



Western Australia

Library Board of Western Australia Act 1951

Reprinted as at 2 November 1999

Western Australia

Library Board of Western Australia Act 1951

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Notes



Western Australia

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Library Board of Western Australia Act 1951

An Act to provide for the constitution and functions of a Library Board and for other purposes.

1. Short title

This Act may be cited as the *Library Board of Western Australia Act 1951*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Interpretation

- (1) For the purposes of shortening this Act, the following expressions, where used in this Act, have the respective meanings attributed by this section, unless the context requires otherwise —

“**approved body**” means an organization which is not a local government and which, pursuant to the provisions of this Act, elects and is declared by the Governor to be a body approved as suitable for participation in a scheme;

“**Board**” means The Library Board of Western Australia, constituted pursuant to the provisions of this Act;

“**Fund**” means The Library Board of Western Australia Fund;

“**library**” includes a children’s library, but does not include a library conducted by private enterprise for profit;

“library service” does not include a library service conducted by private enterprise for profit;

“nominee member” means a person appointed as a member of the Board under section 5(3);

“non-current public record” means any public record that has ceased to be in current use in the public office in which it was originally made or received, or in the public office in whose custody it has been placed after being so made or received;

“participating body” means —

- (i) a local government; or
- (ii) an approved body;

which elects and is declared to be a participating body pursuant to the provisions of this Act, during such time as it continues to be and to participate as such in a scheme;

“public office” means —

- (a) any department, branch or office of the Government of Western Australia;
- (b) any public body, corporate or incorporate, constituted pursuant to a statute of Western Australia; or
- (c) any local government;

“public record” means —

- (a) any record made or received by a public officer in the course of his duties;
- (b) any record made or received by a court or person acting judicially in Western Australia; and
- (c) any copy of any public record as defined by this Act;

but does not include —

- (d) any record which is lawfully owned by a person or body other than the Crown or a public office; or

- (e) any book or other document, except a public record, which forms part of the stock of a library for the use of the users of that library;

“record” includes any document, book, plan, paper, parchment or other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them, photographs, and any other device by means of which information is recorded or stored;

“registered public library” means a free library registered by the Board in pursuance of the provisions of this Act;

“scheme” means a scheme for the promotion, organization, or supervision, generally or in any particular case, pursuant to the provisions of this Act, of free libraries and free library services;

“State archive” means a non-current public record which has been selected for preservation under the provisions of this Act; and

“State Reference Library” means The State Reference Library of Western Australia, known prior to the coming into operation —

- (a) of the *Acts Amendment (Libraries) Act 1955*¹, as the Public Library of Western Australia; and
- (b) of the *Library Board of Western Australia Act Amendment Act 1974*¹, as The State Library of Western Australia.

- (2) Where a public office has been abolished, or the relevant functions of that office have been transferred to another office, the expression **“public office”** in this Act shall include the public office at the time exercising the functions of the former public office, but if no public office at the time exercises the function of the former public office the Board shall refer to the Premier any matter upon which this Act requires the Board to

consult with the public office which transferred to the Board any public record or State archive.

[Section 3 amended by No. 20 of 1955 s.5; No. 29 of 1974 s.2; No. 44 of 1983 s.2; No. 14 of 1996 s.4.]

General provisions

[Heading inserted by No. 29 of 1974 s.3.]

4. Participating bodies

- (1) A local government or an approved body —
 - (a) shall become a participating body if and when the Governor makes a declaration to that effect;
 - (b) shall continue to be a participating body unless and until the Governor cancels such declaration.
- (2) Such declaration shall not be made —
 - (a) unless a local government or an approved body elects by resolution to become a participating body;
 - (b) if a local government does not so resolve, unless the ratepayers by a majority vote at a poll held in manner prescribed, elect that the local government becomes a participating body.
- (3) A local government or approved body shall cease to be a participating body, if and when the Governor cancels such declaration.
- (4) Such declaration —
 - (a) may be cancelled if on consideration of a report from the Board, the Governor is satisfied that the local government or approved body is no longer suitable to be a participating body;
 - (b) shall, where applicable to an approved body, be cancelled if the governing body of the approved body, resolves that it no longer remains a participating body;

- (c) shall, where applicable to a local government, be cancelled, if the ratepayers by a majority vote at a poll held in manner prescribed, elect that the local government no longer remains a participating body.
- (5) Such cancellation shall not affect the liability, if any, of a local government or approved body to the Board.

