

STATE ENERGY COMMISSION.

No. 101 of 1981.

**AN ACT to amend the State Energy Commission
Act 1979-1981.**

[Assented to 4 December 1981.]

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:—

1. (1) This Act may be cited as the *State Energy Commission Amendment Act 1981*. Short title and citation.

(2) In this Act the State Energy Commission Act 1979-1981 is referred to as the principal Act. Act No. 111 of 1979 as amended by Act No. 63 of 1981.

(3) The principal Act as amended by this Act may be cited as the State Energy Commission Act 1979-1981.

Commence-
ment.

2. (1) Section 4 of this Act shall come into operation on the day on which this Act is assented to by the Governor.

(2) The provisions of this Act, other than section 4, shall come into operation on such day or days as is or are respectively fixed by proclamation.

Section 4
amended.

3. Section 4 of the principal Act is amended in subsection (1)—

(a) in the definition of “Assistant Commissioner”, by deleting “to that office pursuant to subsection (11) of section 12” and substituting the following—

“ as an Assistant Commissioner under section 11 ” ;

(b) by inserting after the definition of “Council” the following definition—

“ “Deputy Commissioner” means the person appointed under section 12 to be the Deputy Commissioner; ” ; and

(c) in the definition of “Secretary”, by deleting “officer” where it first occurs and substituting the following—

“ person ” .

Section 8
amended.

4. Section 8 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections—

“ (1a) The Commission may, by writing under its Common Seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed executed by such an agent or attorney

on behalf of the Commission binds the Commission and has the same effect as if it were under the Common Seal of the Commission.

(1b) The authority of an agent or attorney empowered pursuant to subsection (1a) shall be deemed, as between the Commission and a person dealing with him, to have continued during the period (if any) specified in the instrument conferring the authority or, if no period is so specified, until notice of the revocation or termination of his authority was given to the person dealing with him.

(1c) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of the Commission may make, vary or discharge a contract in the name of or on behalf of the Commission in the same manner as if the Commission were a natural person.

(1d) The making, varying or discharging of a contract in accordance with subsection (1c) is effectual in law and binds the Commission and other parties to the contract.

(1e) Subsection (1c) of this section does not prevent the Commission from making, varying or discharging a contract under its Common Seal. ” ;

(b) in subsection (2)—

(i) by deleting “notice, order, summons or other document” and substituting the following—

“ document, summons, notice or order ” ; and

(ii) by inserting after "Secretary" the following—

" , the Commissioner, the Deputy Commissioner, or an Assistant Commissioner, or if it bears a facsimile of the signature of any such person " ;

(c) in subsection (3), by inserting after "Commissioner" the following—

" , the Deputy Commissioner " ;

(d) in subsection (4), by deleting "with the addition on its face of the words "Share Seal", and substituting the following—

" , with or without additional words, " ;

and

(e) by inserting after subsection (5) the following subsection—

" (6) Where the Commission prior to the coming into operation of section 4 of the State Energy Commission Amendment Act 1981 purported to execute a document in a manner that would have been lawful had the provisions of this section as in force immediately following the coming into operation of that section been in force at that time, the effective execution by the Commission of the document shall be deemed to have been lawfully and properly carried out. " .

Section 11
amended.

5. Section 11 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (b), by deleting "two" and substituting the following—

" three " ; and

(ii) by deleting paragraph (c) and substituting the following paragraph—

“ (c) a Deputy Commissioner. ” ;

(b) in subsection (2)—

(i) by deleting “An officer of the Commission” and substituting the following—

“ A person ” ; and

(ii) by inserting before “may” the following—

“ of the Commission ” ; and

(c) by inserting after subsection (2) the following subsections—

“ (3) There shall be 3 Assistant Commissioners, who shall be appointed, subject to the approval of the Minister, by the Commissioner, but who shall not be members of the Commission.

(4) The person who, immediately before the coming into operation of section 5 of the State Energy Commission Amendment Act 1981, held office as an Assistant Commissioner shall be deemed to have been appointed for the time being as the Deputy Commissioner. ” .

