

WESTERN AUSTRALIAN TOURISM COMMISSION ACT 1983.

(No. 57 of 1983.)

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WESTERN AUSTRALIAN TOURISM COMMISSION.

No. 57 of 1983.

AN ACT to make provision for the establishment of a Western Australian Tourism Commission, to repeal the Tourist Act 1973-1981, and for incidental and other purposes.

[Assented to 13 December 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Western Australian Tourism Commission Act 1983*. Short title.

2. This Act shall come into operation on such day or days as is or are respectively fixed by proclamation. Commence-
ment.

Interpreta-
tion.

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

“appointed member” means a person appointed under section 5 (1) (b) to be a member of the Commission;

“Chairman” means the person appointed under section 12 to be Chairman and chief executive officer of the Commission and includes a person acting in the office of chairman;

“Commission” means the Western Australian Tourism Commission established under section 4;

“Commission Account” means the Western Australian Tourism Commission Account established by section 24;

“Department” means the Department of Tourism established under the Public Service Act 1978;

“local authority” means the executive body of a municipality or regional council within the meaning of the Local Government Act 1960 or a Commissioner appointed pursuant to that Act;

“member” means the Chairman and a member of the Commission appointed under section 5;

“paragraph” means a paragraph of the section or subsection in which the term appears;

“Part” means a Part of this Act;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term appears;

(2) Subject to this Act each appointed member shall hold office for such period not exceeding 4 years as is specified in the instrument of his appointment, but is eligible for reappointment.

(3) The Minister may grant leave of absence to an appointed member on such terms and conditions as the Minister determines.

(4) The Governor may terminate the appointment of an appointed member for inability, inefficiency or misbehaviour.

(5) If an appointed member—

(a) is or becomes an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

(b) has his appointment terminated by the Governor, pursuant to subsection (4);

(c) is absent, except on leave duly granted by the Minister, from 3 consecutive meetings of the Commission of which he has had notice; or

(d) resigns his office by written notice addressed to the Minister,

the office of that appointed member becomes vacant.

(6) The Governor may fill any vacancies in the office of an appointed member.

(7) Any person appointed under subsection (6) shall be entitled to hold office for the unexpired portion of the term of his predecessor.

6. (1) Where—

Acting
members.

- (a) a member is absent or temporarily incapable of fulfilling the duties of a member; or
- (b) the office of a member is vacant and has not been filled in accordance with this Act,

the Minister may appoint a person to act in the place of that member during that absence or incapability, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties, powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

(2) The appointment of a person as an acting member may be terminated at any time by the Minister.

7. (1) An appointed member shall be paid such remuneration and allowances as the Minister from time to time determines in his case on the recommendation of the Public Service Board.

Remunera-
tion of
members.

(2) Acceptance of, or acting in, the office of an appointed member shall not of itself render the provisions of the Public Service Act 1978 or any other Act applying to persons as officers of the Public Service or employees of a State instrumentality applicable to that member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of, or acting in, that office.

8. (1) The Commission shall hold its meetings at such place on such days and at such intervals as the Commission shall from time to time determine.

Proceedings
of the
Commission.

(2) At any meeting of the Commission—

- (a) a majority of the members constitute a quorum;
- (b) the Chairman, or in his absence the deputy Chairman, shall preside but where both are absent from the meeting the members may appoint one of their number to preside at that meeting;
- (c) each member present is entitled to a deliberative vote; and
- (d) where the votes cast on any question are equally divided the Chairman, or, in his absence the deputy Chairman or the presiding member in terms of paragraph (b), shall have a casting vote.

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

(4) To the extent that it is not prescribed, the Commission may determine its own procedure.

(5) The Commission may from time to time appoint committees of such members or such members and other persons, as it thinks fit and may discharge, alter, continue or reconstitute any committee so appointed.

(6) Subject to the directions of the Commission, each committee appointed under subsection (5) may determine its own procedures.

Matters not
to be
invalidated
by vacancies,
or defects in
appoint-
ment.

9. No proceeding or act of the Commission shall (if there is a quorum) be invalidated or illegal in consequence only of there being a vacancy in the number of members at the time of that proceeding or act, or in consequence of there being some defect in the appointment of a person purporting to be a member.

10. A person who is or has been a member or acting member of the Commission is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Commission by or under this Act. Liability of members.

11. (1) Any member of the Commission who has a pecuniary interest, which he has not previously disclosed pursuant to this section, in any matter— Pecuniary interests of members to be disclosed.