[Section 4 amended by No. 14 of 1996 s.4.]

5. The Board

- (1) For the purposes of this Act, there shall be constituted a board having the name of The Library Board of Western Australia.

[(1a) repealed]

- (2) The Board shall consist of 13 members including the Chairman and Vice Chairman.
- (3) Of the members of the Board, one shall be the person for the time being holding or acting in the office of chief executive officer of the Education Department as defined in the *Education Act 1928*, one shall be the Permanent Head² of the Department for the Arts³ and the remaining 11 shall be appointed by the Governor, of whom —
 - (a) 5 shall be nominated by the Minister; and
 - (b) each of the other 6 shall be selected by the Minister, in the manner provided by subsection (4), to represent the body by which the member was nominated.
- (4) Each of the bodies named in this subsection has the right to submit to the Minister a panel of the names of 3 persons from whom the Minister shall select one to be the member of the Board representing that body, that is to say —
 - (a) the Library Association of Australia, Western Australian Branch;
 - (b) City of Perth;

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- (c) City of Fremantle;
- (d) the Country Shire Councils' Association of Western Australia;
- (e) the Country Urban Councils' Association; and
- (f) the Local Government Association of Western Australia,

and for the purpose of filling any vacancy in the office of such a member, as soon as practicable after the vacancy occurs, the Minister shall request the appropriate body to submit to him the panel of names within 28 days of the service of the request, but where no panel of names is submitted in response to the request within that time the Governor, on the recommendation of the Minister, may appoint a person to represent that body as a member of the Board notwithstanding that the panel was not so submitted to the Minister.

- (5) Except in the case of a person who is appointed to fill an extraordinary vacancy, the term of tenure of office of a nominee member shall be 4 years from the date of appointment.
- (5a) A nominee member shall be eligible to be selected for reappointment.
- (6) The office of a nominee member of the Board shall become vacant —
 - (a) at the expiration of his term of office;
 - (b) if he dies;
 - (c) if he is incapable of continuing a member;
 - (d) if he resigns in writing under his hand addressed to the Governor in Council;
 - (e) if without leave granted by the Minister he fails to attend 3 successive meetings of the Board,

but the office of a nominee member of the Board shall not become vacant by reason only that if when appointed to the

office he was a member of the council of a local government, he ceases to be such.

- (7) If the office of a nominee member of the Board becomes vacant otherwise than by the retirement of such member at the expiration of his term of office, a person shall, in accordance with the provisions of this section, be appointed to fill the extraordinary vacancy.
- (8) Any person appointed to fill an extraordinary vacancy shall, subject to the provisions of this section be entitled to hold office for the remainder of the term of office of the person in whose place he is appointed.
- (9) (a) The Governor may, in respect of each nominee member of the Board, appoint a person as deputy or and to represent the same interests as that member, subject to the provisions of the next succeeding paragraph, and a person so appointed shall, in the event of the absence of the member, have all the powers of that member during his absence, and no appointment of and no act done in that capacity by a deputy shall be questioned on the ground that the occasion for his appointment had not arisen or had ceased.
- (aa) A member of the Board who is not a nominee member shall nominate in writing a senior executive officer of the department of the Public Service principally assisting the Minister charged with the administration of the *Education Act 1928* in administering that Act or of the Department for the Arts ³, as the case requires, to act for him as a member at any meeting which he is unable to attend, and while so attending the person so nominated has all of the functions and entitlements of that member.
- (b) (i) In the event of the absence of the Chairman, the Vice Chairman shall have all the powers of the Chairman.

- (ii) In the event of the absence of the Chairman and the Vice Chairman, then the members of the Board present may choose out of their number a member who shall for the purposes of that meeting and until its conclusion, have all the powers of the Chairman.
- (10) The meetings of the Board shall be held at such times and places as may be determined, or until determined, as convened by the Chairman.
- (11) The Chairman and Vice Chairman shall be elected annually by the members of the Board from among their number and shall be entitled to hold office for a period of 12 months, and shall on the expiration of any term of office, be eligible, subject to the provisions of this Act, for re-election.
- (12) The Board shall conduct its proceedings in such manner as may be prescribed, and until prescribed, as the Board shall determine, but in any case —
 - 7 members shall constitute a quorum for the conduct of business;
 - all matters shall be determined by a majority of the votes of the members present, and where there is an equality of votes, the question shall be regarded as determined in the negative;
 - each member, including the Chairman, shall be entitled to one vote only on the determination of any matter.
- (13) The Board may act and exercise all of its powers, notwithstanding any vacancy in membership, and no act or proceeding of the Board shall be invalid or illegal in consequence only of any vacancy in membership existing at the time of any act or proceeding.
- (14) Acceptance of, or acting in the office of member or deputy member of the Board by any person shall not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*

or the *Superannuation and Family Benefits Act 1938*, applicable to him, nor affect the application of those provisions to him if they apply to him at the time of the acceptance of or acting in the office.

