



Western Australia

## **Agriculture Act 1988**

Compare between:

[01 Feb 2007, 01-b0-03] and [24 Oct 2007, 01-c0-07]



## **Agriculture Act 1988**

**An Act relating to the Department of Agriculture and the Director General of Agriculture, and for incidental or connected purposes.**

**1. Short title**

This Act may be cited as the *Agriculture Act 1988*<sup>1</sup>.

**2. Commencement**

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

**3. Interpretation**

In this Act, unless the contrary intention appears —

“**agricultural**”, in relation to a matter, industry or community, means related to or associated with improving, developing, growing investigating, marketing, or experimenting with crops, livestock or other primary produce within the State or elsewhere;

“**department**” means the Department of Agriculture mentioned in section 5;

“**Director General**” means the person holding the office of Director General of Agriculture mentioned in section 7(1).

**4. Other enactments not affected**

This Act is additional to, and does not derogate from, any other enactment that —

**s. 5**

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- (a) confers functions on the Minister, the department or the Director General; or
- (b) confers functions on any other person in relation to agricultural matters.

**5. Department of Agriculture**

There shall continue to be a department of the Public Service under section 35 of the *Public Sector Management Act 1994* designated as the Department of Agriculture.

*[Section 5 amended by No. 32 of 1994 s. 19.]*

**6. Functions of department**

- (1) The functions of the department are —
  - (a) to assist the Minister in the administration of Acts that relate to agricultural matters;
  - (b) to provide research, advisory, diagnostic, training, extension, regulatory and other services and assistance to agricultural industries and communities;
  - (c) to safeguard the productive soil and vegetation resources of agricultural industries and protect the environment;
  - (d) to provide to the Government, as and when requested, advice and information on agricultural matters;
  - (e) to promote the advancement of scientific knowledge in agricultural matters and the practical application of such knowledge;
  - (f) to utilise the developed expertise of the department by means of the sale of knowledge and services and the exploitation of intellectual property.
- (2) The performance of the functions of the department is subject to the direction and control of the Minister.

**7. Director General of Agriculture**

- (1) There shall continue to be an office in the Public Service with the title Director General of Agriculture.
- (2) The Director General shall hold office under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (3) The Director General is the chief executive officer of the department.

*[Section 7 amended by No. 32 of 1994 s. 19.]*

**8. Director General a body corporate**

- (1) The Director General is a body corporate with perpetual succession and a common seal.
- (2) The corporate name of the Director General is “Chief Executive Officer of the Department of Agriculture” and the body corporate —
  - (a) is capable of suing and being sued in that corporate name;
  - (b) is capable of —
    - (i) holding land vested in, or placed under the control and management of, the body corporate under Part 4 of the *Land Administration Act 1997*; and
    - (ii) acquiring and holding an interest in land under a lease or licence,but otherwise is not capable of acquiring, holding or disposing of real property;
  - (c) is capable of exercising any power conferred on the Director General under this Act or any other written law.
- (3) Courts, judges and persons acting judicially shall take judicial notice of the common seal of the Chief Executive Officer of the Department of Agriculture on a document and shall presume that it was duly affixed unless the contrary is shown.

*[Section 8 amended by No. 31 of 1997 s. 6.]*

**9. Powers of Director General**

- (1) Subject to subsection (3) and the *Public Sector Management Act 1994*<sup>2</sup>, the Director General has power to do all things necessary or convenient to be done for, or in connection with, the performance of the functions of the department.
- (2) Without limiting the generality of subsection (1) the Director General may —
  - (a) fix and collect fees, charges or other payments for or in respect of services provided by the department;
  - (b) make applications for the grant of letters patent or the registration of designs in the corporate name of the Director General, or take other measures necessary or convenient for protecting intellectual property rights.
- (3) The exercise of the powers of the Director General is subject to the direction and control of the Minister.

**10. Deputy of the Director General**

- (1) The Minister may nominate an officer of the department to be the deputy of the Director General.
- (2) A nomination under subsection (1) may be made by nominating the holder of an office by the term designating the office and any such nomination of the holder of an office shall be construed as the nomination of the person from time to time holding, acting in, or lawfully performing the functions of the office.
- (3) Subject to subsection (4), if the Director General is absent from duty or from the State or is otherwise unable to perform his or her functions as Director General of Agriculture, the person nominated under subsection (1) may, by authority of this subsection, act in the office of Director General of Agriculture during the absence or inability and while that person is so acting —
  - (a) that person may exercise all the powers of the Director General and anything done by that person in so

exercising those powers has the like effect as if it were done by the Director General;

- (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Director General shall be regarded as effectively done if done to, by reference to or in relation to that person.
- (4) Subsection (3) does not apply if a direction under section 51 of the *Public Sector Management Act 1994* has effect in relation to the performance of the functions of the Director General.

*[Section 10 amended by No. 32 of 1994 s. 19.]*

#### **11. Public Service and other staff**

- (1) Under and subject to Part 3 of the *Public Sector Management Act 1994*, there shall be such officers of the department as may be necessary to provide administrative, professional, scientific, technical, and other services to the department.
- (2) The Director General may employ persons as wages or field staff otherwise than under Part 3 of the *Public Sector Management Act 1994*, and persons so engaged shall, subject to any relevant industrial order, award or agreement, be employed on such terms and conditions as the Director General determines on the recommendation of the Minister for Public Sector Management<sup>3</sup>.

