

WESTERN AUSTRALIA

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# ACTS AMENDMENT (GOLD BANKING CORPORATION) ACT

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No. 10 of 1990

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AN ACT to amend the *Gold Banking Corporation Act 1987* and to make consequential amendments to the *Financial Administration and Audit Act 1985*, the *Constitution Acts Amendment Act 1899* and the *Parliamentary Commissioner Act 1971*.

[Assented to 31 July 1990.]

The Parliament of Western Australia enacts as follows:

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Acts Amendment (Gold Banking Corporation) Act 1990*.

## **Commencement**

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

### **PART 2—GOLD BANKING CORPORATION ACT 1987**

## **Principal Act**

3. In this Part the *Gold Banking Corporation Act 1987\** is referred to as the principal Act.

[\*Act No. 99 of 1987 as amended by Act No. 5 of 1988.]

## **Long title amended**

4. The long title to the principal Act is amended by deleting “Banking” in both places where the word occurs.

## **Short title amended**

5. Section 1 of the principal Act is amended by deleting “Banking”.

## **Substitution of references to Gold Corporation**

6. The principal Act is amended, in the provisions set out in the Table to this section, by deleting “Gold Bank” wherever the words occur in those provisions and substituting “Gold Corporation”.

### **Table of provisions**

s. 3 The definitions of “Board”, “chief executive officer”, “deputy chief executive officer”, “director”, and “subsidiary”; s. 4 (2), (3) and (5); s. 5 (1) and (2) (c); s. 6 (1), (2) (a) and (b), (3) (a) and (c), and (4); s. 7 (1) and (2); s. 9 (1) and (2); heading to Part III; s. 10 (1), (2) and (3); s. 11 (1) and (2); s. 13 (1), (2) and (3); heading to Part IV; s. 16 (1) (a), (2) (a) and (b), (3), and (10); s. 18 (1) and (2); s. 20 (1), (2), (3) and (4); s. 21 (1); s. 35 (4); s. 44; s. 46 (1); s. 48 (3); s. 53; s. 67; s. 68 (1), (2), (4), (5) and (6); s. 69 (1);

s. 70 (1) and (2); s. 71 (1) and (2); s. 75 (1), (2), (3) and (6); Schedule 1 clauses 1 (1), 5 (1) and (3), 9 (1) and (3), 10 (2) (a) and (5), and 17 (1), (2) and (3); and Schedule 2 clause 6 (1), (2) and (3).

### Section 3 amended

7. (1) Section 3 of the principal Act is amended, in subsection (1)—

(a) by repealing the definition of “Gold Bank” and of “securities”;

(b) by inserting, in their respective appropriate alphabetical positions, the following definitions—

“ “Gold Bank” means the corporation of that name formerly constituted under section 4 prior to the coming into operation of section 9 of the *Acts Amendment (Gold Banking Corporation) Act 1990*;

“Gold Corporation” means the Gold Corporation constituted under section 4;

“the Account” means the banking accounts together constituting the Gold Corporation Account referred to in section 55;

“The Director of The Perth Mint” means the body corporate of that name constituted under section 9 of the *Perth Mint Act 1970* as enacted prior to the coming into operation of the *Perth Mint Amendment Act 1986*;

“the Royal Mint” means the Perth Branch of the Royal Mint established by proclamation under section 11 of the *Coinage Act 1870* of the Parliament of the United Kingdom; ”;

(c) in the definition of “business undertaking”, by deleting “banking business” and substituting the following—

“ the gold industry ”; and

- (d) in the definition of “GoldCorp”, by inserting after “means” the following—

“ the subsidiary of Gold Corporation known as ”.

(2) Section 3 of the principal Act is amended, in subsection (2), by deleting “, other than in section 19 or in Part V,”.

### **Heading to Part II amended**

8. The principal Act is amended, in the heading to Part II, by deleting “BANKING”.

### **Section 4 amended**

9. Section 4 of the principal Act is amended by—

(a) in subsection (1), deleting—

(i) “Banking”; and

(ii) “(in this Act referred to as Gold Bank).”;

(b) repealing subsection (4) and substituting the following subsection—

“ (4) Where the Board considers that to trade under its corporate name would not be appropriate, Gold Corporation may use, and operate any of its business under, an abbreviation or adaptation of its corporate name, or a trading name, which is approved by the Minister. ”;

and

(c) repealing subsection (4a).