- (a) which is before a meeting of the Commission at which he is present; or
- (b) on which he has advised the Commission, whether or not he is present at the meeting where the matter is considered,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the fact and nature of his interest to the Commission and the Commission shall ensure that the information disclosed is recorded in the minutes.

(2) Where a member discloses an interest under subsection (1) in any matter the Commission may by resolution—

- (a) exclude that member from a meeting whilst that matter is under consideration;
- (b) prohibit that member from voting on any question with respect to that matter.

12. (1) The Chairman shall be appointed by the Governor for such period not exceeding 5 years as specified in the instrument of his appointment and shall be eligible for reappointment. Chairman.

(2) The Chairman shall, in addition to performing the functions of chairman of the Commission—

- (a) be the chief executive officer of the Commission; and

(b) in his capacity as chief executive officer of the Commission and subject to this Act be responsible to the Commission for the administration of this Act.

(3) The terms and conditions of service of the Chairman shall be such as are determined by the Minister upon the recommendation of the Public Service Board.

(4) Subject to the Salaries and Allowances Act 1975, the Chairman shall be paid such remuneration and allowances as are from time to time determined by the Governor.

(5) The Chairman does not hold office under the Public Service Act 1978 but the provisions of sections 18 and 19 apply to the Chairman as if he were a person or an employee of the Commission referred to in those sections.

(6) The office of the Chairman becomes vacant if—

(a) he becomes an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

(b) he resigns his office by written notice addressed to the Minister; or

(c) he is removed from office by the Governor.

*Division 2—Objects, functions and powers
of the Commission.*

Objects of
the
Commission.

13. (1) The objects of the Commission shall be—

(a) to market Western Australia as a tourist destination for interstate and international travellers;

- (b) to increase—
 - (i) the number of travellers to Western Australia;
 - (ii) the period during which travellers or tourists stay at destinations in Western Australia;
 - (iii) the use of tourist facilities in Western Australia;
- (c) to increase the amount of travel within Western Australia and the use of tourist facilities in Western Australia by Western Australians;
- (d) to improve and develop tourist facilities in Western Australia;
- (e) to support and co-ordinate the provision of tourist facilities in Western Australia; and
- (f) to provide for the more efficient and effective utilization of investment in tourism within Western Australia.

(2) The Commission shall advise the Minister upon any matters relating to travel or to tourism within Western Australia that are referred to the Commission by the Minister for advice.

14. (1) Subject to section 16, the Commission shall administer this Act.

Functions
and powers
of the
Commission.

(2) The Commission has power to do all things necessary or convenient for or in connection with carrying out its objects.

(3) Without limiting the generality of subsection (2) the Commission may—

- (a) acquire, lease or otherwise deal in and dispose of real and personal property for the purposes of this Act whether the property is situated in Western Australia or elsewhere;

- (b) open and maintain accounts at a bank approved by the Treasurer;
- (c) construct, establish, maintain and operate, or make arrangements with other persons for or in connection with the construction, establishment, maintenance and operation of establishments or enterprises providing tourist facilities;
- (d) co-ordinate the development of new or existing tourist ventures and for that purpose liaise with all interested persons and bodies, local authorities, State instrumentalities and departments of the government of the State and of the Commonwealth;
- (e) liaise with regulatory authorities affecting tourist and travel enterprises;
- (f) promote tourism and market travel;
- (g) enter into arrangements and agreements with persons and bodies to enable the Commission to participate in tourism promotion ventures, exhibitions and the like whether in Western Australia or elsewhere;
- (h) act as an agent for any person or body engaged in the provision of travel or tourist facilities;
- (i) appoint agents, whether in Western Australia or elsewhere;
- (j) provide travel and tourism information services;
- (k) demand and receive fees, retainers or commissions for acting as an agent or for the sale of travel or the provision of tourist facilities and associated services;

(d) exercise any right conferred upon the Commission to appoint a director of, or hold office in, a company.

(2) In this section "company" means a company incorporated under the law in force in Western Australia or in a State or Territory of the Commonwealth.

(3) The Treasurer may, after considering a report furnished by the Commission, execute a guarantee in favour of any person for the purposes of this section.

(4) A guarantee under subsection (3) may guarantee—

(a) the payment of any moneys and interest thereon owing by any person;

(b) the performance of an obligation undertaken by any person.

(5) The provisions of section 27 (5) shall apply to any guarantee under this section as if it were a guarantee under section 27.