- (15) Every member of the Board shall be entitled to such travelling and other out-of-pocket expenses as the Governor thinks fit.
- (16) The Board shall cause to be kept minutes of all its proceedings in such manner and form as the Minister may direct or approve.

[Section 5 amended by No. 20 of 1955 s.6; No. 29 of 1974 s.4; No. 44 of 1983 s.3; No. 75 of 1987 s.5; No. 7 of 1988 s.20; No. 32 of 1994 s.19; No. 14 of 1996 s.4; No. 22 of 1996 s.16(6); No. 57 of 1997 s.80.]

6. Appointment of Secretary and officers

- (1)
 - (a) The Board shall appoint as State Librarian a person who is a qualified librarian.
 - (b) The person appointed to the office of State Librarian shall, by virtue of that office, be the Executive Officer and Secretary of the Board.
 - (c) The Board may appoint such other officers as are required for the purpose of carrying out the Board's functions in pursuance of this Act.
- (2) The State Librarian and other officers shall not be appointed under Part 3 of the *Public Sector Management Act 1994* but shall be entitled to such leave of absence and to such rights prescribed by or pursuant to the provisions of the *Superannuation and Family Benefits Act 1938*, as would apply if they were appointed under the provisions of that Part.
- (3) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under this section to be the State Librarian or any other officer and who is a member of the Senior Executive Service within the meaning of the

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*Public Service Act 1978*⁴ an inconsistency between this Act and that Act that Act shall prevail.

[Section 6 amended by No. 20 of 1955 s.7; No. 113 of 1987 s.32; No. 32 of 1994 s.19.]

7. Board a body corporate

The Board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued and may, subject to the provisions of this Act, acquire, purchase, hold, sell, lease, exchange, mortgage and dispose of real and personal property.

8. Contracts

In relation to contracts to which the Board is a party, the following provisions shall apply —

- (a) Every contract made by the Board may, if the Board thinks fit, specify the person to whose satisfaction the contract is to be completed and the mode of determining any dispute which arises concerning or in consequence of the contract.
- (b) The powers granted to the Board under this or any other Act to make contracts may be exercised as follows —
 - (i) Any contract which, if made between private persons would be required by law to be in writing under seal, may be made on behalf of the Board in writing under the common seal of the Board, and may in the same manner be varied or discharged.
 - (ii) Any contract which, if made between private persons would be required by law to be in writing signed by the parties to be charged therewith, may be made on behalf of the Board in writing signed by any person acting under its authority express or implied and may, in the same manner, be varied or discharged.

- (iii) Any contract which, if made between private persons would be valid in law although made by parol only and not reduced into writing, may be made by parol on behalf of the Board by any person acting under its authority express or implied and may in the same manner be varied or discharged.
- (c) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the Board and all other parties thereto, their successors, heirs, executors or administrators, as the case may be, and in the case of default in the execution of any such contract either by the Board or by any other party thereto, such actions or suits or other proceedings may, subject to the provisions of this Act, be instituted either by or against the Board in its corporate name or by or against the other parties making the default, and such damages and costs recovered as might be instituted and recovered had the like contract been made between private persons.
- [(d) *deleted*]
- (e) The Board may compound and agree with any person or firm who has entered into any contract with it or against whom any action or suit is brought for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond or security for such sum of money or other recompense as the Board thinks proper.

[Section 8 amended by No. 20 of 1955 s.8.]

9. Protection of members of Board, officers, etc.

No matter or thing done by any member of the Board or by any officer or other person appointed or employed under the provisions of this Act, if done *bona fide* in the exercise of his

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powers or in the performance of his duties under this or any other Act, shall subject him to any personal liability in respect thereof.

10. Judicial notice of common seal

All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to any deed and shall presume that such seal was properly affixed thereto.

11. Documents, how authenticated

Every notice, order, summons or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the Chairman or officer of the Board authorized to sign it.

