

**CITY OF FREMANTLE AND
TOWN OF EAST FREMANTLE
TRUST FUNDS.**

10° Elizabeth II. No. LXXVIII.

No. 78 of 1961.

AN ACT relating to the Fremantle Municipal Transport Board and Certain Trust Funds; and for other purposes.

[Assented to 4th December, 1961.]

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:—

Short title.

1. This Act may be cited as the *City of Fremantle and Town of East Fremantle Trust Funds Act, 1961.*

Commencement.

2. This Act shall come into operation on the twenty-fifth day of November, one thousand nine hundred and sixty-one.

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

“Agreement” means the agreement a copy of which is contained in the Schedule to this Act;

“Board” means The Fremantle Municipal Transport Board constituted under the provisions of the Fremantle Municipal Tramways and Electric Lighting Act, 1903;

“East Fremantle Fund” means the Town of East Fremantle Trust Fund referred to in the Agreement;

“Fremantle Fund” means the City of Fremantle Trust Fund referred to in the Agreement.

4. The Fremantle Municipal Tramways and Electric Lighting Act, 1903-1952 and the Fremantle Municipal Transport Board (Postponement of 1960 Elections) Act, 1960, are repealed. Repeal.

5. The Board is dissolved. Dissolution
of Board.

6. The Agreement is approved. Agreement
approved.

7. (1) Each of the Fremantle Fund and East Fremantle Fund— Trust Funds
constituted
bodies
corporate and
transition.

(a) is under its respective name constituted a body corporate;

(b) shall have a seal; and

(c) is capable of acquiring, holding and disposing of real and personal property and of suing and being sued under its corporate name.

(2) A reference in a law of the State or in any order, contract, agreement, document or other instrument in force immediately before the coming

into operation of this Act, to the Board shall be read as a reference to the Fremantle Fund and East Fremantle Fund jointly.

(3) Where anything that has been commenced by or under the authority of the Board before the date of the coming into operation of this Act remains uncompleted on that date, the Fremantle Fund and East Fremantle Fund may jointly complete that thing.

(4) Any right of action or power of prosecution had by or against the Board shall continue to be had by and may be enforced by or against the Fremantle Fund and East Fremantle Fund jointly.

(5) Where by or under this Act any financial benefit is obtained or any financial obligation is imposed, whether directly or indirectly, on the Fremantle Fund and the East Fremantle Fund jointly, the benefit shall be enjoyed and the obligation discharged by those Funds as between themselves in the following shares, as to the Fremantle Fund, six-sevenths and as to the East Fremantle Fund, one-seventh.

Power to
Funds
to give
effectual
receipt.

8. A receipt given by the Fremantle Fund or the East Fremantle Fund for any moneys received by the Fund, which moneys, but for this Act, would be payable to the Board in discharge or partial discharge of a debt due to the Board, shall be an effectual release and discharge in respect of the amount so paid, as if the receipt were duly given by the Board.

Exemption
from stamp
duty on
Agreement.

9. The Agreement is exempt from Stamp Duty chargeable under the Stamp Act, 1921.

Section 3.

SCHEDULE.

THIS INDENTURE made the 31st day of October, One Thousand Nine Hundred and Sixty One BETWEEN:

- (i) THE FREMANTLE MUNICIPAL TRANSPORT BOARD a Board constituted pursuant to the Fremantle Municipal Tramways and Electric

Lighting Act 1903-1952 of which the registered office is situate at William Street, Fremantle (hereinafter called "the Board") of the first part

— and —

- (ii) CITY OF FREMANTLE being a body Corporate having perpetual succession and a Common Seal (hereinafter called "the City") of the second part

— and —

- (iii) TOWN OF EAST FREMANTLE being a body Corporate having perpetual succession and a Common Seal (hereinafter called "the Town") of the third part.

HISTORY:

- (a) THE Board was created by Act of Parliament entitled "Fremantle Municipal Tramways and Electric Lighting Act 1903".
- (b) AT one time it carried on the undertakings of Electricity, Tramways and Passenger Transport.
- (c) IT has severally from time to time disposed of its undertakings and as a result of the carrying on of those undertakings and of the sale of same has accumulated assets.
- (d) THE Board was created "inter alia" in order to manage the said undertakings and to hold the said assets on behalf of and as trustee for the City and the Town, without any beneficial interest therein.
- (e) THE Board acknowledges it holds its existing assets as trustee for the City and the Town as tenants in common in the following shares— as to the City an undivided six-sevenths interest and as to the Town an undivided one-seventh interest.
- (f) AS one of the main functions of the Board was to manage the said undertakings which as aforesaid have now been disposed of and the passing of an Act is now contemplated for the dissolution of the Board, it is desired to transfer the Board's assets in the manner set out herein.