(6) The Treasurer is hereby authorized to pay out of the moneys in the Public Account as defined in the Audit Act 1904, which to the necessary extent is appropriated accordingly, any liability arising out of a guarantee under this section and any money received or recovered by the Treasurer from the Commission or otherwise in respect of any moneys so paid by the Treasurer shall be paid into the Consolidated Revenue Fund.

Direction by
the Minister.

16. The Minister may from time to time give directions to the Commission with respect to its objects, powers and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.

Division 3—Employees and Staff of the Commission.

Employees
of the
Commission.

17. (1) Subject to this Act, the Commission may, from time to time, employ a General Manager and such other persons as it considers necessary to enable the Commission to carry out its objects.

(2) The General Manager shall act as Secretary to the Commission and, in addition to performing the other functions assigned to him by the Commission, has while the office of Chairman is vacant or the Chairman is absent from duty or is for any reason unable to perform his duties, all the powers, duties and functions of the Chairman in his capacity as the chief executive officer of the Commission only.

(3) Persons employed under subsection (1) may be employed on a full time or part time basis.

(4) Subject to any relevant award under the Industrial Arbitration Act 1979 or any other Act, the Commission may, on the recommendation of the Public Service Board, determine the remuneration and other terms and conditions of service of its employees.

(5) The Commission may, from time to time on the recommendation of the Public Service Board classify the positions to be held by employees of the Commission and define the duties to be performed by the respective holders of those positions.

(6) The Public Service Act 1978 does not apply to or in relation to an employee of the Commission.

18. (1) A person who was immediately prior to the commencement of this section an officer within the meaning of the Public Service Act 1978 holding a position in the Department shall be entitled to be employed pursuant to the provisions of this Act in an office with a remuneration corresponding with or higher than that which he received in the position that he held immediately prior to the commencement of this section.

Employment
of current
officers.

(2) A person who becomes an employee of the Commission pursuant to subsection (1) shall, subject to a suitable vacancy being available, be entitled to be reappointed by the Public Service Board at the

termination of his employment with the Commission, to an office in the Public Service with a classification and remuneration corresponding with that of the office which he last held in the Public Service.

Employees
transitional
provisions.

19. (1) Where an officer of the Public Service becomes an employee of the Commission he is entitled to retain all his existing and accruing rights (including any rights under the Superannuation and Family Benefits Act 1938) as if his service as an employee of the Commission were a continuation of his service as an officer of the Public Service.

(2) Where a person ceases to be an employee of the Commission and becomes an officer of the Public Service his service as an employee of the Commission shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service and for the purposes of the Superannuation and Family Benefits Act 1938.

(3) For the purposes of the Superannuation and Family Benefits Act 1938 the Commission is hereby declared to be a "department" within the meaning of that Act.

Professional
or technical
assistance.

20. The Commission may engage persons on a casual basis or under contract for services to provide professional, technical or other assistance.

Use of staff
and
facilities of
Departments
and
instrumentalities.

21. The Commission may by arrangement with the Minister concerned and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the Public Service Board, make use, either full time or part time, of—

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

22. (1) This section applies to every person who is or has been a member, is acting or has acted in the office of a member, is or has been an employee of the Commission or is rendering or has rendered services to the Commission under section 20 or 21. Secrecy.

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

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his 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.

23. (1) The Commission may, by writing under its common seal, either generally or as otherwise provided by the instrument of delegation, delegate to any of its members or to any employee of the Commission, all or any of its powers, authorities, functions or duties under this Act, other than this power of delegation. Delegation by
the
Commission.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Commission.

(3) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

- (4) A delegation under this section may—
- (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
 - (b) be revoked or varied by instrument in writing under the common seal of the Commission.
- (5) The Commission may exercise a power or perform a duty notwithstanding that it has delegated its exercise or performance under this section.

PART III—FINANCIAL PROVISIONS.

Funds.

24. (1) The funds available for the purpose of enabling the Commission to carry out its objects and perform its functions under this Act consist of—

- (a) moneys from time to time appropriated by Parliament for the purposes of this Act;
- (b) all moneys received by the Commission for services provided under the authority of this Act;
- (c) all moneys received by the Commission for the purposes of this Act;
- (d) any moneys received by the Commission in repayment of any loan or part thereof authorized to be made under section 14 and interest thereon;
- (e) any other moneys received by the Commission, except moneys received and held on behalf of any person in its capacity as a travel agent.