12. Power of officer to represent Board

In all proceedings before justices or in any Court of Petty Sessions, any officer of the Board appointed by the Chairman in writing under his hand for that purpose may represent the Board in all respects as though such officer was the party concerned.

13. Proof of certain matters not required

- (1) In any prosecution or legal proceeding under the provisions of this Act or the regulations instituted by or under the direction of the Board, no proof shall be required, until evidence is given to the contrary, of —
 - (a) the constitution of the Board;
 - (b) any order of the Board to prosecute;
 - (c) the particular or general appointment of any officer or the Board to take proceedings against any person;
 - (d) the powers of the officer to prosecute;
 - (e) the appointment of the Chairman or of any nominee member or officer of the Board; or

- (f) the presence of a quorum at any meeting at which any order is made or any act is done by the Board.
- (2) The production of —
 - (a) a copy of the *Government Gazette* containing any regulation, declaration, order, or notice purporting to have been made or given under any of the provisions of this Act; or
 - (b) a copy purporting to be a true copy of any such regulation, declaration, order or notice certified as such under the hand of the Chairman or an authorized officer of the Board,

shall be evidence until the contrary is proved of the due making, existence, confirmation, approval and giving of such regulation, declaration, order or notice and of all preliminary steps necessary to give full force and effect to the same.

[Section 13 amended by No. 75 of 1987 s.6.]

14. Evidence of documents issued by the Board

All documents whatever purporting to be issued or written by or under the direction of the Board and purporting to be signed by the Chairman or an authorized officer, shall be received as evidence in all courts and before all persons acting judicially, and shall without proof be deemed to have been issued or written by or under the direction of the Board until the contrary is shown.

15. Functions of the Board

- (1) It shall be the duty of the Board to —
 - (Aa) control and manage The State Reference Library;
 - (a) assist participating bodies in any scheme;
 - (b) advise the Minister and participating bodies on matters of general policy relating to any scheme;

- (c) register as registered public libraries such libraries as are approved by the Board and as are controlled by participating bodies;
 - (d) inspect or cause to be inspected libraries and library services, the controlling bodies of which apply for allocations in the distribution of any grant of money made available by Parliament to assist registered public libraries and registered public library services and to recommend to the Minister the allocation of any such grant as between respective applicants;
 - (e) carry out such other functions in connection with registered public libraries as the Governor from time to time directs.
- (2) The Board —
- (a) may provide, control and manage libraries and library services;
 - (b) may provide for the training of persons to carry out the duties of librarians and library assistants, such training to conform to the requirements of the Library Association of Australia.

[Section 15 amended by No. 20 of 1955 s.9; No. 29 of 1974 s.5.]

16. Financial provisions

- (1) The funds necessary for the effectual exercise by the Board of the powers conferred and duties imposed upon it by this Act shall be —
- (a) such moneys as are, from time to time, appropriated by Parliament for that purpose;
 - (b) such moneys as the Board may borrow pursuant to the provisions of this Act;
 - (c) the proceeds of any sale, lease, mortgage, exchange, or other disposal of real or personal property which the Board is authorized to effect and which may properly be so used;

- (d) the proceeds of investment of any part of the Fund which is not required for an immediate use;
 - (e) all gifts, devises and bequests made to the Board; and
 - (f) such moneys as the Board acquires under section 20A.
- (2) All such moneys shall be credited to an account to be kept at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, and called The Library Board of Western Australia Fund and shall be applied to the purposes of this Act.
- (3) The Fund shall be operated upon in such manner as may be prescribed.
- (4) Without other authorization than this Act, the sum of \$10 000 is hereby appropriated from the Consolidated Fund for payment to the Board for carrying out the provisions of this Act during the first year of the operation of this Act.

[Section 16 amended by No. 20 of 1955 s.10; No. 113 of 1965 s.4; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

17. Temporary investment

All moneys standing to the credit of the Fund may, until required by the Board in connection with the exercise of its powers or the discharge of its duties under this Act, be temporarily invested as the Treasurer may direct in any securities in which moneys standing to the credit of the Public Bank Account constituted under the *Financial Administration and Audit Act 1985* may lawfully be invested, and all interest derived from such investment shall be credited to the Fund.

[Section 17 amended by No. 98 of 1985 s.3; No. 49 of 1996 s.64.]