NOW THEREFORE THIS INDENTURE WITNESSETH as follows:—

1. THIS Indenture is subject to the condition that the terms hereof are ratified and confirmed by Act of Parliament on or before the 31st day of December, 1961.
2. (1) THE City HEREBY APPOINTS a Trustee to receive and manage its share of the said assets, The Trustee is to be known as "City of Fremantle Trust Fund".

(2) THE Members of the City of Fremantle Trust Fund shall be:—

- (i) As at the date this agreement is ratified by Act of Parliament, the Councillors and Mayor then appointed as members of the Finance Committee of the City of Fremantle.
- (ii) Thereafter and so long as the City of Fremantle appoint a Finance Committee as a standing Committee, the Councillors and Mayor appointed from time to time as members of the Finance Committee of the City of Fremantle.
- (iii) Thereafter and so long as the City of Fremantle do not appoint a Finance Committee as a standing Committee, such Councillors as are appointed by the City of Fremantle from time to time.

(3) THE machinery applicable to the conduct of meetings of standing Committees of the City of Fremantle shall apply (as modified or altered by the City of Fremantle from time to time) to the conduct of meetings of City of Fremantle Trust Fund.

3. (1) THE Town HEREBY APPOINTS a Trustee to receive and manage its share of the said assets. The Trustee is to be known as "Town of East Fremantle Trust Fund".

(2) THE Members of Town of East Fremantle Trust Fund shall be:—

- (i) As at the date this agreement is ratified by Act of Parliament, the Councillors and Mayor then appointed as members of the Finance Committee of the Town of East Fremantle.
- (ii) Thereafter and so long as the Town of East Fremantle appoint a Finance Committee as a standing Committee, the Councillors and Mayor appointed from time to time as members of the Finance Committee of the Town of East Fremantle.
- (iii) Thereafter and so long as the Town of East Fremantle do not appoint a Finance Committee as a standing Committee, such Councillors as are appointed by the Town of East Fremantle from time to time.

(3) THE machinery applicable to the conduct of meetings of standing Committees of the Town of East Fremantle shall apply (as modified or altered by the Town of East Fremantle from time to time) to the conduct of meetings of Town of East Fremantle Trust Fund.

4. (1) THE Board HEREBY ASSIGNS as from the date this Indenture is ratified by Act of Parliament all its assets until City of Fremantle Trust Fund and Town of East Fremantle Trust Fund as tenants in common as to City of Fremantle Trust Fund an undivided six-seventh interest and as to Town of East Fremantle Trust Fund an undivided one-seventh interest.

(2) THE Board shall within seven (7) days from the date of execution supply each Trust Fund with an accurate statement of the Board's assets and liabilities and such other information as either Trust Fund may require.

5. THE assignment is subject to City of Fremantle Trust Fund and Town of East Fremantle Trust Fund taking over all liabilities and obligations of the Board and as between them six-sevenths and one-seventh respectively.

6. ON or before the 30th day of June 1962, City of Fremantle Trust Fund and Town of East Fremantle Trust Fund shall divide between them the assets held by them as tenants in common so that City of Fremantle Trust Fund shall receive six-sevenths in value thereof and Town of East Fremantle Trust Fund shall receive one-seventh in value thereof.

PROVIDED:—

- (i) Assets consisting of land and mortgages or otherwise being difficult or impossible to divide may continue to be held as tenants in common in the said shares.
- (ii) By agreement of City of Fremantle Trust Fund and Town of East Fremantle Trust Fund, assets difficult or impossible to divide may be transferred to one or the other Trust Fund, subject to a cash adjustment or the transfer of other assets at valuation so that the share of City of Fremantle Trust Fund is Six Sevenths and that of East Fremantle Trust Fund One Seventh.
- (iii) All moneys owing by the State Electricity Commission to the Board under the agreements dated the 16th day of April, 1952 and the 23rd day of January 1958 (which agreements are referred to in the Schedule hereto) shall become a debt owing by the State Electricity Commission to the City of Fremantle Trust Fund only, and the receipt of City of Fremantle Trust Fund shall constitute a full and sufficient discharge to the State Electricity Commission for all moneys so paid to the City of Fremantle Trust Fund. As between City of Fremantle Trust Fund and Town of East Fremantle Trust Fund a cash adjustment shall be made in the transfer and division of funds.