6. Section 12 of the principal Act is amended— Section 12 amended.

(a) by repealing subsection (3);

(b) in subsection (4), by deleting “the other” and substituting the following—

“ one of the other two ” ;

- (c) by repealing subsections (7) and (8) and substituting the following subsections—

“ (7) The Deputy Commissioner shall be a person appointed by the Minister after taking into consideration any recommendation that may be made by the Commissioner.

(8) At any meeting of the Commission at which neither the Commissioner nor a person appointed under section 26 to act in the place of the Commissioner is present, the Deputy Commissioner has all the functions, powers, and duties of the Commissioner. ” ;

- (d) by repealing subsection (9); and

- (e) by repealing subsections (10) and (11) and substituting the following subsection—

“ (10) Subject to the Salaries and Allowances Act 1975, the Commissioner and the Associate Commissioners shall be paid such remuneration and allowances as are from time to time determined by the Governor. ” .

Section 13
amended.

7. Section 13 of the principal Act is amended—

- (a) in subsection (2), by deleting “his deputy, and one Associate Commissioner” and substituting the following—

“ the Deputy Commissioner, and two Associate Commissioners ” ;

- (b) in subsection (3), by deleting “, or in his absence his deputy, ” ; and

- (c) in subsection (4), by deleting paragraphs (a) and (b) and substituting the following paragraph—

“ (a) each member of the Commission present is entitled to a deliberative vote; ” .

8. Section 22 of the principal Act is amended— Section 22 amended.

(a) in subsection (1), by deleting “Subject to subsection (2), the” and substituting the following—

“ The ” ; and

(b) by repealing subsection (2).

9. Section 25 of the principal Act is amended by repealing subsection (5) and substituting the following subsection— Section 25 amended.

“ (5) Members of the Commission, other than the Associate Commissioner who is the Chairman of the Council, are not eligible to vote at a meeting of the Council but may attend any meeting. ” .

10. Section 26 of the principal Act is amended in paragraph (a) of subsection (1) by deleting “both a member, whether of the Commission or of the Council, and the deputy of that member are” and substituting the following— Section 26 amended.

“ a member of the Commission is, or both a member of the Council and the deputy of that member are, ” .

11. Section 27 of the principal Act is amended in subsection (1) by deleting “In accordance with subsection (4) of section 10 the function of the Commission is” and substituting the following— Section 27 amended.

“ The function of the Commission is, pursuant to subsection (4) of section 10, ” .

12. Section 28 of the principal Act is amended— Section 28 amended.

(a) in paragraph (b) of subsection (1), by inserting after “name” the following—

“ and may compound or compromise any claim, or demand made, or any debt or

sum of money owing, to or by it, or any action brought by or against it ” ;

and

(b) in subsection (3) by inserting after paragraph (k) the following paragraph—

“ (ka) with the approval of the Minister, promote any company for the purpose of acquiring or taking over any property, rights, and liabilities of the Commission, or for any other purpose which may seem directly or indirectly calculated to further the objects of this Act;”.

Sections 29,
30 and 31
repealed and
substituted.

13. Sections 29, 30 and 31 of the principal Act are repealed and the following sections are substituted—

Financial
powers.

“ 29. (1) The Commission, subject to this Act, may—

(a) borrow, or re-borrow, moneys—

(i) in ways additional to or other than those specifically provided for in section 99, 107 or 108;

(ii) pursuant to subsection (4) of section 99, or to section 107; or

(iii) pursuant to section 108, subject to the issue and sale of debentures, or the creation, issue and sale of inscribed stock, of the kind referred to in that section;

(b) obtain credit;

(c) arrange for financial accommodation to be extended to the Commission in ways additional to or other than borrowing moneys or obtaining credit;