18. Financial assistance

The Board may —

- (a) subsidize a registered public library conducted by a participating body to the extent of one dollar for each dollar expended by the participating body on its maintenance, including the costs of library services and salaries, but subject to such conditions as may be prescribed;
- (b) recommend to the Minister the payment of additional grants over and above the subsidy referred to in the last preceding paragraph to participating bodies for initial stocking in special cases, having regard among other things to the area of the district of a local government which is a participating body, the population of that area, the rateable land in that area, and the potential revenue available to the local government apart from the provisions of this Act;
- (c) subject to the approval of the Governor and to such conditions as the Governor thinks fit to impose, borrow money for the purposes of this Act.

[Section 18 amended by No. 20 of 1955 s.11; No. 113 of 1965 s.4; No. 14 of 1996 s.4.]

19. Rating powers of local government

- (1) A local government may exercise the provisions relating to rates of the Act under which it is constituted to make and levy, in addition to any other rate which it is thereby authorized to levy, a rate to be called the registered public library services rate, on all rateable land in the district of which it is constituted the local government.
- (2) The registered public library services rate made on rateable land in a district in any financial year shall not exceed —
 - (a) in the case of land rated on unimproved capital value, the sum of $\frac{5}{48}$ of a cent in the dollar;

- (b) in the case of rateable land rated on annual rental value, a sum not exceeding $\frac{5}{6}$ of a cent in the dollar.
- (3) Rates levied in pursuance of the provisions of this section shall be used by the local government for the purposes of the provisions of this Act and may, on such terms and conditions as the local government thinks fit, be appropriated for payment as contributions to any other local government for registered public library services rendered by the other local government to the ratepayers or citizens of the first-mentioned local government.

[Section 19 amended by No. 20 of 1955 s.12; No. 113 of 1965 s.4; No. 29 of 1974 s.6; No. 14 of 1996 s.4.]

20. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

[Section 20 inserted by No. 98 of 1985 s.3.]

20A. Transition provisions relating to transfer of Public Library to the Board

- (1) In this section unless the context requires otherwise —
- “**appointed day**” means the day of the coming into operation of the *Acts Amendment (Libraries) Act 1955*¹;
- “**Public Library**” means the Public Library of Western Australia mentioned in the Public Library Act;
- “**Public Library Act**” means the *Public Library, Museum, and Art Gallery of Western Australia Act 1911*⁵;
- “**Trustees**” means the trustees in office under the Public Library Act.

[(2) repealed]

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- (3) (a) So much of the land described in the Schedule to the Public Library Act, and so much of the buildings on that land, as the Governor by proclamation declares to be vested in the Board, shall, by operation of this Act and the proclamation, cease to be vested in the Trustees, and shall become and be vested in the Board for such estate or interest as is mentioned in the proclamation, without the necessity of any transfer or conveyance.
- (b) The Board shall not, without the consent of the Governor sell, exchange, lease, mortgage or otherwise dispose of or encumber the land so vested, or any part of, or estate or interest in, the land.
- (4) (a) On the appointed day all books, periodicals, newspapers or other printed matter and all maps, plans, music, manuscripts, pictures, prints, motion pictures, sound recordings, photographic plates or photographic films or any other matters or things whereby words or sounds are recorded or reproduced, together with all library fittings, furniture and equipment in the possession or control of or held in trust by the Trustees for the purpose of being used for the provision of a library service shall be transferred to and vested in the Board.
- (b) Where any doubt or difficulty arises as to whether paragraph (a) applies to any property, the Minister may by notice in writing give directions as to that property and a direction so given shall be binding upon all persons, courts and tribunals.
- (c) All contracts entered into or rights enjoyed prior to the commencement of the *Acts Amendment (Libraries) Act 1955*¹ by the Trustees which relate to the Public Library or library services shall be deemed to have been entered into or enjoyed by the Board and the Board shall take and exercise in respect thereof all the powers, duties, rights, liabilities and immunities of the Trustees.