7. CITY OF FREMANTLE Trust Fund and TOWN OF EAST FREMANTLE Trust Fund shall account for all revenue received by them as tenants in common as follows:—

- (i) Six Sevenths of such revenue shall be paid to City of Fremantle at such periods as City of Fremantle requires.
- (ii) One Seventh of such revenue shall be paid to Town of East Fremantle at such periods as Town of East Fremantle requires.
- (iii) Statements and information shall be given as required from time to time.

8. A. City of Fremantle Trust Fund and Town of East Fremantle Trust Fund shall subject to direction by City of Fremantle and Town of East Fremantle respectively each have the following powers:—

- (i) Make use of the services of a Secretary Clerks and other officers and employees provided by the City and Town respectively on such terms as may be agreed.
- (ii) Make use of offices owned by or in the possession or occupation of the City and the Town respectively on such terms as may be agreed.
- (iii) Make use of plant and office equipment owned by or in the possession of the City and the Town respectively on such terms as may be agreed.
- (iv) Appoint a Secretary and such clerks and other officers and employees and on such terms as the City or the Town (as the case may be) approves of.
- (v) Open an account or accounts at any bank in the name of the Trust Fund and to draw and indorse cheques thereon whether the account is in credit or overdrawn, but so that all such cheques shall be signed by at least two members of each Trust Fund and countersigned by the Secretary or some person authorised to act as Secretary.
- (vi) Lend moneys to the City and the Town respectively.
- (vii) Enter into contracts approved of by the City or Town as the case may be.
- (viii) Determine the duties of employees and subject to the approval of the City or the Town (as the case may be) fix salaries and emoluments.
- (ix) Invest funds in investments authorised by the Trustees Act 1900 and Amendments for the time being in force. In this respect, allowing moneys to remain owing by the State Electricity Commission of Western Australia under the Indenture made the 16th day of April 1952 as

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varied by Indenture made the 23rd day of January, 1958 (both referred to in the Schedule hereto) shall constitute such an investment.

B. Where it is provided some act may be done by the Trust Funds with the approval of the City or the Town (as the case may be) it is intended that only the City's approval is required for acts of the City of Fremantle Trust Fund and only the Town's approval is required for acts of Town of East Fremantle Trust Fund.

9. THE duties and responsibilities of City of Fremantle Trust Fund and Town of East Fremantle Trust Fund are each respectively:—

- (i) To cause true accounts to be kept of all moneys received and expended by each, and of all matters in respect of expenditure incurred by each and of the assets and liabilities of each Trust Fund.
- (ii) In the month of June in every year the accounts of each Trust Fund shall be examined and the correctness of the statement and balance sheet made up to the 31st day of May preceding shall be ascertained by two auditors who shall be nominated annually. City of Fremantle Trust Fund auditors shall be nominated and paid by the City and Town of East Fremantle Trust Fund auditors shall be nominated and paid by the Town. The auditors so appointed shall be members of some recognised institute or society of Accountants in Australasia or Great Britain.
- (iii) To allow the auditors at all reasonable times to have access to the books and accounts of the Trust Fund and they may, in relation thereto question the members of each Trust Fund or the officers in its employment.
- (iv) On or before the 25th day of June in every year, to furnish the City and the Town respectively with a copy of the statement of accounts and balance sheet, together with an estimate prepared by each Trust Fund, of the net income for the ensuing year.
- (v) To pay the net income of each Trust Fund so the City and the Town respectively on or before the 30th day of June in each year or at such other times as are directed by the City and the Town respectively.

10. THE City and the Town may each from time to time make rules for the management and control of each Trust Fund respectively, including the selection of the aforesaid authorised investments. Times fixed by this Indenture may be extended and altered and dates may be altered by the

City and Town respectively to suit their convenience. A resolution of the City or the Town as the case may be shall be sufficient to make a rule hereunder and binding on its Trust Fund or to extend or alter times or to alter dates.