### Section 5 amended

10. Section 5 of the principal Act is amended by—

- (a) in subsection (2), deleting “The Board shall be” and substituting the following—

“ The Board shall comprise the person who for the time being holds or is acting in the office of Under Treasurer of the State, who shall be a director *ex officio*, and other directors who shall be ”;

and

- (b) adding the following subsections—

“ (5) The person who for the time being holds or is acting in the office of Under Treasurer of the State may delegate to some other officer of the Treasury, by an instrument of delegation signed by that person, the duty of performing any function of the *ex officio* director under this Act.

(6) Where a officer of the Treasury is authorized under subsection (5) to perform a function as a delegate, when attending a meeting of the Board or otherwise performing that function that officer is deemed to be a director and shall have the powers, duties and immunity of a director. ”.

### Section 6 amended

11. Section 6 of the principal Act is amended by inserting, after subsection (4), the following subsections—

“ (5) The Minister may give directions in writing to Gold Corporation with respect to its functions and powers, either generally or with respect to a particular matter (but not in relation to its dealings with any particular person), and the Board shall ensure that the Corporation gives effect to any such direction.

(6) The text of any direction received by Gold Corporation under subsection (5) shall be included in the annual report submitted by the accountable authority of Gold Corporation under section 66 of the *Financial Administration and Audit Act 1985*.

(7) For parliamentary purposes, or for the proper conduct of the Minister's public business—

- (a) Gold Corporation shall furnish to the Minister all information in the possession of Gold Corporation relating to the business of Gold Corporation or a subsidiary; and
- (b) the Board shall ensure that the Minister shall have and may retain copies of any documents requested.

(8) Gold Corporation shall exercise the control over any subsidiary as to ensure that the Board is provided with all the information relating to the subsidiary that Gold Corporation needs in order to comply with subsection (7).

(9) For the purposes specified in subsection (7) the Minister may—

- (a) request Gold Corporation to furnish information to the Minister;
- (b) request the Board to ensure that the Minister is given access to information; and
- (c) make use of the staff of Gold Corporation or of any subsidiary to obtain information and to furnish it to the Minister.

(10) Gold Corporation shall comply with a request under subsection (9) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(11) For the purposes of 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 business of Gold Corporation or a subsidiary of Gold Corporation being information, as so defined, specified, or of a description specified, by the Minister; and

“parliamentary purposes” means the purpose of—

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament. ”.

### Section 10 amended

12. Section 10 of the principal Act is amended, in subsection (1), by—

- (a) in paragraph (a), deleting “industry and”;
- (b) deleting paragraph (b);
- (c) in paragraph (j), deleting “and” at the end of the paragraph;
- (d) in paragraph (k), deleting the full stop and substituting the following—

“ ; and ”; and

- (e) adding the following paragraph—

“ (m) in relation to precious metals other than gold, and in relation to precious stones or other minerals, to establish and maintain the qualifications, skills and accreditations necessary to be acceptable to the central market organization or authority appropriate. ”.

### Section 11 amended

13. (1) Section 11 of the principal Act is amended, in subsection (1), by inserting, after “Act”, the following—

“, subject to this Act ”.