- (5) (a) All gifts and bequests made to or on behalf of or for the benefit or purposes of the Public Library shall, whether made before or after the coming into operation of the *Acts Amendment (Libraries) Act 1955*¹, be deemed gifts and bequests to or on behalf of or for the benefit of the Board.
- (b) All gifts and bequests made to or on behalf of or for the benefit or purposes of the Public Library, Museum and Art Gallery of Western Australia shall, whether made before or after the coming into operation of the *Acts Amendment (Libraries) Act 1955*¹, be allocated to or divided between the Board and the Trustees as the Governor thinks fit.
- (6) Any references in any other Act to the Trustees of the Public Library, Museum and Art Gallery of Western Australia shall insofar as they refer to the Public Library or to the library service be construed as a reference to the Board.
- (7) (a) All officers and employees holding office or being employed at the appointed day in the Public Library of Western Australia shall be deemed to have been appointed and engaged by the Board under the provisions of the *Library Board of Western Australia Act 1951*.
- (b) All rights and accruing rights of such officers and employees of the Trustees and of the officers and employees of the Board at the appointed day shall remain unimpaired and shall continue for the purposes of those persons' employment with the Board and the Board shall undertake all matters incidental to the fulfilment of any obligations in connection therewith and the Trustees shall at the appointed day be freed and discharged from any such obligations.
- (8) Where doubt or difficulty arises as a result of the operation of the *Acts Amendment (Libraries) Act 1955*¹, or if in the opinion of the Governor that Act omits to make adequate provision for

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any matters necessary to be provided for the transfer of the Public Library to the control and management of the Board, the Governor may by Order in Council make such provision as he thinks just and reasonable in the circumstances for the purpose of removing any such doubt or difficulty or determining what is to be done and upon being published in the *Gazette* such Order in Council shall have effect as if it had been enacted in that Act.

- (9) Where by this section power conferred upon the Governor is exercisable by the making of a proclamation or an Order in Council, the Governor may, from time to time, by subsequent proclamation or Order in Council, as the case requires, amend or alter any previous proclamation or order so made.

[Section 20A inserted by No. 20 of 1955 s.13; amended by No. 29 of 1974 s.7.]

21. Regulations

- (1) The Governor may make regulations prescribing forms, fees and other matters and things which, by this Act, are contemplated, required or permitted to be prescribed, or which appear to be necessary or convenient for the purpose of effectually carrying out the provisions and intentions of this Act, and for better effecting the objects and purposes of this Act.
- (2) The regulations may —
- (a) impose a penalty not exceeding \$100 for a breach thereof; and
 - (b) provide that, in addition to the penalty, any expense incurred in consequence of the breach, shall be paid by the offender.
- (3) The regulations may be of general application or apply in particular cases, and may prescribe the cases in which, and the conditions, if any, under which any persons or things, or classes of persons or things, shall be exempted either wholly or to such extent as is specified in the regulations, from the provisions of the regulations.

- (4) Regulations made pursuant to the provisions of this Act shall not be regarded as invalid on the ground that they delegate to or confer upon any person or class of persons a discretionary authority.
- (5) The regulations, without limiting or otherwise prejudicing the provisions of the foregoing subsections of this section —
- (a) may provide for the conduct of any library or library service;
 - (b) may regulate the use and provide for the protection of any library and its contents;
 - (c) may provide for the lodging of a deposit, security or guarantee against the loss of or injury to any book, periodical, magazine, reading matter or other thing, whether of the same or a different kind from the foregoing, by any person using it;
 - (d) may authorize the officers and servants of any participating body conducting free library services to exclude or remove from any premises used in connection with any library or library services, persons committing any offences against the regulations;
 - (e) may determine the number of books, magazines, periodicals, reading matter, and other things, whether of the same or a different kind from the foregoing, which may be borrowed by any persons or class of persons, and the period during which they may be so borrowed;
 - (f) may provide conditions for financial and other assistance to participating bodies;
 - (g) may provide for the custody and management of the State archives;
 - (h) may provide for the regulation of registered public libraries.

[Section 21 amended by No. 113 of 1965 s.4; No. 29 of 1974 s.8; No. 44 of 1983 s.4.]

State Archives

[Heading inserted by No. 29 of 1974 s.9.]

22. Board to control State archives

In order to make provision for the preservation, management and utilization of the archives of the State, both for administrative purposes and for purposes of study and research, The Library Board of Western Australia shall have custody and control of all State archives.

[Section 22 inserted by No. 29 of 1974 s.9.]

23. Power of exemption

The Governor, on the advice of the Board, may declare that all or any specified provisions of this Act shall not apply to or in relation to any public record or class of public records specified in the declaration, and the Governor may amend or revoke any such declaration on the advice of the Board.

[Section 23 inserted by No. 29 of 1974 s.9.]

24. Board to represent the Crown

In relation to any public record —

- (a) no length of time shall bar the rights of the Crown; and
- (b) the Board shall be deemed to represent the Crown,

notwithstanding the provisions of any other law to the contrary.

