



Western Australia

City of Fremantle (Free Literary Institute) Act 1948

Compare between:

[06 Jul 1998, 00-a0-10] and [04 Dec 2014, 00-b0-02]

City of Fremantle (Free Literary Institute) Act 1948

An Act to vest in the City of Fremantle the land and other assets of the Fremantle Literary Institute Incorporated freed from the Trusts affecting the same, and to confer on the City of Fremantle additional powers to establish and provide for the conduct of a free literary institute and library and to pay the liabilities of the said Fremantle Literary Institute Incorporated and for purposes consequent on and incidental to those objects.

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

1. Short title

This Act may be cited as the *City of Fremantle (Free Literary Institute) Act 1948*.

2. Interpretation

In this Act and in the bylaws and regulations hereunder, unless the context otherwise indicates —

Council means the Council of the City of Fremantle;

Institute means the Fremantle Literary Institute Incorporated;

local authority means the council of a municipality or the board of a road district;

member means a person who has paid a deposit to the council by way of security for a book lend;

principal Act means the *Municipal Corporation Act 1906-1947*;

ratepayer shall have the same meaning as in the principal Act.

3. Establishment and carrying on of Free Literary Institute, etc.

- (1) The City of Fremantle is hereby empowered to establish and carry on a free literary institute, free lending library and free reference library.
- (2) The City of Fremantle is hereby authorised to finance such free literary institute, free lending library, and free reference library from its ordinary revenue.
- (3) Nothing herein will in any way restrict or limit the power of the City of Fremantle to prohibit the removal of any of its books, periodicals, magazines, or other reading matter from the precincts of the premises whereon such free literary institute, free lending library, free reference library is carried on, from time to time.

4. Vesting of land and other assets

The land and all other assets of the Fremantle Literary Institute Incorporated are hereby vested in the City of Fremantle.

5. Land and assets to be held freed from trusts

The City of Fremantle shall hold the said land and assets freed and discharged from all trusts affecting the same.

6. Land and assets to be taken over and held subject to conditions in Indenture in schedule

The City of Fremantle shall take over and hold the said land and assets upon the terms and subject to the conditions contained in an indenture dated the eighteenth day of November, one thousand nine hundred and forty-eight, and made between the

Council of the one part and the Institute of the other part, a copy of which indenture is set out in the Schedule to this Act.

7. Discharge of liabilities and indemnity

The Council shall discharge all of the debts and liabilities of the Institute and shall indemnify the Institute and the trustees and subscribers thereof in respect of thereof.

8. Power to use and deal with premises

The Council may use and deal with the premises acquired by it under the provision of this Act for such purposes as it deems fit, including leasing or letting the same or any part thereof, with power to sell or otherwise dispose thereof as ordinary Council property.

9. Exercise of powers under this Act to be deemed works and undertakings under principal Act

The exercise by the Council of any of the powers by this Act conferred on it shall be deemed to be works and undertakings within the meaning of Part XXIV of the principal Act.

10. Power to borrow

The Council may, with the consent of the Governor borrow in addition to the sums which it is authorised to borrow under Part XXIV of the principal Act any further sums required for the purpose of carrying out any of the works and undertakings which by this Act it is empowered to carry out. All the provision of the principal Act relating to the borrowing of moneys shall apply to such loans except those relating to the restriction of the amounts borrowed.

11. By-laws

- (1) The Council may make by-laws in addition to the purposes provided by Part VIII of the principal Act for the following purposes: —

s. 11A

- (i) The conduct of the Literary Institute and Library.
 - (ii) Regulating the use of the same and of the contents thereof, and for protecting the same and the fittings, furniture and contents thereof from injury, destruction, or misuse.
 - (iii) Requiring from any member or person using the same any deposit, guarantee, or security against the loss of or injury to any book, periodical, magazine, reading matter, or other article.
 - (iv) Enabling the officers and servants of the Council employed there to exclude or remove therefrom persons committing any offence against the principal Act, this Act, or any by-law or regulation.
 - (v) Regulating the method and conduct of any appointment or election of the Board of Directors provided for in the said indenture or in this Act.
 - (vi) Regulating the admission of new members.
 - (vii) Determining qualifications for membership where same are left to the discretion of the Council.
 - (viii) Determining the number of books, periodicals, magazines and other reading matter which may be borrowed by any person or class of persons, and for what period.
 - (ix) Providing for the method of the hearing of appeals from any cancellation or suspension from or refusal to accept membership, and
 - (x) generally for carrying into effect the objects of this Act or any of such objects.
- (2) All such by-laws shall be made in accordance with the provision of Part VIII of the principal Act.