(2) Section 11 of the principal Act is amended, in subsection (2), by—

(a) in paragraph (a)—

(i) inserting, before “or fixed deposit”, the following—

“ , certificate of deposit ”;

and

(ii) adding, after “elsewhere”, the following—

“ , and money in respect of business relating to gold ”;

(b) in paragraph (b)—

(i) inserting, before “borrow”, the following—

“ subject to subsection (3), ”;

and

(ii) inserting, after “with gold”, the following—

“ or the gold industry ”;

(c) in paragraph (c), deleting “affecting” and substituting the following—

“ denominated in, convertible into, exchangeable with or otherwise related to ”;

(d) in paragraph (d)—

(i) inserting, before “buy”, the following—

“ for the purposes of gold related transactions and of carrying out its functions under this Act in relation to gold, but not for any other purpose, ”; and

(ii) adding, after “currency”, the following—

“ subject to such limits as the Treasurer may impose ”;

(e) in paragraph (f), deleting—

- (i) “banking or investment purposes or for”; and
- (ii) “and”, at the end of the paragraph;

(f) deleting paragraph (g), and substituting the following—

“ (g) with the prior approval of the Treasurer, and subject to such terms and conditions as the Treasurer may approve, and not otherwise—

- (i) temporarily invest money standing to the credit of the Account in such manner and categories of investment as are approved;
- (ii) operate banking accounts;
- (iii) borrow, whether for the purposes of paragraphs (b) and (d) or of performing any other functions, money from a lender other than the Treasurer; ”;

and

(g) deleting the full stop at the end of paragraph (g) and substituting the following—

“ ; and

- (h) do any thing incidental to the exercise of any such power. ”.

(3) Section 11 of the principal Act is amended by adding the following subsections—

“ (3) The Treasurer may from time to time impose limits on—

- (a) the physical quantity of gold that Gold Corporation, the Mint or Goldcorp may borrow or lease; and
- (b) the monetary value of currency, or of any liability related to currency, that Gold Corporation, the Mint or Goldcorp may borrow or incur,

and for the purpose of determining those limits the Board shall make known to the Treasurer its recommendations as

to the requirements of Gold Corporation, the Mint and Goldcorp at least once in each financial year and at such other times as the Treasurer may require.

(4) Moneys borrowed by Gold Corporation, the Mint or Goldcorp under this Act shall not exceed in the aggregate in any financial year such amount as the Treasurer approves, and the powers to borrow conferred by this Act shall be construed subject to that limitation. ”.

### **Section 12 repealed**

14. Section 12 of the principal Act is repealed.

### **Section 14 repealed**

15. Section 14 of the principal Act is repealed.

### **Section 15 amended**

16. Section 15 of the principal Act is amended by—

(a) in subsection (1)

(i) deleting “Gold Bank is” and substituting the following—

“ Gold Corporation shall be the authorized capital which immediately prior to the coming into operation of section 9 of the *Acts Amendment (Gold Banking Corporation) Act 1990* was the authorized capital of Gold Bank, which by the operation of this subsection and without further assurance shall thereupon be transferred to and vested in Gold Corporation as representing the initial capital which was ”; and

(ii) in paragraph (b), deleting “, or other securities or capital stock or other capital instruments”;

(b) deleting subsection (2) and substituting the following—

“ (2) On the coming into operation of section 9 of the *Acts Amendment (Gold Banking Corporation) Act 1990*, the Under Treasurer of the State shall ensure, and the Board is empowered and required to arrange, that the amount of \$25 000 000 paid by the Treasurer to Gold Bank in respect of shares in Gold Bank issued at par to the Treasurer is repaid to the Treasurer in consideration for the transfer of those shares to Gold Corporation, and those shares shall upon that repayment be taken to be cancelled. ”;

(c) in subsection (3)—

(i) deleting “to acquire —” and substituting the following—

“ , on transferring to Gold Corporation the shares in Gold Bank at par in accordance with subsection (2) and receiving the repayment of the \$25 000 000 paid to Gold Bank in respect of those shares, to — ”;

(ii) deleting paragraphs (a) and (b) and substituting the following—

“ (a) release the Mint from loans amounting to \$5 000 000, and any liability for interest on those loans, on receipt from the Board of shares representing \$5 000 000 at par in Gold Corporation; and

(b) acquire from Gold Corporation—

(i) out of moneys appropriated by Parliament pursuant to item 34 of Schedule 1 of the *Appropriation (General Loan and Capital Works Fund) Act 1989* for the purpose, shares representing a further \$5 000 000 at par;

(ii) further shares, out of moneys appropriated by Parliament from time to time for that purpose, ”;

and

(iii) deleting “securities” and substituting the following—

“ shares ”;

and

(d) in subsection (4), by deleting—

“ or on the disposal of any securities, capital stock or other capital instruments” and substituting the following—

“ any shares ”.