[Section 24 inserted by No. 29 of 1974 s.9.]

25. Transitional provision

All State archives in the custody of the Board at the coming into operation of the *Library Board of Western Australia Act Amendment Act 1974*¹, shall be deemed to have been transferred to the Board under the provisions of this Act and shall remain in the custody of the Board.

[Section 25 inserted by No. 29 of 1974 s.9.]

26. Archives may remain in, or be called for by, a public office

- (1) The Board may enter into an agreement under the provisions of this Act with a public office for any or all of the State archives of that public office to remain in the custody of that public office.
- (2) If an officer in charge of any public office notifies the Board in writing that any archive which was transferred to the Board from that public office is required for use in that public office, the Board shall, if the Board has the custody and control of that archive, make that archive available to that officer.

[Section 26 inserted by No. 29 of 1974 s.9.]

27. Validity of records in archives

The legal validity of a public record shall not be affected by its transfer as a State archive to the Board under the provisions of this Act.

[Section 27 inserted by No. 29 of 1974 s.9.]

28. Public access

Subject to the provisions of this Act, the Board shall provide public access to the State archives, together with appropriate assistance and facilities to enable the archives to be effectively used for administrative requirements and for study and research.

[Section 28 inserted by No. 29 of 1974 s.9.]

29. Functions of the Board

It shall be the duty of the Board —

- (a) to advise and assist public offices in matters of record management, including the creation, maintenance, security and disposal of records;
- (b) to select for preservation non-current records notified to the Board by public offices;

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- (c) to accept custody and control of public records so selected, and to take all reasonable steps to secure their preservation; and
- (d) to organize and arrange the State archives in a proper manner for use,

and the Board shall have all such powers as may be reasonably necessary for the carrying out of that duty.

[Section 29 inserted by No. 29 of 1974 s.9.]

30. Records management

- (1) The officer in charge of a public office —
 - (a) shall be responsible, with the advice and assistance of the officers of the Board, for the maintenance within that office of a system of records management; and
 - (b) shall take all action necessary for the recovery of any public records unlawfully removed from that office.
- (2) The officer in charge of a public office may destroy or dispose of any public record or class of public records in the custody or under the control of that public office —
 - (a) if the destruction or disposal is in accordance with a Retention and Disposal Schedule with the terms of which an authorized officer of the Board has concurred; or
 - (b) if the Board has informed that officer in writing that it does not require that public record or that class of public records to be transferred to the Board for inclusion among the State archives,but not otherwise.
- (3) Before any public records are destroyed or disposed of, the officer in charge of the public office in the custody or under the control of which the public records are shall notify the Board of the intention to destroy or dispose of those public records and in that notification shall specify the nature of the public records concerned.

- (4) If within 3 months after a notification under subsection (3) has been given to the Board, the Board does not in accordance with section 31 inform the officer who caused the notification to be given that it requires the public records referred to in the notification to be transferred, this section shall not thereafter apply to the destruction or disposal of the records referred to in the notification.
- (5) Public records in the custody, or under the control, of a public office shall not be destroyed or disposed of otherwise than in accordance with this Act.
- (6) Notwithstanding the provisions of any other law, any officer having the control or custody of any non-current public records may notify the Board of those records, specifying the nature of the records, and request that the records be inspected with a view to the transfer of those records to the Board as State archives.

[Section 30 inserted by No. 29 of 1974 s.9.]

31. Transfer to Board

- (1) Where the Board is notified by the officer having the control or custody of any non-current public records that he intends to destroy or dispose of those records or that he desires that those records should be transferred to the Board as State archives the Board shall inspect those records or cause them to be inspected.
- (2) Where the Board selects and requires any such public record to be transferred to the custody of the Board as State archives, the Board shall so inform the officer who caused the notification to be given to the Board and thereupon those public records shall be transferred to the Board as soon as practicable and in the same form and order as that in which those records were maintained in the public office from which they were transferred.

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- (3) Where the Board is unable to accept custody at that time of any public record selected and required as State archives under this section, the officer in charge of the public office in the custody of which that record is shall comply with the requests of the Board concerning the care and security of that public record until so transferred.

[Section 31 inserted by No. 29 of 1974 s.9.]