(2) The funds referred to in subsection (1) shall be paid into, and be placed to the credit of, an account at a bank within the State approved by the Treasurer, to be called the “Western Australian Tourism Commission Account”.

Borrowing
by the
Commission.

27. (1) Subject to this Act the Commission may—

- (a) borrow by way of loan, advance or overdraft such moneys;
- (b) obtain and provide such credit;
- (c) pay such commission or brokerage; and
- (d) give, take or arrange such security,

as it thinks necessary from time to time for carrying out its objects.

(2) A loan, advance or overdraft under this section may only be made with the prior approval of the Treasurer and upon such terms and conditions as the Treasurer approves.

(3) Any moneys borrowed by the Commission under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.

(4) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee repayment of the principal moneys and interest thereon in respect of moneys borrowed by the Commission under this section, and any liability of the Crown arising out of the guarantee is payable out of moneys in the Public Account as defined in the Audit Act 1904, which to the necessary extent is appropriated accordingly.

(5) A guarantee under this section shall be in such form and subject to such terms and conditions as the Treasurer determines and, without limiting the generality of the foregoing, shall be subject to a condition that the lender shall not, without the consent in writing of the Treasurer, assign or encumber the benefit of the guarantee.

28. (1) The Commission shall cause to be kept proper accounts and records of its transactions and affairs under such heads as the Treasurer may from time to time direct and shall do all things necessary to ensure that all payments out of moneys standing to the credit of the Commission Account and the Trust Account are correctly made and properly authorized and that adequate control is maintained over the assets of the Commission and over the incurring of liabilities against those Accounts.

Accounts to
be audited.

(2) The Commission shall cause to be prepared in respect of each financial year ending on 30 June—

(a) a full, true and fair—

(i) balance sheet of its assets and liabilities; and

(ii) income and expenditure statement;

and

(b) such other statements as the Treasurer may from time to time direct,

in such form as the Treasurer approves and shall submit that balance sheet and those statements for audit, examination and report by the Auditor General.

(3) The Auditor General shall inspect and audit the accounts and records of the financial transactions of the Commission and of the Commission Account and the Trust Account and shall—

(a) forthwith draw the attention of the Minister to any irregularity disclosed by the audit that is, in the opinion of the Auditor General, of sufficient importance to justify him so doing; and

(b) report to the Minister as to—

(i) whether in his opinion the statements are based on proper accounts and records;

- (ii) whether in his opinion the accounts and records are properly drawn up in accordance with generally accepted accounting standards so as to present a true and fair view of the transactions for the period under review and the financial position at the end of that period;
- (iii) whether in his opinion the controls exercised by the Commission are adequate to provide reasonable assurance that the receipt, expenditure and investment of moneys and the acquisition and disposal of assets have been in accordance with this Act; and
- (iv) such other matters arising out of the statements as the Auditor General considers should be reported.

(5) The Auditor General has for the purposes of this Act all the powers conferred on him by the Audit Act 1904.

PART IV—GENERAL.

Annual
report of the
Commission.

29. (1) The Commission shall as soon as is practicable after 1 July in each year, prepare and furnish to the Minister a report on its operations and proceedings for the year ending on 30 June last preceding.

(2) The Minister shall cause the report, together with copies of the financial statements of the Commission and the report of the Auditor General thereon, to be laid before each House of Parliament as soon as practicable in each year after the receipt by him of all reports.

Regulations.

30. 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.

(2) Not later than one month after the coming into operation of this section the Commission and the Minister for Works shall agree upon the terms and conditions on which the Commission shall—

(a) occupy the premises referred to in paragraph (b) of subsection (1); and

(b) take an assignment of the assets referred to in paragraph (c) of subsection (1),

and in default of agreement the terms and conditions of occupancy and assignment shall be as the Minister for Works determines.

References to
Department
of Tourism
in other
laws.

32. (1) A reference in any Act or regulation to the Department shall, unless the context otherwise requires, be read and construed as a reference to the Commission.

(2) A reference in any Act or regulation to the Director of Tourism or the Permanent Head of the Department shall, unless the context otherwise requires, be read and construed as a reference to the Chairman.

Repeal.

33. The Tourist Act 1973-1981 is hereby repealed.

Duration
of Act.

34. (1) This Act shall, subject to this section, continue in operation until 31 December, 1993 and no longer.

(2) On the expiry of this Act by virtue of subsection (1)—

(a) all real and personal property and every right or interest that immediately before that expiry was vested in the Commission shall without any transfer or assignment pass to and become vested in the Minister;