## **Section 16 amended**

17. Section 16 of the principal Act is amended by—

(a) in subsection (1)—

(i) deleting “16. (1) Securities (as defined in section 14), whether or not shares,” and substituting the following—

### **Share issues**

“ 16. (1) Shares in Gold Corporation ”;

(ii) in paragraph (b), deleting “of the securities”; and

(iii) in paragraph (c) (ii), deleting “authorized by” and substituting the following—

“ , subject to ”;

(b) in subsection (2)—

(i) deleting “A statutory authority is authorized by this subsection to acquire and hold securities issued by Gold Bank” and substituting the following—

“ Where a statutory authority is authorized to acquire and hold shares, that power shall be exercisable in relation to shares issued by Gold Corporation ”.

(ii) deleting “securities” in paragraphs (a) and (b) and substituting the following—

“ shares ”; and

(iii) in paragraph (b), deleting “, capital stock and other capital instruments”;

(c) in subsection (3)—

(i) deleting “or any prescribed class of security issued by Gold Bank”; and

(ii) deleting “securities”, wherever it occurs, and substituting the following—

“ shares ”;

(d) repealing subsections (4), (5), (6), (7) and (8);

(e) in subsection (9), deleting “securities, capital stock or other capital instruments” and substituting the following—

“ shares ”; and

(f) in subsection (10), deleting “securities, capital stock and other capital instruments” and substituting the following—

“ shares ”.

## **Section 17 repealed**

18. Section 17 of the principal Act is repealed.

**Section 18 amended**

19. Section 18 of the principal Act is amended by adding the following subsection—

- “ (3) The amount to be approved by the Treasurer shall take into account any borrowing made otherwise than from the Treasurer, and the limitation imposed by section 11 (4). ”.

**Section 19 repealed**

20. Section 19 of the principal Act is repealed.

**Section 21 amended**

21. Section 21 of the principal Act is amended by—

- (a) in subsection (1), deleting “The Board” and substituting the following—

“ Subject to this section, the Treasurer ”;

and

- (b) adding, after subsection (2), the following subsections—

“ (3) A dividend under this section shall be calculated with respect to the net profits for a financial year after first taking into account the amount payable to the Treasurer under section 20.

(4) The Board shall, as soon as practicable after the end of each financial year of Gold Corporation, make a recommendation to the Treasurer as to the amount of the dividend (if any) that the Board recommends as appropriate for that financial year.

(5) In making a determination under subsection (1) in respect of a financial year, the Treasurer shall have regard to but shall not be bound by the recommendation of the Board.

(6) Gold Corporation shall pay the amount of a dividend payable under this section as soon as practicable after the determination of the Treasurer and the Board shall use its best endeavours to ensure that the amount is paid within 6 months after the end of the financial year to which the dividend relates. ”.

### **Section 22 substituted**

22. Section 22 of the principal Act is repealed and the following section substituted—

#### **Guarantee by Treasurer**

“ 22. (1) The payment of—

- (a) the cash equivalent of gold due, payable and deliverable by Gold Corporation, the Mint or Goldcorp under this Act; and
- (b) all moneys due and payable by Gold Corporation in respect of the exercise of the power to buy, borrow or otherwise acquire and to sell, lend or otherwise dispose of, deal in and hold Australian and foreign currency,

is guaranteed by the Treasurer, in the name and on behalf of the Crown in right of the State.

(2) The term “cash equivalent” in subsection (1) means, in relation to any security in respect of which Gold Corporation, the Mint or Goldcorp is liable to deliver gold in the form of gold coin, the current market price in Australian currency of that gold coin calculated in accordance with any terms or conditions prescribed in relation to that security and in force at the time of issue of that security.

(3) Except in so far as subsection (1) has effect unconditionally, the Treasurer, in the name and on behalf of the Crown in right of the State, may guarantee the payment of moneys borrowed by Gold Corporation, the Mint or Goldcorp upon such terms and conditions, and in such manner, as the Treasurer may determine.