[Section 11 amended by No. 35 of 1960 s.2.]

11A. Mayor to be *ex officio* member of Board of Directors

Notwithstanding the terms and conditions contained in Clause 7 of the said Indenture, the Mayor of the Council is hereby appointed to be *ex officio* a member of the Board of Directors so long as he remains in office in addition to the Directors referred to in Clause 7.

[Section 11A inserted by No. 35 of 1960 s.3.]

12. Eligibility for membership

The following persons shall be eligible as members of the Literary Institute and Library: —

- (i) All ratepayers of the Council.
- (ii) All employees of ratepayers of the Council.
- (iii) All persons who at any time during a period of two years prior to the passing of this Act have been subscribers to the Institute and who have not previously been expelled by the Institute.
- (iv) Any other person or class of persons as determined from time to time by the Council by-law.

Provided that the Council may at any time cancel or suspend for such period as it deems fit, or refuse to accept the membership of any person guilty of unseemly behaviour in the premises occupied at any time by the Council and used as a literary institute or library under and by virtue of this Act, or guilty of any by-law made at any time pursuant to this Act. Any person complaining of such decision may appeal therefrom to the Council of the City of Fremantle, whose decision will be binding.

13. Application for membership

A person desirous of becoming a member shall pay the prescribed deposit by way of security and shall make application to the Council on the prescribed form, and unless notified by the Council within 28 days from the date of such

application that his application has been refused, he shall be deemed to be a member.

14. Power to grant facilities of Literary Institute to non-members

No charge shall be made to a member for admission to the Literary Institute or Library except as provided in section twelve of this Act, but the Council, if it thinks fit, may grant the use of the facilities of the Literary Institute and Library to persons not members, either gratuitously or for payment.

15. Other local authorities may become contributors

Any other local authority may from time to time become a contributor to the upkeep of the Literary Institute and Library upon such terms as shall be mutually agreed upon between the Council and such other local authority and as shall be approved by the Governor.

16. Agreement with other local authorities

Any agreement between the Council and any other local authority shall provide, in addition to any other terms, as follows: —

- (i) For the Council to retain the ownership of the assets of the Institute and Library.
- (ii) For the local authority to contribute to the Council such proportion of the expenses in connection with the conduct of the Literary Institute and Library (including due allowance for depreciation and interest) as shall be mutually agreed upon.
- (iii) For the admission as members of persons.
- (iv) For representation of such local authority on the Board of Directors provided for in the said indenture.

17. Powers contained in principal Act and this Act conferred on municipalities

A local authority being a municipality under the provisions of the principal Act shall have all of the powers and authorities conferred by the principal Act and by this Act for the purpose of enabling it to carry out the powers conferred on it by this Act.

18. Powers contained in principal Act and this Act conferred on road boards

A local authority being a road district under the provisions of the *Road Districts Act 1919-1946*, shall have all of the powers and authorities conferred by that Act and by this Act for the purpose of enabling it to carry out the powers conferred on it by this Act.

19. This Act not to restrict or limit powers conferred by principal Act

Nothing in this Act shall be deemed to restrict or limit the powers conferred on the Council by the principal Act.

The Schedule

[Section 6]

THIS INDENTURE made the 18th day of November, One thousand Nine hundred and Forty-eight BETWEEN City of Fremantle (hereinafter called “the Council”) of the one part and Fremantle Literary Institute Incorporated of 13 South Terrace, Fremantle (hereinafter called “the Institute”) of the other part.

Whereas the Institute is registered proprietor of all that piece of land —

- (a) Fremantle Town Lot 1388 and being the whole of the land comprised in Certificate of Title Volume 122 Folio 162;
- (b) Fremantle Town Lot 871 and being the whole of the land comprised in Certificate of Title Volume 664 Folio 83;

And has carried on thereon a literary institute and lending library.

And whereas the Council and the Institute have mutually agreed that subject to an Act of Parliament being passed giving the Council the required authority the Council should take over and carry on the said Literary Institute and Lending Library upon the terms and conditions hereinafter contained.