- (d) provide credit (including credit to consumers in the normal course of business) for, or arrange financial accommodation on behalf of, or lend or advance money to any person, body or authority whether or not security is to be furnished to the Commission;
 - (e) pay moneys by way of commission or brokerage for or in respect of the procuring, negotiating, making or obtaining of any—
 - (i) loan;
 - (ii) credit; or
 - (iii) financial accommodation, under the authority of this section, or in respect of any dealings relating thereto;
 - (f) guarantee or give indemnities for the payment of money or the performance of contracts or obligations by any other person, body or authority; and
 - (g) give, take or arrange security.
- (2) Where—
- (a) the Commission proposes to make use of—
 - (i) moneys borrowed by the Commission;
 - (ii) credit obtained by the Commission; or
 - (iii) financial accommodation, extended to the Commission, under this section; or
 - (b) the Commission exercises any other power conferred by this section,

that money, credit or accommodation shall be used, and that power shall be exercised, by the Commission for the purposes only of this Act or any other Act administered by the Commission and not otherwise.

(3) The Treasurer may, from time to time, give directions to the Commission in relation to the exercise of the powers, or any specified power, conferred on the Commission by subsection (1), including a direction that the Commission shall not exercise a power without the prior written approval of the Treasurer (which may be given upon, or subject to, such terms or conditions as the Treasurer thinks fit), and the Commission shall give effect to any such direction.

(4) Any moneys borrowed by, credit obtained by, or financial accommodation extended to, the Commission under this section may be raised or entered into, either in the State or elsewhere, as one loan or transaction or as several loans or transactions.

(5) Except in so far as subsection (1) of section 32 applies—

(a) no contract made, or security, guarantee or indemnity given, by the Commission pursuant to this section shall be taken to be unenforceable by or against the Commission, or shall be in any way prejudiced or otherwise affected, by reason only—

(i) that any direction given to the Commission was not given effect to, any approval required to be obtained was not obtained, or any terms or conditions upon or subject to which any such approval was given were not complied with, as required by or pursuant to this section; or

- (ii) that any money borrowed or credit obtained or financial accommodation extended was or is to be borrowed, obtained or extended, or was or is to be used, for a purpose other than a purpose of this Act or any other Act administered by the Commission; and
- (b) a person dealing with the Commission shall not be bound or concerned to inquire into any matter of a kind referred to in subparagraph (i) or (ii) of paragraph (a).

(6) The provisions of the Money Lenders Act 1912 do not apply, and shall be deemed never to have applied, to or in relation to any loan, within the meaning of section 2 of that Act, made to or by the Commission, whether made before or after the coming into operation of section 13 of the State Energy Commission Amendment Act 1981, or to any contract or security relating to such a loan.

30. (1) Subject to the approval of the Governor, the Treasurer may guarantee on behalf of the State the performance by the Commission, in the State or elsewhere, of any obligation of the Commission, however or wherever arising, entered into or to be entered into by the Commission.

Specific
State
Guarantees.

(2) An instrument of guarantee given pursuant to subsection (1) shall be executed by—

- (a) the Treasurer; or
- (b) a person authorised—
 - (i) by the Treasurer in writing; or
 - (ii) by operation of law.

(3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Commission of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Commission and any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.

Delegation
by the
Treasurer,
and
authorisation
by the Under
Treasurer.

31. (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate any function or power that is conferred on the Treasurer by this Act, other than this power of delegation.

(2) Where a function or power has been delegated under subsection (1) to the Under Treasurer, the Under Treasurer may authorise another officer of the Treasury to perform the function or exercise the power so delegated.

(3) A delegation under subsection (1) or an authorisation under subsection (2) may be to—

- (a) a specified person; or
- (b) the person for the time being holding a specified office.

(4) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Treasurer under subsection (1), or by an officer authorised by the Under Treasurer under subsection (2) to perform that function or exercise that power, has the same force and effect as if it had been done by the Treasurer.

(5) Where the performance of a function or the exercise of a power by the Treasurer is

dependent upon the opinion, belief or state of mind of the Treasurer in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate, or by an officer authorised by the Under Treasurer under subsection (2), upon the opinion, belief or state of mind of the delegate or of the authorised officer, as the case may be, in relation to that matter.

(6) Subject to subsection (8), a delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Treasurer, and may be revoked or varied.