(4) Where a guarantee to which this section applies has effect—

(a) the due payment of moneys thereunder—

(i) is by force of this Act a charge on the financial resources of the State; and

(ii) shall be made by the Treasurer out of the Consolidated Revenue Fund, which to the extent necessary is hereby appropriated accordingly; and

(b) the account and the assets of Gold Corporation and its subsidiaries are jointly and severally charged with—

(i) the due repayment to the Treasurer of any payment made by the Treasurer under paragraph (a); and

(ii) the performance and observance of such covenants and conditions as the Treasurer may impose as a term or condition on the giving of that guarantee,

and Gold Corporation and the subsidiaries shall give, or cause to be given, to the Treasurer such security as the Treasurer requires and execute all instruments necessary for that purpose.

(5) The Treasurer shall cause any amounts received or recovered in respect of any payment made by the Treasurer under a guarantee to which this section applies to be paid into the Consolidated Revenue Fund.

(6) Except in so far as subsection (4) (b) applies, a guarantee under this section does not apply to or in relation to the obligations of any subsidiary of Gold Corporation other than the Mint and Goldcorp. ”.

### **Part V repealed**

23. The principal Act is amended by repealing Part V, comprising the heading to Part V and sections 23 to 34 inclusive.

### **Section 35 amended**

24. Section 35 of the principal Act is amended by, in subsection (1), inserting, after “constituted”, the following—

“ , pursuant to section 9 (g) of the *Perth Mint Amendment Act 1986*, ”.

### **Section 37 amended**

25. Section 37 of the principal Act is amended by—

(a) in subsection (1), inserting, after “Act”, the following—

“ , subject to this Act ”; and

(b) in subsection (2), in paragraph (d), by inserting, after “moneys”, the following—

“ , with the approval of the Treasurer but not otherwise ”.

### **Section 50 amended**

26. Section 50 of the principal Act is amended—

(a) in subsection (1), inserting, after “Act”, the following—

“ , subject to this Act ”; and

(b) in subsection (2), deleting paragraph (c) and substituting the following paragraph—

“ (c) borrow, lend and invest money, with the approval of the Treasurer but not otherwise; ”.

### Part VIII amended

27. The principal Act is amended by repealing Part VIII other than the heading, comprising sections 54 to 66 inclusive, and substituting the following sections—

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

“ 54. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities and their subsidiaries apply to and in respect of—

- (a) Gold Corporation;
- (b) the subsidiaries of Gold Corporation known respectively as the Western Australian Mint and as Goldcorp Australia; and
- (c) such other subsidiaries of Gold Corporation as the Treasurer may determine in accordance with that Act,

and its and their operations.

#### Funding

55. (1) Subject to this Act, the funds available for the purpose of enabling Gold Corporation, the Mint and Goldcorp to exercise functions under this Act comprise—

- (a) moneys appropriated by Parliament from time to time for the purpose;
- (b) moneys standing to their respective credit in any account, or borrowed under section 11, 18 or 50;

- (c) in the case of the Mint, moneys to which section 42 applies;
- (d) the proceeds of sales effected or services provided; and
- (e) all other moneys lawfully payable to and received by or made available to their respective credit.

(2) The funds referred to in subsection (1) shall be paid or transferred into, and placed to the credit of, banking accounts opened with the approval of the Treasurer and operated for the purposes of this Act, whether in Australia or elsewhere, which together shall be taken to constitute an account known as “the Gold Corporation Account”.

(3) There may be paid out of the Account, from the moneys from time to time available—

- (a) interest on, and repayments of, moneys borrowed or advanced under this Act; and
- (b) all other expenditure lawfully incurred under this Act. ”.

### **Section 68 amended**

28. Section 68 of the principal Act is amended by deleting “Gold Bank’s” and substituting “Gold Corporation”.

### **Section 69 amended**

29. Section 69 of the principal Act is amended by, in subsection (1), inserting “agency or” before “instrumentality”, in both places where it occurs.