11. THE Chairman of City of Fremantle Finance Committee shall be the Chairman of City of Fremantle Trust Fund. The Chairman of Town of East Fremantle Finance Committee shall be the Chairman of Town of East Fremantle Trust Fund.

12. EACH trust fund shall hold meetings:—

- (i) As called by its Chairman
- (ii) As decided by itself, or
- (iii) As directed by the City or the Town as the case may be.

13. (1) ALL powers vested in each Trust Fund may be exercised by a majority of its members at any meeting duly convened and held at which a quorum is present and all questions shall be decided by a majority and by open voting. This is without limiting the power of the City and the Town respectively to make rules as provided in Clause 10 hereof.

(2) THE Chairman shall preside at every meeting of each Trust Fund at which he is present. If the Chairman is absent from a meeting the other members of the Trust Fund shall select one of their number to act as Chairman at that meeting.

(3) THE Chairman shall have a casting vote as well as a deliberative vote.

14. (1) AS soon as convenient City of Fremantle Trust Fund shall pay to the City the sum of £60,000 0s. 0d. as Capital to be used by the City in its discretion.

(2) AS soon as convenient Town of East Fremantle Trust Fund shall pay to the Town the sum of £10,000 0s. 0d. as Capital to be used by the Town in its discretion.

(3) Otherwise no capital payment shall be made hereunder to the City or the Town (except as a loan authorised by this Indenture) but the Capital shall be retained in perpetuity for the City and the Town respectively.

15. (1) THERE are listed in the first schedule the agreements to which the Fremantle Municipal Transport Board is a party and which are in force and which are assigned by this Indenture to City of Fremantle Trust Fund and Town of East Fremantle Trust Fund.

(2) THE City and the Town JOINTLY AND SEVERALLY COVENANT with the Board and each other that City of Fremantle Trust Fund and Town of East Fremantle Trust Fund will carry out the terms of such agreements on the Board's part binding.

16. CITY OF FREMANTLE Trust Fund is a Trustee appointed by the City and the Town within the meaning of Clause 2 (h) of the Indenture dated the 17th day of April, 1952 referred to in the Schedule.

IN WITNESS whereof the parties have set their seals the day and year first hereinbefore appearing.

SCHEDULE

1. INDENTURE made the 16th day of April 1952
BETWEEN:

The Honourable Duncan Ross McLarty M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the State of Western Australia, acting for and on behalf of the State and of its Government, of the first part.

— and —

The Fremantle Municipal Tramways and Electric Lighting Board (now called the Fremantle Municipal Transport Board) of the second part.

— and —

The State Electricity Commission of Western Australia of the Third part.

(Ratified by Act of Parliament No. 40 of 1952)

2. INDENTURE made the 17th day of April 1952.
BETWEEN:

The Fremantle Municipal Tramways and Electric Lighting Board (now called "The Fremantle Municipal Transport Board) of the First part.

— and —

Municipality of East Fremantle (now called Town of East Fremantle) of the third part.

(Ratified by Act of Parliament No. 66 of 1952 contained in the first schedule of the Statute)

3. INDENTURE made the 23rd day of January, 1958
BETWEEN:

The Honourable Albert Redvers George Hawke M.L.A., Premier and Treasurer of the State of Western Australia, of the first part.

— and —

The Fremantle Municipal Transport Board (formerly called The Fremantle Municipal Tramways and Electric Lighting Board) of the second part.

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— and —

The State Electricity Commission of Western Australia,
of the third part.

(varying Indenture made the 16th day of April, 1952)

SEALED with the Official Seal of
the Fremantle Municipal Transport
Board and signed in authentication
by Frank Ernest GIBSON, Chair-
man, and Claude William JERRAT,
Secretary, in the presence of:—

F. E. GIBSON
C. W. JERRAT

[L.S.]

THE COMMON SEAL of CITY OF
FREMANTLE was hereto affixed
this 31st day of October, 1961,
pursuant to a resolution passed
the 16th day of October, 1961, in
the presence of:—

[L.S.]

W. FRED SAMSON, MAYOR

N. J. C. McCOMBE, TOWN CLERK

THE COMMON SEAL of TOWN OF
EAST FREMANTLE was hereto
affixed in the presence of:—

[L.S.]

W. WAUHOP, MAYOR

L. R. LATHAM, TOWN CLERK