(7) Subject to subsection (8), the giving of an authorisation under subsection (2) does not prevent the performance of a function or the exercise of a power by the Under Treasurer, and may be revoked or varied.

(8) The authority of a person to whom a power is delegated or an authorisation is given under this section shall be deemed, as between the person delegating that power or giving the authorisation and a person dealing with him, to have continued during the period (if any) specified in the instrument delegating the power or conferring the authority or, if no period is so specified, until notice of the revocation or variation of the delegation or authorisation was given to the person dealing with him.

(9) Where a person purports to perform a function or exercise a power conferred or expressed to be conferred on the Treasurer under this Act, it shall be presumed, unless the contrary is established, that the person is duly authorised by a delegation under subsection (1), or by an authorisation under

subsection (2) given pursuant to such a delegation, to perform the function or exercise the power.

(10) A document purporting to be signed for the purposes of this Act by a person as a delegate of the Treasurer shall be deemed, unless the contrary is established, to have been signed by him as such a delegate and to have been so signed pursuant to the performance of a function or the exercise of a power duly delegated by the Treasurer.

(11) A document purporting to be signed for the purposes of this Act by an officer of the Treasury authorised by the Under Treasurer to sign the document shall be deemed, unless the contrary is established, to have been signed by such an officer so authorised and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorised by the Under Treasurer to perform or exercise. ” .

Section 32
amended.

14. Section 32 of the principal Act is amended in subsection (1) by—

(a) deleting “two hundred thousand” and substituting the following—

“ one million ” ; and

(b) deleting all the passage following “unless or until” to the end of the subsection and substituting the following—

“ the entering into that contract by the Commission is authorised, or the execution of that contract by the Commission is ratified, by the Governor. ” .

Section 61
amended.

15. Section 61 of the principal Act is amended in paragraph (b) of subsection (1) by deleting “in

advance of the carrying out of the work” and substituting the following—

“ within 3 months, or such further period as the Commission may agree, after the agreement is made ” .

16. Section 62 of the principal Act is amended— Section 62
amended.

(a) in subsection (1), by deleting “59” and substituting the following—

“ 60 ” ;

(b) in subsection (9), by deleting “(10)” in the second place where it occurs and substituting the following—

“ (9) ” ; and

(c) by repealing subsection (12) and substituting the following subsection—

“ (12) Where—

(a) a deposit is made or any other security is given in excess of the amount applicable pursuant to subsection (11), the amount required by the Commission shall be re-assessed;

or

(b) a deposit is made or any other security is given that the Commission considers to be no longer appropriate for the purpose for which it was required, the Commission shall re-assess whether a deposit or other security should be required for that purpose and, if so, the amount of the deposit or other security to be required,

and the deposit shall be refunded or credited or the security shall be discharged or modified accordingly. ” .

Section 67
amended.

17. Section 67 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (e) by inserting after “energy” the following—

“ or enables a supply of energy to be obtained ” ; and

(ii) by deleting “Penalty: Five hundred dollars.” and substituting the following—

“ Penalty: For a first offence, \$500; for a second offence, \$1 000 or imprisonment for 6 months, or both such fine and imprisonment; for a third or subsequent offence, \$2 000 or imprisonment for 12 months, or both such fine and imprisonment. ” ; and

(b) in subsection (2), by deleting “fine” and substituting the following—

“ penalty ” .

Section 68
amended.

18. Section 68 of the principal Act is amended—

(a) in subsection (3) by deleting “, the form of energy to which his powers relate, and the Acts under which and the purposes for which he is appointed,”; and

(b) in subsection (5), by deleting “appointed under this Act in respect to the Acts and the form of energy specified in that certificate” and substituting the following—

“ under this Act ” .

Section 87
amended.

19. Section 87 of the principal Act is amended in subsection (1) by deleting paragraph (e) and substituting the following paragraph—

“ (e) the appointment of a person as the Commissioner, an Associate Commissioner, the Deputy Commissioner, an Assistant

Commissioner, the Secretary, or any other officer of the Commission; ” .

