liability for an honest act or omission in the course of employment in the office.

(2) An employee of the Authority incurs no liability for an honest act or omission in the course of the employee's employment.

(3) A liability that would, but for this section, attach to the chief executive officer or an employee of the Authority attaches to the Authority.

- (4) This section does not apply to —
- (a) wilful misconduct; or
  - (b) wilful neglect; or
  - (c) wilful failure to comply with this Act.

### **Seal of Authority**

48. (1) The seal of the Authority is to be kept in such custody as the Board directs and may be used only as authorized by the Board.

(2) Judicial notice is to be taken of the imprint of the seal of the Authority appearing on a document and the document is to be presumed to have been properly sealed until the contrary is proved.



### Judicial notice of certain signatures

49. Judicial notice is to be taken of —

(a) the official signature of a person who is or has been —

(i) chairperson, deputy chairperson, or another director of the Board; or

(ii) chief executive officer;

and

(b) the fact that the person holds or has held the office concerned.

### Evidentiary provisions

50. (1) Evidence of a direction issued, or determination made, by the Authority under this Act, or the financial institutions legislation, may be given by the production of a copy of the direction or determination certified as a true copy by the chairperson or chief executive officer.

(2) A certificate signed by the chairperson or chief executive officer stating any matter in relation to —

(a) a supervision levy, amount of contribution, or support levy, determined under Subdivision 6 of Division 2 of Part 2 of the *Financial Institutions (Western Australia) Code*; or

(b) an amount ordered to be paid by way of compulsory loan under the Subdivision,

is evidence of the matter.

### **Delegation of powers of Authority**

51. (1) Subject to subsection (2), the Authority may, by resolution of the Board, delegate its powers under or in relation to the financial institutions legislation to —

- (a) a director; or
- (b) the chief executive officer; or
- (c) an employee of the Authority; or
- (d) the SSA of another participating State that, under the law of that State, is authorized to accept the delegation.

(2) The powers under section 95 of the *Financial Institutions (Western Australia) Code* are not to be delegated.

(3) A certificate signed by the chairperson stating any matter in relation to a delegation of a power under subsection (1) is evidence of the matter.

(4) A document purporting to be a certificate under subsection (3) is, unless the contrary is established, taken to be such a certificate and to have been properly given.

### **Authority may act as delegate**

52. The Authority is authorized to act as the delegate of the SSA of another participating State in relation to the SSA's powers under or in relation to the financial institutions legislation.

**Application of *Financial Administration  
and Audit Act 1985***

53. 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 Authority and its operations.

**Regulations**

54. 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.

**Amendment of *Constitution  
Acts Amendment Act 1899***

55. Schedule V to the *Constitution Acts Amendment Act 1899\** is amended in Part 3 —

- (a) by deleting the item commencing “The Credit Union Advisory Committee”; and
- (b) by inserting in the appropriate alphabetical position the following item —

“ The Western Australian Financial Institutions Authority established by the *Western Australian Financial Institutions Authority Act 1992*. ”.

[\* *Reprinted as at 16 March 1989.*  
*For subsequent amendments see 1991 Index to  
Legislation of Western Australia, pp. 42-3.*]

**Amendment of *Financial Administration  
and Audit Act 1985***

56. Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting in the appropriate alphabetical position the following —

“      Western Australian Financial Institutions Authority.      ”.

[\* *Reprinted as at 1 July 1991.  
For subsequent amendments see 1991 Index to  
Legislation of Western Australia, pp. 72-3.*]

**Amendment of *Parliamentary Commissioner  
Act 1971***

57. The Schedule to the *Parliamentary Commissioner Act 1971*\* is amended —

(a) by deleting the items commencing "Registrar of Building Societies" and "Registrar of Credit Unions";

and

(b) by inserting in the appropriate alphabetical position the following item —

“      Western Australian Financial Institutions Authority established by the *Western Australian Financial Institutions Authority Act 1992*.      ”.

[\* *Reprinted as at 31 March 1989.  
For subsequent amendments see 1991 Index to  
Legislation of Western Australia, pp. 150-1.*]