Now this indenture witnesseth as follows: —

1. The said lands together with all buildings erections and structures thereon and together with all the appurtenances thereto and together with all fixtures fittings furniture library book periodicals magazines and other assets of the Institute shall be vested in the Council subject to the liabilities hereinafter mentioned.
2. The Council shall take over and assume the liability of the Institute to the Commonwealth Bank of Australia secured by registered mortgage No. 439/1917 over the said land and the liability to the Western Australian Trustee Executor and Agency Company Limited for the sum of Two Hundred Pounds (£200) together in each case with all interest and other moneys secured thereby.
3. The Council shall take over and assume the benefit of and liability under all contracts heretofore entered into by the Institute for the supply of books periodicals newspapers and other literature.
4. The Council shall take over and assume the liability of the Institute to the subscribers thereof in respect of the balance of subscriptions paid in advance by

such subscribers subsequent of taking over by the Council and apportionments shall be made accordingly.

5. The Council hereby indemnifies the Institute and the Trustees and the subscribers thereof from and against all liabilities claims actions debts or demands arising from or in respect of any of the matters referred to in Clauses 2, 3, and 4 hereof.

6. The Council will carry on the lending library heretofore carried on by the Institute in the City of Fremantle (but not necessarily in the same building) for a period of not less than Five years and agrees to spend during each year a sum of not less than One Thousand Pounds (£1,000) in the purchase of books periodicals and papers for use in the said library.

7. (i) The Council agrees that the general management and conduct of the library shall be in the hands of a Board of Directors of whom one half shall be appointed by the Council from its members and the other half shall be elected by the members for the time being of the library. The said directors who shall be elected annually shall hold office for the term of one year but shall be eligible for re-election.

(ii) The Board of Directors shall so far as practicable have the same powers and functions as an ordinary sub-committee of the Council appointed by the Council with power to act.

(iii) The Board of Directors will at all times be responsible to the Council and will not have power to commit the Council to any expenditure of any item in excess of that allocated by the Council for any particular purpose.

(iv) Subject to the next succeeding clause, the Board of Management may recommend the employees to be engaged from time to time and the remuneration and terms of employment but the actual decision in such matters will at all times rest with the Council.

8. The Council agrees to appoint the present librarian Flora Catherine Anderson as librarian in charge and to retain her in its service for a period of not less than Five years as the librarian in charge and to retain all other existing staff of the Institute upon terms not less beneficial to such staff than those enjoyed from time to time by ordinary members of the staff of the Council provided that any member of the staff may be dismissed at any time by the Council for incompetency neglect of duty or other cause deemed sufficient by the Council.

Sch. The Schedule

9. The Council agrees that so long as the Council carries on the said library in the present building Henry Raymond shall be permitted to occupy the caretaker's quarters.

10. It is mutually covenanted and declared that these presents are conditional upon a Statute being passed by the Parliament of Western Australia and assented to authorising the Council to enter into these presents and to take over and acquire the said assets and carry on the said library and in the event of no such Statute being passed within Twelve (12) months from the date hereof these presents and the covenants and conditions herein contained and implied shall be null and void and of no effect.

11. After the said Statute shall have been assented to a date shall be mutually agreed between the Council and the Institute for the coming into force of this agreement for the taking over by the Council of the said library and in default of agreement same shall be taken over on the first day of the month next three months after the said Statute being assented to.

In witness whereof the parties hereto have hereunto set their seals the day and year herein first appearing.

The Common Seal of the City of Fremantle was hereunto affixed this 18th day of November, 1948, pursuant to a resolution passed the 18th day of October, 1948,

in the presence of: —

N.J.C. McCombe, Town Clerk.

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[L.S.]

The Common Seal of the Fremantle Literary Institute Incorporated was hereunto affixed by order of the General Committee of the Institute

in the presence of: —

William E. Slattery, Trustee

C.R. Dunkley, Trustee

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[L.S.]

Notes

- ^{1.} This is a compilation of the *City of Fremantle (Free Literary Institute) Act 1948* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>City of Fremantle (Free Literary Institute) Act 1948</i>	65 of 1948	21 Jan 1949	21 Jan 1949
<i>City of Fremantle (Free Literary Institute) Act Amendment Act 1960</i>	35 of 1960	1 Nov 1960	1 Nov 1960

[This Act was repealed by the Statutes \(Repeals\) Act 2014 s. 3 \(No. 32 of 2014\) as at 4 Dec 2014 \(see s. 2\(b\)\)](#)