32. Secrecy

- (1) Notwithstanding any other Act or law, whether coming into operation before or after the coming into operation of this provision of this Act, which prohibits any person from disclosing or divulging any information contained in a public record the provisions of this Act apply to that public record, and no person shall be liable to a penalty under any such other Act or law by virtue of anything done pursuant to this Act.
- (2) When an officer in charge of any public office transfers to the Board any public record which contains information the disclosure of which is prohibited by any other Act or law, he shall by notice in writing inform the Board of that prohibition.
- (3) When an officer in charge of any public office transfers to the Board any public record the disclosure of which is not prohibited by any other Act or law but the disclosure of which would not be in the public interest he may, by notice in writing given to the Board, impose reasonable restrictions on public access to that public record or any part of that record, but any such conditions may be varied or revoked, either in general or in a particular case, by the officer for the time being in charge of the public office from which that public record was transferred.
- (4) The Board and any officer of the Board shall comply with a restriction imposed in accordance with the provisions of subsection (3).

(5) If the Board, or an authorized officer of the Board, is of the opinion that any archives or class of archives transferred from a public office contain matters of such private or personal nature that they should not be open for general public consultation, the Board or an officer of the Board may —

- (a) restrict access to those archives to any extent which the Board or the authorized officer sees fit; or
- (b) grant access subject to conditions,

and any person to whom access is granted shall observe such restrictions or conditions.

[Section 32 inserted by No. 29 of 1974 s.9.]

33. Destruction of archives

- (1) If the Board, for any reason, is of the opinion that a State archive or a class of archives in the custody of the Board should no longer be preserved, the Board may, after consultation with the officer in charge of the public office from which that archive or class of archives was transferred, recommend to the Governor that the archive be destroyed.
- (2) Subject to the approval of the Governor being given pursuant to subsection (1), the Board may destroy any State archive in the custody of the Board.
- (3) A certificate that a State archive has been destroyed by the Board shall be *prima facie* evidence of the fact so certified, if authenticated by the signature of the Chairman or an authorized officer.

[Section 33 inserted by No. 29 of 1974 s.9.]

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Notes

- ¹ This reprint is a compilation as at 2 November 1999 of the *Library Board of Western Australia Act 1951* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Library Board of Western Australia Act 1951</i>	42 of 1951	20 December 1951	30 September 1952 (see section 2 and <i>Gazette</i> 26 September 1952 p.2358)	
<i>Acts Amendment (Libraries) Act 1955, Part I</i>	20 of 1955	3 November 1955	1 December 1955 (see section 2)	
<i>Decimal Currency Act 1965, section 4(1)</i>	113 of 1965	21 December 1965	14 February 1966 (see section 2)	
<i>Library Board of Western Australia Act Amendment Act 1974</i>	29 of 1974	29 October 1974	29 October 1974	
<i>Library Board of Western Australia Amendment Act 1983</i>	44 of 1983	5 December 1983	5 December 1983	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	
<i>Acts Amendment (Arts Representation) Act 1987, Part III</i>	75 of 1987	26 November 1987	12 February 1988 (see section 2 and <i>Gazette</i> 12 February 1988 p.399)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Service) Act 1987, section 32</i>	113 of 1987	31 December 1987	16 March 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)	
<i>Acts Amendment (Education) Act 1988, Part 7</i>	7 of 1988	30 June 1988	8 July 1988 (see section 2 and <i>Gazette</i> 8 July 1988 p.2371)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Education Amendment Act 1996, section 16(6)</i>	22 of 1996	11 July 1996	11 July 1996 (see section 2(1))	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 80</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2(1))	

^{1a} As at the date of this reprint, Schedule 2 of the *School Education Act 1999* (No. 36 of 1999) was not in operation. The part pertaining to this Act reads as follows —

“

1. Section 5(3) is amended by deleting “Education Department as defined in the *Education Act 1928*” and substituting the following —

“

department referred to in section 228 of the *School Education Act 1999*

”

2. Section 5(9)(aa) is amended by deleting “*Education Act 1928*” and substituting instead the following —

“ *School Education Act 1999* ”.

”.

² Under section 31(1)(f) of the *Acts Amendment (Public Service) Act 1987* (No. 113 of 1987) references to “Permanent Head” may be construed as references to “chief executive officer”.

³ Name changed to Ministry for Culture and the Arts.

⁴ A reference to the *Public Service Act 1978* may be read as a reference to the *Public Sector Management Act 1994* according to s.112(1) of that Act.

⁵ Repealed by the *Art Gallery Act 1959* (No. 62 of 1959) s.3.