20. Section 88 of the principal Act is amended in subsection (1) by deleting “an Assistant Commissioner” and substituting the following—

Section 88 amended.

“ the Deputy Commissioner, an Assistant Commissioner, ” .

21. Section 90 of the principal Act is amended—

Section 90 amended.

(a) by inserting after the section designation “90.” the following subsection designation—

“ (1) ” ; and

(b) by inserting at the end of the section the following subsection—

“ (2) Where a person who has not been appointed or employed pursuant to subsection (1)—

(a) is appointed to hold office for the time being as Deputy Commissioner; or

(b) is, or before the coming into operation of section 21 of the State Energy Commission Amendment Act 1981 was, appointed to hold office for the time being as an Assistant Commissioner or as Secretary to the Commission,

that person is deemed thereby to be, or to have been, appointed as an officer of the Commission pursuant to subsection (1), as the case may be. ” .

22. Section 92 of the principal Act is amended—

Section 92 amended.

(a) in subsection (6), by deleting “of the ordinary” and substituting the following—

“ before an ordinary ” ; and

- (b) in subsection (7), by deleting the comma after paragraph (c) and substituting the following—

“ ; or

- (d) ceases to be an employee of that branch of the staff of the Commission in which he was employed when he was elected, ” .

Section 97
amended.

23. Section 97 of the principal Act is amended in subsection (3) by deleting “paid to the credit of the State Energy Commission Account referred to in section 99 and shall be”.

Section 99
amended.

24. Section 99 of the principal Act is amended—

- (a) in paragraph (d) of subsection (3), by deleting “this Act”, and substituting the following—

“ this Act,
and those funds shall be placed to the credit of an account to be called the “State Energy Commission Account” maintained by the Commission ” ;

- (b) in subsection (4)—

- (i) by deleting “with a bank approved by the Treasurer an account to be called the “State Energy Commission Account” ” and substituting the following—

“ one or more bank accounts in the name of the Commission with such bank or banks, in the State or elsewhere, as the Treasurer may approve, ” ; and

- (ii) by deleting “subject to and not exceeding such limitations as the bank imposes or the Treasurer directs”;

- (c) in subsection (5), by deleting “and for the purposes of”;
- (d) in subsection (8), by deleting “Account is” and substituting the following—
 - “ Account or any bank account maintained by the Commission is ” ; and
- (e) in subsection (9), by inserting after “in the State Energy Commission Account” the following—
 - “ (other than moneys in relation to which the Commission is a trustee) ” .

25. Section 100 of the principal Act is amended in subsection (1)— Section 100 amended.

- (a) by deleting “entered and debited in the State Energy Commission Account” and substituting the following—
 - “ chargeable to the Commission ” ;
 - and
- (b) by deleting “has applied” and substituting the following—
 - “ has been applied in relation ” .

26. Section 102 of the principal Act is amended— Section 102 amended.

- (a) in subsection (1)—
 - (i) by deleting “entered and debited in the State Energy Commission Account” and substituting the following—
 - “ chargeable to the Commission ” ; and
 - (ii) by deleting “of the services” in the second place where it appears and substituting the following—
 - “ , subject to section 119A, of the services ” ; and

(b) by repealing subsection (2) and substituting the following subsection—

“ (2) Any amount charged pursuant to subsection (1) shall be paid by the Commission as and when directed by the Treasurer—

(a) into a fund or account specified by the Treasurer; or

(b) in accordance with subsection (3). ” ;

and

(c) in subsection (3), by deleting “to be debited pursuant to subsection (1)” and substituting the following—

“ chargeable under subsection (1) ” .

Section 104
amended.

27. Section 104 of the principal Act is amended by deleting “reserve”, in each place where it appears, and substituting the following—

“ provision or reserve ” .

Section 106
amended.

28. Section 106 of the principal Act is amended—

(a) in subsection (1), by deleting “section 31” and substituting the following—

“ section 30 ” ; and

(b) in subsection (2), by deleting “section 31” and substituting the following—

“ section 30 ” .