*[Section 11 amended by No. 32 of 1994 s. 19.]*

#### **12. Contracts and arrangements for services and projects**

The Director General may —

- (a) engage any person under a contract for services to provide any of the services referred to in section 11(1);
- (b) enter into arrangements with —
  - (i) a Minister of the Crown of any State or Territory, a Minister of State of the Commonwealth, a

department, instrumentality, or agency of the Commonwealth or of any State or Territory;

(ii) a university or other educational institution; or

(iii) any other body or person,

with respect to the conduct of any study or research, the carrying out of any work, or participation in any project or venture, that may be necessary or convenient for, or in connection with, the performance of the functions of the department.

**13. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the department.

*[Section 13 amended by No. 77 of 2006 s. 17.]*

**14. Exemption from liability**

The Minister, the Director General, the deputy of the Director General or a person employed in the department is not personally liable for anything done or omitted to be done by the Minister, the Director General in a personal or corporate capacity, the deputy of the Director General, or a person employed in the department, in good faith in, or in connection with, the performance or purported performance of a function under this Act.

**15. Regulations**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.



**16. References in other laws**

- (1) In any written law a reference to the Director of Agriculture shall be construed as a reference to the Director General of Agriculture.
- (2) Subsection (1) applies to a reference however the reference is expressed but does not apply if the context in which the reference occurs is such that its application would be incorrect or inappropriate.

**17. Transitional**

Subject to the *Public Sector Management Act 1994*<sup>2</sup>, the person holding the office of Director General of Agriculture, and the persons holding other offices in the Department of Agriculture, immediately before the commencement of section 5 shall continue to hold those offices after that commencement.

**18. Review of the Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act after the expiration of 5 years from the commencement of section 5, and in the course of that review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the department;
  - (b) the need for the continuation of the functions of the department; and
  - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall complete the review required by subsection (1) and shall prepare a report based on that review and cause it to be laid before each House of Parliament within 12 months of the described expiration.

## Notes

- <sup>1</sup> This is a compilation of the *Agriculture Act 1988* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Agriculture Act 1988</i>	24 of 1988	20 Oct 1988	11 Nov 1988 (see s. 2 and <i>Gazette</i> 11 Nov 1988 p. 4433)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 4	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<b>Reprint 1: The <i>Agriculture Act 1988</i> as at 13 Jun 2003</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<u><a href="#">This Act was repealed by the <i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> <sup>4</sup> s. 8 (No. 24 of 2007) as at 24 Oct 2007 (see s. 2 and <i>Gazette</i> 23 Oct 2007 p. 5645)</a></u>			

- <sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).
- <sup>3</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

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<sup>4</sup> The Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 12-17 read as follows:

**Subdivision 2 — Transitional and savings provisions**

**12. Terms used in this Subdivision**

In this Subdivision, unless the contrary intention appears —

“Authority” means the Western Australian Agriculture Authority established under the Biosecurity and Agriculture Management Act 2007;

“commencement day” means the day on which section 8 comes into operation;

“former holder” means the Chief Executive Officer of the Department of Agriculture established as a body corporate under the repealed Act section 8;

“repealed Act” means the Agriculture Act 1988.

**13. Authority is successor in title of former holder**

On commencement day the former holder is succeeded by the Authority.

**14. Devolution of assets and liabilities**

On and after the commencement day —

- (a) the assets and rights of the former holder that were immediately before that day vested in the former holder vest in the Authority by force of this section; and
- (b) the liabilities of the former holder (including a share of a liability) immediately before that day become, by force of this section, the liabilities of the Authority; and
- (c) any proceeding or remedy that immediately before that day might have been brought or continued by or available against or to the former holder, may be brought or continued and are available, by or against or to the Authority; and
- (d) all records and data of the former holder pass to the Authority.

**15. Certain Crown land**

Crown land that, immediately before the commencement day, is under the care, control and management of the former holder is to be regarded as if it had, at that time —

- (a) been reserved under the *Land Administration Act 1997* section 41 for the purposes of the *Biosecurity and Agriculture Management Act 2007*; and
- (b) under the *Land Administration Act 1997* section 46, been placed under the care, control, and management of the Authority for those purposes.

**16. Certain intellectual property**

(1) On the commencement day any intellectual property, or right to apply for, hold, receive, exploit or dispose of intellectual property, that the State has immediately before that day is, by operation of this section, assigned to the Authority.

(2) In subsection (1) —

“**intellectual property**” means intellectual property created in the performance of functions under the repealed Act.

(3) The Minister may certify in writing that a specified intellectual property right was, or was not, created, acquired or held for the purposes of the repealed Act, and such a certificate is conclusive evidence of that fact, unless the contrary is shown.

**17. Agreements and instruments generally**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the former holder was a party; or
- (b) which contains a reference to the former holder,

has effect on and after the commencement day as if —

- (c) the Authority were substituted for the former holder as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the former holder were (unless the context otherwise requires) amended to be or include a reference to the Authority.