### **Section 72 amended**

30. Section 72 of the principal Act is amended by—

(a) in subsection (2)—

- (i) deleting “officer of Gold Bank means” and substituting the following—

“ officer of Gold Bank or of Gold Corporation includes ”; and

(ii) in paragraph (b), inserting before “is concerned” the following—

“ was or ”; and

(b) throughout, inserting “or Gold Corporation” after “Gold Bank”, wherever it occurs.

### Section 73 amended

31. Section 73 of the principal Act is amended by—

(a) in subsection (3)—

(i) in paragraph (b), deleting “, or a person who is aggrieved and is a person of a kind” and substituting the following—

“ or Gold Corporation or a body corporate ”;  
and

(ii) deleting “or other person” and substituting the following—

“ , Gold Corporation or the body corporate ”;

(b) in subsection (4)—

(i) deleting “or a person of a kind” and substituting the following—

“ , Gold Corporation or a body corporate ”;

(ii) deleting “or the person aggrieved may” and substituting the following—

“ , Gold Corporation or that body corporate may  
by virtue of this Act ”;

(iii) deleting “to Gold Bank or the person aggrieved, as the case requires”; and

(iv) in paragraph (b), deleting “or the person aggrieved” and substituting the following—

“ , Gold Corporation or that body corporate ”.

**Section 74 amended**

32. Section 74 of the principal Act is amended, in subsection (1)—
- (a) by inserting “or any other Act or as required by section 6 (7), (8) or (9)” after “Act”, where it first occurs; and
  - (b) by deleting the penalty provision and substituting the following—  
“ Penalty: \$10 000. ”.

**Schedule 1 amended**

33. Schedule 1 to the principal Act is amended by—
- (a) in clause 1, adding the following subclause—  
“ (5) This clause does not apply to or in relation to an *ex officio* director who holds, or is acting in, the office of Under Treasurer of the State. ”;  
and
  - (b) repealing clause 16.

**Schedule 3 repealed**

34. Schedule 3 to the principal Act is repealed.

**PART 3—FINANCIAL ADMINISTRATION AND AUDIT ACT 1985**

**Principal Act**

35. In this Part the *Financial Administration and Audit Act 1985\** is referred to as the principal Act.

[\*Act No. 117 of 1985 reprinted as at 4 March 1987 and amended by Acts Nos. 94 of 1986; 9, 32, 65, 88, 89, 91, 99 and 113 of 1987; 4, 19, 21 and 52 of 1988; and 5, 31 and 48 of 1989 and by regulations published in the Government Gazette on 30/6/87, 25/9/87 and 4/12/87; 8/4/88 and 16/12/88; 9/6/89 and 30/6/89.]

**Schedule 1 amended**

36. Schedule 1 to the principal Act is amended by inserting in the appropriate alphabetical position the following—

“ Gold Corporation ”.

PART 4—*CONSTITUTION ACTS AMENDMENT ACT 1899*

**Principal Act**

37. In this Part the *Constitution Acts Amendment Act 1899\** is referred to as the principal Act.

[\*63 Vict. No. 19 reprinted as at 16 March 1989 and amended by Acts Nos. 75 of 1988 and 19 of 1989.]

**Schedule V amended**

38. Schedule V to the principal Act is amended by deleting “The board of directors of Gold Banking Corporation constituted under the *Gold Banking Corporation Act 1987*” and substituting the following—

“ The board of directors of Gold Corporation constituted under the *Gold Corporation Act 1987* ”.

PART 5—*PARLIAMENTARY COMMISSIONER ACT 1971*

**Principal Act**

39. In this Part the *Parliamentary Commissioner Act 1971\** is referred to as the principal Act.

[\*Act No. 64 of 1971 reprinted as at 31 March 1989 and amended by Acts Nos. 75 of 1988 and 31 of 1989.]

**Schedule amended**

40. The Schedule to the principal Act is amended by deleting “Gold Banking Corporation constituted under the *Gold Banking Corporation Act 1987*” and substituting the following—

“ Gold Corporation constituted under the *Gold Corporation Act 1987* ”.

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