Section 107
amended.

29. Section 107 of the principal Act is amended in subsection (1)—

(a) by deleting “If the money standing to the credit of the State Energy Commission Account is insufficient at any time to meet expenditure incurred or proposed to be

incurred by the Commission in carrying out its functions, the” and substituting the following—

“ The ” ; and

- (b) by inserting after “amounts” the following—

“ and for such reasons ” .

30. Section 108 of the principal Act is amended— Section 108 amended.

- (a) in paragraph (a) of subsection (1)—

- (i) by deleting “borrow and reborrow moneys for the purpose of” and substituting the following—

“ whether as units of debentures or units of stock, individual debentures or parcels, or classes of debentures or stock, issue and sell debentures or create, issue and sell inscribed stock for the purpose of ” ;

- (ii) in subparagraph (iii) by deleting “stock,” and substituting—

“ stock; ” and

- (iii) by deleting “by the issue and sale of debentures or by the creation, issue and sale of inscribed stock; ” ;

- (b) after paragraph (b) of subsection (1), by inserting “and”;

- (c) in subsection (2)—

- (i) by deleting “Governor shall not approve of the borrowing by the Commission of moneys” and substituting the following—

“ Commission shall not implement the issue and sale of debentures or the creation, issue and sale of inscribed stock ” ;

(ii) in paragraph (a) and paragraph (b), respectively, by deleting “loan” and substituting the following—

“ issue ” ;

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

“ raised ” ; and

(iv) in paragraph (d), by deleting “that loan is” and substituting the following—

“ any moneys raised are ” ;

(d) in subsection (4), by deleting “borrowed by the Commission under and subject to this section may be raised as one loan or as several loans” and substituting the following—

“ raised by the Commission pursuant to an issue made under this section shall be secured ” ;

(e) in subsection (6), by deleting “or any share therein”;

(f) in subsection (7), by deleting “, with the approval of the Governor,”;

(g) by repealing subsection (10);

(h) in subsection (14), by deleting “or any share therein”; and

(i) in subsection (22) by deleting “Governor” and substituting the following—

“ Treasurer ” .

32. Section 110 of the principal Act is amended in paragraph (a) by deleting "this Act" and substituting the following—

Section 110 amended.

" section 108 " .

33. Section 113 of the principal Act is amended by deleting "State Energy Commission Account" in both places where it occurs and in each case substituting the following—

Section 113 amended.

" Commission " .

34. Section 117 of the principal Act is amended in subsection (3) by deleting "fair and correct" and substituting the following—

Section 117 amended.

" true and fair " .

35. Section 119 of the principal Act is amended by inserting after "vested in" the following—

Section 119 amended.

" or under the management and control of " .

36. After section 119 of the principal Act the following section is inserted—

Section 119A inserted.

" 119A. Any officer of the Commission appointed by the Minister may, for the purposes of this Act or any other Act administered by the Commission, search and obtain copies of the public registers of the Office of Titles and Registry of Deeds, or any office of the Department of Lands and Surveys, the Department of Mines, or the Corporate Affairs Office, without payment of any fee. " .

Search of public registers.

37. Section 120 of the principal Act is amended—

Section 120 amended.

(a) by deleting "this Act the Commission shall" and substituting the following—

" section 49, or where the Commission is otherwise empowered to enter any land, premises or other thing, whether under

this Act or any other Act administered by the Commission, the Commission is required to ” ;

- (b) by inserting after “pay” the following—
“ forthwith ” ;
- (c) by deleting “any physical damage to any” and substituting the following—
“ the physical damage done to the ” ;
- (d) by deleting “committed by the Commission, its” and substituting the following—
“ by the Commission’s ” ;
- (e) by inserting after “in the course” the following—
“ and at the time ” ; and
- (f) by deleting “a power conferred by this Act” and substituting the following—
“ such a power ” .

Section 121
amended.

38. Section 121 of the principal Act is amended in subsection (1) by inserting after “this Act” the following—

“ or any other Act administered by the Commission ” .
